

A COMPILATION  
OF THE  
STATUTES OF THE STATE OF ILLINOIS,

OF A  
GENERAL NATURE,

IN FORCE JANUARY 1, 1856,

COLLATED WITH REFERENCE TO

DECISIONS OF THE SUPREME COURT

OF SAID STATE, AND TO

PRIOR LAWS RELATING TO THE SAME SUBJECT MATTER.

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BY N. H. PURPLE,  
A MEMBER OF THE ILLINOIS BAR.

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PART I.

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## PREFACE.

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Entered, according to Acts of Congress, in the year 1855, by

W. B. KEEN, F. LEE, AND N. H. PURPLE,

In the Clerk's Office of the District Court of the Northern District of Illinois.

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G. SCOTT,  
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MANY of the members of the legal profession in Illinois have for some years entertained the belief that there existed a necessity for a thorough and radical revision of the Statute Laws of the State. No specific work of the kind has as yet been undertaken, and, of course, none could be successfully prosecuted, without the direct sanction of the General Assembly.

The revisions of 1827 and 1833 were compilations merely; and the Revised Statutes of 1845, in most respects, retain the phraseology of the laws, as they were originally enacted.

Whether an entire revision of our laws would, at the present time, prove a general benefit to the citizens at large, is a question for the Legislature alone to determine. Many thinking men believe that with however much of ability such a work might be executed, it would prove of doubtful utility. Experience has taught them the salutary lesson, that unless a law, which has for a long time been acquiesced in, and which has received judicial construction, is palpably wrong, oppressive or burdensome, it should neither be altered, modified or repealed—that, in the attempt to do either, there is danger that its substitute may not be an improvement, and a wide door is sure to be opened for new constructions, often to the great embarrassment of the lawyer, and always at the expense of his client.

The revisions in other States, when they have been really revisions, that is, a *new code*, have not usually met the approbation of the legal profession, where they have been adopted. Compelled, by their introduction, to relearn the Statute Laws, and



build up and establish a new system of practice, lawyers have found themselves "afloat upon a sea of speculation," and obliged to wait the "slow and toilsome progress" of the courts, until they shall have decided which, out of some half dozen constructions which often may, with equal propriety, be placed upon any new enactment, is the legitimate one, before they can safely advise their clients *what is the law*.

But whether such a revision of the Statute Laws may be deemed advisable or otherwise, or whether the same may or may not, at some future period, be accomplished, all must admit the necessity that exists, and that will continue to exist, for a compilation of the *General Laws* now in force, in such form as to afford a convenient reference to the decisions of our courts under the same, and to the several dates of the passage of the various laws relating to the same subject matter.

Such is the design of this work. The Revised Statutes of 1845 show us what the laws were, existing up to the date of their publication, but they afford us no opportunity, by reference to the times of their original enactment, and the contemporaneous history of those periods, by which to determine the intention of the Legislature; and we are often compelled to wade through imperfect indices of twenty volumes of public and private statutes, to find the origin of the law. The compiler flatters himself that in this work, these inconveniences and evils will be measurably obviated, if not entirely removed.

The edition of the Revised Statutes of 1845 is exhausted. Gentlemen of the legal profession, who are not already supplied, cannot now procure the General Laws of the State: this publication will afford facilities to them and others desiring to learn or practice the law, for obtaining that necessary information, without which they can neither merit nor expect success.

N. H. PURPLE.

Peoria, May 1, 1856.

## NOTICE TO SUBSCRIBERS AND THE PUBLIC.

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WHEN the publication of this work was commenced, it was supposed that it might be comprised in one volume of about one thousand pages, and that it could be afforded at about seven dollars per volume. As it progressed, it became manifest that it must make, at least, thirteen hundred pages of printed matter, and be published in two volumes. To improve the appearance of the volumes, in a mechanical point of view, and increase the interest and utility of the work, thereby more than compensating the purchaser for the advance in price, the publishers and compiler have added to the original design, the charter of the Central Rail Road, and the laws relating to the same, and several Acts of Congress, highly useful and important to the interests of the people of the State.

The price of the work, in two volumes, will be necessarily increased to ten dollars.

It is hoped that the alteration and improvement may meet the approbation of the subscribers and the public.

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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 meantime, 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 offenses:

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 legislature, 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 insurrection 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 connection 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 connection 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.*

JOSIAH BARTLETT,  
WILLIAM WHIPPLE,  
MATTHEW THORNTON.

*Massachusetts Bay.*

SAMUEL ADAMS,  
JOHN ADAMS,  
ROBERT TREAT PAINE,  
ELBRIDGE GERRY.

*Rhode Island, &c.*

STEPHEN HOPKINS,  
WILLIAM ELLERY.

*Connecticut.*

ROGER SHERMAN,  
SAMUEL HUNTINGTON,  
WILLIAM WILLIAMS,  
OLIVER WOLCOTT.

*New York.*

WILLIAM FLOYD,  
PHILIP LIVINGSTON,  
FRANCIS LEWIS,  
LEWIS MORRIS.

*New Jersey.*

RICHARD STOCKTON,  
JOHN WITHERSPOON,  
FRANCIS HOPKINSON,  
JOHN HEART,  
ABRAHAM CLARK.

*Pennsylvania.*

ROBERT MORRIS,  
BENJAMIN RUSH,  
BENJAMIN FRANKLIN,  
JOHN MORTON,  
GEORGE CLYMER,  
JAMES SMITH,  
GEORGE TAYLOR,  
JAMES WILSON,  
GEORGE ROSS.

*Delaware.*

CÆSAR 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 HAYWARD, 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 defense, 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 pretense 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 restrictions 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 offense.

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 court or place out of Congress, and the members of Congress shall be protected in their person 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 any embassy to, or receive any 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 purpose 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 defense of such State, or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall

be deemed requisite to garrison the forts necessary for the defense 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 defense, 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 defense, 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 estab-

lishing 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 lists 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 courts 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 defense 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 of the 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 hath pleased the Great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorise 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 presents, 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,  
SAMUEL ADAMS,  
ELBRIDGE GERRY,  
FRANCIS DANA,  
JAMES LOVELL,  
SAMUEL HOLTEN.

*On the part and behalf of the State of Rhode Island and Providence Plantations.*

WILLIAM ELLERY,  
HENRY MARCHANT,  
JOHN COLLINS.

*On the part and behalf of the State of Connecticut.*

ROGER SHERMAN,  
SAMUEL HUNTINGTON,  
OLIVER WOLCOTT,  
TITUS HOSMER,  
ANDREW ADAMS.

*On the part and behalf of the State of Virginia.*

RICHARD HENRY LEE,  
JOHN BANNISTER,  
THOMAS ADAMS,  
JNO. HARVE,  
FRANCIS LIGHTFOOT LEE.

*On the part and behalf of the State of New York.*

JAMES DUANE,  
FRA. LEWIS,  
WM. DUER,  
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,  
DANIEL ROBERDEAU,  
WILLIAM CLINGAN,  
JOSEPH REED, 22d July, 1778,  
JONA. BAYARD SMITH.

*On the part and behalf of the State of Delaware.*

THOMAS McKEAN, Feb. 13, 1779,  
JOHN DICKINSON, May 5, 1779,  
NICHOLAS VAN DYKE.

*On the part and behalf of the State of Maryland.*

JOHN HANSON, March 1, 1781.  
DANIEL CARROLL, March 1, 1781.

*On the part and behalf of the State of South Carolina.*

HENRY LAURENS,  
WILLIAM HENRY DRAYTON,  
JNO. MATTHEWS,  
RICHARD HUTSON,  
THOMAS HAYWARD, Jr.



*On the part and behalf of the State of North Carolina.*

JOHN PENN, July 21, 1778,  
CORNS. HARNETT,  
JNO. WILLIAMS.

*On the part and behalf of the State of Georgia.*

JNO. WALTON, 24th July, 1778,  
EDW. TELFAIR,  
EDW. LANGWORTHY.

ACT OF VIRGINIA, DEC. 20, 1783.

An Act to authorize the delegates of this State in Congress, to convey to the United States in Congress assembled, all the right of this commonwealth to the territory north-westward of the river Ohio.

1. Whereas the Congress of the United States did, by their act of the sixth of September, in the year one thousand seven hundred and eighty, recommend to the several States in the Union, having claims to waste and unappropriated lands, in the western country, a liberal cession to the United States, of a portion of their respective claims for the common benefit of the Union :

2. And whereas this commonwealth did, on the second day of January, in the year one thousand seven hundred and eighty-one, yield to the Congress of the United States, for the benefit of the said States, all right, title, and claim, which the said commonwealth had to the territory north-west of the river Ohio, subject to the conditions annexed to the said act of cession :

3. And whereas the United States in Congress assembled, have, by their act of the thirteenth of September last, stipulated the terms on which they agree to accept the cession of this State, should the legislature approve thereof, which terms, although they do not come fully up to the propositions of this commonwealth, are conceived, on the whole, to approach so nearly to them, as to induce this State to accept thereof, in full confidence that Congress will, in justice to this State for the liberal cession she hath made, earnestly press upon the other States claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal for the common benefit and support of the Union : *Be it enacted by the General Assembly*, that it shall and may be lawful for the delegates of this State to the Congress of the United States, or such of them as shall be assembled in Congress, and the said delegates, or such of them so assembled, are hereby fully authorized and empowered, for and on behalf of this State, by proper deed or instrument in writing, under their hands and seals, to convey, transfer, assign and make over to the United States in Congress assembled, for the benefit of the said States, all right, title, claim, as well of soil as jurisdiction, which this commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying and being to the north-west of the river Ohio, subject to the terms and conditions

contained in the before recited act of Congress of the thirteenth day of September last, that is to say : Upon condition that the territory so ceded shall be laid out and formed into States, containing suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit ; and that the States so formed, shall be distinct republican States, and admitted members of the Federal Union, having the same rights of sovereignty, freedom and independence, as the other States ; that the necessary and reasonable expenses incurred by this State in subduing any British posts, or in maintaining forts or garrisons within and for the defense, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States ; and that one commissioner shall be appointed by Congress, one by this commonwealth, and another by those two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this State, which they shall judge to be comprised within the intent and meaning of the act of Congress of the tenth of October, one thousand seven hundred and eighty, respecting such expenses. That the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions confirmed to them, and be protected in the enjoyment of their rights and liberties. That a quantity not exceeding one hundred and fifty thousand acres of land, promised by this State, shall be allowed and granted by them to the then Colonel, now General George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the forts of Kaskaskies and St. Vincents were reduced, and to the officers and soldiers that have been since incorporated into the same regiment, to be laid off in one tract, the length of which is not to exceed double the breadth, in such place on the north-west side of the Ohio, as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion according to the laws of Virginia. That in case the quantity of good lands on the south-east side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon continental establishment, should, from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands, to be laid off between the river Scioto and Little Miami, on the north-west side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the before mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation or federal alliance of the said States, Virginia inclusive, according to the usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever. *Provided*, that the

trust hereby reposed in the delegates of this State shall not be executed, unless three of them, at least, are present in Congress.

Passed December 20, 1783.

[Revised Code of Virginia of 1819.]

### ACT OF VIRGINIA, OF DECEMBER 30, 1788.

Whereas the United States in Congress assembled did, on the seventh day of July, in the year of our Lord one thousand seven hundred and eighty-six, state certain reasons, showing that a division of the territory which hath been ceded to the United States, by this commonwealth, into States, in conformity to the terms of cession, should the same be adhered to, would be attended with many inconveniences, and did recommend a revision of the act of cession, so far as to empower Congress to make such a division of the said territory into distinct and republican States, not more than five nor less than three in number, as the situation of that country and future circumstances might require; and the said United States in Congress assembled, have, in an ordinance for the government of the territory north-west of the river Ohio, passed on the thirteenth of July, one thousand seven hundred and eighty-seven, declared the following as one of the articles of compact between the original States and the people and States in the said territory, viz:

[Here the 5th article of compact, of the ordinance of Congress of 13th July, 1787, is recited verbatim. *Post*, p. 24.]

And it is expedient that this commonwealth do assent to the proposed alteration, so as to ratify and confirm the said article of compact between the original States and the people and States in the said territory:

2. Be it therefore, enacted, by the general assembly, That the aforesaid article of compact, between the original States and the people and States in the territory north-west of Ohio river, be and the same is hereby ratified and confirmed, anything to the contrary in the deed of cession of the said territory by this commonwealth to the United States, notwithstanding.

### DEED OF CESSION FROM THE STATE OF VIRGINIA.

To all who shall see these presents, we, Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, the underwritten delegates for the commonwealth of Virginia, in the Congress of the United States of America, send greeting:

Whereas, the general assembly of the commonwealth of Virginia, at their sessions begun on the 20th day of October, 1783, passed an act, entitled,

“An act to authorize the delegates of this State in Congress, to convey to the United States in Congress assembled, all the right of this commonwealth to the territory north-westward of the river Ohio, in these words following, to wit:” [Here follows the first act of cession. *Ante*, p. 20.]

And whereas, the said general assembly, by their resolution of June sixth, one thousand seven hundred and eighty-three, had constituted and appointed us, the said Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, delegates to represent the said commonwealth in Congress, for one year from the first Monday in November then next following, which resolution remains in full force: Now, therefore, know ye, that we, the said Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, by virtue of the power and authority committed to us by the act of the said general assembly of Virginia, before recited; and in the name and for and on behalf of the said commonwealth, do, by these presents, convey, transfer, assign, and make over unto the United States in Congress assembled, for the benefit of the said States, Virginia inclusive, all right, title, and claim, as well of soil as of jurisdiction, which the said commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying and being to the north-west of the river Ohio, to and for the use and purposes and on the conditions of the said recited act. In testimony whereof, we have hereunto subscribed our names and affixed our seals, in Congress, the first day of March, in the year of our Lord one thousand seven hundred and eighty-four, and of the independence of the United States the eighth.

### ORDINANCE OF JULY 13, 1787:

FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES NORTH-WEST OF THE OHIO.

1. BE IT ORDAINED, by the United States in Congress assembled, That the said territory, for the purpose 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.

2. Be it ordained by the authority aforesaid, That the estate 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 rela-

tive to descent 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 estate 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, St. 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.

3. 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.

4. 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.

5. 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 districts, 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.

6. 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.

7. 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.

8. 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.

9. 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 a 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.

10. 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.

11. 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, resident 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 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.

12. 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.

13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitution, 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.

14. 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 be bailable, unless for capital offenses, 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 shall never 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 the 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 twenty-third of April, one thousand seven hundred and eighty-four, relative to the subject of this ordinance, be, and the same are hereby repealed, and declared null and void.

Done by the United States in Congress assembled, the thirteenth day of July, in the year of our Lord one thousand seven hundred and eighty-seven, and of their sovereignty and independence the twelfth.

WILLIAM GRAYSON, *Chairman.*

CHARLES THOMPSON, *Secretary.*

## AN ORDINANCE,

*Accepting certain propositions made by Congress, April 18, 1818.*

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, 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.*

[NOTE. Indiana was erected into a separate territory, and the provision of the ordinance of 1787 extended over the same, on the 7th day of May, 1800; admitted into the Union Dec. 11, 1816.

Illinois was erected into a separate territory and the provisions of said ordinance extended over the same, February 3, 1809; admitted into the Union Dec. 3, 1818.]

## 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 the 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.

## OLD CONSTITUTION 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 18, 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 aforesaid, 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 the north latitude forty-two degrees and thirty minutes; thence west to the middle of the Mississippi river; and thence down along the middle of the river to its confluence with the Ohio river; and thence up the latter river along its north-western shore to the beginning.

### ARTICLE I.

SEC. 1. The powers of the government of the State of Illinois, shall be divided into three distinct departments, and each of them shall be confined 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 for their dissent entered on the journals.

SEC. 10. Each house may determine the rules of its proceeding, 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 power 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 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.

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 of 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 pardon 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 time 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 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 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 office for 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 in 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 re-consider the said bill. But if, after such re-consideration, 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 re-considered: 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, jailers, 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 temporary appointment, 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 age of eighteen and forty-five years, except such persons as now are, or hereafter may be exempted by the law 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 exemptions.

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 a 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 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 offenses 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 pretense whatever: *Provided, however*, that nothing in this section shall be so construed as to effect 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 offense, 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 offense, 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 offenses, 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 case of rebellion or invasion, the public safety may require it.

SEC. 14. All penalties shall be proportioned to the nature of the offense, 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 offense committed within the same.

SEC. 18. That a frequent recurrence to 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 moneyed 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 dueling.

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 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 preëmption 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 herunto subscribed our names.

JESSE B. THOMAS,

*President of the Convention, and Representative from St. Clair County.*

*St. Clair County,*

JOHN MESSINGER,  
JAMES LEMEN, JR.

*Randolph County,*

GEORGE FISHER,  
ELIAS KENT KANE.

*Madison County,*

B. STEPHENSON,  
JOSEPH BOROUGH,  
ABRAHAM PRICKETT.

*Gallatin County,*

MICHAEL JONES,  
LEONARD WHITE,  
ADOLPHUS FRED. HUBBARD.

*Johnson County,*

HEZEKIAH WEST,  
WILLIAM M'FATRIDGE,

*Edwards County,*

SETH GARD,  
LEVI COMPTON.

*White County,*

WILLIS HARGRAVE,  
WILLIAM M'HENRY.

*Monroe County,*

CALDWELL CARNS,  
ENOCH MOORE.

ATTEST:

WM. C. GREENUP,

*Secretary to the Convention.*

*Pope County,*

SAMUEL OMELVENY,  
HAMLET FERGUSON.

*Jackson County,*

CONRAD WILL,  
JAMES HALL, JR.

*Crawford County,*

JOSEPH KITCHELL,  
EDWARD N. CULLOM.

*Bond County,*

THOMAS KIRKPATRICK,  
SAMUEL G. MORSE.

*Union County,*

WILLIAM ECHOLS,  
JOHN WHITEAKER.

*Washington County,*

ANDREW BANKSON.

*Franklin County,*

ISHAM HARRISON,  
THOMAS ROBERTS.

## NEW CONSTITUTION OF ILLINOIS.

### PREAMBLE.

WE, the people of the State of Illinois—grateful to Almighty God for the civil, political and religious liberty, which he hath so long permitted us to enjoy, and looking to him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations—in order to form a more perfect government, establish justice, insure domestic tranquility, provide for the common defense—promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the State of Illinois.

## ARTICLE I.

### BOUNDARIES.

SEC. 1. The boundaries and jurisdiction of the State shall be 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 place of beginning: *Provided*, That this State shall exercise such jurisdiction upon the Ohio river as she is now entitled to, or such as may hereafter be agreed upon by this State and the State of Kentucky.

## ARTICLE II.

### 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 judicial, to another.

SEC. 2. No person or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted, and all acts in contravention of this section shall be void.

## ARTICLE III.

### OF THE LEGISLATIVE DEPARTMENT.

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

SEC. 2. The first election for senators and representatives shall be held on the Tuesday after the first Monday in November, one thousand eight hundred and forty-eight; and thereafter elections for members of the general assembly shall be held once in two years, on the Tuesday next after the first Monday in November, 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-five years; who shall not be a citizen of the United States, and three years 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. No person shall be a senator who shall not have attained the age of thirty years; who shall not be a citizen of the United States; five years an inhabitant of this State, and 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. 5. The senators, at their first session herein provided for, shall be divided by lot, as near as can be, into two classes. The seats 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. 6. The senate shall consist of twenty-five members, and the house of representatives shall consist of seventy-five members, until the population of the State shall amount to one million of souls, when five members may be added to the house, and five additional members for every five hundred thousand inhabitants thereafter, until the whole number of representatives shall amount to one hundred; after which, the number shall neither be increased or diminished; to be apportioned among the several counties according to the number of white inhabitants. In all future apportionments, where more than one county shall be thrown into a representative district, all the representatives to which said counties may be entitled, shall be elected by the entire district.

SEC. 7. No person elected to the general assembly shall receive any civil appointment within this State, or to the senate of the United States, from the governor, the governor and senate, or from the general assembly, during the term for which he shall have been elected; and all such appointments, and all votes given for any such member for any such office or appointment, shall be void; nor shall any member of the general assembly be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the time for which he shall have been elected, or during one year after the expiration thereof.

SEC. 8. In the year one thousand eight hundred and fifty-five, and every tenth year thereafter, an enumeration of all the inhabitants of this State shall be made in such manner as shall be directed by law; and in the year eighteen hundred and fifty, and every tenth year thereafter, the census taken by authority of the government of the United States shall be adopted by the general assembly as the enumeration of this State; and the number of senators and representatives shall, at the first regular session holden after the returns herein provided for are made, be apportioned among the several counties or districts to be established by law, according to the number of white inhabitants.

SEC. 9. Senatorial and representative districts shall be composed of contiguous territory bounded by county lines; and only one senator allowed to each senatorial, and not more than three representatives to any repre-

sentative, district: *Provided*, That cities and towns containing the requisite population may be erected into separate districts.

SEC. 10. In forming senatorial and representative districts, counties containing a population of not more than one-fourth over the existing ratio, shall form separate districts, and the excess shall be given to the nearest county or counties not having a senator or representative, as the case may be, which has the largest white population.

SEC. 11. The first session of the general assembly shall commence on the first Monday of January, one thousand eight hundred and forty-nine, and forever after, the general assembly shall meet on the first Monday of January next ensuing the election of the members thereof, and at no other period, unless as provided by this constitution.

SEC. 12. 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 election 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. 13. 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. 14. 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. 15. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member, but not a second time for the same cause; and the reason for such expulsion shall be entered upon the journal, with the names of the members voting on the question.

SEC. 16. When vacancies shall happen in either house, the governor, or the person exercising the powers of governor, shall issue writs of election to fill such vacancies.

SEC. 17. 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. 18. 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. 19. 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. 20. 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. 21. Bills may originate in either house, but may be altered, amended



or rejected by the other; and, on the final passage of all bills, the vote shall be by ayes and noes, and shall be entered on the journal; and no bill shall become a law without the concurrence of a majority of all the members elect in each house.

SEC. 22. Bills making appropriations for the pay of the members and officers of the general assembly, and for the salaries of the officers of the government, shall not contain any provisions on any other subject.

SEC. 23. 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 their respective houses; and no private or local law which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title. And no public act of the general assembly shall take effect or be in force until the expiration of sixty days from the end of the session at which the same may be passed, unless in case of emergency the general assembly shall otherwise direct.

SEC. 24. The sum of two dollars per day, for the first forty-two days' attendance, and one dollar per day, for each days' attendance thereafter, and ten cents for each necessary mile's travel, going to and returning from the seat of government, shall be allowed to the members of the general assembly, as a compensation for their services, and no more. The speaker of the house of representatives shall be allowed the sum of one dollar per day, in addition to his *per diem* as a member.

SEC. 25. The *per diem* and mileage allowed to each member of the general assembly shall be certified by the speakers of their respective houses, and entered on the journals, and published at the close of each session.

SEC. 26. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and 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. And no person, who has been or may be a collector or holder of public moneys, shall be eligible to a seat in either house of the general assembly, nor be eligible to any office of profit or trust in this State, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

SEC. 27. The house of representatives shall have the sole power of impeaching; but a majority of all the members elected 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 the senators elected.

SEC. 28. The governor, and 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. 29. No judge of any court of law or equity, secretary of state, attorney general, attorney for the state, recorder, 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 of this State—provided that appointments in the militia, 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. 30. 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. 31. The general assembly shall have full power to exclude from the privilege of electing, or being elected, any person convicted of bribery, perjury, or other infamous crime.

SEC. 32. The general assembly shall have no power to grant divorces, but may authorize the courts of justice to grant them for such causes as may be specified by law; *Provided*, That such laws be general and uniform in their operation.

SEC. 33. The general assembly shall never grant or authorize extra compensation to any public officer, agent, servant or contractor, after the service shall have been rendered, or the contract entered into.

SEC. 34. The general assembly shall direct by law in what manner suits may be brought against the State.

SEC. 35. The general assembly shall have no power to authorize lotteries for any purpose, nor to revive or extend the charter of the State bank, or the charter of any other bank heretofore existing in this State, and shall pass laws to prohibit the sale of lottery tickets in this State.

SEC. 36. The general assembly shall have no power to authorize, by private or special law, the sale of any lands or other real estate belonging, in whole or in part, to any individual or individuals.

SEC. 37. Each general assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of each house, nor exceed the amount of revenue authorized by law to be raised in such time; *Provided*. The State may, to meet casual deficits or failures in revenues, contract debts never to exceed, in the aggregate, fifty thousand dollars; and the moneys thus borrowed shall be applied to the purpose for which they were obtained, or to repay the debt thus made, and to no other purpose; and no other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the State in war, (for payment of which the faith of the State shall be pledged,) shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for members of the general assembly at such election. The general assembly shall provide for the publication of said law for three months at least before the vote of the people shall be taken upon the same; and provision shall be made, at the time, for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue; which law, providing for the payment of such interest by such tax, shall be irrevocable

until such debt be paid; *And provided, further,* That the law levying the tax shall be submitted to the people, with the law authorizing the debt to be contracted.

SEC. 38. The credit of the State shall not, in any manner, be given to, or in aid of, any individual, association or corporation.

SEC. 39. The general assembly shall provide, by law, that the fuel and stationery furnished for the use of the State, the copying, printing, binding, and distributing the laws and journals, and all other printing ordered by the general assembly, shall be let, by contract, to the lowest responsible bidder; and that no member of the general assembly, or other officer of the State, shall be interested, either directly or indirectly, in any such contract; *Provided,* That the general assembly may fix a maximum price.

SEC. 40. Until there shall be a new apportionment of senators and representatives, the State shall be divided into senatorial and representative districts, and the senators and representatives shall be apportioned among the several districts, as follows, viz.:

#### SENATORIAL DISTRICTS.

1. The counties of Alexander, Union, Pulaski, Johnson, Massac, Pope and Hardin shall constitute the first senatorial district, and be entitled to one senator.

2. The counties of Gallatin, Saline, Williamson, Franklin and White shall constitute the second senatorial district, and be entitled to one senator.

3. The counties of Jefferson, Wayne, Marion and Hamilton shall constitute the third senatorial district, and be entitled to one senator.

4. The counties of Washington, Perry, Randolph and Jackson shall constitute the fourth senatorial district, and be entitled to one senator.

5. The counties of St. Clair and Monroe shall constitute the fifth senatorial district, and be entitled to one senator.

6. The counties of Madison and Clinton shall constitute the sixth senatorial district, and be entitled to one senator.

7. The counties of Christian, Shelby, Montgomery, Bond and Fayette shall constitute the seventh senatorial district, and be entitled to one senator.

8. The counties of Effingham, Jasper, Clay, Richland, Lawrence, Edwards and Wabash shall constitute the eighth senatorial district, and be entitled to one senator.

9. The counties of Edgar, Clark and Crawford shall constitute the ninth senatorial district, and be entitled to one senator.

10. The counties of Vermilion, Champaigne, Piatt, Moultrie, Coles and Cumberland shall constitute the tenth senatorial district, and be entitled to one senator.

11. The counties of Tazewell, McLean, Logan, De Witt and Macon shall constitute the eleventh senatorial district, and be entitled to one senator.

12. The counties of Sangamon, Menard and Mason shall constitute the twelfth senatorial district, and be entitled to one senator.

13. The counties of Macoupin, Jersey, Greene and Calhoun shall constitute the thirteenth senatorial district, and be entitled to one senator.

14. The counties of Morgan, Scott and Cass shall constitute the fourteenth senatorial district, and be entitled to one senator.

15. The counties of Adams and Pike shall constitute the fifteenth senatorial district, and be entitled to one senator.

16. The counties of McDonough, Schuyler, Brown and Highland shall constitute the sixteenth senatorial district, and be entitled to one senator.

17. The counties of Hancock and Henderson shall constitute the seventeenth senatorial district, and be entitled to one senator.

18. The counties of Fulton and Peoria shall constitute the eighteenth senatorial district, and be entitled to one senator.

19. The counties of Rock Island, Henry, Mercer, Warren, Knox and Stark shall constitute the nineteenth senatorial district, and be entitled to one senator.

20. The counties of La Salle, Bureau, Purnam, Marshall, Woodford, Livingston and Grundy shall constitute the twentieth senatorial district, and be entitled to one senator.

21. The counties of Du Page, Kendall, Will and Iroquois shall constitute the twenty-first senatorial district, and be entitled to one senator.

22. The counties of Ogle, Lee, De Kalb and Kane shall constitute the twenty-second senatorial district, and be entitled to one senator.

23. The counties of Jo Daviess, Stephenson, Carroll and Whiteside shall constitute the twenty-third senatorial district, and be entitled to one senator.

24. The counties of McHenry, Boone and Winnebago shall constitute the twenty-fourth senatorial district, and be entitled to one senator.

25. The counties of Cook and Lake shall constitute the twenty-fifth senatorial district, and be entitled to one senator.

#### REPRESENTATIVE DISTRICTS.

1. The counties of Union, Alexander and Pulaski shall constitute the first representative district, and be entitled to one representative.

2. The counties of Massac, Pope and Hardin shall constitute the second representative district, and be entitled to one representative.

3. The counties of Gallatin and Saline shall constitute the third representative district, and be entitled to one representative.

4. The counties of Johnson and Williamson shall constitute the fourth representative district, and be entitled to one representative.

5. The counties of Jackson and Franklin shall constitute the fifth representative district, and be entitled to one representative.

6. The counties of Marion, Jefferson, Wayne and Hamilton shall constitute the sixth representative district, and be entitled to three representatives; *Provided,* That no county in said district shall have more than one of said representatives, and the county from which a senator shall be selected, shall not be entitled to a representative residing in said county.

7. The county of White shall constitute the seventh representative district, and be entitled to one representative.

8. The counties of Wabash and Edwards shall constitute the eighth representative district, and be entitled to one representative.

9. The counties of Lawrence and Richland shall constitute the ninth representative district, and be entitled to one representative.



10. The counties of Crawford and Jasper shall constitute the tenth representative district, and be entitled to one representative.
11. The county of Coles shall constitute the eleventh representative district, and be entitled to one representative.
12. The county of Clark shall constitute the twelfth representative district, and be entitled to one representative.
13. The counties of Cumberland, Effingham and Clay shall constitute the thirteenth representative district, and be entitled to one representative.
14. The county of Fayette shall constitute the fourteenth representative district, and be entitled to one representative.
15. The counties of Montgomery, Bond and Clinton shall constitute the fifteenth representative district, and be entitled to two representatives.
16. The counties of Washington and Perry shall constitute the sixteenth representative district, and be entitled to one representative.
17. The county of Randolph shall constitute the seventeenth representative district, and be entitled to one representative.
18. The county of Monroe shall constitute the eighteenth representative district, and be entitled to one representative.
19. The county of St. Clair shall constitute the nineteenth representative district, and be entitled to two representatives.
20. The county of Madison shall constitute the twentieth representative district, and be entitled to two representatives.
21. The county of Macoupin shall constitute the twenty-first representative district, and be entitled to one representative.
22. The counties of Jersey and Greene shall constitute the twenty-second representative district, and be entitled to two representatives.
23. The county of Scott shall constitute the twenty-third representative district, and be entitled to one representative.
24. The county of Morgan shall constitute the twenty-fourth representative district, and be entitled to two representatives.
25. The counties of Cass and Menard shall constitute the twenty-fifth representative district, and be entitled to one representative.
26. The county of Sangamon shall constitute the twenty-sixth representative district, and be entitled to two representatives.
27. The counties of Mason and Logan shall constitute the twenty-seventh representative district, and be entitled to one representative.
28. The county of Tazewell shall constitute the twenty-eighth representative district, and be entitled to one representative.
29. The counties of McLean and DeWitt shall constitute the twenty-ninth representative district; and be entitled to one representative.
30. The county of Vermillion shall constitute the thirtieth representative district, and be entitled to one representative.
31. The county of Edgar shall constitute the thirty-first representative district, and be entitled to one representative.
32. The counties of Champaigne, Piatt, Moultrie and Macon shall constitute the thirty-second representative district, and be entitled to one representative.
33. The counties of Shelby and Christian shall constitute the thirty-third representative district, and be entitled to one representative.
34. The counties of Pike and Callhoun shall constitute the thirty-fourth representative district, and be entitled to two representatives.

35. The counties of Adams, Highland and Brown shall constitute the thirty-fifth representative district, and be entitled to three representatives.
36. The county of Schuyler shall constitute the thirty-sixth representative district, and be entitled to one representative.
37. The county of Hancock shall constitute the thirty-seventh representative district, and be entitled to two representatives.
38. The county of McDonough shall constitute the thirty-eighth representative district, and be entitled to one representative.
39. The county of Fulton shall constitute the thirty-ninth representative district, and be entitled to two representatives.
40. The county of Peoria shall constitute the fortieth representative district, and be entitled to one representative.
41. The county of Knox shall constitute the forty-first representative district, and be entitled to one representative.
42. The counties of Mercer, Warren and Henderson shall constitute the forty-second representative district, and be entitled to two representatives.
43. The counties of Rock Island, Henry and Stark shall constitute the forty-third representative district, and be entitled to one representative.
44. The counties of Whiteside and Lee shall constitute the forty-fourth representative district, and be entitled to one representative.
45. The counties of Carroll and Ogle shall constitute the forty-fifth representative district, and be entitled to one representative.
46. The counties of Jo Daviess and Stephenson shall constitute the forty-sixth representative district, and be entitled to one representative.
47. The county of Winnebago shall constitute the forty-seventh representative district, and be entitled to one representative.
48. The counties of Putnam, Marshall and Woodford shall constitute the forty-eighth representative district, and be entitled to one representative.
49. The counties of La Salle, Grundy, Livingston and Bureau shall constitute the forty-ninth representative district, and be entitled to two representatives.
50. The counties of Du Page, Kendall, Will and Iroquois shall constitute the fiftieth representative district, and be entitled to three representatives.
51. The counties of Kane and De Kalb shall constitute the fifty-first representative district, and be entitled to two representatives.
52. The counties of Boone and McHenry shall constitute the fifty-second representative district, and be entitled to two representatives.
53. The county of Lake shall constitute the fifty-third representative district, and be entitled to one representative.
54. The county of Cook shall constitute the fifty-fourth representative district, and be entitled to two representatives.

SEC. 41. Until the general assembly shall otherwise provide, the clerks of the county commissioners' courts in each of the aforesaid senatorial districts, and in such of the representative districts as may be composed of more than one county, shall meet at the county seat of the oldest county in said district, within thirty days next after any election for senator or representative therein, for the purpose of comparing and canvassing the votes given at such election; and the said clerks shall in all other respects conform to the laws on the subject in force at the time of the adoption of this constitution.

## ARTICLE IV.

## OF THE EXECUTIVE DEPARTMENT.

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

SEC. 2. The first election of governor shall be held on Tuesday next after the first Monday in November, A. D. 1848; and the next election shall be held on Tuesday next after the first Monday of November, A. D. 1852; and thereafter an election for governor shall be held once in four years, on Tuesday next after the first Monday of November. 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 enter upon the duties of his office on the second Monday of January, A. D. 1849, and shall hold his office until the second Monday of January, A. D. 1853, and until his successor shall have been elected and qualified; and thereafter the governor shall hold his office for the term of four years, and until his successor shall have been elected and qualified; but he shall not be eligible to such office more than four years in any term of eight years, nor to any other office until after the expiration of the term for which he was elected.

SEC. 4. No person except a citizen of the United States shall be eligible to the office of governor; nor shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been ten years a resident of this State, and fourteen years a citizen of the United States.

SEC. 5. The governor shall reside at the seat of government, and shall receive a salary of fifteen hundred dollars per annum, which shall not be increased or diminished; and he shall not, during the time for which he shall have been elected, receive any emolument from the United States, or either of them.

SEC. 6. Before he enters upon the duties of his office, he shall take the following oath or affirmation, to wit: "I do solemnly swear (or affirm) that I will faithfully execute the duties appertaining to the office of governor of the State of Illinois; and will, to the best of my ability, preserve, protect and defend the constitution of this State; and will also support the constitution of the United States."

SEC. 7. 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. 8. The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations

as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the general assembly at its next meeting, when the general assembly shall pardon the convict, commute the sentence, direct the execution thereof, or grant a further reprieve. He shall, biennially, communicate to the general assembly each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime for which he was convicted, the sentence and its date, and the date of commutation, pardon or reprieve.

SEC. 9. 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. 10. He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state in said proclamation the purpose for which they are to convene; and the general assembly shall enter on no legislative business except that for which they were specially called together.

SEC. 11. 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. 12. The governor shall nominate and, by and with the advice and consent of the senate, (a majority of all the senators concurring,) appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointments are not otherwise provided for; and no such officer shall be appointed or elected by the general assembly.

SEC. 13. 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. 14. A lieutenant governor shall be chosen at every election of 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. 15. The lieutenant governor 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. 16. 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 number 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. 17. 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.

SEC. 18. 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 of state, for the time being, to convene the senate for the purpose of choosing a speaker.

SEC. 19. In case of the impeachment of the governor, his absence from the State, or inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve upon the lieutenant governor; and in case of his death, resignation or removal, then upon the speaker of the senate for the time being, until the governor, absent or impeached, shall return or be acquitted; or until the disqualification or inability shall cease; or until a new governor shall be elected and qualified.

SEC. 20. In case of a vacancy in the office of governor, for any other cause than those herein enumerated, or in case of the death of the governor elect before he is qualified, the powers, duties and emoluments of the office shall devolve upon the lieutenant governor, or speaker of the senate, as above provided, until a new governor be elected and qualified.

SEC. 21. Every bill which shall have passed the senate and house of representatives shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated; and the said house shall enter the objections at large on their journal, and proceed to re-consider it. If, after such re-consideration, a majority of the members elected shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be re-considered; and if approved by a majority of the members elected, it shall become a law, notwithstanding the objections of the governor; but in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journals of each house, respectively. If any bill shall not be returned by the governor 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 general assembly shall, by their adjournment, prevent its return; in which case, the said bill shall be returned on the first day of the meeting of the general assembly after the expiration of said ten days, or be a law.

SEC. 22. There shall be elected by the qualified electors of this State, at the same time of the election for governor, a secretary of state, whose term of office shall be the same as that of the governor, 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, and shall receive a salary of eight hundred dollars per annum, and no more, except fees; *Provided*, That if the office of secretary of state should be vacated by death, resignation or otherwise, it shall be the duty of the governor to appoint another, who shall hold his office until another secretary shall be elected and qualified.

SEC. 23. There shall be chosen, by the qualified electors throughout the State, an auditor of public accounts, who shall hold his office for the term of four years, and until his successor is qualified, and whose duties shall be regulated by law, and who shall receive a salary, exclusive of clerk hire, of one thousand dollars per annum, for his services, and no more.

SEC. 24. There shall be elected, by the qualified electors throughout the State, a State treasurer, who shall hold his office for two years, and until his successor is qualified; whose duties may be regulated by law, and who shall receive a salary of eight hundred dollars per annum, and no more.

SEC. 25. All grants and commissions shall be sealed with the great seal of State, signed by the governor or person administering the government, and countersigned by the secretary of state.

SEC. 26. The governor and all other civil officers shall be liable to impeachment for misdemeanor in office, during their continuance in office, and for two years thereafter.

## ARTICLE V.

### OF THE JUDICIARY DEPARTMENT.

SEC. 1. The judicial power of this State shall be, and is hereby, vested in one supreme court, in circuit courts, in county courts, and in justices of the peace; *Provided*, That inferior local courts, of civil and criminal jurisdiction, may be established by the general assembly in the cities of this State, but such courts shall have a uniform organization and jurisdiction in such cities.

SEC. 2. The supreme court shall consist of three judges, two of whom shall form a quorum; and the concurrence of two of said judges shall in all cases be necessary to a decision.

SEC. 3. The State shall be divided into three grand divisions, as nearly equal as may be, and the qualified electors of each division shall elect one of the said judges for the term of nine years; *Provided*, That after the first election of such judges, the general assembly may have the power to provide by law for their election by the whole State, or by divisions, as they may deem most expedient.

SEC. 4. The office of one of said judges shall be vacated, after the first election held under this article, in three years; of one, in six years; and of one, in nine years; to be decided by lot, so that one of said judges shall be elected once in every three years. The judge having the longest term to serve shall be the first chief justice; after which, the judge having the oldest commission shall be chief justice.

SEC. 5. The supreme court may have original jurisdiction in cases relative to the revenue, in cases of *mandamus*, *habeas corpus*, and in such cases of impeachment as may be by law directed to be tried before it, and shall have appellate jurisdiction in all other cases.

SEC. 6. The supreme court shall hold one term annually in each of the aforesaid grand divisions, at such time and place, in each of said divisions, as may be provided for by law.

SEC. 7. The State shall be divided into nine judicial districts; in each of which one circuit judge shall be elected by the qualified electors thereof, who shall hold his office for the term of six years, and until his successor shall be commissioned and qualified; *Provided*, That the general assembly may increase the number of circuits to meet the future exigencies of the State.

SEC. 8. There shall be two or more terms of the circuit court held, annually, in each county of this State, at such times as shall be provided by

law; and said courts shall have jurisdiction in all cases at law and equity, and in all cases of appeals from all inferior courts.

SEC. 9. All vacancies in the supreme and circuit courts shall be filled by elections as aforesaid; *Provided, however,* That if the unexpired term does not exceed one year, such vacancy may be filled by the executive appointment.

SEC. 10. The judges of the supreme court shall receive a salary of twelve hundred dollars per annum, payable quarterly, and no more. The judges of the circuit courts shall receive a salary of one thousand dollars per annum, payable quarterly, and no more. The judges of the supreme and circuit courts shall not be eligible to any other office or public trust, of profit, in this State or the United States, during the term for which they are elected, nor for one year thereafter. All votes for either of them for any elective office, (except that of judge of the supreme or circuit court,) given by the general assembly, or the people, shall be void.

SEC. 11. No person shall be eligible to the office of judge of any court of this State who is not a citizen of the United States, and who shall not have resided in this State five years next preceding his election, and who shall not for two years next preceding his election have resided in the division, circuit or county in which he shall be elected: nor shall any person be elected judge of the supreme court who shall be, at the time of his election, under the age of thirty-five years; and no person shall be eligible to the office of judge of the circuit court until he shall have attained the age of thirty years.

SEC. 12. For any reasonable cause, to be entered on the journals of each house, which shall not be sufficient ground for impeachment, both justices of the supreme court, and judges of the circuit court, shall be removed from office, on the vote of two-thirds of the members elected to each branch of the general assembly; *Provided, always,* That no member of either house of the general assembly shall be eligible to fill the vacancy occasioned by such removal; *Provided, also,* That no removal shall be made unless the justice or judge complained of shall have been served with a copy of the complaint against him, and shall have an opportunity of being heard in his defense.

SEC. 13. The first election for justice of the supreme court and judges of the circuit courts shall be held on the first Monday of September, 1848.

SEC. 14. The second election for one justice of the supreme court shall be held on the first Monday of June, 1852; and every three years thereafter an election shall be held for one justice of the supreme court.

SEC. 15. On the first Monday in June, 1855, and every sixth year thereafter, an election shall be held for judges of the circuit courts; *Provided,* Whenever an additional circuit is created, such provision may be made as to hold the second election of such additional judge at the regular elections herein provided.

SEC. 16. There shall be, in each county, a court, to be called a county court.

SEC. 17. One county judge shall be elected by the qualified voters of each county, who shall hold his office for four years, and until his successor is elected and qualified.

SEC. 18. The jurisdiction of said court shall extend to all probate and

such other jurisdiction as the general assembly may confer in civil cases, and such criminal cases as may be prescribed by law, where the punishment is by fine only, not exceeding one hundred dollars.

SEC. 19. The county judge, with such justices of the peace in each county as may be designated by law, shall hold terms for the transaction of county business, and shall perform such other duties as the general assembly shall prescribe; *Provided,* The general assembly may require that two justices, to be chosen by the qualified electors of each county, shall sit with the county judge in all cases; and there shall be elected, quadrennially, in each county, a clerk of the county court, who shall be *ex officio* recorder, whose compensation shall be fees; *Provided,* The general assembly may, by law, make the clerk of the circuit court *ex officio* recorder, in lieu of the county court.

SEC. 20. The general assembly shall provide for the compensation of the county judge.

SEC. 21. The clerks of the supreme and circuit courts, and State's attorneys, shall be elected at the first special election for judges. The second election for clerks of the supreme court shall be held on the first Monday of June, 1855, and every sixth year thereafter. The second election for clerks of the circuit courts, and State's attorneys, shall be held on the Tuesday next after the first Monday of November, 1852, and every fourth year thereafter.

SEC. 22. All judges and State's attorneys shall be commissioned by the governor.

SEC. 23. The election of all officers, and the filling of all vacancies that may happen by death, resignation or removal, not otherwise directed or provided for by this constitution, shall be made in such manner as the general assembly shall direct; *Provided,* That no such officer shall be elected by the general assembly.

SEC. 24. The general assembly may authorize the judgments, decrees and decisions of any local, inferior court of record, of original, civil or criminal jurisdiction, established in a city, to be removed, for revision, directly into the supreme court.

SEC. 25. County judges, clerks, sheriffs, and other county officers, for wilful neglect of duty or misdemeanor in office, shall be liable to presentment or indictment by a grand jury, and trial by a petit jury, and, upon conviction, shall be removed from office.

SEC. 26. 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. 27. There shall be elected in each county in this State, in such districts as the general assembly may direct, by the qualified electors thereof, a competent number of justices of the peace, who shall hold their offices for the term of four years, and until their successors shall have been elected and qualified, and who shall perform such duties, receive such compensation, and exercise such jurisdiction as may be prescribed by law.

SEC. 28. There shall be elected in each of the judicial circuits of this State, by the qualified electors thereof, one State's attorney, who shall hold his office for the term of four years, and until his successor shall be commis-

sioned and qualified; who shall perform such duties and receive such compensation as may be prescribed by law; *Provided*, That the general assembly may hereafter provide by law for the election, by the qualified voters of each county in this State, of one county attorney for each county, in lieu of the State's attorneys, provided for in this section; the term of office, the duties and compensation of which county attorneys shall be regulated by law.

SEC. 29. The qualified electors of each county in this State shall elect a clerk of the circuit court, who shall hold his office for the term of four years, and until his successor shall have been elected and qualified; who shall perform such duties and receive such compensation as may be prescribed by law. The clerks of the supreme court shall be elected, in each division, by the qualified electors thereof, for the term of six years, and until their successors shall have been elected and qualified; whose duties and compensation shall be provided by law.

SEC. 30. The first grand division, for the election of judges of the supreme court, shall consist of the counties of Alexander, Pulaski, Massac, Pope, Hardin, Gallatin, Saline, Williamson, Johnson, Union, Jackson, Randolph, Perry, Franklin, Hamilton, White, Wabash, Edwards, Wayne, Jefferson, Washington, Monroe, St. Clair, Clinton, Marion, Clay, Richland, Lawrence, Crawford, Jasper, Effingham, Fayette, Bond, Madison, Jersey and Calhoun.

The second grand division shall consist of the counties of Edgar, Coles, Moultrie, Shelby, Montgomery, Macoupin, Greene, Pike, Adams, Highland, Hancock, McDonough, Schuyler, Brown, Fulton, Mason, Cass, Morgan, Scott, Sangamon, Christian, Macoupin, Piatt, Champaigne, Vermilion, DeWitt, Logan, Menard, Cumberland and Clark.

The third grand division shall consist of the counties of Henderson, Warren, Knox, Peoria, Tazewell, Woodford, McLean, Livingston, Iroquois, Will, Grundy, Kendall, LaSalle, Putnam, Marshall, Stark, Bureau, Henry, Mercer, Rock Island, Whiteside, Lee, Carroll, Jo Daviess, Stephenson, Winnebago, Ogle, DeKalb, Boone, Kane, McHenry, Lake, Cook and DuPage.

SEC. 31. The terms of the supreme court for the first division shall be held at Mount Vernon, in Jefferson county; for the second division, at Springfield, in Sangamon county; for the third division, at Ottawa, in LaSalle county, until some other place in either division is fixed by law.

SEC. 32. Appeals and writs of error may be taken from the circuit court of any county to the supreme court held in the division which includes such county, or, with the consent of all the parties in the cause, to the supreme court in the next adjoining division.

SEC. 33. The foregoing districts may, after the taking of each census by the State, be altered, if necessary, to equalize the said districts in population; but such alteration shall be made by adding to such district such adjacent county or counties as will make said district nearest equal in population; *Provided*, No such alteration shall affect the office of any judge then in office.

## ARTICLE VI.

## OF ELECTIONS AND THE RIGHT OF SUFFRAGE.

SEC. 1. In all elections, every white male citizen above the age of twenty-one years, having resided in the State one year next preceding any election, shall be entitled to vote at such election; and every white male inhabitant of the age aforesaid, who may be a resident of the State at the time of the adoption of this constitution, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote, except in the district or county in which he shall actually reside at the time of such election.

SEC. 2. All votes shall be given by ballot.

SEC. 3. 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. 4. No elector shall be obliged to do militia duty on the days of election, except in time of war or public danger.

SEC. 5. No elector shall be deemed to have lost his residence in this State by reason of his absence on the business of the United States, or of this State.

SEC. 6. No soldier, seaman or marine, in any army or navy of the United States, shall be deemed a resident of this State, in consequence of being stationed at any military or naval place within the State.

SEC. 7. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States, and who shall not have resided in this State one year next before the election or appointment.

SEC. 8. The general assembly shall have full power to pass laws excluding from the right of suffrage persons convicted of infamous crimes.

SEC. 9. The general elections shall be held on the Tuesday next after the first Monday of November, biennially, until otherwise provided by law.

## ARTICLE VII.

## OF COUNTIES.

SEC. 1. No new county shall be formed or established by the general assembly, which will reduce the county or counties, or either of them, from which it shall be taken, to less contents than four hundred square miles; nor shall any county be formed of less contents; nor shall any line thereof pass within less than ten miles of any county seat of the county or counties proposed to be divided.

SEC. 2. No county shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

SEC. 3. All territory which has been or may be stricken off, by legislative enactment, from any organized county or counties, for the purpose of forming a new county, and which shall remain unorganized after the period provided for such organization, shall be and remain a part of the county or

counties from which it was originally taken, for all purposes of county and State government, until otherwise provided by law.

SEC. 4. There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition for such division; and no territory shall be added to any county without the consent of a majority of the voters of the county to which it is proposed to be added.

SEC. 5. No county seat shall be removed, until the point to which it is proposed to be removed shall be fixed by law, and a majority of the voters of the county shall have voted in favor of its removal to such point.

SEC. 6. The general assembly shall provide, by a general law, for a township organization, under which any county may organize whenever a majority of the voters of such county, at any general election, shall so determine; and whenever any county shall adopt a township organization, so much of this constitution as provides for the management of the fiscal concerns of the said county by the county court, may be dispensed with, and the affairs of said county may be transacted in such manner as the general assembly may provide.

SEC. 7. There shall be elected in each county in this State, by the qualified electors thereof, a sheriff, who shall hold his office for the term of two years, and until his successor shall have been elected and qualified: *Provided*, No person shall be eligible to the said office more than once in four years.

## ARTICLE VIII.

### MILITIA.

SEC. 1. The militia of the State of Illinois shall consist of all free male able-bodied persons, (negroes, mulattoes and Indians excepted,) residents 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 for such time as the legislature may provide.

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 IX.

### OF THE REVENUE.

SEC. 1. The general assembly may, whenever they shall deem it necessary, cause to be collected from able-bodied, free white male inhabitants of this

State, over the age of twenty-one years and under the age of sixty years, who are entitled to the right of suffrage, a capitation tax of not less than fifty cents, nor more than one dollar each.

SEC. 2. The general assembly shall provide for levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his or her property; such value to be ascertained by some person or persons to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn keepers, grocery keepers, toll bridges and ferries, and persons using and exercising franchises and privileges, in such manner as they shall from time to time direct.

SEC. 3. The property of the State and counties, both real and personal, and such other property as the general assembly may deem necessary for school, religious and charitable purposes, may be exempted from taxation.

SEC. 4. Hereafter, no purchaser of any land or town lot, at any sale of lands or town lots for taxes due either to this State or any county, or incorporated town or city within the same, or at any sale for taxes or levies authorized by the laws of this State, shall be entitled to a deed for the land or town lot so purchased, until he or she shall have complied with the following conditions, to wit: such purchaser shall serve, or cause to be served, a written notice of such purchase on every person in possession of such land or town lot, three months before the expiration of the time of redemption on such sale; in which notice he shall state when he purchased the land or town lot, the description of the land or lot he has purchased, and when the time of redemption will expire. In like manner he shall serve on the person or persons in whose name or names such land or lot is taxed, a similar written notice, if such person or persons shall reside in the county where such land or lot shall be situated; and in the event that the person or persons in whose name or names the land or lot is taxed do not reside in the county, such purchaser shall publish such notice in some newspaper printed in such county; and if no newspaper is printed in the county, then in the nearest newspaper that is published in this State to the county in which such lot or land is situated; which notice shall be inserted three times, the last time not less than three months before the time of redemption shall expire. Every such purchaser, by himself or agent, shall, before he shall be entitled to a deed, make an affidavit of his having complied with the conditions of this section, stating particularly the facts relied on as such compliance; which affidavit shall be delivered to the person authorized by law to execute such tax deed, and which shall be filed with the officer having custody of the records of lands and lots sold for taxes and entries of redemption in the county where such land or lot shall lie, to be by such officer entered on the records of his office, and carefully preserved among the files of his office; and which record or affidavit shall be *prima facie* evidence that such notice has been given. Any person swearing falsely in such affidavit shall be deemed guilty of perjury, and punished accordingly. In case any person shall be compelled under this section to publish a notice in a newspaper, then, before any person who may have a right to redeem such land or lot from tax sale, shall be permitted to redeem, he or she shall pay the officer or person who by law is authorized to receive such redemption



money, the printer's fee for publishing such notice, and the expenses of swearing or affirming to the affidavit and filing the same.

SEC. 5. The corporate authorities of counties, townships, school districts, cities, towns and villages, may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. And the general assembly shall require that all the property within the limits of municipal corporations belonging to individuals, shall be taxed for the payment of debts contracted under authority of law.

SEC. 6. The specification of the objects and subjects of taxation shall not deprive the general assembly of the power to require other objects or subjects to be taxed in such manner as may be consistent with the principles of taxation fixed in this constitution.

## ARTICLE X.

### CORPORATIONS.

SEC. 1. Corporations, not possessing banking powers or privileges, may be formed under general laws, but shall not be created by special acts, except for municipal purposes and in cases where, in the judgment of the general assembly, the objects of the corporation cannot be attained under general laws.

SEC. 2. Dues from corporations, not possessing banking powers or privileges, shall be secured by such individual liabilities of the corporators, or other means, as may be prescribed by law.

SEC. 3. No State bank shall hereafter be created, nor shall the State own or be liable for any stock in any corporation or joint stock association for banking purposes, to be hereafter created.

SEC. 4. The stockholders in every corporation, or joint stock association, for banking purposes, issuing bank notes, or any kind of paper credits to circulate as money, shall be individually responsible, to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

SEC. 5. No act of the general assembly, authorizing corporations or associations with banking powers, shall go into effect, or in any manner be in force, unless the same shall be submitted to the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for and against such law.

SEC. 6. The general assembly shall encourage internal improvements, by passing liberal general laws of incorporation for that purpose.

## ARTICLE XI.

### COMMONS.

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; but the said commons, or any of them, or any part thereof,

may be divided, leased or granted, in such manner as may hereafter be provided by law, on petition of a majority of the qualified voters interested in such commons, or any of them.

## ARTICLE XII.

### AMENDMENTS TO THE CONSTITUTION.

SEC. 1. Whenever two-thirds of all the members elected to each branch 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 of the general assembly, to vote for or against a convention; and if it shall appear that a majority of all the electors 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 the house of representatives at the time of making said call, to be chosen in the same manner, at the same place, and by the same electors, in the same districts that chose the members of the house of representatives, and which convention shall meet within three months after the said election, for the purpose of revising, altering or amending this constitution.

SEC. 2. Any amendment or amendments to this constitution may be proposed in either branch of the general assembly; and if the same shall be agreed to by two-thirds of all the members elect in each of the two houses, such proposed amendment or amendments shall be referred to the next regular session of the general assembly, and shall be published at least three months previous to the time of holding the next election for members of the house of representatives; and if, at the next regular session of the general assembly after said election, a majority of all the members elect in each branch of the general assembly shall agree to said amendment or amendments, then it shall be their duty to submit the same to the people at the next general election for their adoption or rejection, in such manner as may be prescribed by law; and if a majority of all the electors voting at such election for members of the house of representatives, shall vote for such amendment or amendments, the same shall become a part of the constitution. But the general assembly shall not have power to propose an amendment or amendments to more than one article of the constitution at the same session.

## ARTICLE XIII.

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 establishment or modes of worship.

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

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

SEC. 6. That the right of trial by jury shall remain inviolate; and shall extend to all cases at law, without regard to the amount in controversy.

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 offenses 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.

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 county or district wherein the offense shall have been committed, which county or district shall have been previously ascertained by law; and that he shall not be compelled to give evidence against himself.

SEC. 10. No person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia when in actual service in time of war or public danger: *Provided*, That justices of the peace shall try no person, except as a court of inquiry, for any offense punishable with imprisonment or death, or fine above one hundred dollars.

SEC. 11. No person shall, for the same offense, 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 offenses 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 offense, 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. There shall be neither slavery nor involuntary servitude in this State, except as a punishment for crime, whereof the party shall have been duly convicted.

SEC. 17. No *ex post facto* law, nor any law impairing the obligation of contracts, shall ever be made; and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 18. That no person shall be liable to be transported out of this State for any offense committed within the same.

SEC. 19. That a frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

SEC. 20. The military shall be in strict subordination to the civil power.

SEC. 21. 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. 22. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in manner prescribed by law.

SEC. 23. 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. 24. In prosecutions for the publication of papers investigating the official conduct of officers, or of men acting in a public capacity, or when 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.

SEC. 25. Any person who shall, after the adoption of this constitution, fight a duel, or send or accept a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honor or profit in this State, and shall be punished otherwise, in such manner as is or may be prescribed by law.

SEC. 26. That from and after the adoption of this constitution, every person who shall be elected or appointed to any office of profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of this State, shall, before he enters upon the duties of his office, in addition to the oath prescribed in this constitution, take the following oath: "I do solemnly swear (or affirm, as the case may be,) that I have not fought a duel, nor sent or accepted a challenge to fight a duel, the probable issue of which might have been the death of either party, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of the constitution; and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel, during my continuance in office. So help me God."



## SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

SEC. 1. That all laws in force at the adoption of this constitution, not inconsistent therewith, and all rights, actions, prosecutions, claims and contracts of this State, individuals or bodies corporate, shall continue and be as valid as if this constitution had not been adopted.

SEC. 2. That all fines, penalties and forfeitures due and owing to the State of Illinois under the present constitution and laws, shall enure to the use of the people of the State of Illinois under this constitution.

SEC. 3. Recognizances, bonds, obligations, and all other instruments entered into or executed before the adoption of this constitution, to the people of the State of Illinois, to any State or county officer or public body, shall remain binding and valid, and rights and liabilities upon the same shall continue, and all crimes and misdemeanors shall be tried and punished as though no change had been made in the constitution of the State.

SEC. 4. That "Article XI," entitled "Commons," is hereby adopted as a part of the constitution of this State, without being submitted to be voted upon by the people.

SEC. 5. That at the first election fixed by this constitution for the election of judges, there shall be elected one circuit judge in each of the nine judicial circuits now established in this State.

SEC. 6. The county commissioners' courts, and the probate justices of the several counties, shall continue in existence and exercise their present jurisdiction until the county court, provided in this constitution, is organized in pursuance of an act of the general assembly to be passed at its first session.

SEC. 7. That the clerk of the circuit court, in each county fixed by this constitution as the place for holding the supreme court, except in the county of Sangamon, shall be *ex officio* clerk of the supreme court, until the clerks of said court shall be elected and qualified, as provided in this constitution, and all laws now in force, in relation to the clerk of the supreme court, shall be applicable to said clerks and their duties.

SEC. 8. That the sheriffs, State's attorneys, and all other officers elected under this constitution, shall perform such duties as shall be prescribed by law.

SEC. 9. That the oaths of office herein required to be taken, may be administered by a justice of the peace until otherwise provided by law.

SEC. 10. That this constitution shall be submitted to the people for their adoption or rejection at an election to be held on the first Monday in March, A. D. 1848, and there shall also be submitted for adoption or rejection at the same time, the separate articles in relation to the emigration of colored persons, and the public debt.

SEC. 11. That every person entitled to vote for members of the general assembly, by the constitution and laws now in force, shall, on the first Monday in March, A. D. 1848, be entitled to vote for the adoption or rejection of this constitution, and for and against the aforesaid articles separately submitted, and the said qualified electors shall vote in the counties in which they respectively reside, at the usual place of voting, and not else-

where; and the said election shall be conducted according to the laws now in force in relation to the election of governor, so far as applicable, except as herein otherwise provided.

SEC. 12. That the poll book to be used at said election shall, as nearly as practicable, be in the following form, to wit:

POLL BOOK of an Election held at ——— Precinct, in the County of ———, on the first Monday of March, A. D. 1848, for the adoption or rejection of the Constitution, and the separate articles submitted.

NAMES OF THE VOTERS.	Adoption of Constitution.	Rejection of Constitution.	For the article in relation to colored persons.	Against article in relation to colored persons.	For the article for the two mill tax.	Against article for the two mill tax.
A. B.	1		1		1	
C. D.		1	2		2	
E. F.				1	3	
G. H.	2		3			1

SEC. 13. That the returns of the voters for the adoption or rejection of this constitution, and for and against the separate articles submitted, shall be made to the secretary of state within fifty days after the election, and the returns of the votes shall, within five days thereafter, be examined and canvassed by the auditor, treasurer and secretary of state, or any two of them, in the presence of the governor, and proclamation shall be made by the governor forthwith of the result of the polls. If it shall appear that a majority of all votes polled are for the adoption of this constitution, it shall be the supreme law of the land, from and after the first day of April, A. D. 1848; but if it shall appear that a majority of the votes polled were given against the constitution, the same shall be null and void. If it shall further appear that a majority of the votes polled shall have been given for the separate article in relation to colored persons, or the article for the two mill tax, then said article, or articles, shall be and form a part of this constitution; otherwise said article or articles shall be null and void.

SEC. 14. That if this constitution shall be ratified by the people, the governor shall forthwith, after having ascertained the fact, issue writs of election to the sheriffs of the several counties in this State; or, in case of vacancy, to the coroners, for the election of all the officers the time of whose election is fixed by this constitution or schedule; and it shall be the duty of said sheriffs or coroners to give at least twenty days' notice of the time and place of said election, in the manner now prescribed by law.

SEC. 15. The general assembly shall, at its first session after the adoption of this constitution, provide by law for the mode of voting by ballot, and also for the manner of returning, canvassing and certifying the number of votes cast at any election; and until said law shall be passed, all elections shall be *viva voce*, and the law now in force regulating elections shall continue in force until the general assembly shall provide otherwise, as herein directed.

SEC. 16. That the first general election of governor, secretary of state, auditor, treasurer and members of the general assembly, and of such other officers as are to be elected at the same time, shall be held on the first Monday of August, eighteen hundred and forty-eight, anything in this consti-

tution to the contrary notwithstanding. County officers then elected shall hold their respective offices until their successors are elected or appointed, in conformity with laws hereafter enacted.

SEC. 17. That returns of the election of justices of the supreme and judges of the circuit courts, secretary of state, auditor and treasurer, shall be made and canvassed as is now provided by law for representatives in Congress; and returns for members of the general assembly and county officers shall be made and canvassed as is now provided by law.

SEC. 18. That all laws of the State of Illinois, and all official writings, and the executive, legislative and judicial proceedings, shall be conducted, preserved and published in no other than the English language.

SEC. 19. On the first Monday in December, one thousand eight hundred and forty-eight, the term of office of judges of the supreme court, State's attorneys, and of the clerks of the supreme and circuit courts, shall expire; and on said day, the term of office of the judges, State's attorneys and clerks, elected under the provisions of this constitution, shall commence. The judges of the supreme court, elected as aforesaid, shall have and exercise the powers and jurisdiction conferred upon the present judges of that court; and the said judges of the circuit courts shall have and exercise the powers and jurisdiction conferred upon the judges of those courts, subject to the provisions of this constitution.

SEC. 20. On the first Monday of December, one thousand eight hundred and forty-eight, jurisdiction of all suits and proceedings then pending in the present supreme court, shall become vested in the supreme court established by this constitution, and shall be finally adjudicated by the court where the same may be pending. The jurisdiction of all suits and proceedings then pending in the circuit courts of the several counties, shall be vested in the circuit courts of said counties.

SEC. 21. The Cook and Jo Daviess county courts shall continue to exist, and the judges and other officers of the same remain in office until otherwise provided by law.

SEC. 22. Until otherwise provided by law, the terms of the supreme court shall be held as follows: In the first division, on the first Monday of December, A. D. 1848, and annually thereafter. In the second division, on the third Monday of December, A. D. 1848, and annually thereafter. In the third division, on the first Monday of February, A. D. 1849, and annually thereafter. The sheriffs of Jefferson and LaSalle counties shall perform the same duties and receive the same compensation as is required and provided for the sheriff of Sangamon county, until otherwise provided by law.

SEC. 23. Nothing in this constitution shall prevent the general assembly from passing such laws in relation to the apprenticeship of minors, during their minority, as may be necessary and proper.

SEC. 24. That the general assembly shall pass all laws necessary to carry into effect the provisions of this constitution.

SEC. 25. Elections of judges of the supreme and circuit courts shall be subject to be contested.

SEC. 26. Contested elections of judges of the supreme court shall be tried by the senate, and of judges of the circuit court by the supreme court, and the general assembly shall prescribe the manner of proceeding therein.

Done in convention, at the capitol, in the city of Springfield, on the thirty-first day of August, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States of America, the seventy-second.

IN WITNESS WHEREOF, we have hereunto subscribed our names.

NEWTON CLOUD,

*President of the Convention, and member of the Convention from the County of Morgan.*

AUGUSTUS ADAMS,	C. K. HARVEY,
GEORGE W. AKIN,	JEDUTHAN HATCH,
WILLIS ALLEN,	NELSON HAWLEY,
SAMUEL ANDERSON,	DANIEL HAY,
WM. R. ARCHER,	S. SNOWDON HAYES,
GEO. A. ARMSTRONG,	HUGH HENDERSON,
MARTIN ATHERTON,	GEORGE W. HILL,
P. BALLINGALL,	ABRAHAM HOES,
MONTGOMERY BLAIR,	JAMES M. HOGUE,
WILLIAM H. BLAKELY,	WILLIAM H. HOLMES,
BENJAMIN BOND,	SAMUEL HUNSAKER,
WILLIAM BOSBYSHILL,	STEPHEN A. HURLBUT,
JAMES BROCKMAN,	JOHN HUSTON,
GEORGE T. BROWN,	AARON C. JACKSON,
GEORGE BUNSEN,	J. A. JAMES,
HORACE BUTLER,	A. M. JENKINS,
JAMES M. CAMPBELL,	HUMPHREY B. JONES,
THOMPSON CAMPBELL,	THOMAS JUDD,
JOHN CANADAY,	A. R. KENNER,
F. S. CASEY,	SIMON KINNEY,
Z. CASEY,	WILLIAM C. KINNEY,
CHARLES CHOATE,	ALFRED KITCHELL,
SELDEN M. CHURCH,	AUGUSTUS R. KNAPP,
ALFRED CHURCHILL,	NATHANIEL M. KNAPP,
EBEN F. COLBY,	LINCOLN B. KNOWLTON,
CHARLES HENRY CONSTABLE,	JAMES KNOX,
JOHN CRAIN,	GEORGE KREIDER,
ROBERT J. CROSS,	JAMES M. LASATER,
SAMUEL J. CROSS,	WILLIAM LAUGHLIN,
M. G. DALE,	GEORGE B. LEMEN,
DAVID DAVIS,	ISAAC LINLEY,
JAMES M. DAVIS,	SAMUEL D. LOCKWOOD,
THOMAS G. C. DAVIS,	JOHN TINEN LOUDON,
JOHN DAWSON,	STEPHEN T. LOGAN,
P. W. DEITZ,	ANDREW McCALLEN,
JOHN DEMENT,	JOHN McCULLEY,
JAMES DUNLAP,	WILLIAM McCLURE,
H. E. DUMMER,	A. McHATTON,
HARVEY DUNN,	URI MANLEY,
DANIEL DUNSMORE,	DAVID MARKLEY,
JOSEPH T. ECCLES,	FRANKLIN S. D. MARSHALL,
J. WM. F. EDMONDSON,	T. A. MARSHALL,
CYRUS EDWARDS,	JOHN WEST MASON,
NINIAN W. EDWARDS,	JAMES H. MATHENY,
EDWARD EVEY,	JOHN MICURE,
SETH B. FARWELL,	R. MILLER,
FREDERICK FRICK,	WM. A. MINCHALL,
JAMES GRAHAM,	GARNER MOFFETT,
THOMAS GEDDES,	WILLIAM S. MOORE,
HENRY R. GREEN,	R. G. MORRIS,
PETER GREEN,	J. M. NICHOLS,
WILLIAM B. GREEN,	B. F. NORTHCOTT,
DAVID L. GREGG,	JESSE O. NORTON,
WILLIAM A. GRIMSHAW,	JOHN OLIVER,
A. C. HARDING,	G. W. PACE,
J. HARLAN,	HENRY D. PALMER,
J. HARPER,	JOHN M. PALMER,

	ONSLow PETERS,		HURLBURT SWAN,
	E. J. PINCKNEY,	X	WILLIAM THOMAS,
	WM. B. POWERS,		WM. W. THOMPSON,
X	O. C. PRATT,	X	ANTHONY THORNTON,
X	GEORGE W. RIVES,		THOMAS B. TROWER,
	EZEKIEL W. ROBBINS,		GILBERT TURNBULL,
	BENALAH ROBINSON,		OAKS TURNER,
	W. W. ROMAN,		WILLIAM TUTT,
X	HIRAM ROUNTREE,	X	JAMES TUTTLE,
	WALTER B. SCATES,		JOHN W. VANCE,
	R. B. SERVANT,		ZENAS H. VERNOR,
	WILLIAM SHIELDS,		HEZEKIAH M. WEAD,
	DORICE D. SHUMWAY,		T. R. WEBBER,
	JOHN SIBLEY,		EDWARD M. WEST,
	WILLIAM SIM,		ARCHIBALD WILLIAMS,
	LEWIS J. SIMPSON,		FRANKLIN WITT,
	E. O. SMITH,		JOHN D. WHITESIDE,
	J. SMITH,		DANIEL H. WHITNEY,
	JOHN W. SPENCER,		DAVID M. WOODSON,
	WM. STADDEN,	X	L. E. WORCESTER.

ATTEST,

HIRAM W. MOORE, *Secretary.*

HARMAN G. REYNOLDS, *Assistant Secretary.*

THE  
STATUTES OF ILLINOIS.

AN ACT

FOR REVISING AND CONSOLIDATING THE GENERAL STATUTES OF THE STATE OF ILLINOIS.

Whereas, it is expedient that the general statutes of this State should be consolidated, and arranged in appropriate chapters and sections; that omissions should be supplied, and defects amended; and that the whole should be rendered plain, concise and intelligible: therefore,

*Be it enacted by the People of the State of Illinois, represented in the General Assembly, in manner following, that is to say:*

CHAPTER I.

ABATEMENT.

SECTION

1. Pleas in abatement to be sworn to.
2. Full costs on overruling plea in.
3. Non-joinder of one of a company, &c., not to abate suit: but defendant brought in by summons.
4. What proceedings when defendant not found; no other plea in abatement allowed.
5. Marriage of *feme sole* plaintiff not to abate suit, but husband made a party.
6. Marriage of *feme sole* defendant.
7. Death of sole plaintiff not to abate action; when and how to proceed.
8. Death of sole defendant: how to proceed in case of.
9. Death of co-plaintiff or co-defendant not to abate action: how to proceed in case of.

SECTION

10. When plaintiff or defendant, who is executor or administrator, shall die, how to proceed.
11. When plaintiff, being a public officer or trustee, shall die, &c., how to proceed.
12. Proceedings for partition of lands not to abate by death of parties; proceedings in such cases.
13. Suit in the name of one, for another's use, not to abate by death, &c.: proceedings in such cases.
14. The provisions of this chapter to extend to proceedings in equity, to appeals, &c.
15. Orders of court to bring in or substitute parties, how to be made: and writs of *scire facias*, how issued; within what time such writs shall be sued out.

[Approved March 3, 1845. Rev. Stat. 1845, p. 43.]

SECTION I. No plea in abatement, other than a plea to the jurisdiction of the court, or when the matters relied upon to establish the truth of such plea appear of record, shall be admitted or received by any court of this State, unless the party offering the same, or some other person for him, file an affidavit of the truth thereof.

SEC. II. When a plea in abatement shall be adjudged insufficient by the court, the plaintiff shall recover full costs to the time of overruling such plea.

SEC. III. When one or more of the persons composing any company or association of individuals, shall be sued, and the person or persons so sued, shall plead in abatement that all the persons who should have been made defendants are not joined in the suit, such suit shall not for that cause, abate, if the plaintiff or plaintiffs forthwith sue out a *scire facias* against the persons named in such plea; and on the return of such *scire facias*, the names of the persons named in such plea may be inserted in the declaration, and the suit shall proceed in all respects thereafter as if the persons named in such plea had been named in the original suit.

SEC. IV. If the persons named in such plea cannot be served with process, the plaintiff or plaintiffs, on the return of such summons, may suggest on the record the names of those not served, and proceed, as in other cases in which service is made on part of the defendants only; and no other plea in abatement for non-joinder of defendants shall be allowed in the same case.

SEC. V. No action or complaint, in law or equity, commenced by a *feme sole*, shall abate on account of her intermarriage before final judgment: *Provided*, The husband shall appear and cause such marriage to be suggested on the record, and himself made a party in the suit; after which the suit may proceed in the same manner as if commenced after such marriage.

SEC. VI. If a *feme sole* defendant intermarry before final judgment or decree, the action shall not thereby abate, but the husband, on his own application, or on that of the plaintiff, and due notice thereof given, may, by order of the court, be made a party to the suit; and the suit shall then proceed as in other cases.

SEC. VII. When there is but one plaintiff in an action, and he shall die before final judgment, such action shall not thereby abate, if the cause of action survive to the heirs, devisees, executors or administrators of such plaintiff, but any of such, to whom the cause of action shall survive, may, by suggesting such death on the record, be substituted as plaintiff or plaintiffs therein, and prosecute the same as in other cases.

SEC. VIII. When there is but one defendant in an action, and he shall die before final judgment, such action shall not thereby abate, if it might be originally prosecuted against the heirs, devisees, executors or administrators of such defendant; but the plaintiff may suggest such death on the record, and shall, by order of the court, have summons against such person or persons, requiring him or them to appear and defend the action, after which such suit shall proceed to final judgment according to law.

SEC. IX. If there are two or more plaintiffs in any action, and one or more of them die before final judgment, the action shall not thereby abate, if the cause of action survive to the surviving plaintiff or plaintiffs; and if there are two or more defendants in any action, and one or more of them shall die before final judgment, such action shall not be abated thereby; but in either of said cases, such death or deaths shall be suggested on the record, and the action may proceed at the suit of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, as the case may require, in all respects as if such persons had been originally sole parties to the suit.

SEC. X. When any executor or administrator shall be plaintiff or defend-

ant in any suit, and shall, before final judgment, die, or cease to be such executor or administrator, the suit shall not thereby abate; but the same may be continued by or against the successor of such executor or administrator, by an order of court substituting such successor as defendant therein.

SEC. XI. When an action is authorized or directed by law to be brought by or in the name of any public officer, or by any trustee appointed by virtue of any statute, and such officer or trustee shall, before final judgment, die, or cease to be such officer or trustee, the suit shall not thereby abate, if the cause of such suit survive to his successor; but the same may be continued by such successor, who shall be substituted for that purpose by order of the court, on a suggestion of such death being made upon the record.

SEC. XII. Proceedings for the partition of lands shall not abate by the death of any party thereto, but shall continue in the names of the survivors, if the interest of such deceased person in the lands shall survive to them; and if such interest shall pass to other persons, they may, by rule of court, be made parties, and the same proceedings shall be had as though they had been made parties originally.

SEC. XIII. No suit instituted in the name of one for the use of another, shall abate by reason of the death of the person whose name is used; but may be continued by the real plaintiff in interest in his own name, on his suggesting such death on the record, and an order of the court being made, substituting his name for that of the deceased plaintiff.

SEC. XIV. The provisions of this chapter shall extend as well to proceedings in equity as at law, and the provisions of sections five, six, seven, eight, nine, ten, eleven, twelve and thirteen, shall be applicable to all appeals, writs of error, and of *certiorari*.

SEC. XV. All orders authorized by this chapter to be made, for the purpose of introducing into a suit a new person as a co-defendant with the original party, or for the purpose of substituting a person as defendant in place of the original party, shall be made either upon the voluntary appearance of such person, or by order of the court, after the party to be made such defendant shall have been served with a *scire facias*; and all such writs of *scire facias* may be sued out either in term time or in vacation, and may be directed to any county, and shall correspond, as nearly as practicable, to the original writ, and may be executed and returned in the same manner; but no *scire facias* for the purpose of substituting another person in place of the original defendant, shall be sued out after the second day of the second term of the court, next after the term at which the death or disability of the original party shall be suggested on the record.

PRIOR LAWS relating to this subject. Act, Feb. 6, 1819. Laws, 1819, pp. 6, 7. Act, Dec. 30, 1826. Rev. Laws, 1833, p. 59.

DECISIONS. When there are several defendants sued jointly, and they desire to plead in abatement, denying their joint liability, they must all join in the plea, or such of them as do not join will admit their liability. The plea may be verified by the affidavit of one defendant, or of a third person. *Warren v. Chambers et al.*, 12 Ill. 124.

Under the act of Dec. 30, 1826, the affidavit to a plea in abatement was required to be sworn to by the party himself—*aliter* under the statute now in force. *Bancroft v. Eastman*, 2 G. 263.

## CHAPTER II.

## ACCOUNT.

## SECTION

1. What persons shall account, and to whom.
2. Who may maintain action of, and against whom.
3. Executor being a residuary legatee, may maintain action of, and against whom.
4. When by and against executors and administrators.
5. Process in, service and return of.
6. Defendant summoned and not appearing, may be attached.

## SECTION

7. Auditors to be appointed.
8. Powers and duties of auditors, if defendant fail to appear.
9. Powers and duties of auditors, if defendant appear.
10. Auditors to report, and action of the court.
11. Parties may appeal.
12. Chancery jurisdiction saved.

[Approved March 3, 1845. Rev. Stat. 1845, p. 45.]

SECTION I. When one or more joint tenants, tenants in common, or co-parceners in real estate, or any interest therein, shall take and use the profits or benefits thereof, in greater proportion than his, her or their interest, such person or persons, his, her or their executors and administrators, shall account therefor to his or their co-tenant jointly or severally.

SEC. II. Joint tenants, tenants in common, and co-parceners in any estate, real or personal, may maintain actions of account against their co-tenants, who receive as bailiffs more than their due proportion of the profits and benefits of such estate.

SEC. III. Any executor, being residuary legatee, may bring and maintain an action of account against his co-executor; and any other residuary legatee shall have the same remedy against executors and administrators.

SEC. IV. Actions of account may be maintained by and against executors and administrators in all cases in which the same might have been maintained by and against their testator or intestate.

SEC. V. The original process in actions of account, shall be the same as is provided by law for other personal actions, and shall be served and returned in the same manner.

SEC. VI. 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, the party to whom such an account ought to be made, may bring his action of account, and if the person against whom such action may be brought, being summoned, does not appear at the return of the writ, then the defendant shall be attached by his body to appear and render his account.

SEC. VII. Whenever a judgment shall be rendered against any defendant, that he 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, before they enter on their duties, be sworn faithfully and impartially to take and state the account between the parties, and make report to the court.

SEC. VIII. Such 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.

SEC. IX. 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. If either party shall refuse to be sworn, or answer proper questions respecting his account, the auditors, or a majority of them, may commit him to jail, there to remain until he consent to be sworn, or answer the interrogatories.

SEC. X. The auditors, or a majority of them, 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.

SEC. XI. 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.

SEC. XII. Nothing in this chapter contained, shall be so construed as to deprive courts of chancery of their jurisdiction in matters of account.

PRIOR LAWS. An act to regulate actions of account; approved Jan. 11, 1827; in force June 1, 1827. Rev. Laws, 1827, p. 47; Rev. Laws, 1833, p. 61.

DECISIONS. The judgment upon the declaration, in an action of account, is interlocutory, that the defendant account. The final judgment is upon the report of the auditors. *Lee v. Abrahams*, 12 Ill. 116.

Defenses which deny the liability of the defendant, must be set up before the court, and cannot be interposed before the auditors. *Idem*, 118.

The circuit court has a discretion to approve or disapprove the auditor's report. After a judgment *quod computet*, the defendant is still at liberty to show before the auditors that there is nothing due from him to the plaintiff; but he cannot refuse to account, nor defend upon the ground that he has already accounted. *Idem*, 119.

## CHAPTER III.

## ADVERTISEMENTS.

## SECTION

1. Publication of, how proved.
2. By whom paid for, and how allowed by court.

## SECTION

3. By public officers, how allowed and paid for.
4. How often published, when number of insertions are not specified.

[Approved March 3, 1845. Rev. Stat. 1845, p. 47.]

SECTION I. 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 notice or advertisement annexed, stating the number of times 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.

SEC. II. When any notice or advertisement relating to any cause, matter

or thing depending in any court of record, shall have been duly published, the same may be paid for by the party at whose instance the same was published, who may present 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 proceedings to which such notice or advertisement shall relate.

SEC. III. When any notice or advertisement shall be published by a public officer, in pursuance of law, the reasonable expense thereof shall be allowed and paid out of the State or county treasury, as the case may require.

SEC. IV. In all cases, in which, by law or order of court, any advertisement shall be directed to be published, and the number of publications shall not be specified, it shall be taken and intended that such advertisement shall be published three times for three successive weeks.

PRIOR LAWS. An act concerning the publication of advertisements; approved Dec. 23, 1826. Rev. Laws, 1833, p. 63; Rev. Laws, 1827, p. 48.

DECISIONS. In computing the time of the publication of a notice or advertisement, the rule is to exclude the day of publication and include the day of the commencement of the term of court.

Notices of this sort become, when certified and filed, a part of the record of a cause. *Varian et al. v. Edmondson*, 5 G. 272.

## CHAPTER IV.

### ALIENS.

#### SECTION

1. Rights of aliens to acquire, hold and transmit real estate.
2. Personal estate of aliens may pass to heirs, though aliens.

#### SECTION

3. Aliens may acquire, hold and transmit real estate.
4. Personal estate of alien dying intestate, how distributed.
5. When act to be in force.

[Approved March 3, 1845. Rev. Stat. 1845, p. 47.]

(1.) SECTION I. All aliens, residing in this State, may take, by deed, will or otherwise, lands and tenements and any interest therein, and alienate, sell, assign and transmit the same to their heirs or any other persons, whether such heirs or other persons be citizens of the United States or not, in the same manner as natural born citizens of the United States or of this State might do; and upon the decease of any alien having title to, or interest in, any lands or tenements, such lands and tenements shall pass and descend in the same manner as if such alien were a citizen of the United States, and it shall be no objection to any persons having an interest in such estate that they are not citizens of the United States; but all such persons shall have the same rights and remedies, and in all things be placed on the same footing as natural born citizens and actual residents of the United States.

(2.) SEC. II. The personal estate of an alien dying intestate, who at the time of his death shall reside in this State, shall be distributed in the same manner as the estates of natural born citizens, and all persons interested in such estate, shall be entitled to their proper distributive shares thereof, under the laws of this State, whether they are aliens or not.

An Act to amend chapter IV. Revised Laws, entitled "Aliens."

[Approved Feb. 17, 1851. Laws, 1851, p. 149.]

(3.) SEC. I. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That all aliens may take, by deed, will or otherwise, lands and tenements and any interest therein, and alienate, sell, assign and transmit the same to their heirs or other persons, whether such heirs or other persons be citizens of the United States or not, in the same manner as natural born citizens of the United States or of this State might do; and upon the decease of any person having title to or interest in any lands or tenements, such lands and tenements shall pass and descend in the same manner as if such alien were a citizen of the United States, and it shall be no objection to any persons having an interest in such estate, that they are not citizens of the United States, but all such persons shall have the same rights and remedies, and in all things be placed upon the same footing, as natural born citizens and actual residents of the United States.

(4.) SEC. II. The personal estate of an alien, dying intestate, shall be distributed in the same manner as the estates of natural born citizens, and all persons interested in such estate shall be entitled to proper distributive shares thereof, under the laws of this State, whether they are aliens or not.

(5.) SEC. III. This act to be in force from and after its passage.

PRIOR LAWS. An act to authorize aliens to purchase and hold real estate within this territory; approved Sept. 17, 1807. Territorial Laws.

An act to authorize aliens to purchase and hold real estate within this State; approved Feb. 6, 1819. Laws, 1819, p. 6. Repealed Feb. 7, 1827.

An act to enable aliens to hold real estate; approved Feb. 7, 1827. Rev. Laws, 1827, p. 49. Repealed, and substantially re-enacted by the statute entitled, "An act relative to wills and testaments, executors and administrators, and the settlement of estates;" approved Jan. 23, 1829. Rev. Laws, 1833, p. 626, sec. 48.

DECISIONS. Aliens are not disqualified to serve on juries except in capital cases. *Guykowski v. The People*, 1 S. 481; *Greenup v. Stoker*, 3 G. 222.

The court may discharge an alien from a jury after the jury is impaneled. *Stone v. The People*, 2 S. 326.

## CHAPTER V.

### AMENDMENTS AND JEOPAILS.

#### SECTION

1. Misprision of clerk not to vitiate process or record; amendment after judgment.
2. General power of court to amend pleadings.
3. Courts may correct misprisions of sheriffs and others.
4. Judgments not to be reversed for erasures and interlineations.
5. New entries, &c.
6. Effect of errors after judgment.
7. Judgment not to be reversed for want of form.
8. Judgment not to be reversed for variance or lack of certain averments.
9. Judgment not to be reversed for want of certain allegations.

#### SECTION

10. How far court to proceed on demurrer: certain defects not cause of demurrer, except when specially set forth.
11. Extent of provisions of this chapter; in cases when defect is cured by verdict.
12. Shall extend to debts due the State; to cases for recovery of revenue; to writs of mandamus, informations in nature of *quo warranto*.
13. To writs of error in which there is variance, may be amended.
14. This chapter not to extend to indictments, informations, nor to proceedings upon penal statutes.

[Approved March 3, 1845. Rev. Stat. 1845, p. 48.]

SECTION I. By the misprision of any 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.

SEC. II. The court in which any record, process, declaration, count, plea, warrant of attorney, writ, panel 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, panels 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, panel 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.

SEC. III. 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, coronors, 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.

SEC. IV. For errors assigned, or to be assigned, in any record, process, warrant of attorney, writ, original or judicial, panel or return, or 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, panel or return, no judgment, or record, or decree, shall be reversed or annulled.

SEC. V. Record and process, real, personal or mixed, whereof judgment or decree shall be given and enrolled, or things touching such pleas, shall in nowise 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.

SEC. VI. 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 mispleading, 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. VII. 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. VIII. 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. IX. 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 of any bond, bill, indenture or other deed or writing mentioned in the declaration or other pleading, for default of allegation of bringing into court of 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 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 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 omissions, 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. X. When 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 of 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. XI. 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 on any writ of inquiry of damages executed thereon shall be stayed or reversed for or by reason of any imperfection, omission, defect, matter or thing which would have been aided and cured by this chapter in case a verdict had been given in such action or suit, so there be an original writ, duly issued according to law.

SEC. XII. This chapter 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.

SEC. XIII. 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.

SEC. XIV. No part of this chapter 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.

PRIOR LAWS. An act concerning amendments and jeopails; approved Jan. 11, 1827. Rev. Laws, 1833, p. 63.

DECISIONS. *Amendments*. If parties appear and go to trial without a plea, the irregularity is cured by the verdict. *Brazzle v. Hawkins v. Usher*, Breese, 14.

Clerical mistakes and matters of form may be amended at any time. *Atkins v. Hinman*, 2 G. 437.

Record may be amended so as to show that the party appeared by attorney, instead of showing service of process. *Lyon v. Boilein*, 2 G. 629.

Sheriffs may amend their returns. *Montgomery v. Brown*, 2 G. 581.

Judgments cannot be amended at a subsequent term, in a material matter, without notice. *O'Connor v. Mullen*, 11 Ill. 116.

An execution is directed to the sheriff of one county, and delivered to the sheriff of another county, who sells land under the same: the process cannot afterward be amended so as to cure the defective sale, with or without notice. *Bybee v. Ashby*, 3 G. 151.

During the term, the court has control over its own records, and may alter or amend them as it sees proper. *Stahl v. Webster*, 11 Ill. 511.

*Amendments in the discretion of the court*. To amend a petition and summons. *Warren v. McHatton*, 2 S. 33.

To amend an appeal bond in case of forcible entry and detainer. *Harlan v. Scott*, 2 S. 66.

To amend the pleadings in a cause. *Philips v. Dana*, 1 S. 498.

In proceedings in chancery. *McCartee v. Engart*, 13 Ill. 242.

Affidavits for writs of replevin. *Frink v. Flannagan*, 1 G. 35; *Campbell v. Head*, 13 Ill. 127.

## CHAPTER VI.

### APPRENTICES.

#### SECTION

1. Minors may be bound; at what age.
2. Father may bind minor; or mother, if father be incapacitated.
3. If mother be dead or incompetent, guardian may bind.
4. If there be no guardian, probate justice may bind, or two justices of the peace, with minor's consent.
5. Executor may bind in certain cases.
6. When minor shall beg, or become a public charge, who may bind.
7. Compulsory process in certain cases.
8. Mayor or aldermen may bind in certain cases.
9. Indentures to be of two parts; to be signed and sealed.
10. Age and term of service to be inserted in indenture.
11. Apprentice to be taught reading, writing, arithmetic;

#### SECTION

12. Amount of compensation to be inserted, and held for use of apprentice.
13. Copy of indentures to be filed in certain cases with probate justice. Duty of probate justice.
14. What indentures are void.
15. Remedy and mode of redress in case of improper treatment of apprentice.
16. Proceedings in case of misconduct of apprentice. Appeals in such cases.
17. Penalty for enticing away apprentices.
18. Penalty for concealing apprentices.
19. Apprentices not to be removed out of this State.
20. Duty of master on removing or quitting business.
21. Proceedings in case of death of master, &c.
22. Apprentices leaving service, how liable.

[Approved March 3, 1845. Rev. Laws, 1826, p. 51.]

SECTION I. All children under the age of fourteen years may be bound by indenture or covenant of service, as clerks, apprentices or servants, until they arrive at that age, with or without their consent; and all minors above that age, may be so bound, with their consent; males, until they arrive at the age of twenty-one, and females, until they arrive at the age of eighteen years, or for a shorter term as herein provided.

SEC. II. Any such minor may be bound, by and with the consent of his or her FATHER. If the father be dead, or if he shall have willfully abandoned and neglected to provide for his family for the space of six months; or shall have become an habitual drunkard; or from any other cause shall not have legal capacity to consent, then the MOTHER shall have the same power to give such consent as if the father were dead. The fact of such desertion, drunkenness or legal incapacity, shall be tried and found in the court of probate by a jury empaneled for that purpose; and an indorsement on such indenture, under the seal of the court, certifying the facts found by such jury, together with the approval of the court of the terms of such indenture, shall be deemed sufficient evidence of the power of the mother to give such consent as aforesaid. And in all cases of illegitimate children, the mother shall be deemed the proper person to give the consent herein required.

SEC. III. If the mother be dead, or shall have abandoned and neglected to provide for her family for the space of six months, or shall have become an habitual drunkard, or a prostitute, or shall not, from any other cause, have legal capacity to consent; which fact shall be ascertained and certified as provided in the foregoing section; then the GUARDIAN of such minor, duly appointed, shall have power to give such consent. If there be no guardian, such minor may be bound as herein after provided.

SEC. IV. Any minor who shall have no parent or guardian living in this State, may, by and with the approbation of the judge of probate, or of any two justices of the peace of the county in which such minor shall reside, bind himself or herself as aforesaid, which approbation shall be indorsed on the said indenture.

SEC. V. 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.

SEC. VI. Whenever any minor shall habitually beg for alms, or shall become chargeable to the county, or shall be likely to become so, by reason of being an orphan without means of support, or by reason of the inability, refusal or neglect of the parent or parents of such minor to support him or her, such minor may be bound as aforesaid by the county commissioners' court, or by any two overseers of the poor, or by any two justices of the peace of the county in which such minor may reside, by the approval and consent of the judge of probate; and such indenture shall be as valid and binding as though such minor had bound himself or herself with the consent of his or her father; but this section shall not apply to females over the age of fifteen years.

SEC. VII. The persons authorized in the foregoing section to bind the

minors therein specified, may, respectively, as the case may require, issue their order, directing the sheriff or any constable of their county, to bring such minors before them.

SEC. VIII. The mayor, or any two aldermen of any city or incorporated town, which, by its charter, is charged with the custody and maintenance of the poor within its limits, may bind minors as provided in the two foregoing sections.

SEC. IX. The indenture or covenant of service, shall be of two parts, and in all cases shall be signed and sealed by all the parties whose consent is herein made necessary thereto: *Provided*, That in cases requiring the consent and approval of the judge of probate, such consent and approval shall be indorsed on said indenture, attested by his seal of office.

SEC. X. The age and time of service of every apprentice or servant, shall be inserted in his or her indentures; but if such age shall be unknown, then it shall be inserted according to the best information, which age shall, in relation to the term of service, be deemed and taken as the true age of such minor.

SEC. XI. In all indentures it shall be provided that the master or mistress shall cause such clerk, apprentice or servant, to be taught to read and write, and the ground rules of arithmetic; and shall also, at the expiration of such term of service, give to such apprentice a new bible, and two complete suits of new wearing apparel, suitable to his or her condition in life: *Provided*, That if such minor be a negro or mulatto, it shall not be necessary to require that he or she shall be taught to write, or the knowledge of arithmetic.

SEC. XII. Every sum of money paid or agreed for, with, or in relation to the binding of any clerk, apprentice or servant, as a compensation for his or her services, shall be inserted in the indentures; and all money or property so paid or agreed to be paid, shall be secured to and for the sole use and benefit of the minor.

SEC. XIII. Whenever any minor shall be bound by other than his or her parent or guardian, one copy of the indentures shall be filed in the office of the judge of probate for safe keeping; and it shall be the duty of the officers or persons binding such minors, and of the judge of probate, to see that the terms of such indentures are complied with, and that such minor is not ill used.

SEC. XIV. All indentures, covenants, promises and bargains, for taking, binding or keeping any apprentice, clerk or servant, not in conformity with the provisions and requirements of this chapter, shall be utterly void in law, as against such clerk, apprentice or servant.

SEC. XV. The judge of probate, or any two justices of the peace, excepting the justices who may have bound the apprentice complaining, shall at all times receive the complaints of clerks, apprentices and servants, 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 the 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 mis-

tresses to be summoned before them, and shall, on 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 clerk, apprentice or servant from his or her apprenticeship or service. And in case any money or other thing, shall have been paid, given, 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, as provided in the sixth, seventh and eighth sections of this chapter, it shall be the duty of the court granting the discharge, again to bind him or her, if said court shall judge proper.

SEC. XVI. 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 clerk, apprentice or servant, for desertion without good cause, or for any misdemeanor, miscarriage or ill behavior, and may punish such clerk, apprentice or servant, according to the nature and aggravation of his or her offense, by imprisonment not exceeding ten days; and in addition to the above punishment, where the offense shall be desertion without good cause, the court may order the said clerk, 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 clerk, servant or apprentice shall become of full age. The awarding of 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.

SEC. XVII. 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.

SEC. XVIII. Every person who shall 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 con-

cealing 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.

SEC. XIX. 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 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 court or justice to discharge such clerk, apprentice or servant from such apprenticeship or service, and to award judgment against such master or mistress for costs, and for such sum as, considering the term of indenture and the condition of the parties, may be deemed just and reasonable.

SEC. XX. 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 clerk, apprentice or servant before the probate court of the proper county; and such court shall have power, if deemed expedient, to discharge such clerk, apprentice or servant from the service of such master or mistress.

SEC. XXI. When any person shall become bound as clerk, apprentice or servant, according to the provisions of this chapter, 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, such clerk, apprentice or servant shall be thereby discharged from such service.

SEC. XXII. Any clerk, apprentice or servant, bound according to the provisions of this chapter, 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.

**PRIOR LAWS.** An act relating to apprentices; approved Feb. 6, 1819. Laws, 1819, p. 5. Repealed Dec. 30, 1826.

An act respecting apprentices; approved Dec. 30, 1826. Rev. Laws, 1833, p. 69.

**DECISIONS.** Under the act of Dec. 30, 1826, two justices of the peace might bind out any poor child, and it was unnecessary to describe the child in the indentures as a poor child. *Hays v. Bowers*, 1 G. 46.

The masters of apprentices enticed away, are entitled to pay for their services, and for expenses in getting them back. *Idem*.

The fact that a person is an indentured servant cannot be proved by parol. *Chambers v. The People*, 4 S. 355.

By the act of Feb. 12, 1849, Laws, 1849, p. 65, the powers and duties of probate judge are conferred upon the county court.

## CHAPTER VII.

### ARBITRATIONS AND AWARDS.

#### SECTION

1. Persons competent may arbitrate matters not in suit; judgment of proper court may be rendered on the award.
2. When parties to suits agree to arbitrate, order of court may be entered; arbitrators, how selected.
3. Duty of arbitrators: to appoint time and place of meeting; may adjourn for good cause.
4. Arbitrators shall be sworn; by whom oath may be administered.
5. Who may issue subpoenas; attendance of witnesses compelled. Arbitrators may administer oaths, punish contempts, and admit depositions to be read.
6. Award shall be in writing; shall be signed, and copies delivered to parties.

#### SECTION

7. Either party not complying, right of the other to file papers in court.
8. Aggrieved party may have judgment at next term for amount of award and costs.
9. Proceedings when award is other than for the payment of money.
10. In what cases court may set aside the award.
11. Court may modify or correct award in case of mistake, &c.
12. Applications to set aside or correct awards: when to be made; chancery jurisdiction reserved.
13. Writs of error and appeals allowed.
14. Fees of arbitrators, witnesses and officers.
15. Arbitrators may be compelled to report.
16. When matter in suit is referred, cause continued.

[Approved March 3, 1845. Rev. Stat. 1845, p. 36.]

**SECTION I.** All persons having the requisite legal capacity, may, by an instrument in writing, to be signed and sealed by them, and attested by at least one witness, submit to one or more arbitrators, any controversy existing between them, not in suit; and may in such submission agree that a judgment of any court of record competent to have jurisdiction of the subject matter, to be named in such instrument, shall be rendered upon the award made pursuant to such submission.

**SEC. II.** Whenever the parties to any suit pending in any court of record, shall be desirous and willing to submit the matters involved in such suit to the decision of arbitrators, an order shall be entered, directing such submission to three impartial and competent persons, to be named in such order; such arbitrators to be agreed upon and named by the parties. But if the parties are unable to agree, each shall name one, and the court the third.

**SEC. III.** The arbitrators appointed in pursuance of the foregoing provisions, or a majority of them; 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 from time to time, not extending beyond the next term of the court in which the said suit is pending, if the subject matter be in suit.

**SEC. IV.** Before proceeding to hear any testimony in the cause, the arbitrators 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 award 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.

**SEC. V.** 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. If any witness, after being duly summoned, shall fail to attend, the arbitrators 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. Any one of the arbitrators may administer oaths and affirmations to witnesses; they may punish contempts committed in their presence during the hearing of a cause, the same as a court of record, and may admit depositions to be read in evidence, the same as in trials at law.

**SEC. VI.** The award of the arbitrators, or a majority of them, shall be drawn up in writing, and signed by such arbitrators, or a majority of them, and a true copy of such award shall, without delay, be delivered to each of the parties thereto.

**SEC. VII.** If either of the parties shall neglect to comply with said award, the other party may, at any time within one year from the time of such failure, file such award, together with the submission or arbitration bond, in the court named in the submission.

**SEC. VIII.** The party filing such award may, at the next term after such filing, by giving four days' notice of his intention, to the opposite party, and if no legal exceptions are taken to such award or other proceedings, have final judgment thereon, as on the verdict of a jury, for the sum specified in said award to be due, together with the cost of arbitration and of the court; and execution may issue therefor as in other cases.

**SEC. IX.** When the award requires the performance of any act other than the payment of money, the court rendering such judgment shall enforce the same by rule, and the party refusing or neglecting to comply with such rule, may be proceeded against by attachment or otherwise, as for a contempt.

**SEC. X.** If any legal defects appear in the award or other proceedings, or if it shall be made to appear on oath or affirmation that said award was obtained by fraud, corruption or other undue means, or that such arbitrators misbehaved, said court may set aside such award.

**SEC. XI.** If there be any evident miscalculation or misdescription, or if the arbitrators shall appear to have awarded upon matters not submitted to them, not affecting the merits of the decision upon the matters submitted, or where the award shall be imperfect in some matter of form, not affecting the merits of the controversy; and where such errors and defects, if in a verdict, could have been lawfully amended or disregarded by the court, any party aggrieved may move the court to modify or correct such award.

Sec. XII. Application to set aside, modify or amend such award, as provided in the two preceding sections, must be made before the entry of final judgment on such award: *Provided*, Nothing herein contained shall be so construed as to deprive courts of chancery of their jurisdiction as in other cases.

Sec. XIII. Writs of error and appeals may be taken from any decision of the court, by the party deeming himself aggrieved, as in other cases; and if the supreme court shall remand the case, such further proceedings shall be had as the nature of the case may require.

Sec. XIV. Each arbitrator 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 shall be made, but to be recovered of the other party with the other costs of suit, if the award or final decision shall entitle the prevailing party to recover costs. Witnesses shall receive the same fees for attendance at arbitrations, 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, as shall be allowed by law for the like services in their respective courts.

Sec. XV. Arbitrators may be compelled by order of the court in which any cause submitted to them shall be pending, to proceed to a hearing thereof, and to make report without unnecessary delay.

Sec. XVI. When any cause pending in any court shall be referred, as herein provided, 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 arbitrators report, or they be thereof discharged, on filing such report.

PRIOR LAWS. An act regulating arbitrations; approved Feb. 25, 1819. Laws, 1819, p. 71. Repealed Jan. 6, 1827.

An act regulating arbitrations and references; in force July 1, 1827. Rev. Laws, 1833, p. 79.

An act to amend an act entitled "An act regulating arbitrations and references;" approved Jan. 6, 1827; in force March 1, 1833. Rev. Laws, 1833, p. 81.

DECISIONS. Under the act of Feb. 25, 1819, the circuit court had no power to enter judgment upon an award, but only to confirm the same; and the party who refused to perform the award, might be punished for a contempt. *Chandler v. Guy*, Breese, 55.

Under the act of Jan. 6, 1827, the parties stipulated that the award should be made a rule of court, and when entered, should have the force and effect of a judgment. *Held*—That the act providing that the submission might be made a rule of court, no judgment could be entered on the award, on motion, the parties being left to their rights and remedies at common law. *Cromwell v. March*, Breese, 230.

That it does not appear on the face of an award that the arbitrators were sworn, or on what day the award was made, is no ground for reversing a judgment entered on an award. All such objections should be taken in the court below. *Duncan v. Fletcher*, Breese, 252.

A circuit court has jurisdiction to enter judgment on an award only in cases where the submission is under and in pursuance of the statute, notwithstanding the parties, by their submission, have stipulated that such judgment may be entered. *Low et al. v. Nolte*, 15 Ill. 368.

## CHAPTER VIII.

## ATTACHMENTS BEFORE JUSTICES.

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| <p>SECTION</p> <ol style="list-style-type: none"> <li>1. Affidavit to be filed by creditor: what facts it shall contain: writ of attachment may issue; against what property; when writ returnable.</li> <li>2. Form of writ.</li> <li>3. Bond to be taken: its penalty: condition.</li> <li>4. Form of condition of bond.</li> <li>5. Duty of constable; writ, how served; return; property may be pursued to any county.</li> <li>6. Want of form, how amended: when attachment may be quashed.</li> <li>7. Duty of justice in case of service or appearance: if there be no service or appearance, case continued, and ten days' notice given: substance and proof of notice.</li> <li>8. Duty of justice in such case to try, render judgment, and order sale: continuance.</li> <li>9. Garnishees to be summoned to answer; return to such summons.</li> <li>10. Justice to make entry; continue as to garnishee; try as to defendant.</li> <li>11. If judgment be against defendant, garnishees summoned to appear, &amp;c.; judgment and execution against them.</li> </ol> | <p>SECTION</p> <ol style="list-style-type: none"> <li>12. If garnishee appear, trial to be had; its incidents; judgment therein.</li> <li>13. Effect of judgment in attachment; execution not to issue until property is sold.</li> <li>14. If defendant is not personally served, what property may be sold; defendant may retain property by giving bond; its conditions; duty of constable; right of plaintiff.</li> <li>15. Several judgments of equal date, equally binding; proviso as to property re-captured out of county.</li> <li>16. Rights of garnishees as to their defense.</li> <li>17. Execution not to issue against garnishee until debt be due.</li> <li>18. Garnishee may deliver up effects of defendant.</li> <li>19. Proceedings against non-resident joint debtors, how instituted and conducted; what property liable in such cases.</li> <li>20. Right of property may be tried.</li> <li>21. Affidavit, how sworn to.</li> <li>22. Construction of this chapter.</li> <li>23. Abatement of suits in attachment.</li> </ol> |
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[Approved March 3, 1845. Rev. Stat. 1845, p. 58.]

SECTION I. If any creditor, his agent or attorney, shall file an affidavit with any justice of the peace in this State, setting forth that any person is indebted to such creditor, in a sum not exceeding one hundred dollars, and that such debtor has departed, or is about to depart from this State, with the intention of having his effects removed from this State; or is about removing his property from this State, to the injury of such creditor; or that such debtor conceals himself, or stands in defiance of an officer, so that process cannot be served upon him; or that such debtor is not a resident of this State, it shall be lawful for the justice to grant a writ of attachment against the personal estate, goods, chattels, rights, moneys and effects of the debtor, directed to any constable of his county, and returnable within thirty days from the date thereof.

SEC. II. The writ of attachment required in the preceding section, shall be substantially in the following form:

STATE OF ILLINOIS, } SCT.  
 — COUNTY, }

*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, this — day of —, 18

C. D., Justice of the Peace. [SEAL.]

Sec. XII. Application to set aside, modify or amend such award, as provided in the two preceding sections, must be made before the entry of final judgment on such award: *Provided*, Nothing herein contained shall be so construed as to deprive courts of chancery of their jurisdiction as in other cases.

Sec. XIII. Writs of error and appeals may be taken from any decision of the court, by the party deeming himself aggrieved, as in other cases; and if the supreme court shall remand the case, such further proceedings shall be had as the nature of the case may require.

Sec. XIV. Each arbitrator 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 shall be made, but to be recovered of the other party with the other costs of suit, if the award or final decision shall entitle the prevailing party to recover costs. Witnesses shall receive the same fees for attendance at arbitrations, 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, as shall be allowed by law for the like services in their respective courts.

Sec. XV. Arbitrators may be compelled by order of the court in which any cause submitted to them shall be pending, to proceed to a hearing thereof, and to make report without unnecessary delay.

Sec. XVI. When any cause pending in any court shall be referred, as herein provided, 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 arbitrators report, or they be thereof discharged, on filing such report.

**PRIOR LAWS.** An act regulating arbitrations; approved Feb. 25, 1819. Laws, 1819, p. 71. Repealed Jan. 6, 1827.

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**DECISIONS.** Under the act of Feb. 25, 1819, the circuit court had no power to enter judgment upon an award, but only to confirm the same; and the party who refused to perform the award, might be punished for a contempt. *Chandler v. Gay*, Breese, 55.

Under the act of Jan. 6, 1827, the parties stipulated that the award should be made a rule of court, and when entered, should have the force and effect of a judgment. *Held*—That the act providing that the submission might be made a rule of court, no judgment could be entered on the award, on motion, the parties being left to their rights and remedies at common law. *Cromwell v. March*, Breese, 230.

That it does not appear on the face of an award that the arbitrators were sworn, or on what day the award was made, is no ground for reversing a judgment entered on an award. All such objections should be taken in the court below. *Duncan v. Fletcher*, Breese, 252.

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## CHAPTER VIII.

## ATTACHMENTS BEFORE JUSTICES.

## SECTION

1. Affidavit to be filed by creditor: what facts it shall contain: writ of attachment may issue; against what property; when writ returnable.
2. Form of writ.
3. Bond to be taken: its penalty: condition.
4. Form of condition of bond.
5. Duty of constable; writ, how served; return; property may be pursued to any county.
6. Want of form, how amended; when attachment may be quashed.
7. Duty of justice in case of service or appearance; if there be no service or appearance, case continued, and ten days' notice given: substance and proof of notice.
8. Duty of justice in such case to try, render judgment, and order sale; continuance.
9. Garnishees to be summoned to answer; return to such summonses.
10. Justice to make entry; continue as to garnishee; try as to defendant.
11. If judgment be against defendant, garnishees summoned to appear, &c.: judgment and execution against them.

## SECTION

12. If garnishee appear, trial to be had; its incidents; judgment therein.
13. Effect of judgment in attachment; execution not to issue until property is sold.
14. If defendant is not personally served, what property may be sold; defendant may retain property by giving bond; its conditions; duty of constable; right of plaintiff.
15. Several judgments of equal date, equally binding; proviso as to property re-captured out of county.
16. Rights of garnishees as to their defense.
17. Execution not to issue against garnishee until debt be due.
18. Garnishee may deliver up effects of defendant.
19. Proceedings against non-resident joint debtors, how instituted and conducted; what property liable in such cases.
20. Right of property may be tried.
21. Affidavit, how sworn to.
22. Construction of this chapter.
23. Abatement of suits in attachment.

[Approved March 3, 1845. Rev. Stat. 1845, p. 58.]

SECTION I. If any creditor, his agent or attorney, shall file an affidavit with any justice of the peace in this State, setting forth that any person is indebted to such creditor, in a sum not exceeding one hundred dollars, and that such debtor has departed, or is about to depart from this State, with the intention of having his effects removed from this State; or is about removing his property from this State, to the injury of such creditor; or that such debtor conceals himself, or stands in defiance of an officer, so that process cannot be served upon him; or that such debtor is not a resident of this State, it shall be lawful for the justice to grant a writ of attachment against the personal estate, goods, chattels, rights, moneys and effects of the debtor, directed to any constable of his county, and returnable within thirty days from the date thereof.

SEC. II. The writ of attachment required in the preceding section, shall be substantially in the following form:

STATE OF ILLINOIS, }  
COUNTY, } SCT.

*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, this — day of —, 18

C. D., Justice of the Peace. [SEAL.]



SEC. III. Upon the issuing of any such writ of attachment, the justice shall take from the creditor, his agent or attorney, a bond to the defendant with good security, to be approved by said justice, in a penalty of at least double the amount of the plaintiff's claim, conditioned that said creditor will pay to the defendant, and to all others interested in such attachment, or the proceedings to grow out of it, all damages and costs which may be sustained by reason of the wrongful suing out of said attachment.

SEC. IV. The condition of the bond required in the preceding section, shall be substantially as follows :

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 ———, 18 .

[SEAL.]  
[SEAL.]

SEC. V. 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. If the defendant, or any other person for him, shall be in the act of removing such personal property, the officer may pursue and take the same in any county of this State, and convey the same to the county from which such attachment issued.

SEC. VI. No attachment shall be abated or dismissed for want of form, if the essential matters required in this chapter be substantially set forth ; and justices of the peace shall allow any amendment to be made, of any affidavit, writ, return or bond, or allow a new affidavit or bond to be filed, 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. And in case a plea in abatement, traversing the facts set forth in the affidavit, shall be filed, and if, on a trial to be had thereon, the issue be found for the defendant, the attachment shall be quashed.

SEC. VII. 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 this 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, 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 indorsement thereon, stating the time when and the place where he posted copies as herein required.

SEC. VIII. When notices shall be given of any proceedings by attachment, as required by the seventh section of this chapter, 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 notice to be posted as aforesaid, previous to any trial of the cause.

SEC. IX. When any constable shall be unable to find personal property of any defendant sufficient to satisfy any attachments issued under the provisions of this chapter, 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.

SEC. X. 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. XI. 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.

SEC. XII. 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.

SEC. XIII. Judgments obtained under the provisions of this chapter, 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.

SEC. XIV. Judgments obtained under the provisions of this chapter, 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 garnishees to collect the amount thereof. Defendants in attachments issued under the provisions of this chapter, 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.

SEC. XV. In all cases arising under the provisions of this chapter, 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 attachment, according to the amount of their judgments respectively: *Provided*, That when the property sought to be attached shall have been removed from the county in which the attachment issued, and shall be overtaken and returned to such county, the claim of such attaching creditor shall have priority over attachments subsequently issued.

SEC. XVI. Persons summoned as garnishees, may set up the same defense in trials under this chapter, as they might against the defendant in the attachment, and may, in like manner, make any set-off against the defendant, whether the same be due or not.

SEC. XVII. Whenever judgment shall have been rendered against any garnishee, and it shall appear that the debt from him to the defendant in the attachment is not yet due, execution shall not issue against him until twenty days after the same shall become due: *Provided*, The plaintiff may swear out execution, as in other cases, after said debt becomes due.

SEC. XVIII. Any garnishee having effects of the defendant in his hands, may, by delivering the same, or any part thereof, to the constable, and taking his receipt therefor, be discharged from his liability respecting such effects so delivered.

SEC. XIX. When two or more persons not residing in this State, are jointly indebted, either as joint obligors, partners or otherwise, the writ or writs of attachment 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 in this State, or against the heirs, executors or administrators of them or either of them; and the goods, 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.

SEC. XX. The right of property may be tried, and appeals taken in all cases arising under this chapter, in the same manner as when property is taken on execution or judgment rendered in ordinary cases.

SEC. XXI. The affidavit required in the first section of this chapter may be sworn to in the manner prescribed in section thirty-two of chapter nine of the Revised Statutes.

SEC. XXII. This chapter shall be construed in all courts in the most liberal manner for the detection of fraud.

SEC. XXIII. The provisions of chapter one of the Revised Statutes shall apply as well to suits in attachment, as to other cases.

PRIOR LAWS. An act prescribing the mode of proceeding against absconding debtors; approved Feb. 24, 1819. Laws, 1819, p. 66. Repealed Jan. 24, 1827. Rev. Laws, 1827, p. 78.  
An act concerning attachments; in force June 1, 1827. Rev. Laws, 1827, p. 66. Repealed Feb. 12, 1833. Rev. Laws, 1833, p. 95.

An act concerning attachments; in force June 2, 1833. Rev. Laws, 1833, p. 82.

An act concerning attachments; in force Jan. 31, 1840. Laws, 1840, p. 30.

An act to amend an act concerning attachments; approved Feb. 12, 1833; in force Jan. 31, 1840. Laws, 1840, p. 31.

An act to amend the several acts relating to attachments; in force Feb. 23, 1843. Laws, 1843, p. 19.

An act in relation to the supreme court, Sec. 5; in force March 3, 1843. Laws, 1843, p. 135.

DECISIONS. If the affidavit for an attachment before a justice does not comply with the requirements of the statute, the subsequent proceedings are void. *Clark v. Roberts*, Breese, 222.

## CHAPTER IX.

### ATTACHMENTS IN CIRCUIT COURTS.

#### SECTION

1. Affidavit of indebtedness to be filed; its contents; writ may issue; against what property.
2. Form of writ.
3. Officer to execute writ; on what property; to what amount; may pursue and retake property; personal service of writ on defendant; return of writ.

#### SECTION

4. Bond required before writ issues; bond and affidavit to be filed; when writ void.
5. Condition of bond.
6. Proceedings against joint debtors.
7. Proceedings against defendants by reputed names, titles, &c., valid; proceedings may be had against heirs, &c., of deceased persons.

## SECTION

8. Want of form not fatal if amended: writ quashed if, on trial had, issue be for defendant.
9. Officer attaching to retain property unless bond be given for its forthcoming, then to be restored.
10. If bond forfeited, may be assigned to plaintiff, or judgment may be against the sheriff; remedy of sheriff.
11. Proceedings against sheriff when he fails to return sufficient bond.
12. When sufficient property is not found, sheriff to summon garnishees.
13. When defendant is not personally served, publication to be made; defendant not required to give bond.
14. On return of writ, published notice to be given; contents of notice; if defendant appear and give bail, property to be liberated and garnishee discharged.
15. If no defense is made, judgment: estate attached to be sold; judgment against garnishee: effect thereof.
16. Conditional judgment, when to be entered against garnishee; *scire facias* to issue; further proceedings.
17. When judgment is had against garnishee, and his debt to defendant is not due, execution stayed; no judgment on negotiable instruments not due.
18. Plaintiff may file the interrogatories and compel garnishee to answer; duty of garnishee.
19. If garnishee does not make true return, trial to be had; judgment in such case and its effect.
20. Testimony of non-resident witnesses, how taken.
21. Other parties interested may interplead; trial of right of property.

[Approved March 3, 1845. Rev. Stat. 1845, p. 62.]

(1.) SECTION I. If any creditor, his agent or attorney, shall file an affidavit in the office of the clerk of the circuit court of any county in this State, setting forth that any person is indebted to such creditor in a sum exceeding twenty dollars, stating the nature and amount of such indebtedness as near as may be, and that such debtor has departed or is about to depart from this State, with the intention of having his effects removed from this State; or is about to remove his property from this State, to the injury of such creditor; or that such debtor conceals himself, or stands in defiance of an officer, so that process cannot be served upon him; or is not a resident of this State, it shall be lawful for such clerk to issue a writ of attachment, directed to the sheriff of his county, returnable like other writs, commanding him to attach the lands, tenements, goods, chattels, rights, credits, moneys and effects of said debtor, of every kind, or so much thereof as will be sufficient to satisfy the claim sworn to, with interest and costs of suit, in whose hands or possession the same may be found.

(2.) SEC. II. The writ of attachment required in the preceding section shall be substantially in the following form:

*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 \_\_\_\_\_ 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

## SECTION

22. Effect of judgment by default, and of judgment on appearance and trial.
23. Goods of a perishable nature may be sold if not relieved; money how applied.
24. When live stock is attached, it may be fed; sheriff's compensation therefor.
25. Defendant may be allowed to set off claims against plaintiff; garnishee may be allowed to set off claims against both.
26. When several judgments at same time, creditors to be paid out of effects, *pro rata*: *proviso*, creditor retaking removed property has preference.
27. Attachments may be served on Sunday in certain cases.
28. Either party may have appeal or writ of error; may try the right of property.
29. Plaintiff desiring return of property, to give bond for payment of judgment; attachment to be dissolved and property restored, and all proceedings set aside.
30. Plaintiff may have a writ of attachment pending a suit at law, in aid thereof.
31. When writ issues to other county, sheriff thereof shall levy and return as in other cases.
32. Before what officer affidavit shall be sworn to; when sworn to out of State, how authenticated.
33. Non-resident joint debtors, proceedings against; whose property liable in such cases.
34. Construction of this chapter liberal for the detection of fraud.
35. As to abatement of suits in attachment.
36. Notice, when to be published.
37. This act applicable to actions now pending.
38. When to take effect.

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, \_\_\_\_\_, clerk 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.

(3.) SEC. III. Such officers shall, without delay, execute such writ of attachment upon the lands, tenements, goods, chattels, rights, credits, moneys and effects of the debtor, of sufficient value to satisfy the claim sworn to, with costs of suit, as commanded in said writ. If the defendant, or any person for him, shall be in the act of removing any personal property, the officer may pursue and take the same in any county in this State, and return the same to the county from which such attachment issued. He shall also serve said writ upon the defendant therein if he can be found, by reading the same to him, or delivering a copy thereof. The return to such writ shall state the particular manner in which the same was served.

(4.) SEC. IV. 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 sworn to be due, conditioned for satisfying all costs which may be awarded to such defendant, or to any others interested in said proceedings, 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.

(5.) SEC. V. The condition of the bond required in the preceding section shall be substantially in the following form:

The condition of this obligation is such, that whereas the above bounden \_\_\_\_\_ hath, on the day of the date hereof, prayed an attachment out of the circuit court of said county, at the suit of \_\_\_\_\_, against the estate of the above named \_\_\_\_\_, for the sum of \_\_\_\_\_, and the same being about to be sued out of said court, 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.

(6.) SEC. VI. In all cases where two or more persons are jointly indebted, either as partners or otherwise, and an affidavit shall be filed as provided in the first section of this chapter, so as to bring one or more of such joint debtors within its provisions, and amenable to the process of attachment, then the writ of attachment shall issue against the property and effects of such as are so brought within the provisions of this chapter; and the officer shall be also directed in said writ to summon all such joint debtors as may be named in the affidavit filed in the case, to answer to the said action, as in other cases of attachment.

(7.) SEC. VII. It shall be sufficient in all cases of attachment to designate defendants by their reputed names, by surnames, and joint defendants by their separate or partnership names, or by such names, styles or titles as they are usually known; and heirs, executors and administrators of

deceased defendants shall be subject to the provisions of this chapter in all cases in which it may be applicable to them.

(8.) SEC. VIII. 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 canceled, 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 shall in their discretion direct; and in that event the cause shall proceed as if such proceedings had originally been sufficient: *Provided*, That in case any plea in 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.

(9.) SEC. IX. The officer serving the writ shall take and retain the custody and possession of the property attached to answer and abide by the judgment of the court, unless the person in whose possession the same may be found shall enter into bond and security to the officer, to be approved by him, in double the value of the property so attached, with condition that the said estate and property shall be forthcoming to answer the judgment of the court in said suit. The sheriff shall return such bond to the court in which the suit is brought, on the first day of the term to which such attachment is returnable.

(10.) SEC. X. 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 defense, 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.

(11.) SEC. XI. If the sheriff shall fail to return a bond taken by virtue of the provisions of this chapter, or shall have neglected to take one when he ought to have done so, in any attachment issued under any provisions of this chapter, the plaintiff in the attachment may cause a rule to be entered at any time during the first two 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 show cause why such bond was not taken. If the said sheriff shall not return the said bond within one day thereafter, or show 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.

(12.) SEC. XII. When the sheriff shall be unable to find property of any defendant, sufficient to satisfy any attachment issued under the provisions of this chapter, he is hereby required to summon all persons within his county, whom the creditor shall designate as having any property, effects or choses in action in their possession or power belonging to the defendant, or who are in any wise indebted to such defendant, to appear before the court to which the writ is returnable on the return day of the attachment, then and there to answer upon oath what amount they are 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 sheriff shall state in his return the names of all persons so summoned, and the date of service on each.

(13.) SEC. XIII. 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 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 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. Any defendant in attachment may appear and plead without giving bail or entering into any bond.

(14.) SEC. XIV. 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.

(15.) SEC. XV. If any attachment as aforesaid shall be returned executed, and the estate attached shall not be replevied, or defense shall not be made as this chapter 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 *feri 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 chapter 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.

(16.) SEC. XVI. 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 chapter 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 show 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, 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. When 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 inquire and return the value thereof, according to the evidence which may be submitted to them relative thereto.

(17.) SEC. XVII. Whenever judgment shall be rendered against any garnishee, and it shall appear that the debt from him to the defendant in the attachment is not yet due, execution shall not issue against him until twenty days after the same shall become due; nor shall judgment be rendered against a garnishee for a debt founded on a negotiable instrument, unless the same shall be due at the time of rendering the judgment.

(18.) SEC. XVIII. 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.

(19.) SEC. XIX. 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 or chattels, belonging to the defendant, are in his or her possession, the court shall direct, without the formality of pleading, a jury to be empaneled immediately, (unless good cause be shown by either party for a continuance,) to inquire 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. Upon such examination, witnesses may be examined by the respective parties as in ordinary cases. 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 examination, and costs of inquest; and if the jury find in favor of the garnishee, he shall recover his costs against the plaintiff.

(20.) SEC. XX. 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, and such examination may be read upon the trial, on motion of either of the parties or garnishee.

(21.) SEC. XXI. 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 shown by either party for a continuance,) direct a jury to be empaneled to inquire 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.

(22.) SEC. XXII. 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.

(23.) SEC. XXIII. 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.

(24.) SEC. XXIV. 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. He 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.

(25.) SEC. XXV. Any defendant against whom an attachment may be sued out under the provisions of this chapter, or garnishee, may avail himself in his defense of any set-off properly pleadable by the laws of this State, notwithstanding such set-off may not be 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.

(26.) SEC. XXVI. 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 when 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 indorse such payments on their respective executions: *Provided*, That when the property sought to be attached shall have been removed from the county in which the attachment issued, and shall be overtaken and returned to such county, the

claim of such attaching creditor or creditors shall have priority over other attachments.

(27.) SEC. XXVII. 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 chapter.

(28.) SEC. XXVIII. 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; and trials of the right of property may be had in the same manner as when property is taken in execution.

(29.) SEC. XXIX. Any defendant in attachment desiring the return of property attached, may, at his option, instead of the bond required in the ninth section of this chapter, 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. In either 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 summons.

(30.) SEC. XXX. 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, rights, moneys, credits 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.

(31.) SEC. XXXI. When 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.

(32.) SEC. XXXII. The affidavit required in the first section of this chapter, may be sworn to before any officer authorized by the laws of this State to administer oaths, or by any officer of any State, territory or district of the United States; the fact that the person administering such oath is



duly authorized, to be proved in the same manner as in the acknowledgment and authentication of deeds.

(33.) SEC. XXXIII. 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 estate of such debtors, or any of them, or against the heirs, executors or administrators of them or either of them; and the lands and tenements, goods and chattels, rights, credits and effects of such debtors, or either 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.

(34.) SEC. XXXIV. This chapter shall be construed in all courts in the most liberal manner for the detection of fraud.

(35.) SEC. XXXV. The provisions of chapter one of the Revised Statutes shall be applicable as well to proceedings in attachment as to other cases.

An Act to amend Chapter IX. of the Revised Statutes, entitled "Attachments in Circuit Courts."  
[Approved Feb. 17, 1851. Laws, 1851, p. 169.]

(36.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That upon the return of attachments issued in aid of actions pending, unless it shall appear that the defendant or defendants have been served with process in the original cause, notice of the pendency of the suit, and of the issue and levy of the attachment, shall be published as is required in cases of original attachment; and such publication shall be sufficient to entitle the plaintiff to judgment, and the right to proceed thereon against the property and estate attached, and against garnishees, in the same manner, to the same extent, and with like effects, as if the suit had been commenced by attachment.

(37.) SEC. II. In actions now pending in court, plaintiffs may give the notice and proceed therein under the provisions of this act.

(38.) SEC. III. This act shall take effect on the first day of March next.

PRIOR LAWS. An act allowing foreign attachments; approved Feb. 22, 1819. Laws, 1819, p. 33. Repealed Jan. 24, 1827.

An act prescribing the mode of proceeding against absconding debtors; approved Feb. 24, 1819. Laws, 1819, p. 66. Repealed Jan. 24, 1827.

An act concerning attachments; in force June 1, 1827. Rev. Laws, 1827, p. 66. Repealed Feb. 12, 1833.

An act concerning attachments. In force June 1, 1833. Rev. Laws, 1833, p. 82.

An act to enable purchasers of real estate to ascertain whether the same is free from incumbrances, and to prevent secret liens of attachments and executions; in force Feb. 26, 1841. Laws, 1841, p. 181.

An act in relation to the supreme court; in force March 3, 1843. Laws, 1843, p. 135.

DECISIONS. Under the act of 1827, the affidavit for an attachment is sufficient if it states that the defendant is indebted in a certain sum, by his certain instrument of writing signed by him. *Phelps v. Young*, Breese, 255.

A judgment of non-suit in attachment is in effect that the writ be quashed. A plea in abatement will lie in attachment cases. *Bryans v. Buckmaster*, Sup. to Breese, 22.

On the trial of the right of property to goods attached, the attachment is evidence to show the plaintiff's right to take the property. *Sheldon v. Reille et al.*, 1 S. 519.

An attachment bond may be amended by adding the seals of the obligors. But where the seals of both principal and surety are omitted, an application to amend by attaching the seal of one only will be denied: such amendment will not perfect the bond. *Hunter v. Ludd*, 1 S. 531.

An attachment bond which does not describe the court from which the attachment is issued, nor to which it is returnable, nor the term of such court, is fatally defective. *Lawrence v. Yeatman et al.*, 2 S. 17.

The word "term" in Sec. 30 of the act of 12th February, 1833, is a misprint—it is "time" in the original law. *Beecher et al. v. James et al.*, 2 S. 463.

An attachment in aid of a summons is process: a motion to quash it, should be made before general appearance and plea. *Idem.*

It is error to refuse a motion to amend an attachment bond by adding seals. *Lea v. Vail*, 2 S. 44.

Objections to attachment bonds must be taken in the circuit court, so that the plaintiff may avail himself of the provisions of the statute authorizing amendments. If this is not done, the objection is waived. *Miere v. Brush*, 3 S. 23.

A defendant in attachment cannot assign for error a decision of the circuit court erroneously made against a party interpleading, but who was no party to the proceeding in the supreme court. *Idem.*

The proper form in entering judgment in attachment cases, is to enter judgment for the debt, &c., and award a special execution to be levied on the property attached. *Idem.*

A creditor who pursues a debtor who is absconding into another country, and there levies upon his property and brings it back to the county where the defendant resided, is entitled to a preference over creditors who issue and levy attachments after the property is so brought back. *Pearson et al. v. Robb et al.*, 3 S. 143.

An appearance and plea in an attachment suit, is equivalent to personal service. *Palmer v. Logan*, 3 S. 60.

Under the attachment act of 1833, the affidavit for an attachment could not be made before a justice of the peace, but must be made before the clerk of the circuit court. But in such cases it is error in the circuit court to refuse leave to amend the affidavit. *Campbell v. Whetstone*, 3 S. 361.

Where an attachment suit is brought on a joint claim against two partners, and the attachment is levied on the property of one, and he dies, the whole suit abates. A *scire facias* will not lie against the representatives of the deceased party; nor can a joint action be maintained against such representatives and the survivor; nor against the survivor alone when his property is not attached, nor process served on him. *Balance v. Samuel*, 3 S. 380.

Money collected by a sheriff on execution, cannot be attached in his hands, nor seized in execution. *Reddick v. Smith*, 3 S. 452.

An attachment may be issued in aid of a *scire facias*, to make a party to a judgment. *Rider et al. v. Glover*, 3 S. 547.

When a plaintiff in attachment dies, his executors or administrators may sue out a *scire facias* and become a party to the suit in place of the testator or intestate. *Singleton v. Wofford*, 3 S. 578.

An attachment is not dissolved by appearance and plea only. To effect this, the defendant must give bond as required by the statute. *Martin v. Dryden*, 1 G. 188; *Conn v. Caldwell*, 1 G. 531.

To give the court jurisdiction in cases of attachment, there must be either a levy on the property of the defendant, or service of a garnishee process on some person indebted to or having effects of the defendant in his hands. *Idem.*

An attachment is a lien from the date of the levy, even against a prior purchaser claiming under an unrecorded deed, without notice. *Idem.*

Where judgment in attachment is rendered without personal service, or appearance of defendant, the property attached only can be sold; but where there is an appearance or personal service, the judgment is general. *Conn v. Caldwell*, 1 G. 535.

A steamboat is attached; the plaintiff and the owner of the boat agree that she may proceed on her voyage, and that she shall be returned at a certain time; the attachment lien, as between the parties, is not thereby divested. *Idem.*

An attachment in aid of a summons is part of the original suit, and is of no avail to the plaintiff unless the summons is served. *Moon v. Hamilton*, 2 G. 430.

Where a judgment is rendered in one county on an attachment levied on land in another county, and execution is issued to the sheriff of the latter county, who sells the property attached, and pays over the money to the plaintiff, without notice of other attachments returnable to the same term of the same court,—the sheriff is not liable to be called upon to make a *pro rata* distribution of the proceeds of the sale between the attaching creditors; and an order of the circuit court directing him to do so, is erroneous. *Chandler v. Mullanphy*, 2 G. 464.

By the levy of an attachment the plaintiff acquires a lien upon the property attached, for the satisfaction of his particular debt, which may become perfect when the debt is merged in a judgment.

Where personal property is attached, the possession is transferred to the sheriff; but if security is given, as required by the statute, the property is released, and the cause proceeds like any other suit commenced by summons. *The People v. Cameron*, 2 G. 470.

A judgment in attachment without personal service, is not evidence of a debt. *Manchester v. McKee*, 4 G. 511.

An attachment will not be sustained upon the ground alone that the debtor is about to remove his property from the State. It must appear that such removal will injure the creditor. *White v. Wilson*, 5 G. 21.

The sheriff may sue in his own name, for the use of the plaintiff, on a forthcoming attachment bond. *Young v. Campbell*, 5 G. 80.

The form of a judgment in attachment suits, is the same as in others; but when there is not personal service, a special execution issues against the property attached. In case of personal service, or bond given under the statute for the payment of the debt, the execution is general; the attached property being bound for the judgment, unless such bond is given. *Young v. Campbell*, 5 G. 80.

The rule for the computation of time under the attachment law relating to notice, is to exclude the day of publication and include the first day of term. *Varian v. Edmondson*, 5 G. 270.

The published notice, with the printer's certificate, is a part of the record, and takes the place of an officer's return of service. *Idem*.

An attaching creditor is protected in the same manner as a purchaser. *Barnell v. Robinson*, 5 G. 282.

Under Section 13, Chapter IX. of the Revised Statutes, an attachment in aid of a suit at law may issue at any time. The word "term" means time. *Dutcher v. Crowell*, 5 G. 225.

Under Section 25, Chapter LVII. Revised Statutes, 1845, the lien of an attachment takes effect only from the date of the recording of the certificate of levy; the sheriff is not presumed to have performed this duty. *Galy et al. v. Pitman*, 11 Ill. 21.

To entitle a party in a civil suit to a *pro rata* distribution with attaching creditors, he must obtain his judgment at the term to which the attachments are returnable. *Rucker v. Fuller*, 11 Ill. 223.

If such civil suits should be continued, they lose all claim to any share of the property attached. *Idem*.

An action of account may be commenced by attachment. *Humphreys v. Matthews*, 11 Ill. 473.

The word "property" in the 26th Section of the attachment act, embraces money, debts and choses in action of every kind; all which, including debts due from garnishees, is to be apporportioned among the several attaching and judgment creditors. *Stahl v. Webster*, 11 Ill. 473.

A bond conditioned that if the plaintiff "failed to substantiate his claim, he shall surrender up and have forthcoming the property attached," is a statutory bond, and assignable. *Purcell v. Steel et al.*, 11 Ill. 473.

Persons claiming to be the owners of property attached, and giving a forthcoming bond, cannot, in a suit on the bond, set up title in themselves. To do this, they must interplead. *Idem*.

The oath on which an attachment is predicated, may be taken before any person authorized to administer an oath. If taken within the county where the court is held, no proof of the official character of the person administering it, is required. If taken out of the county, proof of such official character is necessary. If made out of the State, it may be before any person authorized to take acknowledgments of deeds; and the same proof is required of their official character, as is requisite in the case of the acknowledgment of deeds. *Rowley v. Berran*, 11 Ill. 199.

Where the defendant in attachment is not in court, the plaintiff cannot have judgment for a sum exceeding the amount claimed in his affidavit. *Idem*.

If the proceedings in an original attachment do not show jurisdiction in the court, a garnishee may avail himself of such want of jurisdiction. *Pierce v. Cartelon et al.*, 11 Ill. 363.

Moneys in the hands of an officer, after the execution is satisfied, may be reached by garnishee process. *Idem*.

The answer of a garnishee, until disproved, is taken as true. *Idem*.

An affidavit that a defendant is "about to remove his property beyond the limits of the State, to the injury of the plaintiff," is not traversed by a plea that defendant "was not removing from the State of Illinois, nor was he removing his property from said State of Illinois to the injury of said plaintiff." *Walker v. Welch*, 13 Ill. 675.

An equitable interest in a debt cannot be attached in the hands of a garnishee. *May v. Baker*, 15 Ill. 89.

An attachment cannot be levied upon an equitable interest in real estate. *Lowry et al. v. Wright et al.*, 15 Ill. 95.

All objections to attachment bonds must be made in the circuit court. *Morris v. Trustees of Schools*, 15 Ill. 266.

Writs of attachment may issue to different counties at the same time. *Idem*.

It is the duty of the sheriff in attachment cases, to serve the writ on the defendant if he can be found; if not, to return that fact. *Idem*.

## CHAPTER X.

## ATTACHMENTS OF BOATS AND VESSELS.

## SECTION

1. Boats, vessels, &c., may be attached; for what claims: claims of mariners, &c., preferred.
2. Claimant may have attachment in county in which boat is found, on making affidavit and giving bond; to whom bond given; remedies of injured parties under it.
3. On return of writ, declaration to be filed; its contents; bill of particulars to be filed; trial; judgment; execution.

## SECTION

4. Engineers, pilots, &c., may attach for arrears of wages.
5. If sufficient bond be given, boat may be released.
6. Attachment not to affect other creditors, &c., after three months from time debt accrued.
7. Time changed from three to nine months.
8. When act to be in force.

[Approved March 3, 1845. Rev. Stat. 1845, p. 71.]

(1.) SECTION I. 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, on account of or towards the building, repairing, fitting, furnishing or equipping such boats and 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, boatmen and others, employed in the service of such boats and vessels, which shall first be paid.

(2.) SEC. II. 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.

(3.) SEC. III. 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.

(4.) SEC. IV. All engineers, pilots, mariners, boatmen and others, employed in any capacity in or about the service of any such boat 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 chapter, and shall be entitled to all the benefits hereof.

(5.) SEC. V. 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.

(6.) SEC. VI. No creditor shall be allowed to enforce the lien created under the provisions of this chapter, as against or to the prejudice of any other creditor, or subsequent incumbrancer, or *bona fide* purchaser, unless suit be instituted to enforce such lien as provided in this chapter, within three months after the indebtedness accrues or becomes due according to the terms of the contract.

An Act to amend Chap. X. of the Revised Statutes, entitled "Attachments of Boats and Vessels."

[Approved Feb. 9, 1855. Laws, 1855, p. 150.]

(7.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the time limited in the sixth section of such act for the enforcement of liens created by it, be changed so that the same shall be nine months instead of three, as therein provided.*

(8.) SEC. II. This act shall be in force and take effect from and after its passage.

PRIOR LAWS. An act authorizing the seizure of boats and other vessels by attachment in certain cases; in force June 1, 1833. Rev. Laws, 1833, p. 95.

DECISIONS. Under the act of Feb. 13, 1833, no person can appeal from the judgment of a justice of the peace rendered against a boat or vessel, unless he has made himself a party to the proceeding before the justice. *Quare*—whether an appeal lies at all in such case. *Schooner Constitution v. Woodworth*, 1 S. 511.

An affidavit for an attachment against a boat or vessel must show that the indebtedness accrued while the boat was being built, equipped, repaired or running upon the navigable waters of the State. *Frink v. King*, 3 S. 144.

Where a boat is attached, and one owner comes in and makes defense, it is improper to permit other owners to interpose other pleas. One is competent to make full defense. *Idem*.

Under our statute, the master of a steamboat or other vessel has a lien for wages, as well as any other person employed on the same. *Chauncey v. Jackson*, 4 G. 435.

A sale of a vessel under a judgment in attachment, does not divest liens of a superior degree, nor antecedent liens of the same degree. *Germain v. Steam Tug Indiana*, 11 Ill. 536.

The claims of seamen are to be paid first. *Germain v. Steam Tug Indiana*, 11 Ill. 536.  
A lien once acquired continues in force three months. Until this period expires, the creditor is not chargeable with laches. *Idem*.

An action for supplies can only be maintained for such as are furnished to be used on the boat or vessel. *Clark v. Smith*, 14 Ill. 362.

If money is advanced to the master of a vessel to make repairs, or pay the wages of mariners, it must be shown that the money was necessary for such purpose—otherwise the vessel is not liable. *Leddo v. Hughes*, 15 Ill. 41.

## CHAPTER XI.

## ATTORNEYS AND COUNSELORS AT LAW.

## SECTION

1. No person permitted to practice as attorney, &c., without license: rights.
2. Certificate of moral character.
3. Clerk of supreme court to keep roll, on which the names of attorneys shall be entered; oath to be indorsed on license.
4. No person shall practice unless enrolled: justices of supreme court may strike from the roll for misconduct in office.
5. If attorney refuses or neglects to pay over money collected, how punished.
6. Attorney to receive notice from clerk of supreme court, and shall be heard in his defense.
7. Attorneys, judges, &c., may be arrested and held to bail, but privileged when attending court.

## SECTION

8. Certain officers not to practice as attorneys at law; attorneys to take oath before being enrolled.
9. Oath of office.
10. Persons licensed in other States may practice in this State.
11. Fees, &c., received by persons not licensed, may be recovered back: penalty for signing records, &c., if not authorized.
12. Parties may prosecute and plead in person; nothing herein to affect attorneys already admitted.
13. Attorneys from neighboring States may practice in this State.
14. Attorney permitted to consult prisoner in jail or other place of custody.
15. Penalty for violating provisions of this act.
16. When act to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 72.]

(1.) SECTION I. 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 there to practice as an attorney and counselor at law, according to the laws and customs thereof, for and during his good behavior 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.

(2.) SEC. II. 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.

(3.) SEC. III. 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 indorsed on the said license.

(4.) SEC. IV. 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 to practice as an attorney or counselor at law within this State, under the penalty hereinafter mentioned, any thing in this chapter 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 mal-conduct in his office.

(5.) SEC. V. In all cases when an attorney of any court in this State, or solicitor in chancery, shall have received, or may hereafter receive, in his said office of attorney or solicitor, in the course of collection or settlement of any claim left with him for collection or settlement, any money or other property belonging to any client, and shall, upon demand made, and a tender of his reasonable fees and expenses, refuse or neglect to pay over or deliver the same to the said client, or to any person duly authorized to receive the same, it shall be lawful for any person interested to apply to the supreme court of this State for a rule upon the said attorney or solicitor, to show cause, at a time to be fixed by the said court, why the name of the said attorney or solicitor should not be stricken from the roll; a copy of which rule shall be duly served upon said attorney or solicitor at least two days previous to the day upon which said rule shall be made returnable; and if, upon the return of said rule, it shall be made to appear to the said court that such attorney or solicitor has improperly refused or neglected to pay over or deliver said money or property so demanded as aforesaid, it shall be the duty of the said court to direct that the name of the said attorney or solicitor be stricken from the roll of attorneys in said court.

(6.) SEC. VI. 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 defense, and allowed reasonable time to collect and prepare testimony for his justification. And every attorney whose name shall at any time be stricken from 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 justices, in open court, shall authorize him to sign or subscribe the same.

(7.) SEC. VII. 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 arrest while attending courts, and whilst going to and returning from court.

(8.) SEC. VIII. No person who holds a commission as a justice of the supreme court, or as judge of any circuit court, or county commissioner, shall be permitted to practice as an attorney or counselor at law in the court in which he presides as justice of the supreme or circuit court, or county commissioner; nor shall any 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.

(9.) SEC. IX. 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 and counselor at law, according to the best of my understanding and abilities."

(10.) SEC. X. 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 permitted to practice as a counselor and attorney at law in any court in this State without examination.

(11.) SEC. XI. If any person 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 counselor 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 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 receiving such money or property, shall forfeit three-fold 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 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 in this section, with an intent to deceive, such person shall be deemed guilty of forgery, and shall be prosecuted and punished accordingly.

(12.) SEC. XII. 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 licenses.

(13.) SEC. XIII. 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 and equity 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 States or territories.

An Act for the Security of Personal Liberty.

[Approved Feb. 12, 1849. Laws, 1849, p. 99.]

(14.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all public officers, sheriffs, coroners, jailors, constables, or other officers or persons having the custody of any person committed, imprisoned, or restrained of his liberty, for any alleged cause whatever, shall, except in cases of imminent danger of escape, admit any practicing attorney at law of this State, whom such person so restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody; and when any such prisoner is about to be removed beyond the limits of this State, by any person or public officer, under any pretense whatever, he or she shall at all times be entitled to reasonable delay for the purpose of obtaining counsel, and of availing himself or herself of the laws of this State, for the security of personal liberty.

(15.) SEC. II. If any public officer or other person aforesaid shall violate the provisions of this act, he shall, for every such offense, forfeit and pay to the person aggrieved one hundred dollars, to be recovered by action of debt in any court of competent jurisdiction.

(16.) SEC. III. This act to take effect from and after its passage.

PRIOR LAWS. An act regulating the admission and practice of attorneys and counselors at law; approved Feb. 10, 1819. Laws, 1819, p. 9. Repealed March 1, 1833.

An act concerning attorneys and counselors at law; approved March 1, 1833. Rev. Laws, 1835, p. 99.

An act concerning attorneys and counselors at law; approved March 4, 1843. Laws, 1843, p. 15.

DECISIONS. If any attorney employed to defend a suit, corruptly consents to a judgment against his client, his name will be stricken from the roll of attorneys. *The People v. Lamborn*, 5 S. 123.

The application for a rule on an attorney to show cause why his name should not be stricken from the roll, when not on the complaint of the party injured, should be made upon the oath of some person who will swear affirmatively to the truth of the charges, and not to his belief merely. *Idem*.

The court will not, when an attorney neglects to have his name entered on the roll of attorneys at the time of obtaining his license, permit the same to be done *nunc pro tunc*. *Ex parte Fellows*, 2 S. 369.

## CHAPTER XII.

### ATTORNEY GENERAL AND CIRCUIT ATTORNEYS.

SECTION

1. Attorney general and circuit attorneys elected once in two years; their residence; their duties; how commissioned.

SECTION

2. Each to give official bond; governor may require additional bond; if bond not given in sixty days, office to be vacated.

SECTION

3. Duty of attorney general: shall attend supreme court; try cases for State and for counties; try impeachments; give advice to officers of State.  
4. Attorney general and circuit attorneys shall attend circuit courts; their duties as circuit attorneys.  
5. Shall attend examinations on writs of *habeas corpus*, and examinations for felonies.  
6. When interested in cause, absent, &c., court may appoint substitute, with same powers, duties and fees.

SECTION

7. Attorney general may call on circuit attorneys to assist him.  
8. Governor may fill vacancies.  
9. Fees of attorney general and State's attorneys, &c., in circuit court: *proviso*.  
10. Attorney to be appointed to perform the duties of attorney general or State's attorney, in their absence, &c.; fees allowed; how paid.

[Approved March 3, 1845. Rev. Stat. 1845, p. 75.]

(1.) SECTION I. There shall be elected by the General Assembly on joint vote, once in every two years, an attorney general, who shall reside at the seat of government, and perform such duties as are by this chapter, or may hereafter be prescribed by law; and one circuit attorney in each judicial circuit, excepting that in which the seat of government is situated. Such circuit attorneys shall reside in the circuits for which they may be respectively elected, and shall perform such duties as are herein prescribed, or may be hereafter imposed by law. The attorney general shall be *ex officio* the circuit attorney for the circuit in which he resides, and shall perform the same duties therein, as other circuit attorneys are or may be required to perform; such officers, when so elected, shall be commissioned by the governor.

(2.) SEC. II. Previous to being commissioned as aforesaid, each of the said officers shall file in the office of the secretary of State, a bond, the attorney general in the penal sum of five thousand dollars, and each circuit attorney in the penal sum of one thousand dollars, with good security, to be approved by the governor, conditioned that they will, respectively, faithfully pay over all such moneys as may come into their hands, belonging to the State or to any county, and that they will faithfully and with fidelity perform all duties which are or may be by law imposed upon them. The governor may, at any time when he shall deem necessary, require additional bond and security to be given. And in case the attorney general or any circuit attorney shall neglect or refuse to file any bond herein required or authorized to be taken, within sixty days after his appointment, his office shall be deemed vacant, and may be filled in like manner as other vacancies.

(3.) SEC. III. 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 which the people of this State, the auditor of public accounts, 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.

(4.) SEC. IV. It shall also be the duty of the attorney general and of each circuit attorney to attend each circuit court to be held in each of the counties belonging to his judicial circuit, and to commence and prose-

cute all actions, suits, process, indictments and prosecutions, civil and criminal, in which the people of this State, or any county within such judicial circuit, may be concerned; to defend all actions brought within such judicial circuit, against the auditor of public accounts, 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 circuit aforesaid. 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.

(5.) SEC. V. It shall be the duty of the attorney general and circuit 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.

(6.) SEC. VI. When the attorney general or any circuit 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 circuit attorney shall be absent or sick, and unable to attend 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 circuit 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 business in such court, and shall be entitled to the same fees therefor, as would have been allowed to the attorney general or circuit attorney for said services.

(7.) SEC. VII. The attorney general shall have the right to call upon any of the circuit attorneys to assist him in the prosecution or defense 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 circuit attorney being so required, shall give his assistance accordingly.

(8.) SEC. VIII. 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 chapter provided.

An Act in relation to the Attorney General and State's Attorneys.

[Approved Feb. 23, 1847. Laws, 1847, p. 18.]

(9.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter there shall be allowed to the attorney general and State's attorneys, and the attorneys of the Cook and Jo Daviess county courts, for their services in the circuit court, fees as

follows, in the following cases, to wit: Five per cent. upon all moneys actually collected and paid over to the State, or any county thereof, by them: *Provided,* That this act shall not extend to the collection of the revenue of this State, or any county.

An Act requiring the punctual Discharge of Duties by the Attorney General and the several State's Attorneys.

[Approved Feb. 23, 1847. Laws, 1847, p. 18, 19.]

(10.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever the circuit court of any county in the State shall have to appoint an attorney to attend to the duties of attorney general, or any State's attorney, during any term or part of the term of a court, because of the absence of the attorney general or State's attorney, as the case may be, and the person so appointed shall attend to and perform the duties required, the court may make an order allowing the person so appointed not less than ten nor more than twenty-five dollars for each term or part of a term of such court; a copy of which order shall be certified to the auditor of public accounts, who shall issue a warrant upon the treasurer for the payment thereof, and the amount of such warrant shall be deducted from the salary of the attorney whose duties have been performed as aforesaid.

PRIOR LAWS. An act for the appointment of circuit attorneys, and defining their duties and the duties of the attorney general; approved March 23, 1819. Laws, 1819, p. 204. Repealed Feb. 19, 1827.

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 30, 1819. Laws, 1819, p. 349.

An act for the relief of the attorney general and circuit attorneys; approved Dec. 14, 1824. Laws, 1824, p. 10.

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. Laws, 1824-5, p. 178. Repealed Feb. 17, 1827.

An act relating to attorney general and State's attorney; in force Feb. 19, 1827. Rev. Laws, 1827, p. 79.

An act further defining the duties of the attorney general, and for other purposes; in force Feb. 26, 1841. Laws, 1841, p. 35.

## CHAPTER XIII.

### AUDITOR AND TREASURER.

#### SECTION

1. Auditor and treasurer elected by joint vote of General Assembly; term, two years.
2. Shall give official bonds: condition thereof.
3. Not to be commissioned until bond be given; if bond not given in twenty days, office to be vacant.
4. Shall each keep an official seal; copies of papers authenticated by them to be received in evidence.
5. Governor may require additional bond; if not given, office to be vacant.

#### SECTION

6. Governor may order bonds to be sued: judgment may be had against principal and sureties, jointly or severally.
7. Auditor to keep accounts of the State; audit accounts.
8. Shall draw warrants, and keep record thereof.
9. Auditor shall personally sign all warrants, &c.
10. Warrants to be countersigned by treasurer, and entry thereof made.
11. Auditor to report to General Assembly.

## SECTION

12. Auditor shall make account against collecting officers; circuit attorneys bring suit; auditor to grant *quittances*.
13. Treasurer shall receive, keep safely, and pay out money; keep accounts; make reports; reports to be published with laws.
14. Shall report monthly to the auditor; shall cancel and return warrants, and take receipt.
15. If treasurer die, his heirs, &c., shall pay over money, &c., to his successor, who shall report.
16. If warrant be lost, duplicate to be issued; oath and bond to be first made; *proviso*.
17. Offices to be kept at seat of government; clerks.
18. Auditor to commence suits, &c., in behalf of the State.
19. No money to be paid out of treasury except authorized by law.
20. Governor to have control over contingent fund as hereinafter.
21. Auditor to furnish clerks of county commissioners' court with blank forms of books, &c., connected with assessment and collection of revenue; clerks to make out transcripts.
22. Duty of auditor in relation to forfeited lands and lots sold, and imperfect land records of any county, &c.; compensation for furnishing transcript.
23. Auditor authorized to purchase real estate levied upon to satisfy judgment in favor of State, for the use of the State.
24. Allowance to auditor for collecting revenue.

[Approved March 3, 1845. Rev. Stat. 1845, p. 80.]

(1.) SECTION I. There shall be elected by the joint vote of both houses of the General Assembly, once in every two years, an auditor and a treasurer, who shall hold their offices for two years, and until their respective successors are elected and qualified.

(2.) SEC. II. The auditor and treasurer shall, immediately after their election, execute and file in the office of the secretary of State, bonds, respectively, to the people of the State of Illinois, with good and sufficient securities, to be approved by the governor and two justices of the supreme court, the auditor in the penal sum of twenty thousand dollars, and the treasurer in the penal sum of one hundred thousand dollars, conditioned that said auditor and treasurer shall faithfully discharge all the duties of their said offices, then required or thereafter to be required by law, and that they will at the close of their terms of office, deliver over to their respective successors all moneys, books, records, vouchers, papers and other property pertaining to their respective offices. Said bonds shall each contain a clause in the condition thereof, that the auditor and treasurer, respectively, shall, when required by the governor, give additional bonds, with sufficient securities, as specified in the fifth section of this chapter, to be approved and filed in like manner as the original bond.

(3.) SEC. III. No commission shall be issued to any auditor or treasurer until he shall have given bond and security as required by this chapter. And if either shall neglect or refuse to enter into a bond as required herein, within twenty days after his election, the office shall be deemed and considered vacant, and the governor shall immediately communicate the fact to the General Assembly, if in session, and if not, he shall fill such vacancy according to law.

(4.) SEC. IV. The auditor and treasurer shall each keep an official seal, which shall be used to authenticate all writings, papers and documents required by law to be certified from either of said offices; and copies of all papers, writings and documents legally deposited in either of said offices, when certified by the officer and authenticated by the seal of his office, shall

## SECTION

25. Allowance to John B. Weber, for making tract books for State, and correcting errors in same.
26. Auditor required to furnish each county with transcript of lands sold for taxes in said county.
27. May employ suitable person to assist in making transcripts; his salary; said transcripts to be kept in clerk's office of each county, as record.
28. Limitation of act.
29. When act to take effect.
29. Repeal of law authorizing auditor to issue warrant on treasurer in favor of brigade majors, for services rendered under militia laws; *proviso*.
30. When act to take effect.
31. State's attorneys to bring and prosecute suits against collectors and others indebted to the State, when required by auditor.
32. Person so sued may pay the amount due into the State treasury, pending suit. Within what time sheriff or other officer required to pay money collected on execution into treasury.
33. Compensation to State's attorney.
34. Allowance to prosecuting attorney in supreme court.
35. Duty of auditor, where person entitled to warrant on treasurer, against whom account in favor of State is due; *proviso*.
36. No sale, transfer, &c., to prevent or affect the right of auditor to make deduction and offset as above.
37. When act to take effect.

be received in evidence in the same manner and with like effect as the originals.

(5.) SEC. V. Whenever the governor shall deem any bond filed by the auditor or treasurer insufficient, he may require additional bond, in any penalty not exceeding that specified in the second section hereof; and if such officer shall fail, when so required, to file such bond for the space of twenty days, his office may, in the discretion of the governor, be declared vacant, and shall be filled as provided in the third section hereof.

(6.) SEC. VI. Whenever the condition of any bond given by the auditor or treasurer shall be broken, it shall be the duty of the governor to order the same to be prosecuted. Suit may be instituted and prosecuted to final judgment against such auditor or treasurer, or their respective securities, or one or more of them, jointly or severally, without first establishing the liability of the auditor or treasurer, by obtaining judgment against him alone.

(7.) SEC. VII. 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.

(8.) SEC. VIII. On ascertaining the amount due any person from the treasury, the auditor shall grant his warrant on the treasury for the sum due. He shall keep a fair record of all warrants by him drawn, numbering the same in a book to be kept for that purpose.

(9.) SEC. IX. The auditor 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.

(10.) SEC. X. 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 into a book to be kept for that purpose by him, the date, amount, and the name of the person or persons to whom the same are made payable.

(11.) SEC. XI. 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, showing 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.

(12.) SEC. XII. 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 circuit attorneys, to proceed by motion or action against such delinquent collectors and their securities, before the supreme or circuit court. All *quietusses* necessary to be granted shall be issued by the auditor, under his hand and seal of office.

(13.) SEC. XIII. 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. 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.

(14.) SEC. XIV. 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. Before depositing said warrants with the auditor, the treasurer shall write the word "cancelled" on the face of each.

(15.) SEC. XV. 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 and warrants, together with all books, records, memoranda, 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 of the late treasurer, in which case they shall be given up to the said treasurer, his heirs, executors or administrators.

(16.) SEC. XVI. 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: *Provided*, If any such warrant shall be negotiable, at the time of such loss or destruction, (which fact shall be ascertained by the oath of the party making such application, or otherwise,) then, before such certificate shall be given by the auditor, such person shall give him satisfactory security for the refunding of the amount, together with all costs and charges, should the State afterwards be compelled to pay the original warrant.

(17.) SEC. XVII. The auditor and treasurer shall keep their offices at the seat of government; and shall not hereafter employ the same person as clerk in both their respective offices, at the same time.

(18.) SEC. XVIII. The auditor shall be deemed the proper officer to institute all suits, motions, and other proceedings in law and equity, in which the State is plaintiff, except in cases otherwise provided by law.

An Act concerning the Public Treasury.

[Approved Feb. 21, 1845. Laws, 1845, p. 46.]

(19.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter no sum or sums of money shall be contracted to be paid out of the treasury of the State, by any officer of the State, nor shall any person be encouraged to do any work or labor for the State, by any officer thereof, except such payment, or such work and labor, shall have been authorized by a previous law.

(20.) SEC. II. That the first section of this act shall not be so construed as to prevent the Governor from exercising the same control over the contingent fund as has been heretofore exercised over said fund.

An Act to enable the Auditor of Public Accounts to perform his Duties.

[Approved March 1, 1847. Laws, 1847, p. 19.]

(21.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the auditor of public accounts shall furnish the clerks of the county commissioners' court of the several counties, with blank forms of all books, lists and certificates connected with the assessment and collection of the revenue, together with the proper instructions, which shall be in accordance with the provisions of the revenue laws; and the said clerks are hereby required to make out all transcripts or other papers, for the use of the auditor's office, or the assessor, in conformity with said instructions.

(22.) SEC. II. And it shall be the duty of the said auditor to complete all work that is in arrears in his office, making complete record of the forfeited lands and lots sold, and entering the lands sold for taxes since the year one thousand eight hundred and thirty-eight, in the record books; and when it shall appear that the land records of any county are imperfect, or that the lists of taxable lands have not been furnished, he shall make out and forward to the clerks of the county commissioners' court, in a well-bound book, a correct transcript of all the taxable lands in such county, for which service he shall be allowed three cents for each tract so entered or transcribed, to be paid by the State upon the certificate of the governor.

(23.) SEC. III. The auditor shall cause to be collected, without unnecessary delay, all the revenue remaining due and unpaid, and when real estate shall be levied upon to satisfy any judgment in favor of the State, it shall be the duty of the officer making such levy, to transmit to the auditor by mail, at least twenty days before the day of sale, a correct statement, showing the description and value of the said property; and the auditor is hereby authorized and required to purchase, in the name and for the use of the State, at its cash value, so much of said property as may be necessary to pay the amount of the judgment and costs aforesaid.



(24.) SEC. IV. The auditor shall be allowed two per cent. on the amount collected for collecting any revenue due the State, for the year one thousand eight hundred and forty-five and prior years, which shall be collected from the persons who have failed to pay over said revenue as required by law.

(25.) SEC. V. The auditor of public accounts is hereby authorized to estimate the amount of weeks in making tract books for the State, by John B. Weber, and to pay him two dollars per day for the work which he has not been paid for by the tract or otherwise; and hereafter the said John B. Weber may enter the errors which he has discovered in the said tract books, and the auditor shall have control of said books, and remove them to his office, so as to enable him to enter the disposition of lands as contemplated; but for such work as John B. Weber may do, in entering the errors, the auditor shall estimate and pay two dollars per day for all time actually employed, to be kept by the auditor.

An Act requiring the Auditor to furnish the several Counties with Tax Sale Records.

[Approved Feb. 12, 1849. Laws, 1849, p. 37.]

(26.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the auditor of public accounts be, and he is hereby, required to furnish each county in this State with a suitable book, containing a correct transcript of all the lands sold for taxes at the seat of government, and lying in said county. Said transcript shall show all the facts in regard to said sales, redemptions, &c., that appear on the records in his office.

(27.) SEC. II. The auditor is hereby authorized to employ a suitable person to do the work necessary to be done in making the transcripts aforesaid, who shall receive a salary at the rate of four hundred dollars per annum, to be paid out of the State treasury on the warrant of the auditor. The said book of transcripts of said sales and redemptions as aforesaid, is hereby declared a book of record, to be kept in the clerk's office of the proper county, and the original or copies thereof, certified by said clerk, shall be evidence to prove the facts, sales, redemptions, &c., shown by the entries in said book. This act shall be limited in its effects to the period of eight months.

(28.) SEC. III. This act to take effect and be in force from and after its passage.

An Act regulating the Pay of Brigade Majors.

[Approved Feb. 12, 1849. Laws, 1849, p. 41.]

(29.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all laws authorizing or requiring the auditor of public accounts to issue his warrant on the treasurer in favor of brigade majors, for services rendered under the militia laws of this State, be and the same are hereby repealed; *Provided,* That he shall pay for the services heretofore rendered under said laws and remaining unpaid, when the brigade major claiming the same, shall present to the said auditor an affidavit in writing, setting forth the number of battalions that he has actually inspected, and that he performed the duties required of him by law, together with the certificate of the major general as now required by law.

(30.) SEC. II. This act to take effect and be in force from and after its passage.

An Act to enable the Auditor of Public Accounts to Prosecute Claims in favor of the State.

[Approved Nov. 6, 1849. Laws, 1849, (2nd Sess.) p. 6.]

(31.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the State's attorneys, when required by the auditor of public accounts, to bring suits on accounts against collectors or other persons indebted to the State, and to prosecute said claims to a final settlement and collection of the amount due.

(32.) SEC. II. Any person who may desire to settle and pay over the amount due, after suit has been commenced, and before execution has been issued, shall pay the same into the State treasury, and the auditor shall notify the clerk of the court where such suit was commenced, of the fact, and he shall indorse the judgment "satisfied." The sheriff or other officer who shall collect any funds due on execution in favor of the State, shall pay the same into the State treasury within one month after he has received said funds.

(33.) SEC. III. The State's attorney who shall prosecute any suit in favor of the State, under the provisions of the preceding sections of this act, shall receive as a compensation for his services, upon all sums not exceeding one thousand dollars, by him collected on execution, five per cent., and upon all sums exceeding one thousand dollars, by him collected on execution, five per cent. for the first one thousand dollars, and two and one-half per cent. upon so much thereof as exceeds one thousand dollars. Said commission to be in full for all services of said State's attorney in the suits in which such collections shall be made, and not to be allowed in any cases where collections shall be made by the State purchasing property; and in each case which is settled after being commenced and prior to sale under execution thereon, by the payment into the State treasury of the amount due the State, the auditor is hereby authorized to draw his warrant upon the State treasury in favor of the State's attorney attending to said suit, for the sum of ten dollars.

(34.) SEC. IV. The prosecuting attorney for the circuit in which the supreme court for that grand division may be held, shall attend in that supreme court to all business therein in which the State or any county may be interested, and shall receive therefor one hundred dollars per annum out of the State treasury, in addition to his present salary, and the auditor is hereby required to issue his warrant on the treasurer for that amount in his favor.

An Act regulating the Payment of Money out of the Treasury.

[Approved Feb. 17, 1851. Laws, 1851, p. 161.]

(35.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever any person shall be entitled to a warrant on the treasurer, on any account whatever, against whom there shall be any account or claim in favor of the State then due and payable, the auditor of public accounts shall ascertain the amount due and payable to the State as aforesaid, and issue a warrant on the treasurer, stating the amount for which the party was entitled to a warrant, the amount deducted



therefrom, and on what account, and directing the payment of the balance; which warrant so issued shall be entered on the books of the treasurer as for the amount the party was entitled to, but the balance only shall be paid: *Provided, however,* That the action of the auditor under the provisions of this act shall not be conclusive upon any party who may receive any warrant issued as aforesaid, but such party shall have the right to contest, in any court having jurisdiction, the correctness of any decision of the auditor under the provisions of this act.

(36.) SEC. II. No sale, transfer or assignment of any claim or demand against the State, or right to a warrant on the treasurer, shall prevent or affect the right of the auditor to make the deduction and offset provided in the foregoing section.

(37.) SEC. III. This act shall take effect on its passage.

PRIOR LAWS. An act defining the duties of auditor and treasurer; approved March 24, 1819. Laws, 1819, p. 240. Repealed March 2, 1833.

An act to provide for the election of auditor of public accounts, and further defining his duties; approved Feb. 14, 1831. Laws, 1831, p. 17. Repealed March 2, 1833.

An act further to define the duties of the auditor of public accounts, and State treasurer; approved Feb. 16, 1831. Laws, 1831, p. 18. Repealed March 2, 1833.

An act to consolidate the acts relative to the auditor and treasurer, and election of attorney general; approved March 2, 1833. Rev. Laws, 1833, p. 103.

An act for increasing the penalty of the treasurer's bond; approved March 1, 1837. Laws, 1837, p. 334.

An act to regulate interest on auditor's warrants; approved Feb. 21, 1839. Laws, 1839, p. 145. Repealed Feb. 23, 1843.

An act to amend an act entitled "An act to consolidate the acts relative to the auditor and treasurer, and election of attorney general, approved March 2, 1833;" approved March 4, 1843. Laws, 1843, p. 20.

DECISIONS. In a suit by the auditor against the treasurer, under the act of March 24, 1819, the notice of motion must set forth the cause of action with certainty, and state what judgment is asked. *Auditor v. Hall*, Appendix to Breese, 8.

The sureties on the official bond of the State treasurer are not responsible for his acts as cashier of the State Bank. *Reynolds v. Hall et al.*, 1 S. 36.

It is unnecessary to take out a *scire facias* on a judgment in favor of the auditor, although more than a year and a day have intervened since the rendition of the judgment. The auditor represents the people, and *laches* cannot be imputed to them. *People ex rel. v. Peck*, 4 S. 404.

## CHAPTER XIV.

### BAIL.

#### SECTION

1. No person not a householder, resident and of sufficient property, no attorney, sheriff nor bailiff, shall be special bail.
2. In what actions bail shall be required: what facts must be proved; in what cases bail may be discharged.
3. Sheriff shall take bail; form of condition of bail bond: bond to be returned with the writ: if sheriff neglect to take sufficient bond, he shall be liable as bail.
4. Plaintiff may sue on bail bond, if sufficient; if not sufficient, bond shall stand as security to the sheriff, who shall have the rights of bail: time of excepting to bail; objections to bail, how decided.

#### SECTION

5. Defendant may surrender himself: how, if in term time; how, if in vacation; how bail discharged; when defendant may be discharged from custody; plaintiff may nevertheless have execution.
6. Defendant in custody may be discharged by giving other bail, which officer may take.
7. Bail may arrest and secure principal, and surrender him.
8. No suit to be commenced on bail bond, until a return that the defendant cannot be found; what necessary to charge bail.
9. Bail having paid debt of principal, may recover; how to proceed.

#### SECTION

10. Bail may plead death of principal in bar of action on bond; when he shall pay costs.
11. If principal be arrested and conveyed in custody out of State, &c., bail not to be liable.

#### SECTION

12. When principal is discharged as an insolvent debtor, bail not to be liable; *proviso*.
13. Bail not to be proceeded against by *scire facias*

[Approved March 3, 1845. Rev. Stat. 1845, p. 90.]

SECTION I. 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 counselor 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.

SEC. II. In all actions to be commenced in any court of record in this State, and founded upon any specialty, 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, who shall issue a *capias* and indorse 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, and 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. III. 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 a 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 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. IV. All bail taken according to the directions of this chapter, 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 burden of proof shall lie on the party affirming the sufficiency, allowing the bail to be examined on oath or affirmation, touching his sufficiency.

SEC. V. 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 vacation, 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 indorse 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 acknowledg-

ment, 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, 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.

SEC. VI. 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.

SEC. VII. In all cases of bail under this chapter, 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.

SEC. VIII. 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.

SEC. IX. 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. X. In all actions against bail, it shall be lawful for the bail to

plead in bar of 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.

SEC. XI. 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.

SEC. XII. 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 *exoneretur* 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.

SEC. XIII. Hereafter, proceedings by *scire facias* against bail, in civil cases, shall not be allowed in any court of record in this State.

**PRIOR LAWS.** An act regulating the practice in the supreme and circuit courts of this State, and for other purposes; approved March 22, 1819. Laws, 1819, p. 139.  
An act regulating the practice at law and in chancery; approved Jan. 25, 1821. Laws, 1821, p. 8.  
An act concerning special bail; in force June 1, 1827. Rev. Laws, 1833, p. 107.

**DECISIONS.** Under the practice act of March 22, 1819, bail bonds should be given to the sheriff, and suit on them brought in his name. The sheriff cannot assign them to the plaintiff in the action. *Hunter v. Gillham*, Breese, 51.

A motion to discharge bail and let the *capias* stand as a summons, is addressed to the discretion of the court, and its decision cannot be assigned for error. *Bancroft v. Eastman*, 2 G. 259.

B. held L. to bail on a *capias*. The bail was discharged, but judgment given for the plaintiff. *Held*, that the motion to discharge bail is in the discretion of the court, and that its decision cannot be assigned for error. *Bruner v. Ingraham*, 1 S. 556.

Defendant gave bail when arrested upon a *ca. ad resp.* issued on an insufficient affidavit. On his motion to dismiss the suit for that cause, the motion to dismiss was refused, but the bail bond was canceled. *Wann, Jr., v. McGoon*, 2 S. 74.

The penalty of a bail bond is not the cause of action, nor the true amount to be recovered. The breach of the condition is the *gist* of the action, and the damages caused by the breach the true amount to be recovered. *Murphy v. Summerville*, 2 G. 360.

Under Section 5, Chapter XIV, Revised Statutes, the surrender of the principal after the return day of process against the bail, does not exonerate the bail. *Gear v. Clark*, 3 G. 64.

A motion to discharge bail is addressed to the discretion of the court, and its decision cannot be assigned for error. *Adams v. Bartlett*, 5 G. 169. See also *Morrison et al. v. Silberbaugh*, 13 Ill. 551, and *Walker v. Welch et al.*, 14 Ill. 364.

When a default is taken against a defendant in an action on a bail bond, the clerk does not assess the debt. The assessment should be of the damages occasioned by breach of the condition of the bond, which damages are the amount recovered in the suit in which the bond is given. *O'Conner et al. v. Mullen*, 11 Ill. 116.

## CHAPTER XV.

## BANK NOTES.

## SECTION

1. Five dollars fine for passing bank notes of other States, of less denomination than five dollars.
2. Obligations given for loan of such notes void; fact to be pleaded in bar.

## SECTION

3. Notes of joint stock companies void, and persons passing them punished as swindlers.

[Approved March 3, 1845. Rev. Stat. 1845, p. 84.]

SECTION I. No person or persons shall be permitted to utter or pass in this State, as or in lieu of money, any bank bill or note made or issued by any banking institution, or purporting to have been made or issued by any banking institution, of a less denomination or for a less sum than five dollars; and each and every person offending herein, shall forfeit and pay the sum of five dollars for every such offense, which may be recovered, with costs of suit, by action of debt or *assumpsit* before any justice of the peace, by any person who will sue for the same: *Provided*, The provisions of this chapter shall not apply to the uttering or passing of any bank bill or note issued by any banking institution in this State authorized by its charter to make, utter or issue bills or notes of a less denomination than five dollars.

SEC. II. Any person or persons who shall use or lend any bill or note of any bank within the provisions of the first section of this chapter, for a less denomination than five dollars, and who shall take obligations in writing, or verbal promise, for the re-payment thereof, of any note or bill of the character and description aforesaid, loaned as aforesaid, shall not be permitted to collect the same; and it shall be competent for the defendant, in any suit brought for the collection thereof, to plead that the obligation in writing, or verbal promise, was made and executed or given for and in consideration of notes and bills of a less denomination than five dollars, made, uttered and issued by incorporated companies, or by banking institutions, other than those excepted in the proviso to the first section of this chapter, which plea, when so made, shall be deemed good in law; and the plea so pleaded shall be deemed a bar to the action.

SEC. III. If any person or persons shall utter or pass, as or in lieu of money, any note or bill issued and published by any joint stock or other company not incorporated, or purporting to have been so issued or published, such person or persons shall not be permitted to collect any demands arising therefrom; and the plea allowed in the second section of this chapter shall be taken and allowed as a good and sufficient plea in bar of any such demand; and such person or persons so uttering or passing notes or bills issued and published as aforesaid, shall be deemed and considered swindlers, and shall be liable to indictment as such; and, upon conviction, shall be fined, in any sum not less than one hundred dollars, nor more than one thousand dollars, for each offense.

## CHAPTER XVI.

## BASTARDY.

## SECTION

1. When complaint is made by mother of bastard child, justice shall cause father to be brought before him, examined, and bound to appear at next circuit court. On refusal to give bond, may be committed.
2. Court shall try the cause.
3. Cause continued in certain cases.
4. Mother may be a witness, if otherwise competent.
5. If issue be found against defendant, he shall be adjudged to support child; payments, how made, and to whom; punishment for refusal; father may take charge of child after it is three years of

[Approved March 3, 1845. Rev. Stat. 1845, p. 85.]

## SECTION

- age; if child die, bond to be void; when money paid to guardian.
6. If issue be found for defendant, mother of child to pay the costs.
7. If parents intermarry, child to be deemed legitimate, and bond void.
8. Prosecution barred after two years, except in case of absence from the State.
9. All warrants issued by justices of the peace to be directed to and executed by sheriffs, &c.; to whom returnable.
10. When act to take effect.

(1.) SECTION I. 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 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.

(2.) SEC. II. 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.

(3.) SEC. III. 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.

(4.) SEC. IV. 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.

(5.) SEC. V. 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 quarterly 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 at any time after said child shall arrive at the age of three years; 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 bond shall be paid over to such guardian.

(6.) SEC. VI. 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.

(7.) SEC. VII. 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.

(8.) SEC. VIII. No prosecution under this chapter 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.

An Act to amend Chapter XVI. of the Revised Statutes of this State.

[Approved Feb. 24, 1847. Laws, 1847, p. 21.]

(9.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter, when any justice of the peace shall be required to issue a warrant, as is now required by chapter sixteen of the revised laws of this State, the same shall be directed to, and executed by, all sheriffs, coroners and constables, in the State of Illinois, returnable before the magistrate by whom said process was issued, or, in case of his absence, before any magistrate of the county from which said process issued.

(10.) SEC. II. This act shall be in force from and after its passage.

PRIOR LAWS. An act for the maintenance and support of illegitimate children; approved March 25, 1819. Laws, 1819, p. 261. Repealed July 1, 1827.

An act to provide for the maintenance of illegitimate children; in force July 1, 1827. Rev. Code, 1827, p. 244. Rev. Laws, 1833, p. 334.

DECISIONS. Under the fifth section of the "Act to provide for the maintenance of illegitimate children," in force July 1, 1827, the father, after giving bond as required by that section, may demand and have possession and control of his child. So long as the mother refuses to surrender it, he is not liable on his bond, and if she surrenders it, he is not required to give further bond, but must maintain it, as if born in wedlock. The father was not entitled, at common law, to the custody of the child, but under the statute is entitled, after giving bond. *Wright v. Bennett et al.*, 2 G. 587.

In law, bastardy is only a misdemeanor, which may be compromised or compounded by the offending parties. And a bond given by the father, to the mother of a bastard, upon the consideration that she should dismiss a complaint for bastardy then pending against him, is founded upon a valid consideration. *Coleman v. Frum*, 3 S. 378.

## CHAPTER XVII.

### BIRTHS AND DEATHS.

#### SECTION

1. County commissioners' clerk to record births and deaths in a book.
2. Father, mother, or another person may file affidavit of birth of child.
3. Who may make affidavit of death; in what time; contents of affidavit; if inquest be held by coroner, he shall make report.

#### SECTION

4. Clerk shall file affidavit, and make entry; form of entry of birth; of death.
5. Clerk shall keep alphabetical index; shall, on request, give certificate, which shall be *prima facie* evidence.
6. Fees of clerk in such cases; *proviso*.
7. Persons swearing falsely to be deemed guilty of perjury, and punished accordingly.

[Approved March 3, 1845. Rev. Stat. 1845, p. 87.]

SECTION I. It shall be the duty of the clerk of the county commissioners' court, in each county of this State, to provide himself with a well bound book, wherein he shall record the births and deaths of all persons coming to his knowledge in the manner hereinafter provided.

SEC. II. The father of a child or children, or mother of any child or children, in case the father be dead, out of the State or otherwise prevented, or in case of an illegitimate child or children, may appear before the clerk of the county commissioners' court of his or her respective county, and make an affidavit in writing before such clerk, setting forth the birth or births of

his or her child or children, stating therein the day and year when, and the justice's precinct wherein, such birth or births happened, and the christian and surname of said child or children. In case such father or mother fail or neglect to make an affidavit as aforesaid within sixty days after such birth or births, any householder may make the same concerning every birth happening in his house.

SEC. III. The eldest person next of kin may make affidavit before the clerk aforesaid of his or her respective county, of the death of his or her kindred; and in case the next of kin neglects to make such an affidavit for the space of twenty days, the administrator or executor of such deceased person may make such affidavit as aforesaid; and any householder may make the like affidavit before said clerk concerning any death happening in his house. Affidavits made under the provisions of this section, shall state the name and age of the person deceased, according to the best of his or her knowledge and belief, and shall also state the justice's precinct where such death happened. If any person shall come to his death, and a coroner's inquest be held over his or her body, or if any person die while confined in any penitentiary, jail, workhouse, poorhouse or hospital within this State, the respective wardens, jailers or keepers of such workhouses, poorhouses or hospitals, shall make out a certificate containing substantially the same statements concerning the name, age, death, and place of death, required in the affidavit last aforesaid, and within ten days after such death happened, file the same with the county commissioners' clerk of the proper county.

SEC. IV. The said county commissioners' clerk shall carefully file and number such affidavits and certificates in the order they are presented, which shall be parts of the records of his office; and said clerk shall make an abstract of the material facts set forth in said affidavits or certificates, and enter the same in the said record of births and deaths, which abstract shall be in substance as follows:

*"Entry concerning the birth of a person.*

On the — day of —, A. D. —, A. B. (*being the father or mother, or a householder, as the case may be,*) made proof of the birth of C. D., which took place on the — day of —, A. D. —, in — precinct, county of —; see affidavit on file No. —.

*Entry of death.*

On the — day of —, A. D. —, A. B. of — county (*being the eldest person next of kin, or a householder, in whose house the death happened, executor or administrator of deceased, coroner or keeper of a jail, poorhouse, workhouse or hospital, as the case may be,*) made proof of the death of C. D., aged — years, which took place the — day of —, A. D. —, in — precinct, — county; see affidavit (or certificate) on file No. —."

SEC. V. The clerk shall keep a correct alphabetical index to said record, showing the christian names and surnames of the persons concerning whom entries have been made; said index distinguishing between cases of births and deaths, and shall, upon request of any person, make out a certificate of said entry, under his hand and the seal of the county commissioners' court; and such certificate shall be received as *prima facie* evidence of the facts stated therein in all courts of law and equity in this State.

SEC. VI. For every affidavit taken under this chapter, the said clerk shall be entitled to a fee of twelve and a half cents; for making the entry and filing certificates, to a fee of twelve and a half cents; and for making out a certificate under seal as aforesaid, to a fee of fifty cents: *Provided,*

He shall not be entitled to any fee in case where one of the above enumerated officers files a certificate of the death of any person under his charge.

SEC. VII. Any person having sworn or made affirmation to any of the affidavits above mentioned, who shall swear or affirm wilfully, corruptly and falsely, in a material point therein set forth, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury, and shall be, upon conviction thereof, punished accordingly.

PRIOR LAWS. An act to establish a mode to register births and deaths; approved March 3, 1843; in force April 1, 1843. Laws, 1843, p. 210.

An act to amend "An act providing a voluntary mode of registering births and deaths," approved March 3, 1843; approved March 6, 1843. Laws, 1843, p. 213.

## CHAPTER XVIII.

### CASTOR BEANS.

#### SECTION

1. Persons cultivating castor beans to secure the same by sufficient inclosure.

2. Violations of this chapter punished by fine; how

#### SECTION

collected, and applied; damages may be recovered.

3. Standard weight of castor beans.

4. When act to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 89.]

(1.) SECTION I. 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 or are generally put up and used for the protection of grain crops in the neighborhood.

(2.) SEC. II. All persons violating this chapter 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.

An Act to amend an Act entitled "Weights and Measures."

[Approved Feb. 17, 1851. Laws, 1851, p. 194.]

(3.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the standard weight of castor beans shall and it is hereby declared to be forty-six pounds to the bushel.

(4.) SEC. II. This act shall take effect from and after its passage.

## CHAPTER XIX.

### CENSUS.

#### SECTION

1. Census taken every five years.

2. To be taken by commissioners; appointed by county courts.

3. Census of unorganized county taken by commissioner of county to which it is attached.

4. Commissioner to take oath of office; form of oath.

5. When commissioner shall commence taking census; what facts he shall ascertain and set down.

6. Of whom inquiry to be made.

7. Commissioners shall, by first day of October, transmit returns to secretary of State, and to county court; shall report number of militia to adjutant general.

8. Penalty for neglect; how recovered; judges to give this law in charge to grand juries.

9. Who shall be returned as members of families, &c.

#### SECTION

10. Heads of families and others to render account; penalty for refusing; *proviso*.

11. Compensation of commissioners; how paid.

12. Secretary of State shall receive and file returns, and report same to speaker of House at next session; adjutant general to report number of militia to the Secretary of War of the United States.

13. Enumeration of inhabitants of Tazewell county, by George Parker and others, legalized.

14. Above enumeration deemed and taken to be true;

15. Representation to be apportioned upon said enumeration; requisition upon the auditor.

16. How census to be taken in 1855; exceptions; *proviso*.

17. When act to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 89.]

(1.) SECTION I. An enumeration of the inhabitants of this State shall be taken on the first day of July, one thousand eight hundred and forty-five, and at the end of every five years thereafter.

(2.) SEC. II. The enumeration shall be taken by commissioners, to be appointed by the county commissioners' courts of the respective counties.

(3.) SEC. III. The enumeration of the inhabitants of any unorganized county shall be taken by the commissioner of the county to which such unorganized county is attached; the table of enumerations in such counties to be kept distinct from each other.

(4.) SEC. IV. Before entering upon their duties, each of such commissioners shall file in the office of the county commissioners' clerk of his county, in substance, the following oath: "I, A. B., do solemnly swear, that I will make a just and perfect enumeration and description of all persons resident within the county of C., (and the county of D., thereto attached, *when such is the fact.*) and perform all other duties required of me by law, according to the best of my knowledge and abilities."

(5.) SEC. V. Each commissioner shall commence taking such enumeration on the first day of July in each year in which such enumeration is required to be taken, and shall ascertain and set down in a book to be kept for that purpose, in a convenient tabular form, the following facts: The number, each, of white males and females of ten years of age and under; over ten and not over twenty; over twenty and not over thirty; over thirty and not over forty; over forty and not over fifty; over fifty and not over sixty; over sixty and not over seventy; over seventy and not over eighty; over eighty and not over ninety; over ninety and not over one hundred; over one hundred: Also, the number of white male persons between the ages of eighteen and forty-five years, subject to military duty: Also, each, of free male and female persons of color, of all ages: of indentured or registered servants and their children; of French negroes and mulattoes held in bondage: Also, the number of manufactories of every kind, and the annual product of each kind; the number and annual product of coal mines; the value of live stock; value of grains produced; value of all other agricultural products; the number of pounds of wool; number of mills and distil-



leries; the number of universities or colleges, academies and grammar schools, and common schools, with the number of pupils in each.

(6.) SEC. VI. 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.

(7.) SEC. VII. Each of said commissioners shall, on or before the first day of October, of each year in which the enumeration is required to be taken, transmit to the secretary of State, and to the commissioners' court of his county, his return, by him duly certified as correct, full and true, so far as he has been able to ascertain. He shall also transmit to the adjutant general of the State a certified statement of the number of persons subject to military duty. Such commissioner in his report shall at the foot of each column, list or class, give the total number or amount, and shall give the aggregate number of all the inhabitants of the State.

(8.) SEC. VIII. Each commissioner failing or neglecting to make proper returns, as aforesaid, or making a false return of the enumeration to the clerk of the county commissioners' court of the county, to the secretary of State, and adjutant general, within the time limited by this chapter, shall forfeit the sum of three hundred dollars, recoverable in the circuit court of the county where such offense 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 offenses, 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 chapter 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.

(9.) SEC. IX. Each person, whose usual place of abode shall be in any family, on the said first Monday in July in the year of our Lord one thousand eight hundred and forty-five, and on the first Monday in July 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 July; 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.

(10.) SEC. X. 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.

(11.) SEC. XI. 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.

(12.) SEC. XII. 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 thereafter make out a statement of the whole number of such persons, and report the same to the secretary of war of the United States.

An Act to correct and legalize the Census of Tazewell County.

[Approved Jan. 26, 1847. Laws, 1847. p. 41.]

(13.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the enumeration of the inhabitants of the county of Tazewell as made by George Parker, Samuel Rhodes, Catesby Gill, Alexander B. Davis, John Durham, Jr., Jefferson Britt, and Anthony Vincent, being one person from each election precinct in said county, appointed by the county commissioners' court of said county, on the sixth day of March, eighteen hundred and forty-six, for the purpose of correcting supposed errors in the return of the commissioner appointed to take the census of eighteen hundred and forty-five, be, and the same is hereby, legalized.

(14.) SEC. II. The returns as made by the above named persons to the county commissioners' court of said county, on the ninth day of April, eighteen hundred and forty-six, show the actual number of persons in said county to be nine thousand one hundred and nine, instead of seven thousand six hundred and fifteen, as returned by the commissioners appointed by law to take the census of eighteen hundred and forty-five; which number of nine thousand one hundred and nine is, by this act, deemed to be the true enumeration of the inhabitants of said county, and to all intents and purposes of as full force and effect as though the same had been done as provided by chapter nineteen of the Revised Statutes.

(15.) SEC. III. The interest arising from the school, college and semi-nary funds, shall be distributed to said county, and the apportionment of representation made upon the enumeration of nine thousand one hundred and nine, instead of seven thousand six hundred and fifteen, as returned to the office of the secretary of State; and the auditor of public accounts is hereby required, when the next distribution of school fund is made, to issue his order to the collector of Tazewell county for the amount which said county has failed to receive, on account of the error of the census returns of said county.

An Act to provide for taking the Census.

[Approved Feb. 15, 1855. Laws, 1855, p. 51.]

(16.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the enumeration of the inhabitants of this State for the year 1855 shall be taken in conformity with the provisions of the 19th chapter of the revised laws of 1845, except that in counties having adopted the township organization, the board of supervisors shall appoint the commissioner, whose duty it shall be to take the enumeration of the inhabitants of this State, and except, also, that the list of property provided for in the second section of said act shall not include the value of grain raised last year; and also that the said commissioners appointed to take the census shall have the right to appoint one or more deputies under them, who shall take the same oath and perform the same duties as their principals: Provided, The county judge shall have the power of appointing the persons to take the census for the county of Adams, Hancock and Henry.*

(17.) SEC. II. This act to take effect and be in force from and after its passage.

PRIOR LAWS. An act providing for taking the census of the inhabitants of the State of Illinois; approved March 23, 1819. Laws, 1819, p. 197.

An act for the relief of persons taking additional census for the late territory of Illinois; approved March 30, 1819. Laws, 1819, p. 347.

An act to provide for taking the census or enumeration of the inhabitants of the State of Illinois; approved Dec. 27, 1824. Laws, 1824, p. 32.

An act to provide for the taking of the census or enumeration of the inhabitants of the State; approved Jan. 13, 1829. Rev. Laws, 1833, p. 114.

An act to extend the time for taking an enumeration of the inhabitants of this State; approved Jan. 7, 1841. Laws, 1841, p. 52.

## CHAPTER XX.

### CHATTEL MORTGAGES.

#### SECTION

1. Chattel mortgage not valid unless acknowledged and recorded, and possession by mortgage.
2. Acknowledgment, form of; justice's memorandum; his fee.
3. Mortgage when recorded and *bona fide*, good for two years; *proviso* as to possession.

#### SECTION

4. Copy of mortgage on record to be proof, if original be lost.
5. Fee of recorder.
6. If mortgagor seil mortgaged property, how punished.
7. Provisions to extend to all conveyances operating as chattel mortgages.

[Approved March 3, 1845. Rev. Stat. 1845, p. 91.]

SECTION I. No mortgage on personal property shall be valid as against the rights and interests of any third person or persons, unless possession of such personal property shall be delivered to and remain with the mortgagee, or the said mortgage be acknowledged and recorded, as hereinafter directed.

SEC. II. Any mortgagor of personal property may acknowledge such mortgage before any justice of the peace in the justice's district in which he may reside; and said justice shall certify the same in substance as follows:

"This mortgage was acknowledged before me, by A. B., (*the mortgagor.*) this — day of —, 18—;" and the said justice shall also keep on his docket a memorandum of the same, in substance as follows, viz: "A. B. to C. D., mortgage of (*here describe the property.*) acknowledged this — day of —, 18—," inserting the name of the mortgagor in place of A. B., and the name of the mortgagee in place of C. D., and the justice may receive therefor a fee of twenty-five cents.

SEC. III. Any mortgage of personal property, so certified, shall be admitted to record by the recorder of the county in which the mortgagor shall reside at the time when the same is made, acknowledged and recorded; and shall thereupon, if *bona fide*, be good and valid from the time it is so recorded, for a space of time not exceeding two years, notwithstanding the property mortgaged or conveyed by deed of trust, may be left in possession of the mortgagor: *Provided*, That such conveyance shall provide for the possession of the property so to remain with the mortgagor.

SEC. IV. A copy of any such mortgage made, acknowledged and recorded as aforesaid, certified by the proper recorder from the proper record, may be read in evidence in any court of this State, without any further proof of the execution of its original, if said original be lost or out of the power of the person wishing to use it.

SEC. V. For recording any such mortgage, the recorder recording the same, shall receive eight cents for every one hundred words, and for copies thereof, the same compensation only.

SEC. VI. Any person having conveyed any article of personal property to another, by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said personal property to a third person, for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to such purchaser, twice the value of such property so sold; which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof, or, if the amount claimed does not exceed one hundred dollars, before any justice of the peace.

SEC. VII. The provisions of this chapter shall be deemed to extend to all such bills of sale, deeds of trust and other conveyances of personal property, as shall have the effect of a mortgage or lien upon such property.

DECISIONS. A mortgage of personal property, duly acknowledged and recorded, and providing that the property may continue in possession of the mortgagor, if made in good faith, to secure an honest debt, is good against creditors and purchasers for two years after being recorded. *Cook v. Thayer*, 11 Ill. 617.

The parties to a mortgage of personal property may agree to limit the right of possession and use given by the statute, for the better security of the mortgagee. *Prior v. White*, 12 Ill. 261.

Notes under the mortgage, if given to secure a pre-existing, *bona fide* debt, may be given after the execution of the mortgage, without vitiating the transaction. *Idem*.

Declarations of the mortgagor as to his intention in executing the mortgage, are inadmissible in evidence against the mortgagee, unless such declarations are shown to have been known to the mortgagee before the execution of the mortgage. *Idem*.

When the mortgagee of a chattel takes possession of the property, in default of payment, but by consent of the parties, the time of sale or payment is extended, and the mortgagee allowed to use the property for a specified purpose, and at a certain time: *Held*, that a demand of the property by the mortgagor, as his own general property, and not for the specified purpose, might be rightly refused by the mortgagee. *Held*, also, that under the same circumstances the mortgagee might refuse to deliver property substituted by the mortgagor for the original mortgaged property. *Bell v. Shrieve*, 14 Ill. 462.

## CHAPTER XXI.

## CHANCERY.

## SECTION

1. Circuit courts have chancery jurisdiction; may make rules of practice.
2. Suits commenced by bill; in what county; when defendants are non-residents; in case of bills for injunctions.
3. Set-off allowed in certain cases.
4. Infants may sue by guardian, &c.
5. Summons to issue on filing bill; how served when defendants reside in different counties.
6. Summons, how tested, sealed, signed, dated, and when returnable.
7. Service of summons to be by delivery or leaving copy ten days before returnable.
8. If defendant be non-resident, service may be made by publication in newspaper; contents of notice; to be inserted four weeks; first publication sixty days before return; diligence required of sheriff, notwithstanding publication.
9. If no service nor timely publication be made, cause continued; but if otherwise, and no defense made, bill may be taken for confessed.
10. If cause be continued, same proceedings had.
11. If return be made without service, *alias*, *pluries*, &c., to issue without order.
12. Defendant out of this State, may be served by copy of bill thirty days before return.
13. When bill is taken for confessed, court may make and enforce decree; how enforced.
14. Decree for money a lien on real estate.
15. Parties not served or notified, or their heirs, &c., may petition to be heard; re-hearing; such parties barred after three years.
16. If defendant be brought into court for contempt, solicitor to be appointed by court, and cause may proceed.
17. Courts may establish rules of proceeding.
18. Rule respecting time for pleading, answering, &c.
19. If bill is taken for confessed, plaintiff may be required to produce proof.
20. Answer to be on oath; by whom oath may be administered and authenticated.
21. When bill is not for discovery only, oath may be waived.
22. If answer be insufficient, defendant may be ruled to file additional answer, and punished for refusal.
23. Answer to be full.
24. Defendant may file cross bill, which plaintiff must answer.
25. Plaintiff to answer cross bill as if original; effect of his answer.
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## SECTION

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[Approved March 3, 1845. Rev. Stat. 1845, p. 92.]

(1.) SECTION I. The several circuit courts of 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 chapter, 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.

(2.) SEC. II. 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.

(3.) SEC. III. In suits for the payment or recovery of money, set-offs shall be allowed in the same manner, and with the like effect, as in actions at law.

(4.) SEC. IV. Suits in chancery may be commenced and prosecuted by infants, either by guardian or next friend.

(5.) SEC. V. 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.

(6.) SEC. VI. Every summons shall be tested in the name of the clerk of the court out of which it may issue; shall bear the seal of the court and the signature of its clerk; shall be dated of 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.

(7.) SEC. VII. Service of summons shall be made 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.

(8.) SEC. VIII. Whenever any complainant shall file in the office of the clerk of the court in which his suit is pending, an affidavit showing that any defendant resides or hath gone out of this State, or on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him, the clerk shall cause publication to be made in some newspaper printed in his county, and if there be no newspaper published in his county, then in a newspaper published in this State, containing notice of the pendency of such suit, the names of the parties thereto, the title of the court, and the time and place of the return of summons in the case; such publication to be made for four successive weeks, the first of which shall be at least sixty days before the return day of such summons. But this proceeding shall not dispense with the usual exertion on the part of the sheriff, to serve the summons.

(9.) SEC. IX. If sixty days shall not intervene between filing such affidavit and the return day of the summons, and the summons shall not be served, the cause shall be continued to the next term. If sixty days shall intervene, as aforesaid, or if service of process shall be made, and the defendant shall not appear on the return day of the summons, the bill may be taken for confessed.

(10.) SEC. X. If, for want of due publication or service, the cause shall be continued, then the same proceedings shall be had at the succeeding term of the court, as may have been had at the term to which said summons shall be returnable.

(11.) SEC. XI. If, in any suit in chancery, the process shall not be returned executed on the return day thereof, the clerk, if required, shall issue an *alias*, *pluries*, or other process, without an order of the court therefor.

(12.) SEC. XII. The complainant may cause a copy of the bill or petition, together with a notice of the commencement of the suit, to be delivered to any defendant residing or being without this State, not less than thirty days previous to the commencement of the term at which such defendant is required to appear; which service, when proved to the satisfaction of the court by the oath or deposition of any person competent to be a witness in the cause, shall be as effectual as if such service had been made in the usual form within the limits of this State.

(13.) SEC. XIII. When any bill is taken for confessed, the court may make such decree thereon as may be just, and may enforce such decree either by sequestration of real and personal estate, by attachment against the person, by causing possession of real and personal estate to be delivered to the party entitled thereto, or by ordering the demand of the complainant to be paid out of the effects or estate sequestered, or which are included in such decree; and by the exercise of such other powers as pertain to courts of chancery, and which may be necessary for the attainment of justice.

(14.) SEC. XIV. A decree for money shall be a lien on the lands and tenements of the party against whom it is entered, to the same extent and under the same limitations as a judgment at law.

(15.) SEC. XV. When any final decree shall be entered against any defendant who shall not have been summoned or notified to appear as required by this chapter, and such person, his heirs, devisees, executor, administrator or other legal representatives, 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.

(16.) SEC. XVI. 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 appoint a solicitor of the court to do it for him, according to the provisions of this chapter 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.

(17.) SEC. XVII. The judges of the circuit courts in their respective circuits, may establish rules of proceeding in chancery, and make all needful orders and regulations consistent with the practice of courts of chancery, in cases not provided for by law.

(18.) SEC. XVIII. Every defendant who shall be summoned according to the provisions of this chapter, shall file his exceptions, plea, demurrer or answer to the bill, at the time to which the process or summons shall be returnable; if he fail to do so, the bill may be taken for confessed; but for good cause shown, 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 term; in such case the decree shall be vacated, and the cause may be proceeded in as in other cases.

(19.) SEC. XIX. 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.

(20.) SEC. XX. 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 seal of some court of record within such State, territory, kingdom or empire.

(21.) SEC. XXI. When a bill shall be filed in the court of chancery, other than for discovery only, the complainant may waive the necessity of the answer being made on the oath of the defendant; and in such cases, the answer may be made without oath, and shall have no other or greater force as evidence than the bill.

(22.) SEC. XXII. 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.

(23.) SEC. XXIII. Every defendant shall answer fully all the allegations and interrogatories of the complainant, except such as are not required to be answered, by reason of exceptions, plea or demurrer thereto allowed.

(24.) SEC. XXIV. Any defendant may, after filing his answer, exhibit and file his cross bill containing interrogatories to the complainant, and call upon him to file his answer thereto, in such time as may be prescribed by the rules of the court.

(25.) SEC. XXV. The complainant shall in such case be held to except,

plead, demur or answer to such cross bill in the same manner that a defendant is required to except, plead, demur or answer to an original bill, and his answer shall be evidence in the same manner as the defendant's answer to the bill.

(26.) SEC. XXVI. If the complainant shall fail to answer such interrogatories, his bill or petition shall be dismissed with costs, or the new matter set out in the defendant's cross bill shall be taken as confessed, and a decree entered accordingly.

(27.) SEC. XXVII. Where it is necessary for the defendant to bring a new party before the court, he shall state it in his answer, and insert interrogatories for him in his answer; and a subpoena shall be issued, and other proceedings had, as in the case of other defendants.

(28.) SEC. XXVIII. No complainant shall be allowed to dismiss his bill after a cross bill has been filed, without the consent of the defendant.

(29.) SEC. XXIX. The complainant shall not be compelled to file his answer to any cross bill, until the defendant shall have filed a sufficient answer to the complainant's bill.

(30.) SEC. XXX. All exceptions to answers to 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.

(31.) SEC. XXXI. Replications shall be general, with the like advantage to all parties as if special; and shall be filed in four days after the answer, if in term time; or if such answer be filed in vacation, the plaintiff or his attorney shall have notice thereof.

(32.) SEC. XXXII. After replication is 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 the 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.

(33.) SEC. XXXIII. 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, it may be disproved or contradicted like any other testimony, according to the practice of courts of equity.

(34.) SEC. XXXIV. 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 nor delayed thereby.

(35.) SEC. XXXV. 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.

(36.) SEC. XXXVI. Whenever an execution shall have been issued against the property of a defendant, on a judgment at law or in equity, and shall have been returned unsatisfied, in whole or in part, the party suing out such execution may file a bill in chancery against such defendant,

and any other person, to compel the discovery of any property or thing in action belonging to the defendant; and if any property, money or thing in action due to him, or held in trust for him, and to prevent the transfer of any such property, money or thing in action, or the payment or delivery thereof to the defendant, except when such trust has been created by, or the fund so held in trust has proceeded from, some person other than the defendant himself.

(37.) SEC. XXXVII. The court shall have power to compel such discovery, and to prevent such transfer, payment or delivery, and to decree satisfaction of the sum remaining due on such judgments, out of any personal property, money or things in action belonging to the defendant, or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery, whether the same were originally liable to be taken in execution at law or not: *Provided*, That no answer made to any bill filed under this and the preceding section, shall be read in evidence against the defendant on the trial of any indictment for the fraud charged in the bill.

(38.) SEC. XXXVIII. 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 shown 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.

(39.) SEC. XXXIX. When 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 provided in chapter one of the Revised Statutes.

(40.) SEC. XL. 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.

(41.) SEC. XLI. In all suits in chancery, and suits to obtain title to lands, 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 section eight of this chapter, shall be sufficient to authorize the court to hear and determine the suit, as though all parties had been sued by their proper names.

(42.) SEC. XLII. All decrees, orders, judgments and proceedings made or had with respect to such unknown persons, shall have the same effect, and be as binding and conclusive upon them, as though such suit or proceeding had been instituted against them by their proper names.

(43.) SEC. XLIII. 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.

(44.) SEC. XLIV. 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.

(45.) SEC. XLV. All decrees given in causes in equity in this State, shall be a lien on all real estate respecting which such decrees shall be made; and whenever, by any decree, any party to a suit in equity shall be required to perform any act other than the payment of money, or to refrain from performing any act, the court may, in such decree, order that the same shall be a lien upon the real or personal estate, or both, of such party until such decree shall be fully complied with; and such lien shall have the same force and effect, and be subject to the same limitations and restrictions, as judgments at law.

(46.) SEC. XLVI. When there shall be no master in chancery or commissioner to execute a decree, the same 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.

(47.) SEC. XLVII. 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.

(48.) SEC. XLVIII. The several circuit courts of this State shall have power to appoint, in each county, a master in chancery, who shall hold his office during the term of four years.

(49.) SEC. XLIX. Every master in chancery before entering on the duties of his appointment, shall give bond, with security to be approved by the court, and take and subscribe an oath of office, which bond and oath shall be filed with the clerk of the court making the appointment.

(50.) SEC. L. Masters in chancery, in their respective counties, shall have power to take depositions, both in law and equity, to administer oaths, to compel the attendance of witnesses, and in the absence from the county of the circuit judge presiding in such county, to order the issuing of writs of *habeas corpus*, *ne exeat* and injunction, and perform all other duties which, according to the laws of this State and the practice of courts of chancery, appertain to the office.

(51.) SEC. LI. Whenever it shall happen that there shall be no master in chancery in any county, or when such master shall be of counsel, of kin to either party interested, or otherwise disqualified or unable to act in any suit or matter, the court may appoint a special master, to perform the duties of the office in all things concerning such suit or matter.

(52.) SEC. LII. Masters in chancery shall receive for their services such compensation as shall be allowed by law, to be taxed as other costs.

(53.) SEC. LIII. Nothing in the preceding sections contained shall be construed to extend to those articles in possession of the defendant, which are exempt from execution by law.

An Act to fix the Tenure of the Office of Master in Chancery.

[Approved March 3, 1845. Laws, 1845, p. 27.]

(54.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That from and after the first day of April next, the tenure of office of master in chancery, in the several counties in this State, shall be two years.

(55.) SEC. II. Whenever a vacancy occurs in the office of master in chancery in any county in this State, under the provisions of this law, it shall be the duty of the judge presiding in the circuit court of such county, to fill such vacancy by appointment, as soon thereafter as conveniently may be.

(56.) SEC. III. So much of the first section of the law entitled "An act to fix the tenure of certain officers," approved Feb. 21st, one thousand eight hundred and forty-three, as conflicts with the provisions of this law, shall be and the same is hereby repealed.

An Act in relation to Masters in Chancery.

[Approved Feb. 10, 1845. Laws, 1845, p. 29.]

(57.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That whenever any master in chancery



shall have resigned his office, or shall have been removed therefrom, and shall have left any business pertaining to his office, unfinished, it shall be lawful for his successor or successors in office to do any act or acts coming within the duties of the master, which may have been left undone by his predecessor or predecessors, and which may be necessary to the final completion of such unfinished business.

(58.) SEC. II. That this act shall have relation to any business as aforesaid, which may, now or hereafter, remain unfinished, as contemplated in the first section of this act; and that this act shall take effect from and after its passage.

An Act authorizing Masters in Chancery to grant Writs of Certiorari.

[Approved March 3, 1845. Laws, 1845, p. 26.]

(59.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter, masters in chancery in their respective counties, upon application in manner as now is provided by law, to be made to the proper judge, shall have power to grant and order the issuing of writs of *certiorari*, to remove causes from before justices of the peace and probate justices, into the circuit court.

An Act to provide for bringing Actions at Law or in Chancery against Railroad Companies.

[Approved Feb. 12, 1853. Laws, 1853, p. 65.]

(60.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That actions at law or in chancery may be brought against any railroad company in any circuit court, in any county in this State through which any railroad of such company may be located.

(61.) SEC. II. In all cases at law or in chancery, any person may commence an action or actions against any railroad company by filing in the clerk's office of the circuit court in which said action or actions shall be instituted, a declaration or bill in chancery, as the case may be, and by giving notice to said company of the filing of said declaration or bill in chancery, by at least four successive publications of said notice in a weekly newspaper published in the county (or if no newspaper be published in the county, then in the newspaper published in the nearest county,) where said action shall be brought, the first of which publications shall be at least sixty days previous to the first day of the next succeeding term of said court.

(62.) SEC. III. In all cases instituted under the provisions of this act, the said circuit court shall have the same power and authority to hear and determine the same as in other cases at law or in chancery, and the filing of a declaration or bill in chancery, and the publication of notice, as in the second section of this act named, shall be deemed and taken as sufficient notice to said railroad company of the pendency of said action.

(63.) SEC. IV. All judgments and decrees recovered against any railroad company as aforesaid, shall have the same force and effect as other judgments at law or decrees in chancery.

(64.) SEC. V. This act shall take effect and be in force from and after its passage.

(65.) SEC. VI. All actions instituted under the provisions of this act shall be commenced and prosecuted in the counties where the cause of action accrued, and not otherwise.

An Act respecting the Practice in Chancery in Cases in the Seventh Judicial Circuit in this State.

[Approved Feb. 12, 1853. Laws, 1853, p. 66.]

(66.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in all chancery cases pending in any of the courts of the seventh judicial circuit of this State, motions for the dissolution of injunctions, appointment of receivers and guardians *ad litem*, demurrers to bills, and other pleadings, exceptions, petitions, and all interlocutory motions, may be filed by the parties and heard by the presiding judge of said circuit, at his chamber in vacation; and the decree, judgment or order of the judge on such hearing, shall be immediately transmitted by him to the clerk of the court wherein such suit is pending, and entered by said clerk, as soon as received by him, upon the record of said court, and take effect from the time of such entry: *Provided*, That if any mistake shall be made by said clerk in the entry of such order, decree or judgment, the same may be corrected on motion of any party to said suit, made either to the judge in vacation, or to the court wherein such suit is pending, at its next ensuing term.

(67.) SEC. II. Any party to a suit in chancery, pending in any of the courts of said circuit, wishing to bring on for hearing in vacation any motion, petition, demurrer or exception, as provided in the foregoing section, may do so by serving upon all the parties to such suit who are to be affected by such motion, petition, exception or demurrer, a copy of said motion, petition, exception or demurrer, accompanied with notice in writing of said party's intention to bring the same on for hearing in vacation, and stating the time and place of such hearing; which said copy and notice shall be served at least ten days previous to the day fixed for such hearing.

(68.) SEC. III. It shall be the duty of the presiding judge of said circuit, at the next term of court which he may hold in each county in said circuit, after the passage of this act, to cause an entry to be made upon the record of said circuit courts, designating at least two days in each month in vacation as motion days, for the hearing of matters contemplated by this act, and all notices of such hearings shall fix upon one of said motion days as the time for the hearing of the matter in said notice mentioned.

(69.) SEC. IV. Appeals and writs of error may be prosecuted from all judgments, orders or decrees rendered upon any hearing in vacation, under the provisions of this act, in the same manner and to the same extent as though such proceeding were had at a regular term of the court wherein such suit is pending.

(70.) SEC. V. This act shall take effect and be in force from and after its passage.

PRIOR LAWS. An act regulating the practice in the courts of chancery in this State; approved March 22, 1819. Repealed Jan. 26, 1827. Laws, 1819, p. 170.

An act regulating the practice at law and in chancery; approved Jan. 5, 1821. Repealed Jan. 26, 1827. Laws, 1821, p. 8.

An act authorizing courts of chancery to decree conveyances in certain cases; approved Dec. 27, 1824. Repealed Jan. 26, 1827. Laws, 1825, p. 30.

An act to prescribe the mode of proceeding in chancery; approved Jan. 26, 1827. Repealed June 1, 1833. Rev. Laws, 1827, p. 88.

An act prescribing the mode of proceeding in chancery; in force June 1, 1833. Rev. Laws, 1833, p. 113.

The want of a formal order on the record, that a bill be taken for confessed, is not assignable for error. *Savage et al. v. Berry*, 2 S. 545.

An act to amend an act entitled "An act prescribing the mode of proceeding in chancery;" approved Jan. 24, 1839. Laws, 1839, p. 50.

An act to fix the tenure of certain officers; approved Feb. 21, 1843. Laws, 1843, p. 10.

**DECISIONS.** Under the 17th Section of the act of March 22, 1819, a court of equity, after dissolving the injunction and dismissing the bill filed to stay a judgment at law, cannot render a decree, in the same cause, against the plaintiff and his security in the injunction bond, for the amount of the judgment and costs in the suit at law, with interest and damages, and the costs of the suit in equity. *Hubbard v. Hobson*, Breese, 147.

By the 5th Section of the act of Feb. 5, 1833, it is not necessary, in a suit in chancery, that there should be an order of publication before notice can be given by advertisement to parties not served with process. *Ayres et al. v. Lusk et al.*, 1 S. 536.

Where, in a suit in chancery, affidavit was made and filed in the clerk's office, that part of the defendants were non-residents, and notice of the pendency of the suit was published by the clerk four weeks successively in a public newspaper printed in this State: *Held*, that the defendants were duly notified under the statute of Feb. 5, 1833. *Idem*.

Under the statutes of Illinois, the court has power to dissolve an injunction on the filing of an answer which denies the equity of the bill. Before a bill can be dismissed, an issue must be made, as prescribed by the 14th Section of the act regulating proceedings in chancery. Rev. Laws, 1833, p. 123. A cause may be heard upon bill and answer, if complainants do not reply within four days after an answer filed in term time. *Beams et al. v. Denham et al.*, 2 S. 58.

Under the 4th Section of the act of Feb. 13, 1833, the return of a sheriff on a summons in chancery, that he had "left true copies thereof at the residence of the defendants, in the hands of white persons over fourteen years of age, after having explained to them the contents thereof," is insufficient in not stating that such persons were of the family of the defendants. *Townsend et al. v. Griggs*, 2 S. 365.

Where, under the 9th Section of the act of Feb. 13, 1833, a decree is rendered *pro confesso*, but the evidence upon which it is rendered is not contained in the record, a general objection that the decree was erroneous cannot be sustained. *Dunn v. Keegin*, 3 S. 292.

The 12th Section of the chancery act (Feb. 13, 1833,) supersedes the necessity of filing a cross bill, when the whole object is to compel a discovery from the complainants; where the defendants seek relief against the complainant, the practice is unaltered. *Balance v. Underhill et al.*, 3 S. 453.

By the 14th Section of the chancery act of Feb. 13, 1833, when no replication is filed to an answer which denies the equity of a bill, the answer is taken as true, without proof. *Payne et al. v. Frazier et al.*, 4 S. 55.

Under the 8th and 9th Sections of the act of Feb. 13, 1833, it is not error for a circuit court to take a bill in chancery *pro confesso*, and render a final decree in the case at the return term of the summons. If injustice be done by entering the decree at the return term, the 8th Section provides an ample remedy. *Grubb v. Crane*, 4 S. 153.

The 7th Section of the same act requires the court to establish rules respecting taking bills for confessed, and when the record shows a bill so taken, without containing the rule, or showing the proceedings under it, the supreme court will presume the rule was complied with, and that the proceedings were regular. *Idem*.

The 2d Section of Chap. XXI. of the Rev. Stat. of 1845, has not changed the original jurisdiction of courts of Chancery over the persons of individuals. *Enos et al. v. Hunter*, 4 G. 211.

Under the provisions of the 19th Section of Chap. XXI. of Rev. Stat. of 1845, when a bill is taken *pro confesso*, it is in the discretion of the court whether any and what proof shall be required in support of the bill. *Manchester et al. v. McKee's Executor*, 4 G. 511.

The party against whom the bill is taken for confessed cannot assign for error the insufficiency of the proof adduced in support of the bill. *Idem*.

Summons in chancery must, by the requirement of the statute, be served by copy. *Sounce et al. v. Whitney et al.*, 12 Ill. 150.

When, under the 47th Section of the chancery act of 1845, the complainant proceeds against infants, not served with process, the court should compel the guardian *ad litem* to answer and defend, and a decree *pro confesso* against the infant, without such answer and defense, will not be sustained. *Idem*.

Under the 7th Section of the chancery act of 1845, if the reasonable and natural construction of the sheriff's return to the writ, be, that service was properly made, it is sufficient. *Farnsworth et al. v. Strasser et al.*, 12 Ill. 482.

Under the provisions of the Revised Statutes, Chapter XXI., Sections 24 to 30, inclusive, no process is necessary to bring in the parties to the original bill, to answer the cross bill. The original and cross bills are considered as constituting one case. *Fleece v. Russell et al.*, 13 Ill. 31.

The 36th and 37th Sections of Chapter XXI., Revised Statutes of 1845, expressly authorize a plaintiff in execution, to file a bill of discovery against his execution debtor, to subject his property to the payment of the judgment, when the execution has been returned "unsatisfied in whole or in part." *Alexander et al. v. Tams et al.*, 13 Ill. 221.

Section 2, Chapter XXI., Revised Statutes, 1845, being a restriction upon the general powers conferred on circuit courts by other statute provisions, can have no application to cases not strictly embraced by it. *Ralston v. Hughes*, 13 Ill. 469.

Under the 15th Section, Chap. XXI., Revised Statutes, 1845, costs are in the discretion of the court, except in certain specified cases. *McArtee v. Engart*, 13 Ill. 242.

The 34th Section of Chapter XXI., Revised Statutes, 1845, invests the circuit courts with discretion to allow amendments in chancery suits, at any stage of the case. *Jefferson County v. Ferguson et al.*, 13 Ill. 33.

Under the 8th Section, Chapter XXI., Revised Statutes, 1845, the due publication of notice alone is not sufficient; there must also be a return of *non est inventus*. *Jacobus v. Smith*, 14 Ill. 359.

The mode of proving the due publication of notice is not prescribed by Chapter XXI., Revised Statutes, 1845, and it is competent to prove it by other evidence than the printer's certificate. *Pile v. McBratney et al.*, 15 Ill. 314.

Notice given under the 8th and 41st Sections, Chapter XXI., Revised Statutes, 1845, to unknown persons, if according to the statute, gives jurisdiction to the court over such persons as effectually as if the proceedings were against them by their proper names. *Idem*.

## CHAPTER XXII.

## CHARITABLE USES.

## SECTION

1. Grants of land, not over ten acres, for school houses, &c., valid; to be recorded.
2. Grants to be made to county commissioners' court, in trust, &c.; *proviso*.
3. Trespassers, how punished; fines, how applied.
4. When trust is perverted, property to vest in county, unless otherwise directed in grant.

## SECTION

5. Property donated, may be sold by county commissioners, by consent of parties; county commissioners not to be responsible for title.
6. Burying grounds exempt from taxation.
7. Not subject to execution or attachment; *proviso*.

[Approved March 3, 1845. Rev. Stat. 1845, p. 74.]

(1.) SECTION I. All gifts and grants of land heretofore made for the erection of a school house, a house for divine worship, for burying the dead, or for any other charitable public purpose, when such gift or grant of land shall not exceed ten acres, 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 the time prescribed by law.

(2.) SEC. II. 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 quantity ten acres of land.

(3.) SEC. III. 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.

(4.) SEC. IV. When any gift or grant, as aforesaid, shall be perverted or used for any other purpose than contemplated in this chapter, 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.

(5.) SEC. V. In all cases in which any land or lot has been or may be conveyed to the county commissioners of any county in this State for the use of any religious society, congregation or church, or to the intent that houses should be erected thereon for purposes of divine worship, and the society, congregation, church or person for whose use the conveyance was made, shall desire to sell or otherwise dispose of the premises conveyed, and shall obtain the consent of the donor or grantor, or his heirs or their legal representatives, to such sale or disposition, it shall be the duty of the county commissioners to whom the conveyance was made, or their successors, to execute conveyances for the same, so as to divest the legal title, and release all claim of the county to the premises conveyed; but no commissioners or county shall, by virtue of such conveyance, become responsible for the title of the premises conveyed, except as against their own acts.

An Act to exempt Burying Grounds from Taxes, Executions and Attachments.

[Approved March 3, 1843. Rev. Stat. 1843, p. 572.]

(6.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever any lot of ground, not exceeding ten acres, shall be appropriated and used as a burying ground, and shall be recorded as such in the recorder's office of the county, the same shall be exempt from all taxes.

(7.) SEC. II. Where any such lot of ground shall be laid off and sold in lots for burying the dead, the said lots shall not be subject to execution or attachment: *Provided,* That no person shall hold more than one-eighth of an acre exempt from execution.

PRIOR LAWS. An act confirming grants of property made for the encouragement of education, and for other purposes; in force Feb. 1, 1831. Rev. Laws, 1833, p. 240.

An act relating to burying grounds, church yards, and lands used by literary institutions; in force March 2, 1843. Laws, 1843, p. 53.

## CHAPTER XXIII.

## CONGRESS.

## SECTION

1. Nine congressional districts appointed.
2. Counties composing the first district.
3. Second district.
4. Third district.
5. Fourth district.
6. Fifth district.

## SECTION

7. Sixth district.
8. Seventh district.
9. Eighth district.
10. Ninth district.
11. One representative elected to Congress from each district.

An Act to establish Nine Congressional Districts, and to provide for the Election of Representatives to the Congress of the United States, under the Census of the Year One Thousand Eight Hundred and Fifty.

[Approved June 16, 1852. Laws, 1852, p. 13.]

SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That for the purpose of electing nine representatives to the house of representatives of the Congress of the United States, to which number the State of Illinois is entitled under the census taken by the authority of the government of the United States for the year one thousand eight hundred and fifty, the following districts shall be and are hereby established, to be styled and known as districts numbered first, second, third, fourth, fifth, sixth, seventh, eighth and ninth.

SEC. II. The first district shall be composed of the counties of Lake, McHenry, Boone, Winnebago, Stephenson, Jo Daviess, Carroll and Ogle.

SEC. III. The second district, of the counties of Cook, Du Page, Kane, De Kalb, Lee, Whiteside and Rock Island.

SEC. IV. The third district, of the counties of Will, Kendall, Grundy, La Salle, Putnam, Bureau, Livingston, Iroquois, Vermilion, Champaign, McLean and De Witt.

SEC. V. The fourth district, of the counties of Fulton, Peoria, Knox, Henry, Stark, Warren, Mercer, Marshall, Woodford, Mason and Tazewell.

SEC. VI. The fifth district, of the counties of Adams, Pike, Calhoun, Brown, Schuyler, McDonough, Hancock and Henderson.

SEC. VII. The sixth district, of the counties of Morgan, Scott, Sangamon, Macoupin, Greene, Montgomery, Christian, Shelby, Cass, Menard and Jersey.

SEC. VIII. The seventh district, of the counties of Logan, Macon, Piatt, Moultrie, Coles, Edgar, Clark, Cumberland, Effingham, Jasper, Clay, Crawford, Lawrence, Richland and Fayette.

SEC. IX. The eighth district, of the counties of Randolph, Monroe, St. Clair, Madison, Bond, Clinton, Washington, Jefferson and Marion.

SEC. X. The ninth district, of the counties of Alexander, Pulaski, Massac, Union, Johnson, Pope, Hardin, Gallatin, Saline, Williamson, Jackson, Perry, Franklin, Hamilton, White, Wayne, Edwards and Wabash.

SEC. XI. One representative to the Congress of the United States shall be elected in each of the districts before enumerated, on the Tuesday after the first Monday of November, in the year of our Lord one thousand eight hundred and fifty-two, and one in each of said districts every two years thereafter. Such elections shall be held, and returns thereof made and canvassed, as is now provided by law in such cases.

PRIOR LAWS. An act to lay out the State into districts for the purpose of electing representatives to the congress of the United States; in force Feb. 15, 1831. Rev. Laws, 1833, p. 235.  
 An act to establish seven congressional districts; in force March 1, 1843. Laws, 1843, p. 71.  
 Chapter XXIII, Revised Statutes, 1845, entitled "CONGRESS," in force March 3, 1845. Rev. Stat. 1845, p. 101.

## CHAPTER XXIV.

## CONVEYANCES.

## SECTION

1. Livery of seizin not necessary in conveyances of real property; capacity of grantor in such case; grant, how vested; prior title not to be disturbed.
2. Effect of grant.
3. When any person is seized of lands, &c., extent of title, and legal obligation.
4. Claimant of lands, though not in possession, may convey interest therein; grantees shall have right of recovery; as fully as though grantee were in possession.
5. Estate in joint tenancy, how held; when in joint tenancy; when in common.
6. Persons seized in fee tail of lands at common law, to have estate for life only; how remainder shall pass.
7. When vendor, not having good title at the time of sale, afterwards acquires it, title to be valid.
8. Person in actual possession seven years and paying all taxes, his paper title deemed good; all persons holding under such possession to have same benefit.
9. Persons having paper title to unoccupied lands, how to acquire title; persons having better paper title, their rights.
10. Limitation to two preceding sections; *proviso*.
11. Import of the words "grant," "bargain," "sell."
12. Deeds given in security for payment of money shall be considered as mortgages.
13. Estates to one, without words of inheritance, deemed estates of inheritance, unless expressly limited.
14. Estates in remainder to posthumous heirs, how taken.
15. Married women may relinquish right of dower.
16. Conveyances of real estate: by whom may be made; in what manner and before whom acknowledged; in this State; out of this State; out of United States; mode of authentication in each case.
17. Manner of acknowledging and proving conveyance executed by husband and wife; rights of wife, how affected thereby.
18. What acknowledgment sufficient to entitle deed to record in other counties; what necessary when acknowledged before justices of the peace.
19. Deeds, &c., of lands sold for taxes, may be acknowledged before auditor.
20. When necessary to prove identity of person acknowledging deed; how proved; how certified; how signatures of subscribing witnesses may be proved; how in case of death of subscribing witness.
21. Married woman may release her right of dower in lands of her husband; manner of acknowledgment; what facts to be certified; effect of such acknowledged grant; right of dower bond.
22. Deeds, &c., to be recorded in county in which the land conveyed lies; or in county to which unorganized county may be attached.
23. Conveyances to take effect from time of being filed for record.
24. Powers of attorney, &c., affecting real estate to be

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- acknowledged and recorded; shall have effect, until revoked by deed.
25. Deeds, &c., may, though not recorded, be read in evidence; if original deed be lost, transcript of record may be read in evidence.
26. County commissioners may execute conveyances of real estate in behalf of their counties.
27. Certificates of school lands may be transferred by indorsement, &c.; effect of such transfer; how proved.
28. Deeds, &c., when filed for record, notice to creditors and subsequent purchasers, but not to be read in evidence, unless proved by proper testimony.
29. Deeds of sheriffs, proved before clerk of court of record, entitled to be recorded.
30. Sheriff may execute deed for predecessor.
31. Persons dying, having contracted to give deed, court of chancery may enforce such contract.
32. How case to be presented, before court can act in such case.
33. When minors are concerned, to have notice; guardian to be appointed.
34. Legal representatives of deceased person may prosecute suit for enforcement of such contract.
35. Court may continue cause; decree.
36. Complete record to be made; costs awarded.
37. How mortgages may be discharged.
38. Penalty if mortgagee refuse to discharge mortgage.
39. Term "real estate" defined.
40. This chapter not to affect wills, &c.
41. If grantor be dead, and his deed be not properly proved, how defect supplied.
42. Deeds conveying public square in Springfield, to governor of State, legalized.
43. Before whom deeds and conveyances of lands may be acknowledged; certificate required when before justice of the peace residing out of State; what requisite when within the State; deeds so proved entitled to record.
44. Feme covert barred of all interest, &c., in lands, when conveying with husband; provisions of this section to apply to deeds, &c., heretofore executed.
45. Conveyances, &c., of lands lying within this State, made in other States, valid; may be recorded and used as evidence.
46. When act to take effect.
47. Deeds, &c., may be acknowledged in foreign countries.
48. Such deeds good and valid in law.
49. Certificate of consul evidence of acknowledgment; *proviso*.
50. When act to be in force.
51. Governor may appoint commissioners in other States to administer oaths, &c.
52. Commissioner to take oath.
53. Acknowledgments, &c., taken by commissioners in other States, good and valid.
54. Commissioner empowered to administer oaths and affirmations; *proviso*.

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55. Commissioners appointed in other States by governor; *proviso*, as to number; how long to continue in office; duties.
56. Acknowledgments taken in accordance with this act, entitled to record, may be read in evidence, &c.
57. Commissioner to take oath: shall have and use an official seal.
58. Certificate of secretary of State to accompany acknowledgments of commissioners.
59. Commissioner authorized to take acknowledgments, &c., only in place where residing when appointed.
60. Certain former acts repealed.
61. Secretary of State to prepare instructions, &c., and forward them to commissioners: his fee therefor.
62. Commissioner to be a resident of place where duties to be performed.
63. When act to take effect.
64. Deeds, &c., acknowledged before justices of peace out of county where lands are located, legalized.

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65. Record of such deeds, &c., valid.
66. Certified copies of such record taken in evidence, *proviso*.
67. Clerk to annex certificate to copy of record, on tender of his fees.
68. Certified copy of deeds, &c., acknowledged without the State, to be evidence in this State; *proviso*.
69. When act to take effect.
70. Deeds, &c., executed by trustees of Illinois and Michigan canal, admitted to record; good in evidence.
71. Acts of commissioner in city of Washington, legalized.
72. Deed, &c., by husband and wife, in good faith, not invalidated by informality, &c.; *proviso*.
73. Parties executing deeds, &c., to have remedies as heretofore.
74. When act to be in force.

[Approved March 3, 1845. Rev. Stat. 1845, p. 102.]

(1.) SECTION I. 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.

(2.) SEC. II. 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 heir 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.

(3.) SEC. III. 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, confi-

dence 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, 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.

(4.) SEC. IV. 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.

(5.) SEC. V. 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.

(6.) SEC. VI. 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 first pass, on the death of the first grantee, devisee or donee in tail, according to the course of the common law, by virtue of such devise, gift, grant or conveyance.

(7.) SEC. VII. If any person shall sell and convey to another, by deed or conveyance purporting to convey an estate in fee simple absolute, 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, and 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, 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.

(8.) SEC. VIII. Every person in the actual possession of lands or tenements under claim and color of title, made in good faith, and who shall for seven successive years continue in such possession, and shall also, during said time, pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section.

(9.) SEC. IX. Whenever a person having color of title, made in good faith, to vacant and unoccupied land, shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land, to the extent and according to the purport of his or her paper title. All persons holding under such tax-payer by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of taxes for the term aforesaid, shall be entitled to the benefit of this section: *Provided, however,* If any person having a better paper title to said vacant and unoccupied land, shall, during the said term of seven years, pay the taxes assessed on said land for any one or more years of the said term of seven years, then and in that case such tax-payer, his heirs and assigns, shall not be entitled to the benefit of this section.

(10.) SEC. X. The two preceding sections shall not extend to lands or tenements owned by the United States or this State, nor to school and seminary lands, nor to lands held for the use of religious societies, nor to lands held for any public purpose. Nor shall they extend to lands or tenements when there shall be an adverse title to such lands or tenements, and the holder of such adverse title is under the age of twenty-one years, insane, imprisoned, *feme covert*, out of the limits of the United States, and in the employment of the United States or of this State: *Provided,* Such person shall commence an action, to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment, or in case of vacant and unoccupied land, shall, within the time last aforesaid, pay to the person or persons who have paid the same, all the taxes, with interest thereon at the rate of twelve per cent. per annum, that have been paid on said vacant and unimproved land.

(11.) SEC. XI. In all deeds whereby any estate of inheritance, in fee simple, shall hereafter be limited to the grantee and his heirs or other legal representatives, the words "*grant,*" "*bargain,*" "*sell,*" shall be adjudged an express covenant to the grantee, his heirs and other legal representatives, to wit: That the grantor was seized of an indefeasible estate in fee simple, free 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 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.

(12.) SEC. XII. Every deed conveying real estate, which by anything therein contained 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.

(13.) SEC. XIII. Every estate in lands which shall 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.

(14.) SEC. XIV. 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 the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been conveyed to support the contingent remainder after his death.

(15.) SEC. XV. A married woman may relinquish her right of dower in any of the real estate of her husband, by joining him in a deed of conveyance and acknowledging the same in the manner hereinafter prescribed.

(16.) SEC. XVI. Deeds and instruments of writing for the conveyance of real estate in this State, or any interest therein, whereby the rights of any person may be affected in law or equity, before they shall be entitled to record, shall be subscribed by the party or parties thereto, in proper person, and acknowledged or proved before one of the following officers, to wit: 1st, when acknowledged or proved within this State, before any judge, justice or clerk of any court of record in this State, having a seal, any mayor of a city, notary public, or commissioner authorized to take the acknowledgment of deeds, having a seal, or any justice of the peace; 2nd, when executed and acknowledged or proved without this State and within the United States or their territories, or the District of Columbia, in conformity with the laws of such State, territory or district: *Provided*, That any clerk of a court of record, within such State, territory or district, shall, under his hand and seal of such court, certify that such deed or instrument is executed and acknowledged or proved in conformity with the laws of such State, territory or district; 3rd, when acknowledged or proved without the United States, before any court of any republic, State, kingdom or empire, having a seal, or any mayor or chief officer of any city or town, having a seal, or before any officer authorized by the laws of such foreign country, to take acknowledgments of conveyances of real estate, if he have a seal, such deed to be attested by the official seal of such court or officer; and in case such acknowledgment is taken other than before a court of record, or mayor, or chief officer of a town having a seal, proof that the officer taking such acknowledgment was duly authorized by the laws of his country to do so, shall accompany the certificate of such acknowledgment.

(17.) SEC. XVII. 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 over 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 chapter to take acknowledgments, to whom she is known, or proved by a credible witness to be the person who executed such deed of 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, indorsed 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 the examination and acknowledgment aforesaid, and that the contents were made known and explained to her; 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.

(18.) SEC. XVIII. Deeds and other conveyances of real estate, executed and acknowledged or proven in proper form in this State, before any judge or justice of the supreme or circuit courts, or before any court or officer having a seal, and attested by such seal, shall be entitled to record without further attestation. When acknowledged before a justice of the peace residing 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. If such justice reside within the county where the lands conveyed are situate, no such certificate shall be required.

(19.) SEC. XIX. 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.

(20.) SEC. XX. 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 instrument 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.

(21.) SEC. XXI. 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 chapter; 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 relinquished 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 indorsed 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 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.

(22.) SEC. XXII. Deeds and other instruments relating to or affecting the title to real estate in this State, shall be recorded in the county in which such real estate is situated, but if such county is not organized, then in the county to which such unorganized county is attached for judicial purposes.

(23.) SEC. XXIII. All deeds, mortgages and other instruments of writing 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.

(24.) SEC. XXIV. 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.

(25.) SEC. XXV. Every deed, conveyance or other writing, of or concerning any lands, tenements or hereditaments, which by virtue of this chapter shall be required or entitled to be recorded as aforesaid, being acknowledged or proved according to the provisions of this chapter, 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.

(26.) SEC. XXVI. The county commissioners of the several counties of this State are hereby authorized to execute and deliver all deeds, grants, 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.

(27.) SEC. XXVII. Purchasers of school or canal lands or town lots, may, by indorsement 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.

(28.) SEC. XXVIII. Deeds, mortgages and other instruments of writing relating to real estate, shall be deemed, from the time of being filed for record, notice to subsequent purchasers and creditors, though not acknowledged or proven according to law; but the same shall not be read as evidence unless their execution be proved in manner required by the rules

of evidence applicable to such writings, so as to supply the defects of such acknowledgment or proof.

(29.) SEC. XXIX. All deeds which may be executed by any sheriff or other officer, for any real estate sold on execution, upon being 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.

(30.) SEC. XXX. 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.

(31.) SEC. XXXI. When 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 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.

(32.) SEC. XXXII. 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.

(33.) SEC. XXXIII. 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.

(34.) SEC. XXXIV. 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 lifetime 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 chapter.

(35.) SEC. XXXV. 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.

(36.) SEC. XXXVI. A complete record of such petition and proceed-

ings thereon shall be made, and the court shall decree payment of costs as shall appear right and equitable.

(37.) SEC. XXXVII. Every mortgagee of real estate, his assignee or other legal representative, 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 office, which shall forever thereafter discharge and release the same, and shall bar all actions or suits brought, or to be brought, thereupon. Or it shall be deemed a sufficient release and extinction of any mortgage granted upon any real estate, if the mortgagee, his or her legal representative or assigns, shall grant a full release of the same under his, her or their seal and signature, in the presence of an attesting witness, and acknowledge the execution of such release in the same manner, and under the same restrictions, in which deeds are acknowledged by the existing laws of this State.

(38.) SEC. XXXVIII. 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 offense, 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.

(39.) SEC. XXXIX. The term "real estate," as used in this chapter, shall be construed as co-extensive in meaning with "lands, tenements, and hereditaments," and as embracing all chattels real.

(40.) SEC. XL. This chapter shall not be construed so as to embrace last wills and testaments.

(41.) SEC. XLI. If any grantor shall not have duly acknowledged the execution of any deed or instrument entitled to be recorded, and the subscribing witnesses be dead, or not to be had, it may be proved by evidence of the hand-writing of the grantor, and of at least one of the subscribing witnesses, which evidence shall consist of the testimony of two or more disinterested persons, swearing to each signature.

An Act to legalize the Deeds made by the County Commissioners of Sangamon County, conveying the Public Square to the State.

[Approved Feb. 17, 1847. Laws, 1847, p. 33.]

(42.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the deeds heretofore made by the county commissioners of Sangamon county, to the governor of this State, for the use of the people of this State, conveying the public square in the city of Springfield, on which the State house now stands, be, and the same are hereby, declared to be legal and valid, and shall vest in the State the full and complete title, in fee simple, to the said public square in the city of Springfield on which the State house now stands.

An Act to amend Chapter XXIV. of the Revised Laws, entitled "Conveyances."

[Approved Feb. 22, 1847. Laws, 1847, p. 37.]

(43.) SEC. I. *Be it enacted by the People of the State of Illinois, represented 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 acknowledgement is made before a clerk, mayor or notary public, it shall be certified by such officer under his seal of office. 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 acknowledgement was made, was a justice of the peace at the time of making the same. If such justice of the peace reside within this State, the certificate 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; if such justice reside within the county where the lands conveyed are situate, no such certificate shall be required. All deeds and conveyances which have been or may be acknowledged or proved in the manner prescribed in this section, shall be entitled to record, and shall be deemed as good and valid in law, in every respect, as if the same had been acknowledged or proved in the manner prescribed in the sixteenth section of the twenty-fourth chapter of the revised laws, to which this act is an amendment.

(44.) SEC. II. When any feme covert, not residing in this State, being above the age of eighteen years, shall join with her husband in the execution of any deed, mortgage, conveyance or other writing of or relating to any lands or real estate situate within this State, she should thereby be barred of and from all estate, right, title, interest and claims of dower therein, in like manner as if she was sole and of full age. And any such feme covert joining with her husband in the execution of a power of attorney or other writing authorizing the sale, conveyance or other disposition of lands or real estate, as aforesaid, shall be bound and concluded by the same, in respect to the right, title, claim or interest in such estate as if she were sole and of full age as aforesaid; and the acknowledgment or proof of such deed, mortgage, conveyance, power of attorney or other writing may be the same as if she were sole, and shall entitle such deed, mortgage, conveyance, power of attorney or other writing to be recorded as is authorized by this act; and the provisions of this section shall apply to deeds, mortgages, conveyances, powers of attorney and other writings heretofore, as well as those which may be hereafter executed.

(45.) SEC. III. That deeds, mortgages, conveyances, powers of attorney or other writings of or concerning lands or real estate situated within this State, which have [been] or may hereafter be executed without this State, and within the United States, and which have been or may hereafter be acknowledged or proved in conformity with the laws of the State, territory or district in which they were executed, shall be admitted to record in the county or counties wherein the lands or real estate affected are situated; and such deeds, mortgages, conveyances, powers of attorney or other writings acknowledged or proved as aforesaid, when so recorded, may be used as evidence without further proof of the execution thereof.

(46.) SEC. IV. This act to take effect and be in force from and after its passage.

An Act to amend Chapter XXIV. of the Revised Laws, entitled "Conveyances."

[Approved Feb. 8, 1849. Laws, 1849, p. 51.]

(47.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all deeds, conveyances and powers of attorney, for the conveyance of lands lying within this State, may be acknowledged or proved before any of the consuls of the United States in foreign countries, who shall authenticate the same by their signatures and by attaching their consular seal thereto.

(48.) SEC. II. All deeds, conveyances and powers of attorney for the conveyance of lands lying in this State, which have been or may be acknowledged or proved and authenticated as aforesaid, or in conformity with the laws of any foreign State, kingdom, empire or country, shall be deemed as good and valid in law as though acknowledged or proved in conformity with the existing laws of this State.

(49.) SEC. III. That where any deed, conveyance or power of attorney has been or may be acknowledged or proved in any foreign State, kingdom, empire or country, the certificate of any consul of the United States in said country, under his official seal, that the said deed, conveyance or power of attorney is executed in conformity with such foreign law, shall be deemed and taken as *prima facie* evidence thereof: *Provided,* That any other legal mode of proving that the same is executed in conformity with such foreign law, may be resorted to in any court in which the question of such execution or acknowledgment may arise.

(50.) SEC. IV. This act to be in force from and after its passage.

An Act to authorize the Appointment of Commissioners in other States.

[Approved March 1, 1845. Repealed July 1, 1851. Rev. Stat. 1845, p. 580.]

(51.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the governor of this State may appoint and commission in any other State or territory of the United States, one or more commissioners, to continue in office during the pleasure of the governor, who shall have power to administer oaths and to take depositions and the proof and acknowledgment of deeds or other instruments to be used or recorded in this State.

(52.) SEC. II. Before any such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath, before some justice of the peace or officer authorized to administer oaths in the State for which he is appointed, that he will faithfully discharge the duties of his said appointment; which oath shall be filed in the office of the secretary of State of this State.

An Act supplemental to an Act entitled "An Act to authorize the Appointment of Commissioners in other States;" approved March 1, 1845.

[Approved Feb. 24, 1847. Repealed July 1, 1851. Laws, 1847, p. 82.]

(53.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the acknowledgment and proof of the execution of any deed, mortgage or other conveyance of any land,

tenements or hereditaments, lying and being in this State, or of any contract, letter of attorney, or any other writing under seal, to be used or recorded in this State, which have been or may hereafter be taken or made in the manner directed by the act entitled "An act to authorize the appointment of commissioners in other States," approved March 1st, eighteen hundred and forty-five, and certified by any one of the commissioners appointed or to be appointed under said act, before whom the same shall be taken or made, shall have the same force and effect, and be as good and valid in law for all purposes, as if the same had been taken or made before any officer authorized to take such acknowledgments or proof residing in this State.

(54.) SEC. II. Every commissioner appointed, or to be appointed, by virtue of the act to which this is a supplement, shall have power and authority to administer an oath or affirmation to any person who shall be willing and desirous to make such oath or affirmation before him; and such affidavit or affirmation made before such commissioner, shall be as good and effectual to all intents and purposes as if taken by any officer authorized to administer oaths or affirmations resident in this State: *Provided*, That willful and false swearing in taking such oath or affirmation would, by the laws of the State wherein the same shall be made, be deemed perjury.

An Act to authorize the Appointment of Commissioners to take the Proof and Acknowledgment of Deeds and other Instruments, and to Administer Oaths in other States and Territories.

[Approved Feb. 17, 1851. Laws, 1851, p. 142.]

(55.) SEC. I. *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 name, appoint and commission so many commissioners in such of the other States and territories of the United States, or in the District of Columbia, as he may deem expedient: *Provided*, that the number of such commissioners shall at no time exceed five in any one city or county. The said commissioners shall continue in office for four years, and shall have authority to take the acknowledgment and proof of the execution of any deed, mortgage, lease or other conveyance, of any lands, tenements or hereditaments, lying or being in this State, or of any contract, assignment, transfer, letter of attorney, satisfaction of a judgment, or of a mortgage, or of any other writing or instrument under seal, to be used or recorded in this State; also, to administer an oath or affirmation to any person or persons who may desire to make such oath or affirmation.

(56.) SEC. II. Any acknowledgment or proof taken in pursuance of the powers and under the directions and limitations conferred by and mentioned in this act, in manner directed by the laws of this State, with respect to the acknowledgment or proof of deeds taken by any officer authorized to take such acknowledgment residing within this State, and certified by any one of said commissioners whose appointment is authorized by this act, before whom the same shall be taken or made, under his hand and official seal, (which certificate shall be indorsed on the said deed or other instrument mentioned in the first section of this act,) shall, when authenticated in the manner hereinafter provided, be entitled to be recorded in any county in this State, and shall have the same force and effect, and be as good and available in law, for all purposes, as if the same had been taken or made before any officer authorized to take such proof or acknowledgment, residing in

this State, and any affidavit or affirmation made before any such commissioner, certified and authenticated as aforesaid, may be read in evidence, and shall be as good and effectual, to all intents and purposes, as if taken and certified by any officer authorized to administer oaths residing in this State.

(57.) SEC. III. Every commissioner appointed by virtue of this act, shall, before he performs any duty under or by virtue of his said appointment, and of this law, take and subscribe an oath or affirmation before a justice of the peace, or some other magistrate in the city or county in which he shall reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of the State of Illinois; which oath or affirmation shall be filed in the office of the secretary of State of this State. And every such commissioner shall, also, before he enters upon the duties of his office, cause to be prepared an official seal, in which shall be designated his name, and the words "A commissioner for the State of Illinois," together with the name of the State or territory, and also the city or county within which he shall reside, and for which he shall have been appointed, and shall transmit to and cause to be filed in the office of the secretary of State of this State, a distinct impression of such seal, taken upon wax, or some other substance capable of receiving and retaining a clear impression, together with his signature, in his own proper writing.

(58.) SEC. IV. When any deed or other instrument shall be proved or acknowledged, or any oath or affirmation shall be taken before any commissioner appointed by virtue of this act, before it shall be entitled to be used, recorded or read in evidence, in addition to the preceding requisites, there shall be subjoined or affixed to the certificate, signed and sealed by the commissioner as aforesaid, a certificate, under the hand and official seal of the secretary of State of this State, certifying that such commissioner was, at the time of taking such proof or acknowledgment, or of the administering such oath or affirmation, duly authorized to take the same, and that the secretary is acquainted with the hand writing of such commissioner, or has compared the signature to such certificate with the signature of such commissioner deposited in his office, and that he verily believes the signature and the impression of the seal of the said certificate to be genuine.

(59.) SEC. V. No commissioner appointed under or by virtue of this law, shall be authorized to take the proof or acknowledgment of any deed or instrument, or to administer any oath or affirmation, in any place other than the city or county within which he shall reside at the time of his appointment; and every certificate of any such commissioner, or any proof or acknowledgment taken before him, or any oath or affirmation administered by him, shall specify the day on which, and the city or town and county within which, the same was taken or administered; and without said specification the said certificate shall be invalid, inoperative and void.

(60.) SEC. VI. The act entitled, "An act to authorize the appointment of commissioners in other States," approved March 1st, 1845, and also the act entitled, "An act supplemental to an act to authorize the appointment of commissioners in other States," approved February 24, 1847, are hereby repealed: and all appointments under and by virtue of said acts shall cease, determine and become utterly null and void from and after the expiration of thirty days after the day on which this act shall take effect; and the secretary of State of this State shall forthwith cause a copy of this act to

be forwarded to each of the commissioners appointed under the said acts, whose appointments shall not have been previously revoked or superseded.

(61.) SEC. VII. It shall be the duty of the secretary of State of this State, to prepare instructions and a set of forms, in conformity with the laws of this State, and to forward the same, together with a copy of this act, to every person who shall be appointed a commissioner under and by virtue of this law; for which, said secretary shall be entitled to demand and receive the sum of five dollars, of said party.

(62.) SEC. VIII. No person shall be appointed a commissioner under this act, who is not, at the time of his appointment, a resident of the city or county, and State or territory, for which he may be appointed.

(63.) SEC. IX. This act shall take effect and be in force from and after the first day of July next.

An Act to amend Chapter XXIV, of the Revised Statutes, entitled "Conveyances."

[Approved Feb. 15, 1851. Laws, 1851, p. 122.]

(64.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all deeds, mortgages and other instruments in writing, relating to or affecting any lands, tenements or hereditaments, situate within this State, which have been executed and acknowledged before any justice of the peace of any county in this State, other than the one in which such lands, tenements or hereditaments lie, and which have been recorded in the county where such lands, tenements or hereditaments do actually lie, shall be adjudged and treated by all courts as legally executed and recorded, notwithstanding there is no certificate attached to said mortgage or other instruments by the proper officer, that the justice of the peace before whom said deed, mortgage or other instrument was acknowledged, was at the time of the said acknowledgment an acting justice of the peace of the county in which said deed, mortgage or other instrument purports to have been acknowledged.

(65.) SEC. II. That the record of all such deeds, mortgages or other instruments in writing, so acknowledged as aforesaid, shall be taken, and the same is hereby declared to be good and effectual in law to charge any purchaser, mortgagee, or creditor, with notice of the existence of such deed, mortgage or other instrument in writing, from and after the time when such deed, mortgage or other instrument was actually filed for record in the proper office.

(66.) SEC. III. That certified copies from the said record, properly authenticated, shall be received in all courts and places as evidence of the due execution and recording of every such deed, mortgage or other instrument in favor of the person or persons who claim or desire to deduce a title under any such deed, mortgage or other instrument, against all persons denying such title or claiming adversely to the same: *Provided, however,* That the person or persons offering in evidence any such deed, mortgage or other instrument, shall exhibit, with a certified copy of the same, a certificate of the clerk of the county court of the county where such deed, mortgage or other instrument was acknowledged, that the justice of the peace before whom the same purports to have been acknowledged, was, on the day of the date of such acknowledgment, an acting justice of the peace of the said county, duly elected and qualified.

(67.) SEC. IV. That it shall be the duty of the proper clerk, on the presentation of a certified copy of every such deed, mortgage or other instrument, at the request of the person who desires to use the same as evidence, and upon tender of his reasonable fees, to annex the certificate required by the preceding section to such deed, mortgage or other instrument, whenever the records and files of his office show the official character of such justice of the peace.

(68.) SEC. V. *And be it further enacted,* That a certified copy of any deed, mortgage or other instrument affecting any real estate situate within this State, which has been acknowledged without this State in conformity with the laws of the State where such deed, mortgage or other instrument was acknowledged, and which has been recorded in the proper county in this State, shall be evidence in all courts and places: *Provided,* The party offering such certified copy in evidence will exhibit with the same a certificate of conformity as provided for in sixteenth (XVI.) section of chapter twenty-four (XXIV.) of the Revised Statutes, notwithstanding said certificate of conformity has never been recorded.

(69.) SEC. VI. This act to take effect and be in force from and after its passage.

An Act to give validity to Grants and Conveyances by the Board of Trustees of the Illinois and Michigan Canal.

[Approved June 23, 1852. Laws, 1852, p. 260.]

(70.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all deeds, title papers, agreements and contracts affecting the title to real estate in this State, heretofore executed or which may hereafter be executed by the board of trustees of the Illinois and Michigan canal, under the seal of said board, shall be admitted to record, without proof or acknowledgment of the execution thereof, and the same having the seal of said board thereto attached, shall be admitted in evidence in all courts without further proof; and the transcript of the record thereof, duly certified, shall be admitted in evidence without further proof, in the same manner as deeds duly acknowledged and recorded are.

An Act to give validity to Conveyances.

[Approved June 22, 1852. Laws, 1852, p. 186.]

(71.) SEC. I. *Be it enacted by the people of the State of Illinois, represented in the General Assembly.* That the acts of David Rowland, Esq., a commissioner to take acknowledgment of deeds, &c., in the city of Washington, for this State, done and performed between the ninth day of August, A. D. 1851, and the twelfth day of May, A. D. 1852, be held valid and legalized so far as relates to the acknowledgment of deeds taken before and certified by him, as such commissioner, during the above time.

An Act to amend Chapter XXIV, of the Revised Statutes, entitled "Conveyances."

[Approved Feb. 11, 1853. Laws, 1853, p. 89.]

(72.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That no deed, mortgage or other instrument of writing, heretofore executed or hereafter to be executed, by husband and wife, in good faith, for the purpose of conveying or encumbering the

estate of the husband or the estate of the wife, or the right of dower in any lands situate in this State, and acknowledged by them before any officer authorized by the laws of this State to take acknowledgments, shall be deemed, held or adjudged invalid or defective or insufficient in law, by reason of any informality or omission in setting forth the particulars of the acknowledgment before such officer as aforesaid in the certificate thereof: *Provided, however*, That it appears in substance, from such certificate, that the parties executing said deed, mortgage or other instrument of writing, executed the same, freely and voluntarily; and that in case of married women executing the same, it appear, in substance, that they knew the contents of said deeds, mortgages or other instruments of writing, and that they were examined by the officer aforesaid, separate and apart from their husbands.

(73.) SEC. II. Nothing in the above section shall be so construed as to deprive the parties executing or having executed such deeds, mortgages or other instruments of writing, of any legal equitable remedies now or hereafter existing, for avoiding or annulling such deeds, mortgages or other instruments of writing, on account of fraud, circumvention, duress, non-age, or any other legal personal disqualification.

(74.) SEC. III. This act to be in force from and after its passage.

PRIOR LAWS. An act establishing the recorder's office; in force Aug. 1, 1795. Repealed Jan. 20, 1802. R. E. S., (Real Estate Statutes,) p. 451.

A law declaring how husband and wife may convey their real estates; in force Aug. 15, 1795. Repealed, in part, Jan. 20, 1802. R. E. S., p. 454.

A law rendering the acknowledgments of deeds more easy, adopted from the Connecticut code, by the governor and judges of the territory north west of the Ohio; adopted May 1, 1798. R. E. S., p. 456.

An act providing for the acknowledgment and recording of deeds, in certain cases; in force Jan. 20, 1802. R. E. S., p. 456.

A law establishing the recorder's office, and for other purposes; in force Sept. 17, 1807. Repealed March 30, 1819. R. E. S., p. 459.

An act establishing the recorder's office, and for other purposes; in force Feb. 19, 1819. Repealed Jan. 8, 1829. R. E. S., p. 462.

An act giving the same faith and effect to certain records in the county of Madison, as if they had been the records of the county of Bond; in force, Jan. 13, 1821. R. E. S., p. 463.

An act concerning ancient books, papers and records; in force Jan. 30, 1821. R. E. S., p. 464.

An act concerning deeds executed without this State; in force Dec. 30, 1822. R. E. S., p. 465.

An act providing for the execution of real contracts in certain cases; in force Jan. 4, 1802. R. E. S., p. 466.

An act authorizing courts of chancery to decree conveyances in certain cases; in force Dec. 27, 1824. R. E. S., p. 468.

An act legalizing the records in the office of the recorder of Pike county; in force Jan. 10, 1825. R. E. S., p. 470.

An act to amend an act entitled "An act establishing the recorder's office, and for other purposes;" in force Jan. 17, 1825. R. E. S., p. 471.

Part of an act extending the powers and duties of the judges of the circuit courts, and for other purposes; in force Jan. 27, 1826. R. E. S., p. 472.

An act concerning conveyances of real property; in force Jan. 31, 1827. R. E. S., p. 472.

An act establishing a recorder's office for the State; in force Feb. 12, 1827. R. E. S., p. 481.

An act relating to the office of recorder; in force Jan. 8, 1829. R. E. S., p. 483.

An act to amend the act concerning the conveyance of real property, and for other purposes, approved Jan. 31, 1827; in force Jan. 22, 1829. R. E. S., p. 486.

An act abolishing the office of State recorder; in force Jan. 13, 1833. R. E. S., p. 498.

An act concerning conveyances by county commissioners; in force Jan. 7, 1835. R. E. S., p. 490.

An act concerning public records; in force Feb. 9, 1835. Repealed Feb. 27, 1841. R. E. S., p. 490.

An act to provide for transcribing certain records therein named; in force Feb. 12, 1835. R. E. S., p. 492.

An act simplifying the mode of acknowledgment of sheriffs' deeds; in force Jan. 16, 1836. R. E. S., p. 494.

An act supplemental to an act entitled "An act concerning public records," approved Feb. 9, 1835; in force Jan. 18, 1836. Repealed Feb. 27, 1841. R. E. S., p. 495.

An act concerning conveyances; in force July 21, 1837. R. E. S., p. 496.

An act concerning the recording of conveyances; in force July 21, 1837. R. E. S., p. 496.

An act relating to the recording or registering of conveyances, or other instruments in writing, executed out of this State and within the United States; in force Feb. 26, 1841. R. E. S., p. 497.

An act concerning the records of Madison county; in force Feb. 27, 1841. R. E. S., p. 498.

An act legalizing certain records in Greene county, and authorizing recorders to appoint deputies in certain cases; in force Jan. 24, 1843. R. E. S., p. 500.

An act concerning the records of Jersey county; in force Feb. 1, 1843. R. E. S., p. 500.

An act in relation to certain records in Adams county; in force Feb. 3, 1843. R. E. S., p. 502.

An act to amend an act entitled "An act to provide for transcribing certain records therein named," approved Feb. 12, 1835; in force March 4, 1843. R. E. S., p. 503.

An act concerning public records; in force March 1, 1845. R. E. S., p. 504.

DECISIONS. Under the law of 1819, the certificate of a magistrate, as follows:—"State of Illinois, Morgan County, March 1825. This day personally appeared Thomas Arnet and his wife, Cayeah, before me, James Deaton, one of the acting justices of the peace for said county, and acknowledged the due execution of the within to be their free act and deed for the within purposes therein named,"—is a sufficient certificate of an acknowledgment by the husband (only) to pass his title to the land described in the deed. The wife's right of dower does not pass by such a deed. *Ayas v. McConnell*, 2 S. 307; *McConnell v. Reed*, 2 S. 372.

As between the parties, a deed is valid without being acknowledged or recorded. *Semple v. Miles*, 2 S. 316.

Under the act of Feb. 19, 1819, to authorize a deed, acknowledged before a justice of the peace out of the county where the land lies, to be read in evidence, the certificate of the clerk of the county where the deed is made, of the official character of the magistrate, must be appended. *Idem*, 316.

The object of the legislature in prescribing the forms for the acknowledgment of deeds was to prevent one person from personating another. A substantial compliance with the requisitions of the statute is sufficient. *McConnell v. Reed*, 2 S. 334; *Wiley et al. v. Bean et al.*, 1 G. 302; *Hughes et al. v. Lane*, 11 Ill. 121.

A deed of land made by three persons, who are described in the body of the deed as county commissioners, and signed and sealed by them individually, acknowledged before the clerk of the county commissioners' court, and certified by him under the seal of the court, is sufficient to pass title to land patented to county commissioners, by their names. *Bestor et al. v. Powell*, 2 G. 119.

Bogardus made a conveyance to Underhill; the deed contained the following clause: "do hereby grant, sell and convey unto said Underhill all my right and interest in and to" (the land, describing it) "to have and to hold the same, unto the said Underhill, his heirs and assigns forever." At the time of the conveyance, Bogardus had no title, but subsequently acquired it. The after acquired title enures to the benefit of Underhill. *Frisby et al. v. Ballance et al.*, 2 G. 145. *Contra*, *Frink v. Darst*, 14 Ill. 304.

The following acknowledgment of a deed, under the act of Jan. 31, 1827, was held sufficient:

"STATE OF ILLINOIS, }  
Morgan County, } ss. Personally came Thomas Arnett, (who to me is personally known to be the same person that executed this deed, and the identical Thomas Arnett of said county,) before me, the undersigned, an acting justice of the peace within and for the said county, and acknowledged the foregoing deed to be his voluntary act and deed, for the uses and purposes in said deed mentioned." *McConnell v. Reed*, 2 S. 373.

A deed imperfectly acknowledged may be proved by a subscribing witness. *Idem*.

Under the recording laws of 1827 and 1829, the first of which requires the deed to be recorded within twelve, and the latter within six, months, to make the same effective as against *bona fide* purchasers, it is sufficient if it be shown that the subsequent purchaser had notice of the first deed, whether the same is recorded or not. If he had such notice, he is not a *bona fide* purchaser. *Robinson v. Rouan*, 2 S. 500.

A deed properly acknowledged may be read in evidence without further proof of its execution. *McConnell v. Johnson*, 2 S. 523.

Under the territorial laws of Sept. 17, 1807, it was unnecessary that the officer taking the acknowledgment of a deed should certify that the party executing the same was personally known to him. *Russell v. Whiteside*, 4 S. 11.

A mere quit-claim deed of a party's interest in land, conveys only the interest of such party at the time of the conveyance, and will not affect the title of a prior purchaser claiming under an unrecorded deed. *McConnell v. Reed*, 4 S. 117.

Possession of land is notice to a purchaser, of the possessor's title. *Idem*.

As between the grantor and grantee the title passes upon the execution and delivery of the deed; but as between the grantee and third persons purchasing without notice, it takes effect only from the time of recording. *Doyle et al. v. Teas et al.*, 4 S. 252.



"STATE OF ILLINOIS, }  
*Peoria County,* } ss. Personally appeared before the undersigned, an acting justice of the peace, the above-named mortgagor, who is personally known to me to be the identical person who executed said mortgage, and who acknowledged the same as his free act and deed, for the purposes therein expressed. A. M. HUNT, J. P. [SEAL.]"

is a sufficient acknowledgment under the act of Jan. 31, 1827; being a substantial compliance with the provisions of the statute. *Livingston v. Kettle*, 1 G. 116.

A deed acknowledged before a commissioner residing without this State, may be read in evidence, without any proof of the official character of such commissioner. *Vance v. Schuyler*, 1 G. 160; *Thompson v. Schuyler*, 2 G. 271; *Irving v. Brownell*, 11 Ill. 402.

His certificate need not be under seal, nor dated. *Idem*.  
 An acknowledgment commencing "Lincoln ss. Wiscasset," with no further statement as to locality, is insufficient. *Vance v. Schuyler*, 1 G. 160.

The registry laws do not apply to patents or to auditor's deeds. Either may be read in evidence without being recorded or without proof of their execution. *Graves et al. v. Bruen et al.*, 1 G. 167; *Thompson v. Schuyler*, 2 G. 271; *Rhinehart v. Schuyler*, 2 G. 473.

Where the execution of a deed by a subscribing witness is sought to be proved, the certificate must show that the witness was known to the officer to be the person who, as such witness, subscribed the deed. The mere statement that the witness was known to the officer is insufficient. The statement of the person testifying as to the execution of the deed, is not proof of his identity by a credible witness as required by the statute. *Job et al. v. Tebbetts*, 4 G. 143.

The certificate of the officer in such case need not state that the person who proves the identity of the subscribing witness is competent and credible; this will be presumed. *Idem*.

In taking proof of the hand-writing of grantors to a deed, it will be sufficient for the witness to state that he had frequently seen and well knew their signatures, in business transactions. *Idem*.

When the deed is sought to be proved by any other than the subscribing witness, the statute requires the preliminary proof that the grantor and subscribing witness are dead or cannot be had. *Idem*. *Dubitatur*. See *Job v. Tebbetts*, 5 G. 376.

In a certificate of proof of the execution of a deed by proof of the hand-writing of a subscribing witness, the statement that he was well acquainted with the subscribing witness, is equivalent to a statement that he personally knew him. *Delawny v. Burnett*, 4 G. 454.

The certificate need not state that the witness is competent and credible. *Idem*.

A certificate of acknowledgment of a deed by a *feme covert*, to convey her own lands, is essential to the validity of a deed. *Marriner v. Saunders*, 5 G. 113.

If a subscribing witness to a deed resided without the jurisdiction of the court, he need not be produced. *Idem*.

In taking proof of the execution of a deed by a subscribing witness, the officer states, "this day personally appeared Samuel L. McGill, a subscribing witness to the within deed, (who was to me made known by the oath of Isaac Prickett, a credible witness,) and who, being by me duly sworn, etc.:" Held, that it sufficiently appeared from the certificate that McGill was a subscribing witness to the deed. *Reece v. Allen*, 5 G. 236.

A certificate of proof of the execution of a deed, by proving the hand-writing of the grantor and the subscribing witness, where such grantor and witness are dead, or without the jurisdiction of the court, is sufficient to entitle the deed to be recorded, and to be read in evidence without evidence *alunde*, of the death or absence of such grantor or witness. *Job v. Tebbetts*, 5 G. 376.

"STATE OF ILLINOIS, }  
*Madison County,* } ss. On this 18th day of June, A. D. 1836, personally appeared before the undersigned, a justice of the peace in and for the county aforesaid, James S. Law and Margaret B. Law, his wife, known to me to be the identical persons described in, and who executed the within deed, and acknowledged that they severally signed, sealed and delivered the same, as their free acts and deeds, for the uses and purposes therein mentioned; and the said Margaret B. Lane, being by me made acquainted with the contents of the within deed, and being by me examined separate and apart from her husband, acknowledged that she executed the same freely and voluntarily, without any compulsion of her husband, and that she relinquishes her dower in the lands and tenements hereby conveyed. All which I hereby certify under my hand and seal, the day and year last above written. WILLIAM MARTIN, J. P. [SEAL.]"

Held, that the foregoing acknowledgment was sufficient to convey the real estate of the wife in one tract of land, and her right of dower in another, both tracts being included in the deed. *Hughes et al. v. Lane*, 11 Ill. 123.

The words, "and does not wish to retract," are no part of the acknowledgment, but are intended for the benefit of the *feme covert*, that she may, if she desires, retract, when the contents of the deed are explained to her. *Idem*.

Under the recording law of 1819, a notary public, residing out of the State, had no authority to take the acknowledgment of a deed conveying land within this State. *Choteau v. Jones et al.*, 11 Ill. 300.

Two deeds for the same land to different purchasers were recorded prior to the passage of the act of Dec. 30, 1822. Neither was acknowledged so as to entitle them to be recorded. The title passed to the first grantee. *Noakes v. Martin*, 15 Ill. 118.

A recorded deed takes precedence of a prior levy by attachment, unrecorded. *Gaty v. Pitman*, 11 Ill. 20.

Under the act of Jan. 22, 1829, a notary public had no power to take and certify the acknowledgment of a deed, except under his official seal. *Mason v. Brock*, 12 Ill. 273.

To defeat the title of a subsequent purchaser, claiming under a deed first recorded, notice of the prior unrecorded deed should be clear and positive. *Rodgers et al. v. Wiley*, 14 Ill. 65.

"STATE OF MISSOURI, }  
*County of St. Louis,* } ss. This day personally appeared before me, the undersigned, clerk of the circuit court within and for the county of St. Louis, Rufus Easton, who acknowledged the foregoing deed or instrument of writing to be his act and deed, hand and seal, for the purposes therein contained. Given under my hand and seal of office at St. Louis, this 5th day of November, 1821.

ARCHIBALD GAMBLE, CLERK,  
 By E. BAKER, Deputy Clerk."

[SEAL.]  
 Held, that the certificate was sufficient. *Hope v. Sawyer*, 14 Ill. 254.

A purchaser from an heir, under the recording laws, is a subsequent purchaser, within the meaning of the act. *Kennedy v. Northrup et al.*, 15 Ill. 149; *Rupert et al. v. Mark*, 15 Ill. 540.

A deed acknowledged out of this territory, under the provisions of the act of Sept. 17, 1807, must have a certificate attached, with an official seal, showing the official character of the officer before whom the acknowledgment was taken. *Buckmaster et al. v. Job*, 15 Ill. 323.

There is no presumption that the laws of a territory authorize a justice of the peace to take the acknowledgment of deeds; this is a matter of fact to be proved. *Idem*.

The certificate of the governor of a territory, not under seal, furnishes no evidence of the official character of a justice of the peace. *Idem*.

Notice of the existence of an unrecorded deed is as effectual against a subsequent purchaser as though the deed was actually recorded. *Rupert et al. v. Mark*, 15 Ill. 541.

Possession of land is notice to a subsequent purchaser of the possessor's title. So, whatever is sufficient to put a purchaser on inquiry. *Idem*. See also *Williams v. Brown*, 14 Ill. 200.

A *feme covert* cannot, except by express statute, convey her title to real estate. *Lane v. Souard*, 15 Ill. 123.

From the time the Revised Statutes of 1845 took effect, till the passage of the act of Feb. 22, 1847, there was no law authorizing a *feme covert*, residing out of this State, to convey her land lying in this State. *Idem*.

## CHAPTER XXV.

## CORPORATIONS.—DIVISION I. TOWNS AND CITIES.

## SECTION

- Inhabitants of town having 150 inhabitants may become incorporated: mode of proceeding in such cases: notice given and meeting held.
- Inhabitants to decide by vote: vote of two-thirds necessary.
- Meeting called to elect trustees; vacancies, how filled.
- Trustees to choose president; style of corporation; powers: duty of clerk.
- Powers of trustees as to police, fires, taxes, &c.
- Duties of trustees; collectors to give bond; term of office.
- Mode of holding elections; proceedings to be public: ordinances to be published; quorum.
- How moneys appropriated; accounts to be kept; sales for taxes; fines, how collected and paid.
- How corporation may be dissolved.
- Statement of polls; poll books, where deposited; oath of office.
- Trustees may appoint constable; his powers and duties.
- May abate nuisances; punish assault, &c.; trial by jury.
- May imprison offenders, for what time.
- May adopt laws respecting wagons, and to punish disturbances.
- May regulate fees and compensation of officers.
- When town becomes incorporated hereby, other like

## SECTION

- laws repealed: work on roads: disposition of funds, &c., if corporation be dissolved.
- Towns, and additions thereto, to be surveyed and laid out.
- In-lots and out-lots to be laid out in plat and numbered.
- Stone monuments at corners of lots.
- Map to be certified, acknowledged and recorded.
- Recorded plat to be evidence of conveyance, &c.
- If county be unorganized, where plat recorded.
- Old plats to be acknowledged and recorded; penalty for neglect.
- Penalty for not placing corner stones, &c., in towns hereafter laid out.
- Selling lots before law complied with, penalty for.
- Fees of county surveyor.
- Forfeitures, how recovered; to whose use; who shall bring suit.
- When may be vacated; *proviso*.
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- Road tax released.
- Property within incorporated towns not assessed for road tax.
- Persons committed to jail required to work on roads.
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- Powers to towns, the same as given to cities.

SECTION  
 37. Inhabitants of town may form a city.  
 38. Powers and duties; *proviso*.  
 39. Boundaries.  
 40. May purchase grounds.  
 41. Taxes.  
 42. When act to take effect.  
 43. Inferior courts.  
 44. Number of magistrates.  
 45. How commissioned and qualified; jurisdiction; *proviso*.  
 46. Rules of practice.  
 47. Marshal and constables.  
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SECTION  
 49. When act to take effect.  
 50. Collector to collect delinquent tax; publication; county court to render judgment; issue precept; *proviso*.  
 51. Assessments for improving sidewalks; apply to county courts; issue precept to sheriff; corporate authorities.  
 52. When act to take effect.  
 53. Power of corporate authorities.  
 54. Damages assessed.  
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 56. When act to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 111.]

(1.) SECTION I. Whenever the white male residents of lawful age of any town in this State, having 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 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.

(2.) SEC. II. The residents, as aforesaid, of any town having assembled as directed in the first section of this division, 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 voters 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.

(3.) SEC. III. Whenever the qualified voters 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.

(4.) SEC. IV. The board of trustees of any town elected agreeably to the provisions of this division, 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 president 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, complaints, 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.

(5.) SEC. V. 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 sidewalks as to them may seem needful: *Provided, always*, That the lot in front of which any sidewalk is made, shall be taxed to pay at least one-half of the expenses of making such sidewalk. 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 power 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.

(6.) SEC. VI. 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 office one year, (unless sooner removed,) and until others shall be appointed, and shall have given bonds.

(7.) SEC. VII. The said president and trustees elected under this division, 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 division, 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.

(8.) SEC. VIII. 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 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, show 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 division, 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 division, 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.

(9.) SEC. IX. Two-thirds of the qualified voters of any town incorporated according to the provisions of this division, 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 division.

(10.) SEC. X. Whenever a president and trustees shall be elected for any town as herein directed, it shall be the duty of the president and clerk of the first meeting, provided for in the first section of this division, 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.

(11.) SEC. XI. The president and trustees of towns incorporated by virtue of the provisions of this division, shall have 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.

(12.) SEC. XII. 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 offense against the laws of the corporation, as is or may be provided by law for like offenses 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 jury for a like offense against the law of the State.

(13.) SEC. XIII. 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.

(14.) SEC. XIV. 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.

(15.) SEC. XV. The said president and trustees shall also have power to regulate the fees and compensation of all officers of the corporation.

(16.) SEC. XVI. Whenever any town shall be incorporated under the provisions of this division, 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 so incorporated, shall not be required to work upon any road except as herein required. And whenever any town corporation shall be dissolved, according to this division, 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.

(17.) SEC. XVII. 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.

(18.) SEC. XVIII. 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.

(19.) SEC. XIX. 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.

(20.) SEC. XX. 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 indorsed on the plat or map; which certificate of the surveyor and acknowledgment shall also be recorded, and form a part of the record.

(21.) SEC. XXI. The plat or map, when made out, certified, acknowledged and recorded, as required by this division, and 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.

(22.) SEC. XXII. 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.

(23.) SEC. XXIII. 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 law, 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 division, noting and particularly describing the donations of land or otherwise to individuals, societies, bodies politic, or for common or public uses: *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 provisions of this division; 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.

(24.) SEC. XXIV. If any county commissioners, 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 planted in any other manner than that which is prescribed in this division, every person so offending shall forfeit and pay the sum of one hundred dollars.

(25.) SEC. XXV. 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 division 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.

(26.) SEC. XXVI. 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.

(27.) SEC. XXVII. All forfeitures and liabilities which may be incurred and arise under this division, 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 the provisions of this division have been violated and a forfeiture incurred, to bring suit and prosecute for the same.

An Act to provide for Vacating Town Plats.

[Approved Feb. 16, 1847. Laws, 1847, p. 166.]

(28.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases where persons have heretofore, or may hereafter, lay out towns, or additions to towns, or subdivisions of town lots, and the plats or maps thereof shall have been recorded, they, their heirs, assigns or grantees, may, at any time before making sale of any single lot or lots, by executing a writing, and causing the same to be recorded in the office in which the plat or map was recorded, declare such map or plat to be vacated; and the execution and recording of such writing shall operate to destroy the force and effect of the recording of the plat or map so vacated, and to divest all public rights in the streets, alleys, commons, and public grounds, laid down or described in such plat or map; and in cases where any single lot or lots have been sold, the plat or map may be vacated, as herein provided, by all the owners of lots joining in the execution of the writing aforesaid: *Provided,* that no such writing shall be recorded until the execution thereof shall have been acknowledged or proved, as is or may be required in respect to deeds.

(29.) SEC. II. The provisions of this act shall not apply to the original plat or map of any town located or laid out as or for a county seat, so long as the county seat shall remain at such town, but plats or maps of additions to such towns, or subdivisions of lots included in the recorded plats or maps thereof, may be vacated as herein provided for: *Provided, however,* that nothing contained in this act shall authorize the closing or obstructing a public road, laid out according to law.

(30.) SEC. III. Any part of a plat or map of a town, addition or subdivision, may be vacated under the provisions and subject to the conditions herein contained.

An Act for the Relief of the Inhabitants of Incorporated Towns.

[Approved March 1, 1847. Laws, 1847, p. 167.]

WHEREAS the county commissioners' courts of many of the counties in this State, acting under the provisions of the road law, have assessed a road tax upon the taxable property within their respective counties, without excluding from the operation of said tax, property situated in and owned by inhabitants of incorporated towns; AND WHEREAS most of the acts incorporating the inhabitants of towns, require such inhabitants to keep all the public roads passing from and through their said towns in repair, for the distance of one mile from the centre thereof, and in consequence thereof said towns are not included in any county road district, but the inhabitants thereof pay for keeping the roads in repair, under the operation of the by-laws of the corporation, and it being manifestly unjust to require the inhabitants of towns so situated to pay double taxes for road purposes; therefore—

(31.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases where county commissioners' courts have assessed a road tax operating upon property situated in

incorporated towns, the inhabitants of which are required to keep the roads passing through and from their said towns in repair, said tax shall be and the same is hereby released.

(32.) SEC. II. Hereafter, in assessing the road tax by county commissioners' courts, property situated within the limits of incorporated towns, the inhabitants of which are required to keep the roads in repair, as mentioned in the first section of this act, shall be excluded from the operation of the order assessing said tax.

An Act to incorporate Towns and Cities.

[Approved Feb. 10, 1849. Laws, 1849, p. 224.]

(33.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any incorporated town or city in this State may have power to provide by ordinance that every person against whom any judgment may hereafter be recovered, in favor of said town or city, for a penalty or fine for a breach of any ordinance, instead of being committed to jail, may be required to labor on the streets until the whole fine and costs shall be paid, at the same rate per day as may be allowed as a forfeiture for a failure to perform street labor under the direction of the street commissioner.

(34.) SEC. II. The corporate authorities of any city or town in this State may have power to declare what shall be a nuisance, and to prevent and remove the same as much as one-half mile beyond the limits of the corporation, with full power to impose a fine for a violation of any ordinance to that effect.

(35.) SEC. III. Whenever it may be necessary to pave or grade any street or front lots, or to fill up or alter any lot that may be declared to be a nuisance, said corporate authorities may have power, upon the failure of the owner of any lot to pave, grade or fill up said lot, or to pay the taxes or fines that may be assessed on the owner or owners thereof, to require that said lot, or so much thereof as may be necessary, shall be sold for the payment of the tax or fine and cost, in the manner authorized for the collection of other taxes; and all assessments so made shall constitute a lien on said lot.

(36.) SEC. IV. The corporate authorities of all towns and cities incorporated under chapter twenty-five, entitled "Corporations," of the revised code, or under any special act, shall have power to pass all the ordinances and by-laws, and possess all the powers authorized under the laws and amendatory acts incorporating either of the cities of Springfield or Quincy: *Provided,* That towns containing a population of less than fifteen hundred white inhabitants, shall have no other officers or allow any other compensation than is allowed under chapter twenty-five of the revised code, unless expressly authorized by law.

(37.) SEC. V. The inhabitants in any town containing a population of not less than fifteen hundred inhabitants, may be incorporated by the name and style of the "city of \_\_\_\_\_," when a majority of the legal voters thereof shall vote in favor of being incorporated as a city, at an election to be held at the court house, notice being given by being published for two weeks in succession in any newspaper published in said town, by the president and trustees of said town, or by giving such notice as may be

prescribed under an ordinance passed by the president and trustees of said town.

(38.) SEC. VI. All the articles and provisions in either of the acts incorporating Quincy or Springfield, prescribing the duties of the president and trustees, ordering an election of city officers, prescribing the powers of the city, of the city council, executive officers, elections, legislative powers of the city council, of the mayor, proceedings in special cases, and miscellaneous provisions, shall be the rule by which the corporate authorities of any city incorporated under the provisions of this act shall be governed: *Provided*, No city incorporated under this act shall be exempt from the payment of county tax, nor be required to support the paupers.

(39.) SEC. VII. The boundaries of any city incorporated under this act may include one mile square, and any tract of land adjoining, laid off into town lots and duly recorded as required by law, and any tract of land adjoining said city, with the consent of the owner thereof, within the limits of one-half mile from the boundary of said city.

(40.) SEC. VIII. The inhabitants of any town or city, in the corporate name, may purchase, receive and hold real estate beyond the limits as [of] their corporate limits for the purpose of burying grounds.

(41.) SEC. IX. Whenever the corporate authorities of any town or city may wish to have the taxes, authorized to be levied under and by virtue of their respective charters, or under the general act, upon filing a certificate of the rate authorized under the authority of the said corporation, in the office of the clerk of the county court, it shall be the duty of the collector of taxes for the State and county to collect the taxes for said town or city upon the assessment of the value of all the property within the limits of said corporation, as ascertained by the assessment for State and county purposes, and enforce the payment thereof in the same manner, and with all the rights, power and authority as he has to collect State and county taxes, and shall pay the same over to the order of the corporate authorities at the same time he is required to pay over the county revenue; and the court of the proper county shall render judgment and order sale of any lot or tract for the non-payment of the tax and cost due said town or city, as is or may be provided for State and county taxes; and judgment and sale shall be rendered for the aggregate amount due for county, State and town or city taxes. The collector shall receive the same compensation for collecting the taxes for any town or city, as is allowed for the collection of the State and county revenue, to be paid out of the funds of the corporation; and he shall be liable on his bond for the faithful performance of the duties required under this act.

(42.) SEC. X. This act to take effect from and after its passage.

An Act for the Better Government of Towns and Cities, and to Amend the Charters thereof.

[Approved Feb. 27, 1854. Laws, 1854, p. 11.]

(43.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That there shall be established in each of the cities of this State, inferior courts of civil and criminal jurisdiction, which shall [be] called police magistrates' courts.

(44.) SEC. II. That there shall be elected in each of the incorporated towns and cities of this State, the population of which shall not exceed six

thousand, an officer who shall be styled police magistrate of the city of \_\_\_\_\_, or town of \_\_\_\_\_, as the case may be; in each city of this State having a population of over six thousand and not exceeding twelve thousand, there shall be elected two police magistrates; and in the cities of this State whose population shall exceed twelve thousand, there shall be elected three police magistrates. Said magistrates shall be elected by the legal voters of such city or town at the next regular election for city or town officers, and every four years thereafter.

(45.) SEC. III. Said police magistrates when elected shall be commissioned and qualified in the same manner as justices of the peace are, and shall have in their respective counties the same jurisdiction, powers and emoluments as other justices of the peace in this State; and they shall also have jurisdiction in all cases arising under the ordinances of their respective towns and cities, and for any breaches thereof, where the amount claimed shall not exceed one hundred dollars, and in all cases arising under the ordinances of towns and cities, said magistrates shall be entitled to the same fees as justices of the peace now are for similar services, and to be collected in the same manner: *Provided*, The city or town authorities of any such town or city may make such additional allowance to such police magistrates as they may deem just and expedient; and in all cases arising under the ordinances of any such town or city, change of venue shall be allowed from one police magistrate to another, in cities where there is more than one such magistrate, and in all other towns and cities from such police magistrate to the nearest justice of the peace, to be applied for in the same manner and granted on the same conditions and in the same manner as changes of venue from justices of the peace now are.

(46.) SEC. IV. The rules of practice and proceeding before such police magistrate shall conform to the practice and proceedings before justices of the peace, except in cases where such rules of practice and proceeding shall be changed or modified by the charter of such town or city; in which case, such rules of practice and proceedings shall conform to the said charters.

(47.) SEC. V. The city marshals of such towns or cities, and all constables of the county in which said town or city may be situated, and all the town or police constables of such towns or cities respectively, shall be and are hereby authorized to execute all process and orders issued or made by said police magistrates in their respective counties.

(48.) SEC. VI. Appeals shall be allowed from the decision of police magistrates in all cases, to be applied for and taken in the same manner that appeals from justices of the peace may be taken.

(49.) SEC. VII. This act to take effect and be in force from and after its passage.

An Act to amend the Charters of the several Towns and Cities in this State.

[Approved March 1, 1854. Laws, 1854, p. 22.]

(50.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in all cases where taxes assessed on real estate by the corporate authorities of any city or town in this State, except in the city of Chicago, are not paid within the time fixed by the corporate authorities of any such city or town, it shall be lawful for the collector of any such city or town, after giving notice of such application



by advertisement, at least thirty days previously to such application, in some newspaper published in said town or city, or, if no newspaper should be published in said town or city, then by posting up printed or written notices of such intended application in at least four of the most public places in such town or city, to apply to the county court of the county in which such delinquent real estate may be situated, and cause judgment to be entered against such delinquent real estate for the amount of taxes due and unpaid, and costs. And the said county court shall proceed to hear and determine said application, and render judgment against said delinquent real estate in the same manner, and said judgment shall have the like effect, as though said delinquent list had been returned to the county court by the sheriff or collector of the county, in the collection of State and county taxes. And the county court shall issue its precept or order to the collector of said city or town, directing him to sell said real estate at public auction, to pay said delinquent taxes and costs: *Provided*, That the corporate authorities of such towns or cities shall have full power to adopt any regulation or proceeding they may deem necessary to carry this section into full effect: *And provided further*, That the corporate authorities of any town or city shall have power to fix the time of such application to the county court, and the time of sale of said real estate.

(51.) SEC. II. In all cases where assessments have heretofore been made, or where assessments may hereafter be made, by the corporate authorities of any town or city in this State, on any lot or real estate in such town or city, for the purpose of improving any street, side-walk, or alley, in front of such lot or real estate, or for any purpose whatever, either by ordinance, resolution or other proceeding, and such assessment is not paid within the time fixed by the order, resolution or ordinance, making such assessment, the corporate authorities of the several towns and cities in this State may apply to the county court of the proper county for judgment against said lot or real estate, for the amount of said assessment and costs; and the county court, on such application being made, shall render judgment against such lot or real estate for the amount of said assessment and costs, and shall issue its precept to the sheriff of the proper county, commanding him to sell said lot or real estate, or so much thereof as may be necessary to pay said judgment and costs, in the same manner, and with like effect, as if sold upon execution at law; and the corporate authorities of the several towns or cities shall have full power to provide by resolution or ordinance for the making or levying any such assessment, and they shall have full power to fix the time of payment, and the kind and time of notice of such assessment, and of the said application to the county court; and the corporate authorities of any town or city shall have full and complete authority to adopt any rule, regulation or proceeding, which they may deem necessary to carry the provisions of this section into full and complete effect.

(52.) SEC. III. This act to take effect from and after its passage.

An Act authorizing Incorporated Cities to change, alter and vacate Streets or Parts of Streets.

[Approved Feb. 15, 1851. Laws, 1851, p. 112.]

(53.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That when the corporate authorities of any city may deem it for the best interest of their respective cities that any

street or part of a street shall be changed, altered or vacated, said authorities shall have the power, upon the petition of the property holders owning property on such street or part of street, to change, alter or vacate the same, and to convey, by quit-claim deed, all interest which said city may have had in the street or part of street so vacated, to the owner or owners of lots and lands next to and adjoining the same, upon the payment by such owner or owners of all assessments which may be made against their lots or lands, for and on account of benefits to the same arising from such change, alteration or vacation of any street or part of street as aforesaid.

(54.) SEC. II. The benefits and damages caused by changing, altering or vacating any street or part of street as aforesaid, shall be assessed and determined in the manner pointed out by the act incorporating such city, or by the ordinances thereof in other cases.

An Act to amend an Act entitled "An Act for the Better Government of Towns and Cities, and to amend the Charters thereof," approved Feb. 27, 1854.

[Approved Feb. 15, 1855. Laws, 1855, p. 44.]

(55.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That so much of said act as requires the officers therein named to be elected at the elections of officers for said towns and cities for the year A. D. 1854, be and is hereby so amended, that in those towns and cities where they failed to elect said officers in the said year 1854, they may elect them at the elections to be held therein for said officers in any subsequent year.

(56.) SEC. 2. This act to take effect and be in force from and after its passage.

## DIVISION II. ACADEMIES.

SECTION	SECTION
57. Five or more may be incorporated to establish academy, &c., and hold real estate.	67. Trustees to receive subscriptions; concerning elections.
58. First meeting; ten days' notice given; trustees to be elected; powers.	68. Payments by stockholders, how made.
59. Certificate of election to be recorded.	69. Who may receive instruction; who be stockholder.
60. Trustees shall be body corporate; powers and obligations.	70. Proceedings in case of violation of this law.
61. Have no power to sell real estate.	71. If day of election pass by, another day to be named.
62. Stockholders; annual elections; vacancies, how filled.	72. Trustees may prescribe course of instruction; appoint teachers, &c.
63. May receive donations.	73. Name of academy or seminary to be filed.
64. Application of funds; donations, how applied.	74. Trustees to be elected, and how.
65. Treasurer to be elected and sworn; his duties.	75. Clerk's certificate to be recorded; corporation.
66. Who may be stockholders; who may vote.	76. Sections 28, 29, &c., to be without force or effect; <i>proviso</i> .
	77. Condition of institution to be filed.
	78. When act to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 117.]

(57.) SECTION XXVIII. When five or more persons shall associate themselves together for the purpose of forming an academy or seminary of learning in their neighborhood, and shall acquire by gift, grant or purchase, any lots or lands not exceeding one hundred and sixty acres, and shall build a house thereon for the purposes of education, it shall be lawful for them to apply to the county commissioners' court of the county in which the land so acquired may be situated, to receive the legal title to said land, and hold it

in trust for them until the persons so associated shall become qualified as a body corporate to receive the same in the manner and mode hereinafter provided for.

(58.) SEC. XXIX. It shall be lawful for the persons associated together for the purposes named in the preceding section, or a majority of them, to meet at some public place in the neighborhood of the intended academy or seminary of learning, after giving ten days' notice thereof by advertisement set up at three public places in the vicinity, or by notice in some public newspaper printed in the county, and then and there proceed to the election of not less than five nor more than seven trustees, a majority of whom shall be capable of receiving a deed or deeds from the county commissioners' court in which the same may lie, for such lots or lands as may be held in trust for such association under the provisions of the twenty-eighth section of this chapter.

(59.) SEC. XXX. The clerk who may have acted as such at the election of said trustees, shall, within ten days thereafter, deposit in the recorder's office of the county where such lands or lots may lie, a certificate of the election of said trustees, which shall be immediately recorded in some book in which deeds are recorded, and the lots or lands so deeded by the county commissioners' court aforesaid, shall vest in said trustees and their successors in office, for the sole use and benefit of said academy or seminary of learning, forever, all the right and title to such lots or lands for the purposes herein named and no other.

(60.) SEC. XXXI. As soon as the clerk of such election shall deposit with the recorder of the county as aforesaid, a certificate of said election, stating therein the name of the association, and for what object formed, and the names of the trustees elected, then, and from that time, the said trustees and their successors in office shall be created and remain a body corporate and politic, and in the name and style assumed by them, shall remain in perpetual succession, with power to sue and be sued, to plead and be impleaded, to acquire, hold and convey property, real and personal, to have and to use a common seal, to alter the same at pleasure, to make and alter from time to time such by-laws as they may deem necessary for the government and regulation of such academy or seminary of learning, its officers, servants and property.

(61.) SEC. XXXII. The aforesaid trustees, and their successors in office, shall have no power nor authority under this law to sell or convey away any of the lots or lands deeded to them by the county commissioners' court, but the same shall be held in trust forever for the purposes for which said lots or lands were originally given, granted or purchased, and for no other use or purpose whatever.

(62.) SEC. XXXIII. The persons associated under the provisions of this division, shall be called and deemed stockholders, and from their number, after the first election and organization, shall elect annually in such manner, mode and time, as they may fix by by-law, not less than five nor more than seven trustees, who shall continue in office until their successors are duly elected and qualified; and before entering on the duties of their office, they shall take an oath before some justice of the peace, faithfully to perform the duties enjoined on them by this division, and by the by-laws of the association to which they belong; and should any vacancy occur in the board of

trustees before the expiration of the year, either by death or resignation, the remaining members of the board shall be authorized to fill such vacancy from among the stockholders; which appointment shall hold and continue until the ensuing annual election.

(63.) SEC. XXXIV. The trustees, when elected and qualified, and their successors in office, shall be competent in law or equity to take or receive in their corporate name, and for and in behalf of the associated stockholders, any estate, real, personal or mixed, by the gift, grant, bargain and sale, conveyance, will, demise or bequest of any person or persons whatsoever, and the same estate, whether real, personal or mixed, to grant, bargain, sell, convey, demise or place at interest or otherwise dispose of, for the use and benefit of the academy or seminary whose interests they represent.

(64.) SEC. XXXV. Said trustees shall faithfully apply all funds collected, or the available proceeds thereof, in erecting, completing or repairing suitable buildings, paying suitable salaries to the necessary officers, instructors and servants, in procuring books, stationery, maps, charts, globes and apparatus necessary to be used in an academy or seminary of learning; and in case any donation, devise or bequest shall be made to any institution established under the provisions of this division, and the corporation to which the same shall be made, shall accept the same, such donation, devise or bequest shall be applied in conformity with the express conditions of the donor or deviser.

(65.) SEC. XXXVI. At the time of the annual election of trustees, the stockholders in each corporation created under the provisions of this division, shall elect a treasurer, who shall, before he enters upon the duties of his office, give bond, with approved security, to the trustees thereof, in such penal sum as they may require, for the faithful performance of the duties of his office, and who, for good cause, may be removed by the concurrent vote of two-thirds of the trustees; and in case of his death, removal, resignation or refusal to serve, it shall be lawful for the trustees at any of their meetings, to appoint another treasurer in his stead, to remain in office till the expiration of the time for which his predecessor was elected.

(66.) SEC. XXXVII. On the payment of such sum as the stockholders in each corporation under the provisions of this division may ordain by their by-laws, every free white person shall be considered a stockholder and be entitled to one vote, and it may be lawful for each and every stockholder for the time being, his executors, administrators or assigns, to give, sell, devise and dispose of their respective rights or shares in such academy or seminary, and such donee or purchaser shall be entitled to all the rights of the original holders.

(67.) SEC. XXXVIII. The first board of trustees elected under the provisions hereof, shall, and they are hereby appointed commissioners to solicit and receive subscriptions of stock to the corporation which they represent, and give receipts for the same, and pay the same over to the treasurer when elected and qualified; and said trustees, within six months from the time of their first election, shall give public notice in some newspaper of the county, if there be any, or in at least three public places in the neighborhood of the location of the academy or seminary, of the time and place of holding an election of trustees and treasurer; and said election

shall be held between the hours of twelve, M., and six, P. M.; and said trustees, or any three of them, may act as judges of elections.

(68.) SEC. XXXIX. Each stockholder shall be required, at or before the second election of trustees, to pay five dollars on each share by him or her subscribed, and the residue at such time and in such amounts as shall be required by the board of trustees; and if the instalments are not paid within six months from the time required, then the amount already paid by him or her, shall be forfeited to the corporation.

(69.) SEC. XL. Any academy or seminary established under the provisions of this division, and in operation, shall at all times be open for the use and privilege of every free white person who may wish to be instructed therein, if such person will comply with the by-laws and regulations of the corporation, and pay such sum as the trustees may require for the instruction of students attending such academy or seminary; and every free white person who may at any time tender to the treasurer of the corporation the sum required by the by-laws to constitute a stockholder, shall be admitted as such, and receive from the treasurer a certificate of stock.

(70.) SEC. XLI. If at any time any corporation created under this division shall violate any of its provisions, it shall be the duty of the attorney general when he may have knowledge thereof, to file an information in the nature of a *quo warranto*, for the purpose of vacating the same: *Provided*, In that case the trustees shall have the right of selling all the property, real and personal, belonging to such corporation, and after paying all its debts, the balance, if any, shall be distributed *pro rata* among the stockholders thereof.

(71.) SEC. XLII. In case it should happen that an election of trustees should not be made on the day appointed by the by-laws of any corporation established by this division, such corporation shall not for that cause be deemed to be dissolved, but it shall be lawful on any other day to hold and make an election of trustees, in such manner as shall be prescribed by the by-laws and ordinances of such corporation.

(72.) SEC. XLIII. All corporations created under the provisions of this division, may from time to time prescribe and regulate the course of studies to be pursued in such institution, fix the rate of tuition, appoint instructors, officers, and such assistants and agents as may be deemed necessary in managing its concerns; and do all and every thing that may be fit and proper, for the purpose of promoting the cause of education, that is not inconsistent with the provisions hereof, or contrary to the constitution and laws of the United States and of this State.

An Act to amend Chapter XXV. of the Revised Statutes, entitled "Corporations."

[Approved Feb. 13, 1851. Laws, 1851, p. 85.]

(73.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any five or more persons, being desirous of associating themselves together for the purpose of forming an academy or seminary of learning in their neighborhood, may make, sign and acknowledge, before any officer authorized to take the acknowledgment of deeds in this State, and file in the office of the secretary of State, and also in the office of the recorder of the county in which said institution is to be established, a certificate or declaration, in writing, in which shall be stated the name or title by which said institution shall be known in law, the number

of trustees, and, as far as practicable, the principal branches of literature and science proposed to be taught.

(74.) SEC. II. It shall be lawful for the persons associated together for the purposes named in the preceding section, or a majority of them, to meet at some public place in the neighborhood of the intended academy, or seminary of learning, after giving ten days' notice thereof, by advertisements set up at three public places in the vicinity, or by notice in some public newspaper printed in the county, and then and there proceed to the election of not less than five, nor more than seven, trustees.

(75.) SEC. III. The clerks who may have acted as such at the election of said trustees, shall, within ten days thereafter, deposit in the recorder's office of the county in which said institution is to be established, a certificate of the election of said trustees, which shall be immediately recorded in some book in which deeds are recorded. And as soon as the clerk of such election shall deposit with the recorder of the county, as aforesaid, a certificate of said election, stating therein the name of the association, and for what object formed, and the names of the trustees elected, then, and from that time, the said trustees, and their successors in office, shall be created and remain a body corporate and politic, and, in the name and style assumed by them, shall remain in perpetual succession, with power to sue and be sued; to plead and be impleaded; to acquire, hold and convey property, real and personal; to have and to use a common seal; to alter the same at pleasure; to make and alter from time to time such by-laws as they may deem necessary for the government and regulation of such academy or seminary of learning, its officers, servants and property.

(76.) SEC. IV. Sections twenty-eight, twenty-nine, thirty, thirty-one and thirty-two of the act to which this is an amendment, are hereby declared to be of no force and effect as to all incorporations formed after the passage of this act, and the remaining sections of the second division of the chapter, to which this is an amendment, shall apply to all the corporations formed under the provisions of this act: *Provided*, That in all corporations so formed, each stockholder shall be entitled to one vote for each share of stock held.

(77.) SEC. V. It shall be the duty of the trustees of any institution created under this act, or a majority of them, on or before the first Monday of January of each year, to file in the office of the secretary of State, and in the recorder's office of the county where the original certificate is filed, a statement of the trustees and officers of said institution, with an inventory of its property and liabilities, the number of students, and such other information as will exhibit its condition and operations.

(78.) SEC. VI. This act shall take effect and be in force from and after its passage.

### DIVISION III. RELIGIOUS SOCIETIES.

#### SECTION

79. Religious societies may receive gifts of land, not over ten acres, for erecting houses of worship; trustees.

80. Certificate of election of trustees to be recorded; their term of office; subsequent elections

#### SECTION

81. Trustees to have perpetual succession; property vested in them; how property to be held; trustees may sue and be sued; have power under direction, &c., to make deeds, &c.; effect thereof; no deed to be made to defeat objects of grant.

## SECTION

82. Power of society respecting trustees, and of its estate.  
83. If society is dissolved, what disposition made of property; if trustees be not elected at the proper time, society not dissolved thereby, but other day may be named.

[Approved March 3, 1845.

## SECTION

84. The provisions hereof to apply to estate heretofore acquired; such rights not to accrue until the provisions hereof are complied with.  
85. Officers to make certificate.  
86. Trustees to be known by and use corporate name.  
87. When act to take effect.

Rev. Stat. 1845, p. 120.]

(79.) SECTION XLIV. 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 receive by gift, devise or purchase, a quantity of land not exceeding ten 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.

(80.) SEC. XLV. 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 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.

(81.) SEC. XLVI. The trustees elected or appointed under the provisions of this division, 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.

(82.) SEC. XLVII. 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.

(83.) SEC. XLVIII. Upon the dissolution of any society or congregation formed under the provisions of this division, 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 division 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.

(84.) SEC. XLIX. The provisions of this division shall be deemed and taken to apply to real estate heretofore acquired and now held by religious societies or congregations, so as to vest such societies or congregations, or their trustees, with the rights and powers herein conferred over real estate hereafter acquired: *Provided*, That such rights and powers shall not be exercised until the provisions of this division shall have been complied with.

An Act to amend Chapter XXV, Division III, of the Revised Statutes of 1845, entitled "Religious Societies."

[Approved Feb. 14, 1855. *Laws*, 1855, p. 171.]

(85.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That that portion of the above recited act concerning religious societies, which requires the certificate of the trustees of any such corporate body, whose term of office expires upon the election of their successors, to be filed and recorded in the recorder's office of the proper county, be so amended as to enable the officers of any such religious society, of whatever name or title, whose duties correspond with those of trustees, to be authorized to make such certificate for record.

(86.) SEC. II. The persons elected under said law in the capacity of trustees, whether known by the name of trustees, wardens, vestrymen or any other name, may assume and continue to use the name, style or description, as a corporation, by which they are known in the discipline or organization of the society to which they belong, or by which they are elected, and shall by such name [be] known and described in all matters pertaining to their said corporation.

(87.) SEC. III. This act shall be deemed a public act, and shall be in force from and after its passage.

## DIVISION IV. LIBRARIES.

## SECTION

88. Five or more persons may associate and establish library, elect trustees, &c.  
 89. Elections, how held; certificate of elections to be filed: fee of clerk.  
 90. Any debating or literary society may organize, without subscribing funds.  
 91. Trustees: powers, liabilities and duties of corporation.  
 92. Trustees may purchase and hold real estate; amount limited.

## SECTION

93. Term of office of trustees; officers appointed.  
 94. Meetings of stockholders to elect officers; accounts to be submitted to meeting of members.  
 95. Meetings of trustees, when held; proviso.  
 96. Members may sell shares in library; proviso.  
 97. Trustees may make by-laws.  
 98. Payments of fees by members.  
 99. Election may be held on any day.

[Approved March 3, 1845. Rev. Stat. 1845, p. 121.]

(88.) SECTION L. Any number of persons, not less than ten, who shall associate themselves together, and subscribe, in the whole, not less than one hundred dollars, may assemble at any time and place, upon which a majority of such subscribers shall determine, 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.

(89.) SEC. LI. 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 names of those who, by plurality of voices, shall be elected trustees of said corporation; 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 such 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.

(90.) SEC. LII. Any debating or literary society may organize according to the provisions of this division, without having subscribed one hundred dollars, and may form its own constitution and by-laws, and regulate its own proceedings without appointing trustees, or any other than such officers as may be proper; and when so organized shall receive all the benefits conferred by this division.

(91.) SEC. LIII. The persons so elected shall be trustees for said library, and 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.

(92.) SEC. LIV. 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.

(93.) SEC. LV. The trustees shall hold their offices one year, and until others are elected in their places, and shall manage the business of the said corporation; and there shall be one chairman of said trustees, one treasurer and one librarian; and it shall be lawful for the said trustees, whenever they conceive it necessary, to appoint one and the same person treasurer and librarian.

(94.) SEC. LVI. A general meeting of the members of the corporation shall be held once in each year for the election of officers, who shall be chosen by a plurality of votes; and any 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. The trustees of said library shall, annually, at their first meeting on and after the day that their offices commence, appoint one of the said trustees their chairman; and 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 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 the trustees of the said library shall, at every such annual meeting of the members of the said corporation, exhibit to the members the state of the said library, the minutes of the proceedings of the trustees during the year immediately preceding, with the treasurer's and librarian's account, stating the amount of the receipts and expenditures during such year.

(95.) SEC. LVII. The 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; and 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; and the chairman and a majority of the said trustees shall form a board of trustees, and in the absence of the chairman, the trustees so met shall choose another to serve on that occasion; the chairman shall have a casting vote and no other; 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, or 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 services in their stations respectively, and to appoint 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 said 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 of 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.

(96.) SEC. LVIII. 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 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 division: *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.

(97.) SEC. LIX. 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 division.

(98.) SEC. LX. Each member of such 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 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, 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 such sums shall become due as aforesaid, 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.

(99.) SEC. LXI. In case it shall happen that an election of trustees should not be made on any day, when, pursuant to this division, it ought to have been made, the said corporation shall not for that cause be deemed to be dissolved, but 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.

#### DIVISION V. FIRE COMPANIES.

##### SECTION

100. Forty or more persons may organize fire companies; may make by-laws.  
101. To be body politic and corporate; powers, &c., of corporation.  
102. Fines, how recovered and applied.  
103. Exemption from militia duty while member of fire company, and after serving in fire company twelve years.

##### SECTION

104. Members of fire department in city of Chicago, exempted from road tax.  
105. Firemen in cities of Peoria and Quincy, exempt from serving on jury.  
106. Members of fire companies in city of Quincy, exempted from road tax.  
107. Construction of this act; when to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 124.]

(100.) SECTION LXII. 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 fires, 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.

(101.) SEC. LXIII. 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.

(102.) LXIV. All fines and forfeitures for non-attendance or delinquency, imposed by the by-laws and regulations to be adopted by the companies pro-



vided for by this division, 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.

(103.) SEC. LXV. All persons who shall form themselves into fire companies, as is provided in this division, 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.

An Act to exempt the Members of the Fire Department in the City of Chicago from paying a Street or Road Tax.

[Approved Feb. 10, 1849. Laws, 1849, p. 84.]

(104.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly.* That the several persons within the city of Chicago who are members of the fire department of said city, shall be and they are hereby exempted from working out any road or street tax within said city, or from paying any money in lieu thereof.

An Act to exempt Firemen in the Cities of Peoria and Quincy from serving as Jurors.

[Approved Feb. 12, 1849. Laws, 1849, p. 84.]

(105.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly.* That hereafter every person who may be an acting member of an organized fire company in the cities of Peoria and Quincy, in the State of Illinois, shall, during the time that he continues such acting member, be free and exempt from serving as a juror in any case whatever.

An Act exempting Members of Fire Companies of the City of Quincy from Road Labor.

[Approved Feb. 12, 1849. Laws, 1849, p. 84.]

(106.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly.* That all members of any fire company of the City of Quincy, residing in said city, during the time he shall remain a member of said company, and comply with the rules and perform the duties thereof, shall be exempt from all road and street labor.

(107.) SEC. II. This act shall not be construed so as to exempt any person from any tax upon property. This act shall take effect from and after its passage.

## DIVISION VI. BANKS.

### SECTION

- 108. Time of charter of State bank extended.
- 109. Trustees to be appointed.
- 110. Bank to file acceptance in secretary of State's office.
- 111. Interest on paper of bank.
- 112. Duties of school commissioners and treasurers.
- 113. Debtors to bank not to pay interest.
- 114. Real estate of bank to be taxed.
- 115. Trustees authorized to maintain suits.

### SECTION

- 116. Suits continued after expiration of charter.
- 117. Act of liquidation extended.
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An Act for finally closing the Affairs of the State Bank of Illinois.

[Approved March 1, 1847. Laws, 1847, p. 20.]

(108.) SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the president, directors and company of the State bank of Illinois be, and they are hereby, allowed the use of the charter of said bank until the first day of November, in the year one thousand eight hundred and forty-eight, in addition to the time allowed in the third section of an act of the General Assembly, entitled, "An act to diminish the State debt and to put the State bank into liquidation," approved January 24, 1843, for the purpose of winding up the affairs of the said bank; the use of the charter hereby granted being subject to all the conditions, restrictions and limitations contained in the said third section and all other portions of the said act, and all acts supplemental thereto.

(109.) SEC. II. If the affairs of the said bank shall not be closed before the said first day of November, 1848, the Governor shall appoint three trustees, whose duty it shall be to take charge of all the assets of the said bank, and wind up its affairs, they being governed in doing so by the provisions of an act entitled "An act supplemental to an act to reduce the public debt one million of dollars, and to put the bank of Illinois into liquidation," approved the 28th February, 1845, so far as said provisions are applicable.

(110.) SEC. III. The State bank of Illinois shall, within three days from the passage of this act, signify the acceptance of the provisions thereof,

by a writing signed by the president and cashier, under the seal of the bank, and to be filed in the office of the secretary of State.

(111.) SEC. IV. That all certificates issued by said bank, in pursuance of the provisions of the above recited act, and all the notes issued by said bank, and in the hands of the school commissioners of the several counties in this State, or in the hands of any treasurer of any school district, at the passage of this act, shall, from and after the fourth day of March next, draw interest at the rate of six per cent. per annum until they shall be taken up. And the said bank is hereby required to pay said interest as aforesaid.

(112.) SEC. V. Said school commissioners and treasurers, who shall hold said certificates at the passage of this act, shall, on or before the first day of September next, report to the cashier of the bank at Springfield, the date and amount of such certificates, which report shall be verified by the oath of such commissioner or treasurer.

(113.) SEC. VI. The debtors to said bank shall not be bound to pay any interest on the debts now due said bank, from and after the fourth day of March instant.

(114.) SEC. VII. The real estate of said bank shall be liable to taxation, and sale on execution, in the same manner as the property of individuals.

An Act authorizing the Trustees of the State Bank of Illinois to maintain Suits at Law.

[Approved Feb. 10, 1849. Laws, 1849, p. 38.]

(115.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the trustees appointed by the governor of the State of Illinois, in pursuance of the second section of the act approved first of March, 1847, entitled "An act for finally closing the affairs of the State bank of Illinois," and the survivor or survivors of them and their successors in said trust, may, in their own names as such trustees, commence, prosecute and maintain all suits, either at law or in equity, which may be necessary to collect all or any debt or debts, claims, dues or demands due to the president, directors and company of said bank, during the existence of its charter, or which may have become due or may hereafter become due to them as such trustees; and also, all actions of every kind which said president, directors and company of the State bank of Illinois might have instituted or prosecuted if their charter had continued to exist.

(116.) SEC. II. All suits and actions, either at law or in equity, which were depending in any of the courts of this State at the time the charter of said bank expired by the act aforesaid, in which said president, director and company of the State bank of Illinois were parties, either as plaintiff or defendants, may be revived by or against said trustees, and in their name may be prosecuted to final trial.

An Act for the relief of the Assignees of the Bank of Illinois, and to extend the time for the Liquidation of the Affairs of said Bank.

[Approved Feb. 10, 1849. Laws, 1849, p. 38.]

(117.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the time for the liquidation of the affairs of said bank, pursuant to the provisions of "An act supplemental to 'an act to reduce the public debt one million of dollars, and to put the bank of Illinois into liquidation,'" in force February 28, 1845, be, and the same is hereby, extended to the first day of January, A. D. 1851.

(118.) SEC. II. That on all debts, dues and causes of action that have hitherto accrued to the president, directors and company of said bank, the assignees of said bank, or their successors in office, shall have power and authority to sue for and recover the same in their own names, in manner and form following, that is to say: Albert G. Caldwell, and Ebenezer Z. Ryan, and their successors in office, shall have such power and authority touching such debts, dues and causes of action as have accrued to, or been contracted with said bank at Shawneetown or Lawrenceville; and Samuel Dunlop and David A. Smith, as successor of John J. Hardin, deceased, and their successors in office, shall have such power and authority touching such debts, dues and causes of action as have accrued to, or been contracted with, said bank at Alton, Jacksonville or Pekin. And that all of said assignees, and their successors in office, shall have power jointly to sue in their own proper names, in ejectment or in chancery, for the recovery or establishment of, title to any real estate that may pertain to the execution of their trusts in the premises.

(119.) SEC. III. That all actions at law, or suits in chancery, that have hitherto been instituted in any of the courts of this State, by the said president, directors and company of said bank, or in their names, or in the names of said assignees as aforesaid, to the use of their assignees as aforesaid, shall be maintainable in the names of said assignees, or their successors in office, with reference to their relation and respective rights as defined in section two of this act: *Provided, nevertheless,* That persons now indebted to the said bank of Illinois, or to the assignees thereof, shall be allowed and permitted to pay all such indebtedness with the certificates of the said bank.

(120.) SEC. IV. That this act be considered and treated as a public act, and that it be in force from and after its passage.

An Act for closing the Affairs of the Bank of Illinois.

[Approved Feb. 15, 1851. Laws, 1851, p. 120.]

(121.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That William Brown, Joseph Gillespie and Albert G. Caldwell, or either of them, who may give bond in pursuance of an order or decree of the circuit court of the United States for the district of Illinois, rendered at the last term of said court, shall be held, deemed and considered as the legal successor or successors of the assignees of the the Bank of Illinois, and as such shall have the right to sue and be sued, to prosecute and defend all suits already brought in the name of said assignees, and to sue out executions on all judgments rendered in favor of the said Bank of Illinois, or the assignees of said bank; which execution shall issue in the names in which the judgments have been rendered, for the use of the said successors, and be controlled and collected by the said successor or successors, as they might have been by said bank or said assignees, at the time said judgments were rendered.

(122.) SEC. II. Said successor or successors as aforesaid may appoint as many agents as he or they may deem necessary, to assist in the collection of the debts due said bank, or the management of the real estate thereof, as he or they may find necessary.

(123.) SEC. III. Said successor or successors shall have the same right to sell and convey all the real estate belonging to the fund of said bank,

whether acquired by said bank or by the assignees thereof, as said assignees have heretofore had.

(124.) SEC. IV. Said successor or successors shall have the right to make such compromises as they may deem proper, of the debts due the said bank, having a due regard to the rights of the creditors of said bank.

(125.) SEC. V. This bill shall take effect from and after its passage.

An Act to establish a General System of Banking.

[Approved Feb. 15, 1851. Laws, 1851, p. 163.]

(126.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the auditor of public accounts is hereby authorized and required to cause to be engraved and printed, in the best manner to guard against counterfeiting, such quantity of circulating notes, in the similitude of bank notes, in blank, of different denominations, not less than one dollar, as he may, from time to time, deem necessary to carry into effect the provisions of this act; such blank circulating notes shall be countersigned, numbered and registered in proper books, to be provided and kept for that purpose in the office of the auditor, under whose direction, by such person or persons as the said auditor shall appoint for that purpose, so that each denomination of each circulating note shall bear the signature of such register, or one of such registers.

(127.) SEC. II. Whenever any person, or association of persons, formed for the purpose of banking under the provisions of this act, shall lawfully transfer to and deposit with the auditor any portion of the public stock issued, or to be issued, by the United States, or any State stocks on which full interest is annually paid, or the stocks of this State—the latter stocks to be valued at a rate twenty per centum less in value than the market price of such stocks, to be estimated and governed by the average rate at which such stocks have been sold in the city of New York, within the previous six months preceding the time when such stocks may be left on deposit with the auditor; and in no case shall the auditor issue bills for banking purposes, on bonds of this or any other State, on which less than six per cent. is not regularly paid, unless there shall be deposited with him at least two dollars in bonds, exclusive of the interest, for every dollar in bills so issued. Such person, or association of persons, shall be entitled to receive from the auditor an equal amount of such circulating notes, of different denominations, registered and countersigned as aforesaid; and it shall not be lawful for the auditor to take such stock at a rate above its par value: *Provided,* That stock shall in no instance be received by the auditor at a rate above the market value at the time of the deposit by said banker or association.

(128.) SEC. III. A descriptive list of the circulating notes so registered and signed, shall be delivered to the treasurer, who shall copy the same in the book hereinafter required to be kept by him, for recording descriptive lists of securities deposited with him for safe keeping.

(129.) SEC. IV. Such person, or association of persons, are hereby authorized, after having executed and signed such circulating notes, in the manner prescribed by this act, payable on demand, at the place of business, within this State, to loan and circulate the same as money, according to the ordinary course of banking business.

(130.) SEC. V. Three descriptive lists of the securities transferred to the auditor as aforesaid, shall be made and signed by the auditor and persons making the transfer, one in a well-bound book, to be kept by the auditor for that purpose, one in a like book to be kept by the treasurer, and one in a book to be kept by the association; and said securities shall then be delivered to the treasurer for safe keeping, who shall receipt to the auditor for the same, and shall be responsible for any loss or destruction thereof, growing out of or resulting from negligence, or the want of reasonable precaution and care. The whole or any part of said securities may be re-delivered to the auditor, for the purposes of being sold under the provisions of this act, or being used or disposed of under any order or decree of court, or of being returned to the owner, in conformity with the provisions of this act: the auditor, in either case, giving a receipt upon the book kept by the treasurer aforesaid, specifying therein the purpose for which such re-delivery was made; which receipt shall discharge the treasurer from all further responsibility.

(131.) SEC. VI. Any number of persons may associate to establish offices of discount, deposit and circulation, and become incorporated upon the terms and conditions, and subject to the liabilities prescribed in this act; but the aggregate amount of the capital stock of any such association shall not be less than fifty thousand dollars.

(132.) SEC. VII. Such persons, under their hands and seals, shall make a certificate, which shall specify:

*First.* The name assumed to distinguish such association, and to be used in its dealings.

*Second.* The place where the business is to be carried on, designating the particular city, town or village.

*Third.* The amount of capital stock, and the number of shares into which the same shall be divided.

*Fourth.* The names and residence of the shareholders, and the number of shares held by each of them respectively.

*Fifth.* The period at which such association shall commence and terminate: which certificate shall be acknowledged and recorded in the office of the recorder of the county where any office of such association shall be established, and a copy thereof shall be filed in the office of the secretary of State and the auditor of State; and upon the recording of which certificate the person or association of persons aforesaid shall become a body politic and corporate, by the name assumed as aforesaid, for and during the time fixed in the certificate, and by such name shall have power to make contracts: to grant and receive; to sue and be sued; to plead and be impleaded in all courts and places wherein legal or judicial proceedings may be had: to have and use a common seal, and alter the same at pleasure; to have, hold, use and enjoy property, real, personal and mixed, with the rents, issues and profits thereof; and to exercise all other powers conferred by this act; and all grants or conveyances of real estate shall be under the seal of the corporation, signed by the president, and countersigned by the cashier.

(133.) SEC. VIII. A copy of the certificate required by the preceding section of this act, duly certified by the recorder of the county and secretary of State, or by either of those officers, may be used as evidence in all courts

and places against any such association, or any other person for or against whom any such evidence may be necessary, on any civil or criminal trial.

(134.) SEC. IX. Such associations shall have power to carry on the business of banking, by discounting bills, notes, and other evidences of debt; by receiving deposits; by buying and selling gold and silver bullion, foreign coins and bills of exchange; by loaning money on real and personal securities, and by exercising such incidental powers as may be necessary to carry on such business; may choose one of their number as president, and appoint a cashier and such other officers and agents as their business may require.

(135.) SEC. X. The shares of said association shall be deemed personal property, subject to taxation, and shall be transferable on the books of the association, in such manner as may be agreed on in the articles of association; and every person becoming a shareholder by such transfer, shall, in proportion to his shares, succeed to all the rights and liabilities of shareholders by whom the transfer was made. No change shall be made in the articles of association, or of the shareholders or members thereof, by which the right, remedies or securities of its existing creditors shall be impaired. Such association shall not be dissolved by the death or insanity of any of the shareholders therein, when there is more than one shareholder in such association. Taxes shall be levied on and paid by the corporation, and not upon the individual stockholders; the value of the property to be ascertained annually by the bank commissioners herein provided for; and the rate of taxation shall be the same as that required to be levied on other taxable property by the revenue laws of the State.

(136.) SEC. XI. Contracts made by any such association, and all notes and bills by them issued and put in circulation as money, shall be signed by the president and cashier thereof; and all suits, actions and proceedings, brought or prosecuted by or in behalf of such association, may be brought or prosecuted in the name of the corporation; and no such suit, action or proceeding shall abate by reason of the death, resignation or removal from office of any president, but may be continued and prosecuted according to such rules as the court of law and equity may direct.

(137.) SEC. XII. Any persons having demands against any such association, may maintain actions against the corporation; which suits or actions shall not abate by reason of the death, resignation or removal from office of any president, but may be continued and prosecuted to judgment against the corporation; and all judgments and decrees obtained against such corporation, for any debt or liability of such association, shall be enforced against the property of the same, except such judgments or decrees as may be obtained against shareholders as herein provided.

(138.) SEC. XIII. The auditor may give to any person or association of persons, so transferring stocks in pursuance of the provisions of this act, power of attorney to receive interest or dividends thereon, and apply the same to their own use; but such powers may be revoked, upon such person or association failing to redeem the circulating notes so issued, or whenever, in the opinion of the auditor, the principal of such stock shall become insufficient security; and the auditor may, upon the application of the owner or owners of such stock, re-transfer to such owner or owners, upon receiving and canceling an equal amount of such circulating notes, delivered to him by each person or association, in such manner that the circulating notes shall

always be secured in full by the pledge of stocks; which circulating notes, after descriptive lists thereof have been made and recorded by the auditor and treasurer, shall, in presence of these officers, be consumed by burning.

(139.) SEC. XIV. In case such person or association of persons shall fail or refuse to pay any bill or note on demand, in the manner specified in the eighteenth section of this act, the auditor, after ten days' notice given in two newspapers printed in the city of New York, therein mentioned, may proceed to sell, at public auction, in the city of New York, the public stock so pledged, or such portion as may be necessary, and out of the proceeds of such sale shall cancel and pay the said bill or note, default in paying which shall have been made as aforesaid; but nothing in this act contained shall be considered as implying any pledge on the part of the State for the payment of said bills or notes, beyond the proper application of the securities pledged to the auditor for their redemption.

(140.) SEC. XV. The public stock to be deposited with the auditor by any such person or association, shall be, first, for the redemption of bills or notes of such person or association, put in circulation as money, until the same is paid; second, for the payment of all other liabilities, and the excess for the use of stockholders.

(141.) SEC. XVI. The plate, dies and materials to be provided by the auditor for the printing and marking of the notes provided for hereby, shall remain in his custody and under his direction; and the expense incurred in executing the provisions of this act, shall be audited and settled by the auditor, and paid out of any money in the treasury not otherwise appropriated; and for the purpose of reimbursing the same, the said auditor is authorized and required to charge against and receive from such person or association applying for such circulating notes, such rate per cent. thereon as may be sufficient for that purpose.

(142.) SEC. XVII. It shall not be lawful for the auditor, or other officer, to countersign bills or notes for any person or association, to any amount, in the aggregate exceeding the public stock deposited with the auditor by such person or association, as provided in the second section of this act; and any auditor or other officer who shall violate the provisions of this section, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by a fine not less than five thousand dollars, and be imprisoned not less than five years in the penitentiary.

(143.) SEC. XVIII. Every association under the provisions of this act, shall be liable to pay the holder of every bill or note put in circulation as money, the payment of which shall have been demanded and refused, damages for the non-payment thereof, in lieu of interest, at the rate of twelve and one-half per cent. per annum, from the time of such refusal until the payment of such evidence of debt and the damage thereon. The president and cashier of every association formed pursuant to the provisions of this act, shall keep a true and correct list of the names of all the shareholders of such association, and shall file a copy of such list in the office of the clerk of the county where any office of such association may be located, and also in the office of the auditor, on the first Monday in January, in every year.

(144.) SEC. XIX. It shall not be lawful for any association under this act, to make any of its bills or notes put in circulation as money, payable

at any other place than at the office where the business of the association is carried on and conducted.

(145.) SEC. XX. No banking association or individual banker shall issue or put in circulation any bills or notes of such association or banker, unless the same shall be made payable on demand. And every such association or bankers shall always keep on hand a sufficient amount of specie to redeem all such bills or notes as may be presented at the place of payment.

(146.) SEC. XXI. It shall be the duty of the auditor to receive mutilated notes issued by him and re-deliver, in lieu thereof, other circulating notes, to the same amount. And two descriptive lists of such mutilated notes so received, and of notes re-delivered, shall be made; one to be retained by the auditor, the other by the treasurer, and copied in each office on the book kept for the purpose of recording descriptive lists of securities; and all such mutilated notes shall, at the time they are received, be consumed by burning, in the presence of said officers.

(147.) SEC. XXII. All grants, conveyances, assignments, transfers, sales, or other disposition of property, rights, credits or effects by any such corporation, for the purpose or with intent to secure the payment of one liability in preference to another or others, or in any manner to secure any priority or preference to any one or more creditors, or which shall be intended to have such operation or effect, shall be void in respect to all other persons and creditors whose rights or remedies may be affected thereby.

(148.) SEC. XXIII. It shall be lawful for such association to purchase, hold and convey real estate for the following purposes:

1st. Such as shall be necessary for its immediate accommodation, banking-houses, and buildings connected therewith in the transaction of its business.

2nd. Such as shall be mortgaged to it in good faith, by way of security for loans made by and money due to such association.

3rd. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

4th. Such as it shall purchase at sales under judgments, decrees or mortgages held by such association, and at sales under judgments and decrees in favor of others, where it is done with a sole view of securing and saving debts due or to become due to such corporation.

(149.) SEC. XXIV. The said association shall not purchase, hold or convey real estate in any other case or for any other purpose whatever; and all conveyances of such real estate shall be made to the corporation, and which the president and cashier, or either, may sell, assign, grant or convey, under the direction of the association, free from any claim thereon in favor of or against the shareholders, or any person claiming under them.

(150.) SEC. XXV. Upon the application of the auditor, the shareholders of any such association, whose debts or shares shall amount to three thousand dollars, and stating facts, verified by affidavit, the judge of the circuit court of the county in which the business of the association may be conducted, may order an examination to be made by any competent person or persons, to be by him appointed, of the affairs of such association, for the purpose of ascertaining the safety of its investments and the prudence of its management; and the result of such examination, together with the opinion of the judge thereon, shall be published in such manner as he shall direct, and who

shall make such order in respect to the expenses of such examination and publication as he may deem proper.

(151.) SEC. XXVI. In case the maker or makers of any such circulating notes, countersigned and registered as aforesaid, shall, at any time hereafter, on lawful demand, during the usual hours of business, between the hours of ten and three o'clock, at the place where such note or notes is or are payable, fail or refuse to redeem them, in the lawful money of the United States, the holder of such note or notes making such demand, may cause the same to be protested for non-payment, by a notary public, in the usual manner, and the auditor, on receiving and filing in his office such protest, shall forthwith give notice, in writing, to the association or banker, the maker or makers of such notes, to pay the same, and if he or they shall omit to do so, the auditor shall immediately thereupon, (unless such association or banker shall satisfy him by affidavits filed in his office that they or he had a good defense, as against the person presenting the same, to a recovery thereof,) give notice in at least one paper printed (if any paper is so printed or published) at the place of business of such person or persons, bank or association, so refusing payment of any notes, (and in one newspaper published at the seat of government of the State of Illinois,) that all the circulation issued by such person or association will be redeemed out of the trust funds belonging to the maker or makers of such protested note, to the payment, *pro rata*, of all such circulating notes, whether protested or not, and to adopt such measures for the payment of such notes as will, in his opinion, most effectually prevent loss to the holders thereof. And so soon as any such note shall be protested as aforesaid, a copy of such protest shall be delivered to the president, cashier or principal clerk, at the office or place of business of the association. The powers and duties of any such association or banker over or with the same, shall cease and determine, and all the officers connected with the same shall be prohibited from exercising any control whatever over the same, unless by the decision or decree of the court in which proceedings may be had for the appointment of receivers and winding up the affairs of the association, it shall be determined that such association was not bound to pay the note or bill protested as aforesaid, the protest thereof to the contrary notwithstanding: *Provided*, That the legal existence of the corporation shall continue for purposes or proceedings in courts for and against the same, and of avoiding the loss of property of any kind, for want of a person in being to hold the same, but for no other purpose whatever. And it shall be the duty of the auditor to apply to any judge of the circuit court of this State, whose duty it shall be to appoint (a disinterested person or persons) a receiver or receivers, to take the assets and property of every such banker or association into his or their possession, and collect debts due, and apply all such assets and property as may come into his or their possession, under the direction of the circuit court of the county in which the corporation was located—first, to the redemption or payment of circulating notes; second, to the payment of all other indebtedness; and third, to the payment of stockholders on account of stocks invested. Receivers appointed under the provisions of this act shall give bond and security as may be required by the judge or court appointing them.

(152.) SEC. XXVII. That the distribution and application of all the

means, assets and property of any such banker or association, as shall come into the hands of any such receiver or receivers, or as shall be in the hands of the auditor, shall first be applied in payment and satisfaction of all notes issued as and for a circulating medium, by any such banker or association.

(153.) SEC. XXVIII. The amount of stock owned and held by any individual banker, or by any stockholder in any such association, shall be held and controlled by the receiver or receivers as aforesaid, for the payment of any note put in circulation; the said liability to continue for the space of six months after the assignment by him of any such stock; and any stockholder, who is really the party in interest, shall be liable as aforesaid, although such stock may be held and recovered in the name of some other party or individual.

(154.) SEC. XXIX. The names of all stockholders in any such association shall be written at length, and in legible characters, and shall be continually exposed, during banking hours, for public inspection; and every transfer of stock, with the date of assignment, shall be exhibited in like manner.

(155.) SEC. XXX. That each and all the provisions of this act shall apply to and control, in all respects, any banker who shall conduct business under the provisions of this law, whether the word banker is or is not used in any such provision.

(156.) SEC. XXXI. At the next session of the general assembly after this act takes effect, and every fourth year thereafter, the governor shall nominate, and by and with the advice and consent of the senate, appoint three citizens of the State as bank commissioners, whose duties shall be to make annual examination in respect to the affairs and business of associations incorporated under the provisions of this act, and in respect to the condition and management thereof, and also to inspect the securities filed with the auditor and treasurer, so as to be able to determine whether or not any change has been made in said securities, as well as in respect to the sufficiency of such securities to meet the liabilities of the corporation, and to report thereon to the auditor and to each corporation. Such commissioners shall have power to examine all books, papers and documents appertaining to the business of the corporation, and to swear or affirm all officers, agents and others connected with the corporation, in respect to any matter or thing about which they have the right to inquire, and their reports shall be published at the seat of government, and such other papers as they may direct.

(157.) SEC. XXXII. If the said bank commissioners shall ascertain, upon any examination which they may make, that any change has been made in the securities deposited with the treasurer, or that any part thereof has been lost, destroyed or improperly withdrawn, or in any way or manner misused or misapplied, or that securities have from any cause become lessened in value or insufficient as security for the redemption of bills or circulation, they shall notify the president and cashier of such association or corporation liable to be affected by any such state of facts, of the discovery thereof, and require the transfer and deposit of other securities, of like kind and value with those originally transferred, to supply the place of those changed, lost, destroyed or improperly withdrawn, or which shall have become insufficient security as aforesaid, in a reasonable time, to be fixed by said commissioners; or that said association or corporation surrender to the auditor, to be burned,

a sufficient amount of bills to reduce the liability of such association to such sum as that the securities in possession of the treasurer, will be sufficient for the redemption of all bills or notes not so surrendered; and in case of any failure to comply with any such requisition, the commissioners shall report the facts to the auditor, as well as to all the other associations incorporated under the provisions of this act; and the auditor shall thereupon proceed to put such defaulting association or corporation into liquidation, as provided for in cases of failure to redeem or pay notes or bills on demand.

(158.) SEC. XXXIII. Any two of said bank commissioners shall constitute a quorum to transact business.

(159.) SEC. XXXIV. Every banking association or individual banker who shall hereafter carry on banking business under the provisions of this act, shall make out and transmit to the auditor of State a full statement of its affairs, as they existed on the first Monday of January, April, July and October of each year, verified by the oath of its president and cashier; which statement shall be deposited in the office of said auditor, by the twentieth day of each of said months in each year; which statement shall be published, quarterly, in the nearest newspaper; and such statement shall contain—

1st. The amount of capital stock of the association or individual banker, paid in and invested according to law.

2nd. The value of the real estate, specifying what portion is occupied by the association or individual banker for the transaction of business.

3rd. The debts owing to the association or individual banker, and the date and amount of each bill or note discounted, and when the same was made payable.

4th. The amount of debts owing by the association or individual banker, and the amount deposited in other banks.

5th. The amount of notes or bills, then in circulation, of said association or banker; of loans and discounts, and specie on hand; what amount of notes of other banks is held by such banker or association.

6th. The amount of suspended debt held by such association or banker.

(160.) SEC. XXXV. Every association or individual banker that shall neglect or refuse to make out and transmit the statement required in the preceding section of this act, shall be restrained from the further prosecution of the banking business, and shall forthwith go into liquidation.

(161.) SEC. XXXVI. Whenever any individual banker or association, desirous of relinquishing the banking business, shall have redeemed at least ninety per cent. of their circulating notes, and shall produce a certificate of a deposit to his credit, in such bank as the auditor may approve, to an equal amount with the notes of such banker or association, it shall be lawful for the auditor to receive the same, and to give up all the securities theretofore deposited by such banker or association, for the redemption of the notes issued.

(162.) SEC. XXXVII. Such association or individual, after having complied with the provisions of the preceding section of this act, may give notice, for three years, in a paper published at the seat of government, and also in at least one paper published in the county where the said association or bank shall have been located, that all circulating notes issued by such association or banker must be presented at the auditor's office, within three



years from the date of such notice, or that the funds deposited for the redemption of the notes will be given up to the bank or association; and on receiving satisfactory proof of the giving such notice for the time aforesaid, the auditor shall surrender, to the order of said association or banker, any securities which he may hold for the payment of any unredeemed notes of the said association or banker; such notice to be published at least three weeks in each six months of each year.

(163.) SEC. XXXVIII. That any such association or banker, doing business under the provisions of this act, shall not be authorized to take or receive exceeding seven per centum per annum as interest on any real or personal security; which interest may, in all cases, be received in advance; and in the computation of time, thirty days shall be a month, and twelve months a year.

Notes, bills, and all other evidences of indebtedness to corporations or associations organized according to the provisions of this act, falling due or maturing on the Sabbath, or on the Fourth of July, or on Christmas, or New Year's day, shall be deemed as due or as having matured on the day previous.

The stockholders in every corporation or association organized under the provisions of this act, shall be individually responsible to the amounts of their respective share or shares of stock for all of its indebtedness and liabilities of every kind, to the full intent provided for in the constitution of this State.

When the property, rights, credits, assets and effects of any corporation or association, put into liquidation under the provisions of this act, shall have been exhausted in the redemption of notes and payment of liabilities, and there shall remain unpaid any indebtedness or liability of any kind, any person having right or cause of action upon or on account of any such remaining indebtedness or liability, shall have remedy, in any court of record having jurisdiction, against the stockholders for the amount due upon such indebtedness or liability; and to enforce this remedy, any such person may institute and maintain any appropriate action or suit in equity against the corporation or association, and upon the trial of such action or the hearing of such suit, if judgment or decree is attained against the corporation or association, the court shall direct an issue or issues to be made in the cause, for the purpose of ascertaining and deciding upon the liability and extent thereof of each stockholder under and according to the provisions herein, and of the constitution; and upon the decision of such issue or issues, the court shall enter judgment or decree against each stockholder for the amount and to the extent of his, her or their liability so ascertained; upon which judgment executions may issue against the stockholders in succession, until the amount of the judgment against the corporation shall be paid or collected, or the liabilities of the stockholders extinguished; and payments or collections made upon judgments against stockholders, shall operate to extinguish the liability of such stockholders to the extent or amount of such payments or collection.

Judgments or decrees entered against stockholders, under the provisions of this act, shall stand and remain as security for the payment of any judgment or decree which may thereafter be obtained against the corporation under the provisions hereof; and when any such subsequent judgment

or decree shall be obtained, the court shall order execution or executions to issue against stockholders liable to pay the same, until the amount shall be paid or collected, or the liabilities of stockholders shall be extinguished.

Whenever two or more judgments or decrees are obtained at the same term of the court in favor of different parties against any corporation, under the provision of the three foregoing sections, the aggregate amount of which shall exceed the amount for which the stockholders are liable, the court shall direct the amount collected to be divided between the said parties *pro rata*, or in proportion to the several amounts, and the same apportionment shall be made of money collected on any such judgments when the whole amount thereof cannot be collected.

Whenever any stockholders shall have paid the amount that he, she or they is or are liable, the court shall, on motion and proof of the facts of each payment, order satisfaction of the judgment, as against or in respect to such stockholder, to be entered of record.

(164.) SEC. XXXIX. At the general election to be held on the Tuesday next after the first Monday in November, one thousand eight hundred and fifty-one, at all the usual places of holding elections in this State, for the election of senators and representatives to the general assembly, the question whether or not this act shall go into effect, or in any manner be in force, shall be submitted to the people, and if the same is approved by a majority of all the votes cast at said election for and against the same, it shall go into effect and be in force from and after the date of said election; otherwise it shall not go into effect or in any manner be in force.

(165.) SEC. XL. Every person voting at said election shall have the right to use a ticket or ballot, with the words written or printed thereon, "For the general banking law," or "Against the general banking law;" which words shall indicate the vote of the elector for or against the approval of this act; and upon canvassing and counting the votes, each clerk of the election shall carefully mark down the votes given upon said questions, in separate columns prepared for that purpose, headed "For the general banking law," "Against the general banking law," and the judges or board of election shall, in the certificate required to be given of the result of said election, include the number of votes given for and against the general banking law as aforesaid.

(166.) SEC. XLI. In making the abstracts of votes given at said election, as required by the election law, the clerks shall make separate abstracts of the votes given under the provisions of this act, which shall be on one sheet, a copy of which shall, without delay, be transmitted by mail or other safe conveyance to the office of the secretary of State, indorsed thereon by the clerk, "Abstract of votes for and against banking," or in words clearly indicating the contents of the paper; and the abstract so transmitted shall be opened and the votes canvassed in the time and manner, and by the officers provided for in relation to the election for representatives to congress; and if it should appear that a majority of the votes cast upon said question are for the general banking law as aforesaid, or if it shall appear that the majority of votes cast are against said law, the officers canvassing the votes, shall, under their hands, make a certificate of the facts, stating the number of votes given for and against said law, and file the same in the office of secretary of State, to be by him recorded and filed with the enrolled act to

which it refers; and the said certificate or a copy thereof, certified by the secretary of State or keeper of enrolled laws, under the seal of office, shall be conclusive evidence of the facts therein stated; and upon the making and filing thereof, the secretary of State shall cause the same to be published, three weeks in succession, in two newspapers, published at the seat of government.

(167.) SEC. XLII. No corporation or association organized under the provisions of this act, shall exist longer than twenty-five years.

The foregoing act, having passed both houses of the General Assembly, and having been laid before the governor, was by him, on the 15th day of February, A. D. 1851, returned to the house of representatives, in which it originated, with his objections thereto in writing, and on the same day, being re-considered, passed the house of representatives and the senate, by a majority of all the members elected thereto respectively, and thereby became a law, the objections of the governor to the contrary notwithstanding.

An Act supplemental to and explanatory of an Act entitled "An Act to establish a General System of Banking," and to prevent the issuing and circulating of Illegal Currency.

[Approved Feb. 10, 1853. Laws, 1853, p. 30.]

(168.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the act to which this is supplementary shall be so construed that no person or persons shall become incorporated under the said act, until he, she or they shall first have deposited with the auditor United States or State stocks, as required by said act, so that the capital stock of the said incorporation shall amount, in such United States stocks or State stocks, at the rate and value fixed by said act, to the sum of fifty thousand dollars; and at no period during the existence of said bank shall the capital stock of the same, in stocks deposited as aforesaid, be less than the sum of fifty thousand dollars.

(169.) SEC. II. No bank, banking association, corporation, broker, banker, dealer in money, produce or foreign merchandise, or other person, shall emit, issue, utter, pay out, pass or receive in payment, or on deposit, any bill of credit, bond, promissory note, bill of exchange, order, draft, certificate of deposit, written instrument, or instrument partly written and partly printed, to be used as a general circulating medium, as or in lieu of money or other currency, or intended by the makers thereof to be so used, other than the bills or notes of banks of this State, countersigned in the auditor's office, according to the provisions of the act to establish a general system of banking, or the notes or bills, (of a denomination not less than five dollars,) of specie-paying banks, created by an express authority of law, in either of the United States, territories, the District of Columbia, or Canada. Every bank, banking association, corporation, broker, dealer in money, produce or foreign merchandise, or other person, who shall violate the provisions of this section, shall forfeit and pay to any person or persons who may sue for the same, the sum of fifty dollars for each and every bill of credit, bond, promissory note, bill of exchange, order, draft, certificate of deposit or other instrument, so issued, uttered, paid out, passed or received, contrary to the provisions of this section, to be recovered in an action of debt before any justice, magistrate or court having jurisdiction, to the amount claimed in any such suit.

(170.) SEC. III. In addition to the penalties provided for in the foregoing section, every broker, banker, dealer in money, produce or foreign

merchandise, and every officer, agent or employee, of any bank, banking association, corporation, broker, banker, dealer in money, produce or foreign merchandise, who shall offend against the provisions of this act, shall, for every bill, bond, note, order, certificate of deposit, or other instrument or piece of paper emitted, issued, uttered, paid out, passed or received, contrary to the provisions of this act, be liable to be indicted, and, on conviction, shall be imprisoned in the county jail not more than one year. It shall not be necessary in any indictment, suit or prosecution, under the provisions of this act, to specify or particularize any particular bill, note, bond, order, certificate of deposit or other instrument, but it shall be sufficient to allege generally that the defendant or defendants have been guilty of violating the provisions of this act by uttering, emitting, paying out, passing or receiving, as the case may be, any such bill, note, bond, order, certificate of deposit or other instrument, of the character or description which, by this act, are forbidden or prohibited to be issued, passed or received, and proof of such general nature shall be sufficient to sustain such indictment, suit or prosecution.

(171.) SEC. IV. Whenever it shall be represented to any one of the bank commissioners, upon the oath or affirmation of any credible person, setting forth the facts, or whenever, from any information, any one of the said commissioners shall have reason to believe that any bank, corporation, broker, banker, dealer in money, produce or foreign merchandise, or any officer, clerk, agent or other employee, of any such bank, corporation, broker, banker, dealer in money, produce or foreign merchandise, shall have been guilty of any violations of the provisions of this act, it shall be the duty of such commissioner forthwith to proceed to the said bank, or place of business of such bank, corporation, broker, banker, dealer in money, produce or foreign merchandise, officer, clerk, agent or employee, and then and there to inquire, by the oaths of the said broker, banker, dealer, officer, clerk, agent or employee, or other testimony, whether the said bank, corporation, broker, banker, dealer in money, produce or foreign merchandise, officer, clerk, agent or employee, have been guilty of any violation of this act. The said bank commissioner shall have full power and authority to issue subpoenas and attachments to compel the attendance of witnesses before him, from any part of the State, and shall also have power and authority to administer all oaths and affirmations to parties, witnesses or others, required to be administered or taken by this act; and shall have power to compel such broker, banker, dealer in money, produce or foreign merchandise, or any officer, clerk, agent or other employee, to answer all proper interrogatories propounded to him, her or them, touching any violation of the provisions of this act, and may commit any such person to jail, for refusal so to do, there to remain until such party consents to answer such interrogatory, or is otherwise discharged by due course of law. He shall reduce the said evidence and answers to writing, and report the same to the other bank commissioners, and also to the State's attorney for the judicial circuit in which the said bank, or other corporation, or the place of business of any such broker, banker, dealer, officer, clerk, agent or other employee, may be situated. And if the said commissioner shall be of opinion that any such banker, broker, dealer, officer, agent or employee, has been guilty of any violation of the provisions of this act, he shall make complaint before some judge, justice of the peace, or other proper officer, and the said judge,

justice of the peace, or other officer, shall proceed against the person or persons named in said complaint, in all respects, as provided by the eighteenth division of chapter thirty of Revised Statutes, entitled "Criminal Jurisprudence;" and, for the purpose of compelling the attendance of witnesses, may issue subpoenas and attachments to any part of the State: *Provided*, That no answer made by any broker, banker, dealer in money, produce or foreign merchandise, officer, clerk, agent or employee, or any other person, upon any examination made by or before any bank commissioner, judge, justice of the peace, or other officer, touching any violation of this act, shall be given in evidence against him, her or them, on the trial of any indictment, suit or prosecution, for the recovery of any penalty or forfeiture imposed or provided for by this act, or in any other writ or legal proceeding whatsoever.

(172.) SEC. V. In case the bank commissioners, or a majority of them, shall be satisfied that any bank, corporation, broker, banker, dealer in money, produce or foreign merchandise, or such officer, clerk, agent or employee, has been guilty of any violation of the provisions of this act, they shall immediately apply to some judge of a circuit or supreme court for a writ of injunction against such bank, corporation, broker, banker, dealer in money, produce or foreign merchandise, such officer, clerk, agent or employee, forbidding and restraining him or them from violating any of the provisions of this act; and such judge, after reasonable notice given to such bank, corporation, banker, broker, dealer in money, produce or foreign merchandise, or such officer, clerk, agent or employee, shall proceed, without delay, to investigate the questions involved in such application, and shall have power to compel the production of all books, papers, vouchers and documents in the possession of the defendant or defendants, or cause and to require answers, on oath, from such defendant or defendants; which answers shall not be evidence on the trial of any other action or suit in law or equity; and if, upon such examination, he shall be of opinion that any of the provisions of this act have been violated, he shall issue such writ of injunction and enforce the same, in case it shall be disregarded, according to the practice of the courts of chancery; and such further proceedings shall be had upon such application in the circuit court of the county where the office or place of business of such bank, corporation, broker, banker, dealer, officer, clerk, agent or employee, may be situated, as may be necessary to enforce the provisions of this act. And if it shall be finally determined by the judge or court that any of the provisions of this act have been violated, it shall, by order of the judge or court, be certified to the auditor, which shall be sufficient authority to him, and he shall proceed to put the said bank into liquidation, in the manner contemplated by this act, and the act to which this is a supplement.

(173.) SEC. VI. The bank commissioners to be appointed under the provisions of the act to which this is a supplement, before entering upon the duties of their office, shall take and subscribe an oath or affirmation, faithfully and impartially to perform all the duties enjoined upon and required to be performed by them, under the provisions of this act and the act to which this is a supplement; which said oath or affirmation shall be filed in the office of the secretary of State.

(174.) SEC. VII. Every payment made, in whole or in part, in any bill,

note, bond, order, draft, certificate of deposit, or other instrument or paper, the passing, uttering, emitting or use of which is prohibited by this act, shall be utterly null and void, and the persons or corporation to whom any such payment may have been made therein, may sue and recover upon the original contract or cause of action, in the same manner and with like effect as if no such payment had been made.

(175.) SEC. VIII. No action shall be maintained in any court of this State upon any contract, express or implied, the consideration of which, in whole or in part, shall be any bill, note, check, draft, or other instrument or paper, the use, receipt or emission of which is prohibited by this act, but the same shall be adjudged to be utterly null and void.

(176.) SEC. IX. In all prosecutions and suits for the recovery of penalties imposed for any violation of the provisions of this act, the person suing for the same, (notwithstanding he may be liable for, or may have given bond for the costs of such suit, or may be entitled to the said penalties when recovered,) and the defendant or defendants, shall be competent witnesses.

(177.) SEC. X. This act to be in force and take effect from and after the first day of August next.

An Act defining the Duties of the Auditor of Public Accounts relative to Banks going into Liquidation.

[Approved Feb. 14, 1855. Laws, 1855, p. 81.]

(178.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That whenever any person or association of persons, formed for the purpose of banking, under the provisions of "An act to establish a general system of banking," passed Feb. 15, 1851, has heretofore, or shall hereafter, be protested and go into liquidation, any person or corporation may return and deliver over to the auditor the circulating notes of such bank in sums of not less than one thousand dollars, which notes shall be canceled and destroyed in like manner as mutilated notes are required to be canceled and destroyed; and the auditor shall deliver to such person or corporation, or to their agent, an equal amount of the securities deposited by such bank: *Provided*, That the provisions of this section shall only apply in cases where the securities deposited have depreciated in value below the price at which they were deposited.

(179.) SEC. II. Any person or corporation desiring to exchange notes for securities, as provided for in the foregoing section, may do so at any time before the securities shall have been forwarded by the auditor for sale; and in no case shall the auditor forward any such securities for sale until after the expiration of twenty days from the publication of the notice required to be published by the twenty-sixth section of the general banking law of this State, nor until after the expiration of twenty days from the passage of this act. If, in the opinion of the auditor, the assets of the bank will not be sufficient to pay the whole amount of the notes outstanding, the person or corporation shall pay a *pro rata* share of the expenses incurred up to the date of making the exchange, in proportion to the amount of securities received by him or them.

(180.) SEC. III. The necessary expenses incurred by the auditor, in making demands of payment of notes protested, publishing notices, making application for the appointment of receivers, court fees, attorney fees, and

one per cent. on the amount of securities, to cover the expense of disposing of said securities and redeeming the circulation, shall be paid out of the assets of the bank in the hands of the auditor; and the expenses incurred by receivers, including their compensation, shall be paid out of the assets that may come into their hands.

(181.) SEC. IV. Receivers appointed under the general banking law of this State, shall report to the auditor within twenty days after their appointment, the condition of the bank, as near as practicable, and shall return the circulating notes of the bank which may have been redeemed and on hand at the time he or they shall take charge of the assets, and shall quarterly thereafter return all such circulating notes of the bank as he or they may redeem; all which circulating notes shall be canceled and destroyed in like manner as mutilated notes are required to be canceled and destroyed. In making descriptive lists of mutilated or other circulating notes returned for cancellation, or of notes redeemed by the auditor, it shall not be necessary to set forth the numbers of such notes, but the number of notes and the amount of each denomination shall be set forth.

(182.) SEC. V. This act shall be in force from and after its passage.

An Act to amend "An Act to establish a General System of Banking," and the Act supplementary thereto, approved Feb. 10, 1853.

[Approved Jan. 10, 1855. Laws, 1855, p. 32.]

(183.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever any banking association which has been or may be formed under the act to which this is an amendment, shall desire to close the business of circulating its bills, it shall be lawful for such association to file a certificate in the office of the auditor, of its desire and intention to withdraw its bills from circulation; and thereupon it shall be lawful for such banking institution to surrender to the auditor its bills, in sums of not less than one thousand dollars; and when such surrender shall be made, it shall be the duty of the auditor to deliver to such banking association a *pro rata* amount of the securities deposited with him by such association.

(184.) SEC. II. Whenever any banking association shall surrender to the auditor any amount of its bills, and shall pay to the auditor an amount, in specie, equal to all the outstanding bills of such banking association, the auditor shall surrender to such association all the securities deposited with him by such association, and the auditor shall return the specie so paid to him under the same regulations and for the same purposes for which the securities were held.

(185.) SEC. III. Whenever any banking association shall file the certificate contemplated in the first section of this act, with the auditor, said association shall cease to pay out or circulate its bills; and any such banking association which shall, after filing said certificate, and withdrawing its securities, or any portion thereof, under the provisions of this act, pay out or issue any of its bills, shall be subject to the same penalties which are imposed by the act to which this is an amendment, upon persons or associations illegally issuing bills for circulation, as or in lieu of money.

(186.) SEC. IV. After filing the certificate aforesaid, said bank filing the same shall cease to do any banking business whatever, and also to have

any banking powers, except to wind up its concerns, collect debts due to it, and pay debts due from it, to sue and be sued therefor: *Provided,* That the auditor shall retain a sufficient amount of stocks, at their certain value, to pay on the remaining outstanding notes of said bank.

(187.) SEC. V. This act to take effect and be in force from and after its passage.

An Act to enable Banks having State Stocks deposited with the State Treasurer, to receive their due proportion of the Payments on the Principal thereof, under Art. XV. of the Constitution.

[Approved Feb. 15, 1855. Laws, 1855, p. 164.]

(188.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the State treasurer, on every first day of January, to present to the auditor all evidences of State indebtedness in his possession, which have been deposited with him in pursuance of the provisions of the general banking law, which are entitled to receive a *pro rata* of the amount paid on every first day of January, on account of the principal of State indebtedness, under the fifteenth article of the constitution, and that the proper dividends shall be declared on all evidences of indebtedness so presented.

(189.) SEC. II. That the treasurer shall hold the *pro rata* dividends so received until the banks, which are the owners of said evidences of indebtedness, shall have deposited with the auditor such an amount of stocks of any of the kinds receivable under the provisions of the general banking law, as are equal in value, under the provisions of the said law, to the amount of dividend held by the treasurer as aforesaid, and he shall then pay over the dividends to the banks entitled to receive them.

(190.) SEC. III. That nothing contained in this act shall be so construed as to withdraw any of the said evidences of indebtedness from the custody and charge of the State treasurer; and that the auditor shall cause the amount of dividend paid on any such indebtedness to be indorsed thereon before the same shall be withdrawn by any bank or other party.

An Act for the Settlement of an Account of the Trustees of the State Bank of Illinois.

[Approved Feb. 15, 1855. Laws, 1855, p. 141.]

WHEREAS, on the seventh day of April, 1851, the trustees of the State Bank of Illinois, in accordance with the provisions of "An act authorizing the refunding of the State debt," surrendered to the governor, to be refunded, State principal bonds and scrip to the amount of thirty thousand seven hundred dollars and seventy cents (\$30,700.70,) on which State bonds and scrip a dividend of seventy per cent., or thereabouts, had been obtained on the first day of January, 1851, under the fifteenth article of the constitution: AND WHEREAS, in refunding these bonds and scrip, the new bonds for principal and interest were dated 1st July, 1847, and the bonds for principal were issued only for the thirty per cent. remaining unpaid on the old bonds, and the interest bonds were issued only for the interest due up to the said 1st July, 1847; AND WHEREAS, by this process the interest due on the seventy per cent. of the bonds from the said first day of July, 1847, until the time of their being refunded, is lost sight of, and the trustees have no voucher or evidence thereof, although the same is justly due to them; therefore,

(191.) SEC. I. *Be it enacted by the People of the State of Illinois, repre-*

sent in the General Assembly, That the governor be required and authorized to issue to the said trustees of the State Bank of Illinois, interest bonds of the kind provided for in the second section of "An act to authorize the refunding of the State debt," approved 23th February, 1847, for the sum of four thousand five hundred and thirty-eight dollars and seventy-nine cents, or such sum, not exceeding this amount, as he shall find to be justly due them on the bonds and scrip refunded as above stated.

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An Act for the Incorporation of Boards of Trade and Chambers of Commerce.

[Approved Feb. 8, 1849. Laws, 1549, p. 42.]

(192.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any number of persons, not less than twenty, residing in any town or city, may associate themselves together as a board of trade, and assemble at any time and place upon which a majority of the members so associating themselves together may agree, and elect a president, one or more vice presidents, as they see fit; a secretary and treasurer, and ten or more directors, as they shall see fit; adopt a name, constitution and by-laws, such as they may agree upon; and shall thereupon become a body corporate and politic, in fact and in name, by the name, style or title which they may have adopted, and by that name shall have succession, shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law and equity whatever; and they and their successors shall have a common seal, and may alter and change the same at their discretion.

(193.) SEC. II. Said corporation shall have the right to admit as members, such persons as they may see fit, and expel any members as they may see fit; and in all cases a majority of the members present at any stated meetings shall have the right to pass, and also the right to repeal, any by-laws of said corporation; and in all cases the constitution and by-laws adopted by such corporation shall be binding upon and control the same

until altered, changed or abrogated, in the manner that may be prescribed in such constitution.

(194.) SEC. III. Said corporation, by the name and style which shall be adopted, shall be capable in law of purchasing, holding and conveying any estate, real or personal, for the use of said corporation: *Provided,* Such real estate shall not exceed in quantity one city, town or village lot and building, in the city, town or village where said corporation may be located.

(195.) SEC. IV. The officers shall hold their offices for the time which shall be prescribed in the constitution adopted by such corporation, and until others shall be elected and qualified, or prescribed by such constitution.

(196.) SEC. V. The president, vice president, secretary and treasurer, shall be *ex officio* members of the board of directors, and, together with the directors elected, shall manage the business of said corporation.

(197.) SEC. VI. All officers shall be elected by a plurality of votes given at any election, and a general election of officers shall be held at least once in each year; but in case of any accidental failure or neglect to hold such general election, the corporation shall not thereby lapse or terminate, but shall continue and exist, and the old officers shall hold over until the next general election of officers provided for in the constitution.

(198.) SEC. VII. The award of any general committee of reference appointed by said corporation, upon any matter of difference submitted to such committee for arbitration in writing, with or without seal, by any member of said corporation, or by any other person whomsoever, shall have the same force and effect as if the same had been submitted to the arbitration of the members of said committee of reference by their individual names, by deed of submission; and such award may be filed and made a rule of court, and judgment entered thereon, and execution issued, in the same manner and under the same rules and regulations that other awards may be entered under and by virtue of the provisions of the seventh chapter of the Revised Statutes, entitled "Arbitrations and Awards." Writs of error may be had, and appeals taken from the decision of the court, in the same manner as is prescribed in said chapter.

(199.) SEC. VIII. No submission or arbitration bond shall be required to be filed with such awards, but four days' notice of the filing of such award shall be given to the opposite party of the party filing the award. Said committee of reference, when sitting as arbitrators as aforesaid, shall have the right to issue subpoenas and compel the attendance of witnesses by attachment, the same as justices of the peace.

(200.) SEC. IX. Said corporation may inflict fines upon any of its members, and collect the same, for breach of the provisions of the constitution or by-laws; but no fine shall in any case exceed the sum of five dollars. Such fines may be collected by action of debt, brought in the name of the corporation, before any justice of the peace, against the person upon whom the fine shall have been imposed.

(201.) SEC. X. Said corporation shall have no power or authority to do or carry on any business, excepting such as is usual in the management and conduct of boards of trade or chambers of commerce, and as provided for in the foregoing sections of this bill.

An Act to authorize the Formation of Corporations for Manufacturing, Agricultural, Mining or Mechanical Purposes.

[Approved Feb. 10, 1849. Laws, 1849, p. 87.]

(202.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That at any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, agricultural, mining or mechanical business, may make, sign and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk in the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of State, a certificate in writing, in which shall be stated the corporate name of the said company, and the objects for which said company shall be formed, the amount of capital stock of said company, the term of its existence not to exceed — years, the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage the concerns of said company for the first year, and the name of the town and county in which the operations of said company are to be carried on.

(203.) SEC. II. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in such certificate; and by that name have succession, and be capable of suing and being sued in any court of law or equity in this State; and they and their successors may have a common seal, and make and alter the same at pleasure; and they shall, by their corporate name, be capable in law of purchasing, holding and conveying any real or personal estate whatever, which may be necessary to enable the said company to carry on their operations named in such certificate, but shall not mortgage the same, or give any lien thereon.

(204.) SEC. III. The stock, property and concerns of such company shall be managed by not less than three nor more than nine trustees, who shall respectively be stockholders, and a majority of whom shall be citizens of this State, who shall, except for the first year, be annually elected by the stockholders, at such time and place as shall be determined by the by-laws of the company; and public notice of the time and place of holding such election shall be published, not less than thirty days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on: and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation or otherwise, it shall be filled for the remainder of the year in such manner as may be provided for by the by-laws of the said company.

(205.) SEC. IV. In case it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an

election for trustees, in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against said company, until their successors shall be elected.

(206.) SEC. V. There shall be a president of the company, who shall be designated from the number of the trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office as the company by its by-laws may require.

(207.) SEC. VI. It shall be lawful for the trustees to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as the trustees [shall] deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or a notice requiring such payment shall have been published for six successive weeks, in the newspaper nearest to the place where the business of the company shall be carried on as aforesaid.

(208.) SEC. VII. The trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the constitution and laws of this State, and prescribing the duties of officers, artificers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

(209.) SEC. VIII. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon; and it shall not be lawful for such company to use any of their funds in the purchase of any stock in any other corporation.

(210.) SEC. IX. The copy of any certificate of incorporation, filed in pursuance of this act, certified by the county clerk or his deputy, to be a true copy, and of the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated.

(211.) SEC. X. All the stockholders of every company incorporated under this act shall be severally individually liable to the creditors of the company in which they are stockholders, to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded as is prescribed in the following section; and the capital stock, so fixed and limited, shall all be paid in, one-half within one year, and the other half thereof within two years from the incorporation of said company, or such corporation shall be dissolved.

(212.) SEC. XI. The president and a majority of the trustees, within thirty days after the payment of the last instalment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in; which certificate shall be signed and sworn to by the president and a majority of the trustees; and they shall,



within the said thirty days, record the same in the office of the county clerk of the county wherein the business of said company is carried on.

(213.) SEC. XII. Every such company shall annually, within twenty days from the first of January, make a report, which shall be published in the newspaper published nearest the place where the business of said company is carried on, which shall state the amount of capital, and of the proportion actually paid, and the amount of its existing debts; which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the clerk of the county where the business of the company shall be carried on; and if any of said companies shall fail so to do, all the trustees of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such report shall be made.

(214.) SEC. XIII. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, while they shall respectively continue in office: *Provided*, That if any of the trustees shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the secretary of the company and with the clerk of the county, they shall be exempt from the said liability.

(215.) SEC. XIV. Nothing but money shall be considered as payment of any part of the capital stock, and no loan of money shall be made by any such company to any stockholder therein; and if any such loan shall be made to a stockholder, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the company contracted while they are stockholders or officers thereof.

(216.) SEC. XV. If any certificate or report made, or public notice given, by the officers of any company, in pursuance of the provisions of this act, should be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company, contracted while they are stockholders or officers thereof.

(217.) SEC. XVI. No person holding stock in any such company, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act, and held the stock in his own name.

(218.) SEC. XVII. Every such executor, administrator, guardian or trustee, shall represent the stock in his hands at all meetings of the com-

pany, and may vote accordingly as a stockholder, and every person who shall pledge his stock as aforesaid, may, nevertheless, represent the same at all such meetings, and may vote accordingly as a stockholder.

(219.) SEC. XVIII. The stockholders of any company organized under the provisions of this act, shall jointly, severally and individually be liable for all debts that may be due and owing to all their laborers, servants and apprentices, for services performed for such corporation.

(220.) SEC. XIX. Any corporation or company heretofore formed by special act or under the general law, and now existing, for any manufacturing, agricultural, mining or mechanical purposes, or any company which may be formed under this act, may increase or diminish its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other manufacturing, mining or mechanical business, subject to the provisions and liabilities of this act. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of the capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital: and any existing company heretofore formed may come under and avail itself of the privileges and provisions of this act, by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties and liabilities of this act.

(221.) SEC. XX. Whenever any company shall desire to call a meeting of the stockholders, for the purpose of availing itself of the privileges and provisions of this act, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees or directors to publish a notice, signed by a majority of them, in the nearest newspaper, (in the county, if there be one published therein,) at least three successive weeks, and to deposit a notice thereof in the post office, addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, and the time and place when and where such meeting shall be held: and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business as aforesaid, or to enable a company to avail itself of the provisions of this act.

(222.) SEC. XXI. If at any time and place specified in the notice provided for in the preceding section, stockholders shall appear by proxy or in person, representing not less than two-thirds of all the shares of stock of the corporation, they shall organize and proceed to a vote of those present, in person or by proxy; and if, on canvassing the votes, it shall appear that a sufficient number of votes are in favor of increasing or diminishing the amount of capital, or extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this act, a certificate of the proceedings, showing a compliance with the provisions of this act, the amount of capital actually paid in the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out,

signed and verified by the affidavit of the chairman, and be countersigned by the secretary; and such certificate shall be acknowledged by the chairman, and filed as required by the first section of this act, and when so filed, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid, and the company shall be entitled to the privileges and provisions, and be subject to the liabilities of this act.

(223.) SEC. XXII. If the indebtedness of any company organized under this act shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of the company.

(224.) SEC. XXIII. No stockholder shall be personally liable for the payment of any debt contracted by any company formed under this act, which is not paid within one year from the time the debt becomes due, unless a suit for the collection of such debt shall be brought against such company, within one year after the debt became due; and no suit shall be brought against any stockholder who shall cease to be a stockholder in any such company, for any debt contracted by said company, unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder, nor until an execution against the company shall have been returned unsatisfied in whole or in part.

(225.) SEC. XXIV. It shall be the duty of the trustees of every corporation formed under this act, to cause a book to be kept by the treasurer or secretary thereof, containing the names of all persons, alphabetically arranged, who are or shall, within six years, have been stockholders of such company, and showing their place of residence, the numbers of shares of stock held by them respectively, the time when they became owners of such shares, and the amount of stock actually paid in; which book shall, during the usual business hours of the day, on every business day, be open for inspection of stockholders and creditors of the company, and their personal representatives, at the office or principal place of business of such company, in the county where its business operations shall be located; and any and every such stockholder, creditor or representative, shall have a right to make extracts from such book; and no transfer of stock shall be valid for any purposes whatsoever except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this act, until it shall have been entered therein, as required by this section, by an entry showing to and from whom transferred. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff, in any suit or proceeding against such company, or against any one or more stockholders. Every officer or agent of such company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or to allow the same to be inspected, and extracts to be taken therefrom, as hereinbefore provided, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured a penalty of fifty dollars for any such neglect or refusal, and all damages resulting therefrom; and every company that shall neglect to keep such book open for inspection as aforesaid, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the name of the people, in the circuit court of the county in which the business of such corporation

shall be located; and when so recovered, the amount shall be paid into the treasury of such county, for the use thereof.

(226.) SEC. XXV. The legislature may at any time alter, amend or repeal this act, saving and preserving all rights which may become vested under the same, and may amend or repeal any incorporation formed or created under this act, for any violation of the provisions of this act, or any act amendatory of the same; but such amendment or repeal shall not, nor shall the dissolution of any company formed under this act, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

### DIVISION VIII. INSTITUTIONS OF LEARNING.

SECTION	SECTION
227. How to organize.	234. To appoint a principal.
228. To be a body politic.	235. Treasurer to give bond.
229. Power to fill vacancies.	236. Process.
230. To hold property.	237. Duty of trustees.
231. Duty of trustees.	238. Forfeiture of rights.
232. In case of donation or bequest.	239. Words added.
233. To hold only one thousand acres of land.	240. When act to be in force.

#### An Act for the Incorporation of Institutions of Learning.

[Approved Jan. 26, 1849. Laws, 1849, p. 86.]

(227.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any five or more persons being desirous of associating themselves for the purpose of establishing an institution of learning, may make, sign and acknowledge before any officer authorized to take the acknowledgment of deeds in this State, and file in the office of the secretary of State, and also in the office of the recorder of the county in which said institution is to be established, a certificate or declaration in writing, in which shall be stated the name or title by which such institution shall be known in law, the number of trustees, directors or managers, and their names, the particular branches of literature and science, or either of them, proposed to be taught, and if said institution is to be of the rank of a college or university, the number and designation of the professorships to be established.

(228.) SEC. II. Upon filing the said certificate as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall, by virtue of the provisions of this act, be a body politic and corporate, by the name and style stated in such certificate, and by that name and style shall have perpetual succession, with power to sue and be sued, plead and be impleaded, to acquire, hold and convey property in all lawful ways, to have and use a common seal, and the same to alter and change at pleasure, to make and alter from time to time such by-laws not inconsistent with the constitution of this State and of the United States, as they may deem necessary for the government of said institution, and to confer upon such persons as may be considered worthy, such academical or honorary degrees as are usually conferred by similar institutions.

(229.) SEC. III. Any corporation so formed as aforesaid shall have power to fill such vacancies in their own body as may happen by death, resignation or otherwise, and shall hold the property of said institution solely for the purposes of education, and not for the individual benefit of themselves or of any contributor to the endowment of the same.

(230.) SEC. IV. Any corporation formed in accordance with the provisions of this act, shall be competent in law and equity to take to themselves, in their corporate name, real, personal or mixed property, by gift, grant, bargain and sale, conveyance, will, devise or bequest, of any person or persons whomsoever, and the same estate to grant, bargain, sell, convey, demise, let, place out at any interest, or otherwise dispose of the same, for the use of said institution, in such manner as shall seem most beneficial thereto.

(231.) SEC. V. The trustees, directors or managers of any corporation formed under this act, shall faithfully apply all the funds collected, or the proceeds of the property belonging to said institution, according to their best judgment, in erecting and completing suitable buildings, supporting necessary officers, instructors and servants, and procuring books, maps, charts, globes, and philosophical, chemical and other apparatus, necessary to the success of said institution.

(232.) SEC. VI. In case any donation, devise or bequest shall be made for particular purposes, accordant with the designs of the institution so established as aforesaid, and the corporation shall accept the same, such donation, devise or bequest shall be applied in conformity with the express conditions of the donor or deviser.

(233.) SEC. VII. No corporation established as aforesaid shall be allowed to hold more than one thousand acres of land at any one time, unless the said corporation shall have received the same by gift, grant or devise, and in such case, such corporation shall be required to sell or dispose of the same within ten years from the time the title thereto is acquired; and on failure so to dispose of the same, said land, over and above one thousand acres, shall revert to the original donor, grantor, deviser or their heirs.

(234.) SEC. VIII. Corporations formed under this act shall have power to employ and appoint a president or principal for each institution, and all such professors or servants as may be necessary, and shall have power to displace any of them as the interest of the institution requires; to fill vacancies which may happen by death, resignation or otherwise, among said officers or servants, and to prescribe and direct the course of studies to be pursued in said institution.

(235.) SEC. IX. Any corporation so established as aforesaid, may require the treasurer of said institution, and all other agents thereof, before entering upon the duties of their appointment, to give bonds for the security of said corporation in such sums and with such sureties as shall be deemed proper and sufficient.

(236.) SEC. X. All process against any corporation established under this act shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the president or treasurer, at least sixty days before the return day thereof.

(237.) SEC. XI. It shall be the duty of the trustees of any institution created under this act, or a majority of them, on or before the first Monday of January in each year, to file in the office of secretary of State, and in the

recorder's office of the county where the original certificate is filed, a statement of the trustees and officers of said institution, with an inventory of its property and liabilities, the number of students, and such other information as will exhibit its condition and operations.

(238.) SEC. XII. In case any corporation created under this act, shall at any time violate or fail to comply with any of the foregoing provisions, upon complaint being made to the circuit court of the county in which the same is situated, a writ of *scire facias* shall issue, and the circuit attorney shall prosecute in behalf of the people, for a forfeiture of all rights and privileges secured by this act to such corporation.

An Act to amend an Act entitled "An Act for the Incorporation of Institutions of Learning."  
[Approved Jan. 24, 1851. Laws, 1851, p. 7.]

(239.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the act entitled "An act for the incorporation of institutions of learning," in force April 13, 1849, be, and the same is hereby, amended by the addition of the words "and associates," after the word successors, in the second line of section two of said act.

(240.) SEC. II. This act to be in force from and after its passage.

#### DIVISION IX. INSANE HOSPITAL.

SECTION	SECTION
241. Name, style and location.	271. Jurisdiction of county courts.
242. Persons incorporated: by-laws, compensation: appointments: superintendent; assistant; physician; treasurer; salaries.	272. Acts in vacation.
243. Land; buildings; tax.	273. Certificate to sheriff; duty of sheriff.
244. Shall contract for buildings: description of buildings.	274. Persons heretofore declared insane.
245. Report to legislature.	275. Trustees to publish notice.
246. Bond.	276. Married women and infants.
247. Treasurer of State; governor and treasurer to report: <i>proviso</i> .	277. Expenses.
248. Power of superintendent.	278. Persons laboring under contagious diseases.
249. To take and hold lands, &c., donated.	279. Sheriff to employ assistance, when.
250. Admission of inmates; <i>proviso</i> .	280. Clothing.
251. Indigent persons.	281. Penalties of bonds.
252. Insane paupers.	282. Medical superintendent exempt from jury service.
253. Power of courts; insane persons; mode of payment: lien upon property.	283. Employees exempt from jury service, &c.
254. County commissioners.	284. Biennial reports; <i>proviso</i> .
255. Application to circuit court.	285. Deficiency of funds, how supplied.
256. Indigent insane to have preference.	286. Trustees to be appointed; classification; powers.
257. Ex-officio visitors.	287. Treasurer to be secretary; accounts.
258. Tax extended for insane hospital; report of trustees.	288. Trustees to meet; expenses.
259. Deaf and dumb asylum, term of office of president and directors; governor to appoint directors; name of the institution.	289. Vacancies, how filled.
260. Deaf and dumb citizens to be received.	290. Accounts of treasurer.
261. Board to meet annually.	291. Statement to be filed before received; form of statement; subpoenas to issue for witnesses; jury.
262. Amount appropriated; directors to pay all debts.	292. Evidence; verdict.
263. To purchase land; to build workshops and out-buildings.	293. Pauper.
264. \$10,000 appropriated to enlarge buildings.	294. Duty of relatives; form of bond.
265. When act to be in force.	295. Duty of superintendent; form of warrant to sheriff; superintendent to indorse warrant; <i>proviso</i> ; further <i>proviso</i> .
266. Special tax; <i>proviso</i> .	296. Expense.
267. Act repealed in part.	297. Compensation to the sheriff.
268. Duty of trustees.	298. Clothing.
269. Who to be received.	299. Patient may be discharged.
	300. Notice.
	301. Application of non-resident; bond.
	302. Idiots.
	303. When act to be in force; conflicting acts repealed.

An Act to establish the Illinois State Hospital for the Insane.

[Approved March 1, 1847. Laws, 1847, p. 52.]

(241.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* There shall be established, as soon after the passage of this act as shall be practicable, at, or within four miles of, the town of Jacksonville, in the county of Morgan, in this State, an institution to be styled and known as the Illinois State Hospital for the Insane.

(242.) SEC. II. That Joseph Morton, James Dunlap, John J. Hardin, John Henry, Samuel D. Lockwood, William Thomas, Bezeleel Gillett, Nathaniel English, and Owen M. Long, of Morgan county, shall constitute a body politic and corporate, by the name and style of the "Trustees of the Illinois State Hospital for the Insane," who shall manage and direct the concerns of the institution, and make all necessary by-laws and regulations for their own governance as may not be inconsistent with the laws and constitution of this State; they shall have power to hold, dispose of, and convey all real and personal property conveyed to them by gift, devise or otherwise, for the use of the institution; they shall serve without compensation, and shall serve as follows, to be determined among them by lot, viz: Three of them shall serve for one year, three for two years, and three for three years, from the passage of this act, and until their successors are appointed and qualified; and at the expiration of the respective terms of office, the vacancies shall be filled by appointments for three years, to be made by the governor of the State. Should any vacancy occur, by death, resignation or otherwise, such vacancy shall be filled by the governor by an appointment for the unexpired term of the trustee whose place is thus vacated. The said trustees shall have charge of the general interests of the institution; they shall appoint the superintendent, assistant physician, and steward, and fix the amount of their salaries. The superintendent shall be a skillful physician, and shall be appointed for a term of two years, during which time his salary shall not be reduced; he shall be subject to removal only for infidelity to the trust reposed in him, or incompetency to the discharge thereof; he shall be a married man, and with his family reside in the institution. The trustees, by and with the advice and consent of the governor, shall make such by-laws for the government of the institution as shall be necessary. They shall appoint a treasurer, who shall give bond to the governor and his successors in office, for the use of the people of the State of Illinois, for the faithful discharge of the duties of his office; they shall determine his compensation for services, also the salaries of such other officers and assistants as may be necessary to the able and economical administration of the affairs of the institution.

(243.) SEC. III. The said trustees are authorized to purchase or obtain, by grant or otherwise, not exceeding three hundred acres of land, situated as aforesaid, which said tract of land shall have a never-failing supply of water on the premises, and be conveniently situated for necessary supplies of fuel. For the purpose of securing said land, if necessary, as also for the purpose of erecting and constructing the hereinafter described buildings, and meeting such expenditures as may be incidental to the erection and completion of the said hospital and appurtenances, there is hereby appropriated the proceeds of a tax on all the taxable property in this State, of the one-

fifth of a mill on the dollar's worth of such taxable property; which said tax shall be continued for three years, and shall, in addition to the taxes now provided by law, be levied as other taxes are now raised and paid into the treasury, to be disbursed as hereinafter provided.

(244.) SEC. IV. At any time after the said site shall have been secured, not exceeding three months, the said trustees shall contract for the erection of the necessary buildings and out-houses, and the improvement of the ground appertaining thereto, on the most improved plans, having reference to commendable prudence: *Provided,* That the hospital building shall be constructed in the most approved manner, of brick or unhewn stone, the partition walls to be brick, and to contain flues for heating, ventilators, and also water pipes; the roof to be fire proof.

(245.) SEC. V. The said trustees, on or before the first day of the meeting of the general assembly of this State, at every session thereof, [shall] lay before each branch of the same, an exact account of all the contracts, expenditures and liabilities which they shall have incurred or authorized in the execution of their duties, with vouchers for the same; and in case of their failure to do so, their authority to issue on the State treasury to cease; and the trustees shall so construct and complete the said buildings, out-houses and improvements, as the same may accommodate two hundred and fifty patients and the necessary attendants; and the whole cost of so doing shall not exceed sixty thousand dollars.

(246.) SEC. VI. The said trustees shall, before entering upon the duties of their office, give bonds, with such security as may [be] required by the governor, for the faithful and proper application of the funds placed in their hands, and performance of their duties.

(247.) SEC. VII. The treasurer of the State is hereby directed to receive from the collectors of the several counties in this State, the moneys arising from the tax levied by this act, and to keep secure the same as a separate fund, to be styled and known as "the fund for the insane," and shall therefrom pay out to the said trustees, on the warrant of the governor, such sums of money as they may require for buildings and improvements contemplated by this act, not exceeding the amount of said fund, at such times as the same may be required; and the said governor and treasurer shall make reports of their transactions, in connection with the said disbursements, at their so reporting: *Provided,* that the money constituting the said fund shall under no circumstances, be applied to any other purpose than those now herein provided for.

(248.) SEC. VIII. The superintendent shall appoint and exercise entire control over all subordinate officers and assistants in this institution, and shall have entire direction of the duties of the same.

(249.) SEC. IX. The said trustees and their successors in office shall have power to take and hold in trust, for the use and benefit of the institution, any grant or devise of lands and any donation or bequest of money or other personal property, to be applied to the maintenance of insane persons in or to the ordinary purposes of the institution.

(250.) SEC. X. The admission of insane patients from the several counties of this State, shall be in proportion to the population of the same: *Provided,* That each county shall be entitled to send at least one insane patient.

(251.) SEC. XI. Indigent persons and paupers shall be charged for medical attendance, board and nursing, while inmates of this institution, no more than the actual cost attending the same. Paying patients, not chargeable to the counties, shall pay such sum or sums, for the privileges of the institution, as shall be determined upon by the trustees.

(252.) SEC. XII. The county commissioners' courts of the several counties of this State, shall have authority to send to this institution such insane paupers in their county as they may deem proper subjects; and on so doing, shall provide, in advance, the costs and charges attending the treatment of such insane pauper, to be paid to the proper officer of the institution.

(253.) SEC. XIII. The courts of this State shall have power to commit to this institution any person who, having been arraigned upon a charge of any capital or felonious offense, has been found by the jury to have been and to be insane at the time of such arraignment; the expenses of such person so committed, if in indigent circumstances, shall be paid by the county in which he or she may have resided at the time of the commission of the alleged offense; it shall be the duty of the court, however, in all cases, to ascertain the condition of such person, and the nature and intent of his or her property, if he or she have any, and certify the same to the trustees of the institution; and if such person have no property, then certify to the said trustees the name of the county in which such person resided at the time of the commission of the offense charged. In all cases where such person shall be possessed of property, real or personal, in his or her own right, and the same is certified to the trustees as herein provided, a lien is hereby declared to exist on all such property in favor of said trustees from the time of the arrest of such person, or if not arrested before indictment found, then from the date of the finding of such indictment, to the extent of the regular charges of the institution, for the care and attention bestowed on such person.

(254.) SEC. XIV. If the county commissioners of any county, or the person to whom any patient sent to this institution is chargeable, shall neglect or refuse, upon demand made, to pay to the trustees the expenses, ordinary and extraordinary, of such patient, the trustees are authorized and empowered to collect the same by proceedings in any court of competent jurisdiction.

(255.) SEC. XV. If any person shall apply to the circuit court of any county in this State for the commitment to this institution of any insane person within the jurisdiction of the same, it shall be the duty of such court to inquire into the fact of insanity as is now provided by law, and if such court shall be satisfied that such person is, by reason of his or her insanity, unsafe to be at large, or is suffering from unkindness, cruelty, hardship or exposure, it shall thereupon commit such insane person to this institution, making inquiry as to his or her property, and certifying as hereinbefore provided, the expenses of such person to be defrayed precisely as is pointed out in the thirteenth section of this act.

(256.) SEC. XVI. In admitting patients into this institution, the indigent insane in this State shall always have precedence; and while the provisions of the institution are not sufficient to meet the applications for admission, recent cases shall have preference over those of chronic character.

(257.) SEC. XVII. The governor, justices of the supreme court, and members of the legislature, shall be *ex officio* visitors of the institution.

(258.) SEC. XVIII. This act shall take effect and be in force from and after its passage.

An Act in relation to the State Hospital for the Insane, and the Deaf and Dumb Asylum.

[Approved Feb. 3, 1849. Laws, 1849, p. 93.]

(259.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the special tax required to be assessed and collected by the act to establish the Illinois Hospital for the Insane, for three years, shall be assessed and collected for one year in addition to the said three years, and the proceeds of the tax for four years shall be applied to the erection of buildings and improvement of grounds. Hereafter the report of the trustees of said hospital shall be made on or before the second Monday of each session of the general assembly, and the money appropriated shall be paid to the said trustees, notwithstanding their failure to report on the first day of the present session of the general assembly.

(260.) SEC. II. The term of office of the president and directors of the Deaf and Dumb Asylum shall be, and it is hereby, limited to two years. The directors now in office shall continue in office until the governor, by and with the advice and consent of the senate, shall appoint others. And it shall be the duty of the governor, by and with the advice and consent of the senate, immediately after the passage of this act, to appoint twelve directors for said institution, and after which appointment the number of directors shall be twelve, exclusive of the principal, who shall continue to be a member of the board, *ex officio*. And the governor shall biennially hereafter, by and with the advice and consent of the senate as aforesaid, appoint twelve directors for said institution, and the board of directors shall have the power, from time to time, to fill vacancies that may happen by death, resignation or otherwise, in their own body, between the biennial appointments made by the governor. The board organized under the provisions of this act shall have all the powers, act under the same responsibilities, and perform the duties of the present board. The name of the institution shall be changed to the "Illinois Institution for the Education of the Deaf and Dumb."

(261.) SEC. III. All the deaf and dumb residing in this State, of suitable age and capacity to receive instruction, shall be admitted into and enjoy the benefits of said institution without charge.

(262.) SEC. IV. The board shall hereafter meet annually, (in addition to other necessary meetings,) at the institution, not exceeding five days before the termination of the academic year.

(263.) SEC. V. That to defray the ordinary expenses of the institution for the year one thousand eight hundred and forty-nine, the sum of five thousand three hundred and sixty-seven dollars and fifty cents is hereby appropriated to the institution for the education of the deaf and dumb, payable out of any money in the treasury not otherwise appropriated; and in addition to the appropriations already provided for, the sum of five thousand three hundred and sixty-seven dollars and fifty cents is hereby appropriated for the year one thousand eight hundred and fifty, payable on the first of January of that year, out of any money in the treasury not otherwise appropriated. The directors are required to pay all the debts of the institution

during the next two years, out of any money payable during that period, and they are expressly prohibited from borrowing money under any pretext whatever.

(264.) SEC. VI. The following amounts are hereby appropriated, and shall be paid to the said president and directors, out of any money in the treasury not otherwise appropriated, for the purposes specified, viz: for the purchase of twenty acres of land adjoining the land now owned by the institution, sixteen hundred dollars; for the building of work-shops, and purchase of lumber to be used therein, fifteen hundred dollars; for building a smoke-house, wood-house, and two porches, six hundred dollars; for supplying such indigent deaf and dumb pupils as may be destitute in that respect, with clothing, three hundred dollars.

(265.) SEC. VII. That to enable the said president and directors to erect an additional building, so as to accommodate the increased number of pupils expected to be received, the sum of five thousand dollars is appropriated, payable on the first of October, one thousand eight hundred and forty-nine, and five thousand dollars payable on the first of July, one thousand eight hundred and fifty, out of any money in the treasury not otherwise appropriated.

(266.) SEC. VIII. This act shall be in force from and after the passage thereof.

An Act to amend the Act establishing the Illinois State Hospital for the Insane.

[Approved Feb. 15, 1851. Laws, 1851. p. 96.]

(267.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the special tax authorized to be levied and collected for the purpose of creating the "fund for the insane," shall be increased to one-third of a mill for the present and succeeding years, until otherwise provided by law, and so much of said fund as may be necessary, shall, after the completion of the buildings provided for in the act to which this is an amendment, be used in defraying the expenses of the institution: *Provided,* That not more than one hundred and fifty dollars per annum shall be paid for each State patient.

(268.) SEC. II. So much of the act to which this is an amendment as requires counties to pay costs and charges attending the treatment of insane paupers, is hereby repealed; and the costs and charges of keeping insane persons residing in this State, shall be paid out of the "fund for the insane."

(269.) SEC. III. The trustees of said institution shall proceed to finish and furnish rooms in the building for the reception and care of patients, with all reasonable diligence; and for this purpose they may use the "fund for the insane," provided that such use of the fund shall not interfere with the finishing the building under existing contracts.

(270.) SEC. IV. The trustees are authorized to receive and detain in the institution all residents of this State who may be decided to be insane or distracted, by any court or judge vested with jurisdiction or power to adjudicate upon questions of sanity or insanity; and the order of such court or judge, or a certified copy thereof, under the seal of court, shall be evidence of [in] all courts and places wherein the right to keep or detain any person or persons shall be called in question.

(271.) SEC. V. The county courts of the several counties in this State

are hereby vested with jurisdiction to hear and determine all questions which may arise in their respective counties, touching the sanity or insanity of persons residing therein, and the possession of a right to property shall not affect the question of jurisdiction; also of all questions which may arise under the provisions of chapter fifty of the Revised Statutes, entitled "Idiots and Lunatics." And the said courts and county judges shall and may proceed in the adjudication of all questions arising under the provisions of said chapter, in the same manner, and with the like effect, as circuit courts or judges thereof.

(272.) SEC. VI. Proceedings had before judges in vacation, under the provisions of this act, shall be recorded at the next regular or special term of the court.

(273.) SEC. VII. Whenever any person shall be found to be insane or distracted, before any court or judge, the sheriff of the county shall be furnished with a certificate by the clerk of the court, if the proceeding was had in court, or by the judge, if such proceeding was had in vacation, stating that in a proceeding had before such court or judge, such person, naming him or her, had been found to be insane or distracted, as the fact may have been, and that such insane or distracted person was thereupon ordered to be conveyed to "the Illinois State Hospital for the Insane;" which certificate shall constitute the authority of the sheriff, or any other person to whom the same may be delivered, to convey such insane or distracted person to the said hospital; and also the authority of the trustees to keep and detain him or her therein.

(274.) SEC. VIII. Persons who have heretofore been found or decided to be distracted or insane, may be conveyed to and detained in said hospital, and a certified copy of the order of court, or judge appointing the conservator, shall authorize the reception and detention of all such persons.

(275.) SEC. IX. The trustees of the hospital shall publish a notice in two newspapers published at the seat of government, three months in advance of the time when the building will be prepared for the reception of patients, and a copy of such notice shall be forwarded by mail to the judge and clerk of every county court in the State, on the first publication thereof, stating the time when patients will be received, and requesting that information will be forwarded to said board, of the names, ages and sex of all insane and distracted persons in the State, with a statement in reference to each—first, of the duration of the disease, dating from the first symptoms; second, the supposed exciting cause of the disease; third, whether or not the disease is hereditary; fourth, whether the patient has made any attempt to commit any violence upon him or herself or others; upon the publication of which notice and request, all persons having charge of insane or distracted persons, judges and clerks of county and circuit courts, shall, without delay, be furnished the information desired in respect to all insane and distracted persons known to them; and one month before the time fixed for the reception of patients, the trustees shall, with the assistance of the medical superintendent, make a list of all the names furnished, and select from them the number to be received, having regard to the provisions of the act establishing the hospital; and notice shall thereupon be given to all persons who have furnished names as aforesaid of the persons so selected; and, also, that in case any patient so selected shall not be conveyed to the hospital within twenty days after



the time fixed for the reception thereof, that another or other selections will be made, so that the person or persons not being conveyed as aforesaid, will not be received until the further order of the board.

(276.) SEC. X. Married women and infants, who, in the judgment of the medical superintendent are evidently insane or distracted, may be received and detained in the hospital on the request of the husband, or the woman, or parent, or guardian of the infants, without the evidence of insanity or distraction required in other cases.

(277.) SEC. XI. The expenses of conveying paupers to the hospital shall be paid by the counties in which they reside, and the expense of carrying others shall be paid by conservators, husbands, parents or guardians; and in no case shall any such expense be paid out of the "fund for the insane."

(278.) SEC. XII. No person, laboring under any contagious or infectious disease, shall be admitted into said hospital as a patient.

(279.) SEC. XIII. In conveying patients to the hospital for the insane, the sheriff may employ one assistant for each patient, and the compensation to the sheriff shall be five cents per mile, going and returning, and two dollars per day, computing one day for every thirty-five miles travel, on the usual route of the United States mail, and one-half of said amount to the assistant; which compensation shall be paid by counties, in cases of paupers, and by conservators, husbands, parents and guardians in other cases.

(280.) SEC. XIV. Clothing for paupers shall be furnished or paid for by the counties in which they resided, and the judge of each county court shall furnish all necessary clothing, at the expense of such counties; and a certificate of the judge, of the purchase of clothing or goods to be made up for the use of patients, shall be received in payment of county revenue the same as county orders.

(281.) SEC. XV. Hereafter the penalties of bonds required of conservators shall be fixed with reference to the value of personal property and rents, and when orders are made for the sale of real estate by courts, additional bonds may be required, with conditions to account for the proceeds of such sales according to law.

(282.) SEC. XVI. The medical superintendent shall not be required to serve on juries, work on roads, or to attend any court as a witness in a civil suit, but parties desiring his testimony in any case shall be allowed to take and use his deposition; nor shall he be required to attend as a witness in any criminal case, unless the court before which his testimony may be desired shall, upon being satisfied of the materiality of his testimony, require his attendance.

(283.) SEC. XVII. All persons employed in the hospital, whilst so employed, shall be exempt from serving on juries, working on roads, and in time of peace, from performing military duty.

(284.) SEC. XVIII. The biennial reports of the trustees to the general assembly shall hereafter be printed, under the direction of the board, before the meeting of the general assembly, so that said reports may be placed on the tables of the members during the first week of the session: *Provided*, That not more than one thousand copies shall be printed for the use of the general assembly, and a like number for the use of the hospital.

(285.) SEC. XIX. If the funds appropriated to defray the expenses of

the Hospital for the Insane, for the years one thousand eight hundred and fifty-one and fifty-two, shall prove insufficient, the governor may, upon being satisfied of the necessity thereof, make an order on the auditor, directing him to issue a warrant on the treasury for a loan, not exceeding five thousand dollars, payable in such sums and at such times as the governor may direct; and whatever amount may be so drawn from the treasury, shall be refunded out of the "fund for the insane," when collected.

An Act to amend an Act entitled "An act to establish the Illinois State Hospital for the Insane," in force March 1, 1847.

[Approved Feb. 12, 1853. Laws, 1853, p. 241.]

(286.) SEC. I. *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 the governor, by and with the advice and consent of the senate, to appoint nine trustees for the Illinois State Hospital for the Insane, designating at the time of such appointment, their respective terms of office, with reference to the following classification, to wit: three of said trustees shall serve for two years, three for four years, and three for six years, from the time of their appointment and until their successors are chosen and qualified; and at the expiration of their respective terms of office, the vacancies shall be filled by appointments for six years, to be made by the governor, by and with the advice and consent of the senate. The board organized under the provisions of this act shall have all the powers, act under the same responsibilities, and perform the same duties, which are prescribed for the board of trustees in the act of which this is an amendment.

(287.) SEC. II. A treasurer shall be kept in the service of the board, who shall also be the secretary. He shall keep the accounts of the institution, and receive and pay out the funds as required by the by-laws. The accounts shall be so kept as to show the receipts and disbursements under appropriate heads, and the kind, quality and cost of every article purchased for the use of the institution; and no individual shall be secretary or treasurer of more than one of the State institutions, located at Jacksonville, at the same time.

(288.) SEC. III. The trustees shall meet for the transaction of business half-yearly, and at such other times as may be found necessary to a proper discharge of their duties, and the traveling and personal expenses incurred in attending the meetings, by those residing out of the county of Morgan, shall be paid out of the funds of the institution, upon orders of the board.

(289.) SEC. IV. The provision of law authorizing the trustees to fill vacancies in the board, is hereby repealed, and vacancies shall hereafter be filled by the governor, as provided for in the act establishing the institution.

(290.) SEC. V. The accounts of the treasurer shall be settled with the governor at the end of every three months; and at each settlement, all the money previously received shall be fully accounted for, and the vouchers for the same filed with the auditor.

(291.) SEC. VI. Before any person shall be committed to the hospital as a patient, except such as have been heretofore legally decided insane, and married women and infants who may be received by the request of the husband of the woman, or the parent or guardian of the infant, if the medical

superintendent shall be satisfied that they are insane, some respectable person living in the county in which the person alleged to be insane, resides, shall file with the judge of the county court, a statement, in writing, substantially as follows:

"STATE OF ILLINOIS, }  
 \_\_\_\_\_ County, } ss. I, the undersigned, hereby state that \_\_\_\_\_, (naming the person,) of the county and State aforesaid, is insane, and that I believe for his (or her) benefit (for the safety of the community) (he (or she) ought to be committed to the Illinois State Hospital for the Insane. The facts in his (or her) case can be proven by \_\_\_\_\_ (naming at least two persons, one of whom shall be a respectable physician.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

A. B."

The judge of the county court shall thereupon order the clerk of said court to issue subpoenas for the persons named as witnesses, and such other persons as he may think proper, commanding them to appear before him at the time and place specified in the subpoenas, to testify concerning the facts in the case of the person alleged to be insane. He shall also order subpoenas for six suitable persons to serve as jurors in the case, to be present at the same time and place, at least one of whom shall be a physician.

(292.) SEC. VII. If, after hearing the evidence, the jury shall be satisfied of the truth of the facts set forth in the statement aforesaid, they shall render to the judge the following verdict substantially; a copy of which, certified by the clerk, shall be forwarded to the superintendent, and shall constitute the authority of the trustees for detaining the patient in the hospital:

"STATE OF ILLINOIS, }  
 \_\_\_\_\_ County, } ss. We, the undersigned, jurors in the case of \_\_\_\_\_, (naming the person,) alleged to be insane, having heard the evidence in the case, are satisfied that said \_\_\_\_\_ is insane, and is a fit person to be sent to the Illinois State Hospital for the Insane; that he is a resident of the State of Illinois and county of \_\_\_\_\_; that his age is —; that his disease is of \_\_\_\_\_ duration; that the cause is supposed to be \_\_\_\_\_ (or is unknown); that the disease is (or is not) with him hereditary; that he is not (or is) subject to epilepsy; and that he is free from vermin or any infectious disease." (If the person be a pauper, the fact shall also be announced in the verdict.)

(293.) SEC. VIII. If the person be a pauper, it shall be the duty of the judge of the county court to see that he is furnished with the necessary amount of substantial clothing, at the expense of the county, and his successors in office shall be held responsible in their official capacity for keeping him suitably furnished with clothes while a patient in the hospital, and for removing him therefrom, if required by the trustees to do so.

(294.) SEC. IX. If the person be not a pauper, then one or more persons, relatives or friends of the patient, shall, upon his admission into the hospital, become responsible to the trustees for finding the patient in clothes, and removing him when required; and shall execute a bond, conditioned as follows, viz:

"KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_ and \_\_\_\_\_, of the county of \_\_\_\_\_ and State of Illinois, are held and firmly bound unto the trustees of the Illinois State Hospital for the Insane, in the sum of one hundred dollars, for the payment of which we jointly and severally bind ourselves firmly by these presents.

The condition of this obligation is, that whereas \_\_\_\_\_, insane person of the county and State aforesaid, has been admitted as a patient into the Illinois State Hospital for the Insane: now, therefore, if we shall find said patient in suitable and sufficient clothing whilst \_\_\_\_\_ may remain in said institution, and shall promptly pay for such articles of clothing as it may be necessary to procure for said \_\_\_\_\_ at the hospital, and shall remove \_\_\_\_\_ from said hospital when required by the trustees to do so, then this obligation to be void; otherwise to remain in full force.

Witness our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

[SEAL.]  
 [SEAL.]"

(295.) SEC. X. Upon receiving the application the superintendent shall advise the clerk whether or not the patient can be received, and if he can be, when. The clerk shall thereupon, in due time [season] for the conveyance of the person to the hospital by the time appointed, issue his warrant to the sheriff, or any other suitable person, commanding him to arrest such insane person and convey him to the hospital; and if the clerk shall be satisfied of the necessity, he may authorize an assistant to be employed. Said warrant shall be substantially as follows:

"STATE OF ILLINOIS, }  
 \_\_\_\_\_ County, } ss.

You are hereby commanded forthwith to arrest \_\_\_\_\_, who has been declared to be insane, and convey him to the Illinois State Hospital for the Insane, (and you are hereby authorized to take to your aid an assistant, if deemed necessary,) and of this warrant make due return to this office after its execution.

Witness my hand and seal of the \_\_\_\_\_ county court, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.  
 S. S. \_\_\_\_\_, Clerk County Court \_\_\_\_\_ County."

Upon receiving the patient, the superintendent shall indorse upon said warrant a receipt as follows:

"Illinois State Hospital for the Insane.  
 Received this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, the patient named in the within warrant.  
 \_\_\_\_\_, Superintendent."

This warrant, with the receipt thereon, shall be returned to the clerk, to be filed by him with the other papers relating to the case: *Provided*, That in all cases the relatives of the insane person shall have a right to convey him to the hospital in preference to others: *And provided also*, If he be not found by the jury free from vermin and any infectious disease, it shall not be the duty of the clerk to apply for his admission as before provided, until he be so declared by the certificate of some respectable physician, which certificate shall be forwarded to the superintendent with the application.

(296.) SEC. XI. The expense of conveying paupers to the hospital shall be paid by the counties in which they reside, and that of others by conservators, husbands, parents and guardians, and in no case shall any such expense be paid out of the "fund for the insane."

(297.) SEC. XII. The compensation to the sheriff and his assistant shall be four cents each per mile, going and returning, computing the distance by the usual route of the United States mail, and two dollars per day for the sheriff, and one dollar per day for his assistant, for each day's necessary absence going to and returning [from] the hospital.

(298.) SEC. XIII. The clothing to be furnished each patient upon being sent to the hospital, shall not be less than the following: For a male, three new shirts, a new and substantial coat, vest, and two pairs of pantaloons of woolen cloth, three pairs of woolen socks, a black or dark stock or cravat, a good hat or cap, and a pair of new shoes or boots, and a pair of slippers to wear within doors. For a female, in addition to the same quantity of under garments, shoes and stockings, there shall be two woolen petticoats or skirts, three good dresses, a cloak or shawl, and a decent bonnet. Unless such clothing be delivered in good order to the superintendent, he shall not be bound to receive the patient.

(299.) SEC. XIV. Any patient may be discharged from the hospital, when, in the judgment of the trustees, it is necessary. Incurable and harm-

less cases may be discharged when necessary to make room for recent cases, as ordered by the trustees.

(300.) SEC. XV. Whenever a patient shall be ordered to be discharged, the superintendent shall immediately give notice thereof to the county clerk, or to the party or parties responsible in the bond for his or her removal. Said clerk shall, immediately upon reception of the notice, issue his warrant to the sheriff, commanding him to remove the patient and return him or her to the county from which he or she has been taken. If within thirty days after the notice was given, the patient be not removed, the superintendent, if he think it necessary, may return the patient to the county from which he came, at the expense of the county in case of a pauper, and of the party responsible on the bond in other cases; the amount to be that allowed sheriffs in section thirteen, and recoverable by the trustees, with costs of suit, by proceedings in any court of competent jurisdiction.

(301.) SEC. XVI. Whenever application shall be made for a patient not residing within the State, if the superintendent shall be of opinion that from the character of the case it is probably curable, and if there be at the time room to spare in the hospital, the trustees, in their discretion, may order the patient to be admitted, always taking a satisfactory bond for the maintenance of the patient, the rate of which the trustees shall fix, requiring two months' pay in advance, and for his or her removal when required.

(302.) SEC. XVII. No idiot shall be admitted into the hospital, and every such case shall be discharged, the trustees and superintendent having the right to decide what cases are idiotic.

(303.) SEC. XVIII. This act shall be in force from and after its passage, and all acts and parts of acts coming in conflict with provisions of this act, are hereby repealed.

## DIVISION X. HOSPITALS FOR BOATMEN.

Section	Section
304. Power to incorporate.	310. Property.
305. Mode of incorporation.	311. Reception of sick persons.
306. General powers; <i>proviso</i> .	312. Use of property.
307. Objects.	313. Individual interests prohibited.
308. Board of directors: <i>proviso</i> ; further <i>proviso</i> .	314. When act to be in force: application.
309. Secretary and treasurer; real estate; buildings	

An Act to provide for the Establishment and Incorporation of Hospitals for Sick and Disabled Boatmen.

[Approved June 18, 1852. Laws, 1852, p. 20.]

(304.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any number of persons who may desire to establish and sustain at any of the cities, towns or villages situated on any of the navigable waters within this State, hospitals, and of erecting houses of worship, or either, for the benefit of persons employed on steamboats and other vessels navigating the said waters, may associate together and become incorporated under the provisions of this act.

(305.) SEC. II. Such persons shall sign an agreement, expressing their desire to become incorporated as aforesaid, in which they shall agree—first, upon a corporate name; second, upon a place of location; third, upon the number of directors; and, fourth, the object intended, whether the establishment of a hospital or the building of a church, or both; which agreement, when so signed, shall be acknowledged before some officer authorized to take the acknowledgment of deeds, and recorded by the recorder of the county in which the establishment is located.

(306.) SEC. III. Upon the recording of said agreement, the persons so associated, their successors and assigns, shall be and remain a body corporate and politic, by the name agreed on as aforesaid, and by such name shall have the right to sue and be sued, plead and be impleaded, in all courts or places wherein judicial proceedings are or may be had; also, to contract and be contracted with, to receive and hold by any lawful mode of conveyance in the corporate name, and for the uses of the institution, property, real, personal and mixed, and to grant and convey the same; also, to adopt, alter or amend by-laws, rules and regulations for the direction, well ordering and conducting the business of the corporation; and also to make, have and use a common seal, and break or alter the same at pleasure: *Provided*, That no by-laws shall conflict with the constitution and laws of the United States and of this State.

(307.) SEC. IV. The objects of said corporations shall be—first, to erect suitable hospital buildings, and provide for the care, support, protection and medical treatment of all officers, sailors, deck hands, carpenters and servants engaged in navigating steamboats and other vessels, who fall sick or become disabled whilst engaged in such service, or who, from age or misfortune, become unable, for the time being, to procure or earn the means of subsistence; second, to erect houses of worship for the use of all persons engaged as aforesaid.

(308.) SEC. V. The business of each corporation shall be transacted by, and all the powers hereby conferred shall be vested in, a board of directors, not less than five nor more than ten in number, to be elected or appointed in such manner as may be provided for in the original agreements or the by-laws of the corporation: *Provided*, That the first board shall be appointed by the persons associating as aforesaid: *And provided further*, That until otherwise agreed on, the members of the board shall fill all such vacancies as they occur, so as to perpetuate its existence.

(309.) SEC. VI. The board of directors shall appoint a secretary and a treasurer, and all agents required in the transaction of the business of the corporation. Said directors shall also obtain, and cause to be conveyed in fee to the corporation, one or more lots of land, not exceeding in quantity, at any one place, ten acres, for the purpose of erecting thereon hospital buildings and houses of worship, or either, as may have been agreed on as aforesaid, together with such other buildings as may be required for the uses of the incorporation, and also for making ornamental, vegetable and fruit gardens; which said lands, buildings and improvements, whilst used for the purpose or purposes expressed in this act, shall be exempt from taxation for all purposes whatever.

(310.) SEC. VII. The funds and property of the corporation shall consist of all such money, property, goods, chattels and effects as may be

contributed or paid by the classes of persons to be provided for, and the benevolent of all classes, for establishing and sustaining the institution; and the directors are authorized to obtain and receive funds, property, goods, chattels and effects, by any lawful way or means, and apply the same to the use of the corporation.

(311.) SEC. VIII. The trustees shall make provision for receiving into the hospital buildings all persons engaged on boats or other vessels as aforesaid, so far as the funds or means in their hands will justify; also provide for their care, nursing, medical treatment and support, and fix the terms of such reception, care and support. They shall also, in the by-laws, provide for the employment of stewards, physicians, nurses, attendants and servants, and prescribe their several duties.

(312.) SEC. IX. All money, property, goods and effects, paid or contributed, when accepted, shall be used according to the expressed direction of the person from whom the same is obtained, and no part thereof shall be diverted to any other purpose or object whatever.

(313.) SEC. X. There shall be no private or individual property or rights vested in or held by the said corporation, but all money, property, goods and effects, paid or contributed, shall be held and used for the purposes stated in this act.

(314.) SEC. XI. This shall be a public act, be in force on its passage, and its provisions apply severally to each corporation which may be organized in conformity with the same.

## DIVISION XI. MINING AND TRANSPORTATION.

SECTION	SECTION
315. Manner of forming corporations; general powers thereof.	328. Elections.
316. Number of directors; how chosen; term of service; vacancy.	329. Directors.
317. By-laws; stock; stock personal property.	330. Business; <i>proviso</i> .
318. Real estate, &c.	331. Powers.
319. Power to hold property.	332. Accounts.
320. Company to keep books and records, which shall be open to inspection; debts.	333. Dividends; <i>proviso</i> .
321. This act public; when to take effect.	334. Financial agent; <i>proviso</i> .
322. Limitation.	335. Payment of subscriptions.
323. Mode of incorporation.	336. Construction of boats.
324. Certificate.	337. Gunpowder, &c.
325. Secretary of State to certify; form of certificate to be recorded.	338. Regulations.
326. Powers.	339. Racing prohibited.
327. Officers.	340. Creditors.
	341. Liability.
	342. Penalty.
	343. Effect of conviction, &c.
	344. Issue of bills, &c., prohibited; when act to take effect.

An Act to authorize the Formation of Corporate Companies for the purpose of Mining and Transportation, by a General Law.

[Approved June 22, 1852. Laws, 1852, p. 135.]

(315.) SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any three or more persons who may desire to form a company for the purpose of mining, or for the transportation of coal, or other products or commodities, may be incorporated for that purpose in the manner following, to wit: Such persons shall make, sign and acknowledge, before some officer authorized to take acknowledgments

of deeds, articles of association, in which shall be fully set forth the description and kinds of business they propose to pursue, the name they assume, the location of the said company, which shall be within this State, the number of years it is to exist, which shall not exceed thirty years from the date of said articles, the amount of capital stock of said company, which shall in no case exceed three hundred thousand dollars, the amount and number of shares composing said stock, and such other particulars as may be deemed proper; and upon filing said articles of association, signed and acknowledged as aforesaid, in the office of the secretary of State, and a duplicate thereof in the office of the county clerk of the county wherein said company may be located, the persons aforesaid, and all persons who shall, from time to time become stockholders and associates in said company, their heirs and assigns, shall be known by the name assumed, and considered in law a body corporate, and shall possess all the powers and privileges, and be subject to all the restraints and liabilities of bodies corporate; may have and use a common or corporate seal and alter the same at pleasure, and by their name assumed sue and be sued, plead and be impleaded, as natural persons, in all or any of the courts of this State having jurisdiction of the subject matter, and the copy of any such articles of association, filed in pursuance of this act, certified by the secretary of State, or by said county clerk or his deputy, to be a full and true copy of such articles of association, shall be taken in all courts and places as presumptive evidence of the facts therein stated, and of the legal existence of said company.

(316.) SEC. II. The stock, property and business of the said company shall be managed by not less than three or more than nine directors, who shall respectively be stockholders in said company, and one of whom shall be appointed president; and the said president and directors, or a majority of them, or a majority of the directors in the absence of the president, shall constitute a board or quorum for the transaction of business, and all questions shall be decided by a majority of votes. The first board of directors may be chosen or appointed at such time and place and in such manner as the members of said corporation may see proper, to hold their offices for one year, and until their successors are elected to fill their places. After the first election or appointment, the said board of directors shall be elected annually, by the stockholders of said company, at such time and place as shall be determined by the by-laws of said company; public notice of the time and place of holding such election shall be published not less than thirty days previous thereto, in some newspaper published in the county, or nearest to the place where the business of said company may be carried on, when there shall be no paper published in said county. The election shall be made by ballot, and by such of the stockholders as shall attend for that purpose, either in person or by proxy, and each stockholder shall be entitled to cast as many votes as he may own shares of stock in said company, and the persons receiving the greatest number of votes shall be the directors of said company for the year next ensuing, and until their successors shall be elected to take their places. When a vacancy shall occur in the board, by death or otherwise, it may be filled for the remainder of the term in such manner as shall be provided by the by-laws of said company; and in case it shall happen at any time, that an election of directors shall not be made on the day designated by the by-laws of the company when it ought to have been made, the

said company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election, upon notice as aforesaid, and all the acts of the directors shall be valid and binding as against said company, until their successors shall be elected and organized by the election of their president.

(317.) SEC. III. The board of directors and their successors shall have power to make and pass such by-laws, rules and regulations for the government of said company and the management of its affairs and business, for the election of a secretary and treasurer, (or the secretary may act as treasurer, *ex officio*.) and such agents and servants as they may deem proper, prescribe their duties, fix their remuneration, require bonds for the faithful performance of their respective duties, and all other matters that shall be deemed necessary to promote the interests of said company, not inconsistent with this act, the laws and constitution of this State or of the United States; a copy of which, duly certified by the president, attested by the secretary and under the seal of said company, shall be filed in the office of the clerk of the county wherein said company shall be located, and shall be as binding on said company, its officers and agents, in every respect as if the same had been incorporated in this act. The said directors may cause books to be opened for subscriptions to their capital stock, in such manner and at such times and places as they shall deem proper, and issue certificates of stock to the said stockholders; and it shall be lawful for the directors to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as the directors shall deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholders, their heirs or legal representatives, within sixty days after a personal notice or demand, or notice requiring such payment shall have been published for six successive weeks in a newspaper published in the county in which said company is located, or in a newspaper published nearest thereto. The stock of said company shall be deemed personal property, and transferable in such manner as shall be prescribed by the by-laws of said company, but no certificate of stock shall be transferable until all calls and instalments are fully paid in, or whilst the holder of said certificate of stock shall be indebted to said company, without the written consent of the directors, and all or any transfer so made, without the consent of the directors as aforesaid, shall be null and void as against said company. The said company shall have and hold the first lien on the stock for any and all debts due from the holder thereof to the said company, and may be reached by judgment and execution, the same as other personal property under the laws of this State; and when any such stock shall be declared forfeited to the company by reason of non-payment of the instalments thereon, or purchased in for debt at public sale, the same numbers and amounts may be again subscribed for by any other person, and certificates issued therefor, the same as if it had been an original subscription.

(318.) SEC. IV. The said company may purchase, hold, sell and convey at their pleasure, all such real estate as shall be deemed necessary for their interest and business operations, not exceeding at any one time twenty-five per centum of their capital stock, and to take and hold any real estate

mortgaged or pledged as security for the payment of any debt due or to become due to said company, or to take and receive any real estate or other property in payment or towards the satisfaction of any debt previously due to said company, and to hold the same until they can conveniently and advantageously sell and convert the same into money or other property. All conveyances of real estate to said company, and all bonds, notes, obligations or agreements, with or to said company, shall be made in the corporate name of said company, and all conveyances of real estate made by said company shall be made in the corporate name thereof, signed and acknowledged by the president, bearing the seal of the company and attested by the secretary, and the same so made shall be valid in law or equity. All business transactions, and all notes, bills, bonds or obligations, made or entered into by said company, shall run in the name of said company, and may be signed by the president, secretary or agent of said company, as the said company may, by their laws, rules or regulations, determine. All suits for or against said company shall be brought, prosecuted or defended by the corporate [name] thereof, and all process against said company shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the treasurer, at least thirty days before the return thereof.

(319.) SEC. V. Said company shall have power to possess, have and hold personal property to the extent that may be necessary for their business operations, and to sell, exchange or dispose of the same at pleasure; to borrow money, and secure the payment thereof by bond, mortgage or otherwise; to be the owner or part owner of docks, depots, warehouses, tenements, water-craft, appliances, and every species of property necessary to carry out the object of their organization, and for developing the resources of this State, by mining for coal or other minerals, transporting the same or other products, commodities, passengers or property, from or to their place of business, by land or water; to effect insurance upon their property; to divide their earnings and profits with the stockholders of said company, or to employ their funds in any other lawful manner.

(320.) SEC. VI. The said company shall keep at the office of their secretary or treasurer, at the place of their location, well-bound and substantial books, in which shall be kept a full and correct record of the names of the stockholders, their place of residence, the amount held by each respectively, the date of the subscription, the amount paid in, and of all transfers of stock, the date of such transfer, from whom and to whom transferred; also a record of all the proceedings of the board of directors, by-laws, rules and regulations made for the government and management of the said company and its business operations: which said books shall be subject to inspection at all reasonable times, during business hours, by any stockholder or creditor of said company, under the penalty of fifty dollars, to be recovered by suit against said company by any person who shall be refused the use and inspection of said books, being a stockholder or creditor of said company, at a proper time and upon request of the officers who may have the said book or books in charge; and at the end of each current year, the said board of directors shall cause to be made out a tabular statement, showing the amount of the capital stock paid in, the amount of property owned by the company, real and personal, the amount of debts due to the company, and the amount of the said company's indebtedness, and also showing the profit or loss of

said company; which said tabular statement shall be liable and subject to inspection, in the same manner and under the same penalty as is provided in relation to the books of said company. The said company in their corporate name may have their action at law or equity, before any court in this State having jurisdiction of the subject matter, and if the sum demanded be one hundred dollars or less, any justice of the peace shall have jurisdiction as in other cases against any and all persons in debt, damages or other action for the recovery of any debt or other matter, notwithstanding the said person or persons against whom suit is brought, may be stockholders in said company, and the law of partnership shall in nowise apply or be pleaded in bar or set up in defense of such action. The stock, property and effects of said company shall be liable and subject to execution for all debts due or owing by said company to any person or persons, company or corporation, and any transfer or assignment of property made by said company to any person, for the purpose of giving preference to any one or more of its creditors, shall be null and void as against all other creditors of said company. It shall not be lawful for said company at any time to contract debts, or be indebted at any one time in any amount over fifty per cent. of the amount of their capital stock actually paid in, and the directors of said company in office at the time of contracting such debts, and consenting thereto or assenting thereto, by not protesting against such contracting of debts, and giving notice of such protest, shall be jointly and severally liable for all such excess of debts over fifty per cent. of the amount of their capital stock actually paid in as aforesaid.

(321.) SEC. VII. This act shall be taken and considered as a public act in all courts and places, shall be liberally construed in favor of any and all companies organized by virtue hereof, and shall take effect and be in force from and after its passage.

(322.) SEC. VIII. The powers conferred by this act shall not be so construed as to authorize any company organized under the same to enter upon the business of transportation upon any waters within this State, for the purpose of carrying freights and passengers, or passengers only, but the word "transportation," whenever used in this act, shall be so construed as to confine said corporation to the transportation incident to and connected with their mining operations.

An Act to provide for the Incorporation of Transportation Companies.  
[Approved June 23, 1852. Laws, 1852, p. 215.]

(323.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any number of persons, not less than ten, desiring to engage in the business of building boats, and transporting persons and property thereon, may associate together and become incorporated in the manner and upon the conditions following:

(324.) SEC. II. Such persons, under their hands and seals, shall make certificate of their agreement to associate together as aforesaid, which shall specify—first, the name assumed to distinguish such association, and to be used in its dealings; second, the place where the office of the association is to be kept, and its business transacted; third, the amount of capital stock and the number of shares into which it shall be divided; fourth, the names and residences of the persons composing the association, and the amount of

stock held by each; fifth, the period at which the association shall commence and terminate; the execution of which certificate shall be acknowledged before some judge, notary public, clerk of a court of record, or justice of the peace, and then be filed with the secretary of State for safe keeping, and for the use and information of all who may become interested.

(325.) SEC. III. Upon the filing of any certificate, signed and acknowledged as aforesaid, the secretary of State shall make and deliver to the parties filing the same, a certificate, under the seal of his office, in substance as follows:

"STATE OF ILLINOIS, Office of Secretary of State.  
Be it known, that on this day (A. B., &c., inserting the name at length,) has filed in this office a certificate of their desire to become incorporated under the provisions of the act of the general assembly, entitled "An act to provide for the incorporation of transportation companies," in the words following: (here copy the certificate:) which said certificate having been executed and acknowledged, as required by the said act, the said parties are hereby declared to be incorporated, according to the provisions thereof.  
Given under my hand and seal of office, this — day of —, 18—."

Which certificate the secretary shall record in a book to be provided and kept for that purpose, and the same, or a certified copy thereof, shall be evidence of the facts therein stated.

(326.) SEC. IV. Upon the recording of the certificate aforesaid, by the secretary of State, the persons so associated shall be a body corporate and politic, by the name assumed in their certificate, and by such name shall be capable of suing and being sued, pleading and being impleaded, contracting and being contracted with, of making and using a corporate seal, and of transacting the business of the association as a natural person.

(327.) SEC. V. The officers of each association formed under the provisions of this act, by whom the business shall be conducted and the powers conferred exercised, shall be a president, secretary, and not more than nine nor less than five directors, including the president.

(328.) SEC. VI. The persons associated as aforesaid may agree in their articles of association upon the time, place and manner of electing the officers, and also upon the number of votes which the owner of any given number of shares shall be entitled to; but in case no such agreement is made, the elections shall be held annually at the office or place of business of the association, and each owner of shares, not exceeding in amount ten thousand dollars, shall be entitled to one vote for each of such shares, and to one vote for every two shares of excess over ten thousand and not exceeding twenty thousand dollars, and for every ten thousand dollars exceeding the said twenty, the owner shall be entitled to two votes. The said shares of stock shall be personal property, and assignable in such manner, and upon such conditions, as may be prescribed by the directory.

(329.) SEC. VII. Immediately after the first and every subsequent election of directors, the persons elected shall meet and appoint one of their number president, and appoint a secretary, a certificate of which appointments, signed by the president and secretary, with the seal of the corporation affixed thereto, shall be transmitted to the secretary of State, and filed with original certificate of association, copies of which, certified by the secretary of State, under his seal of office, shall be conclusive evidence of the facts therein stated.

(330.) SEC. VIII. The business of associations incorporated under the provisions of this act, shall be directed and transacted by the president and



directors elected and appointed as aforesaid; and the power is hereby conferred upon them to adopt, alter and amend by-laws and rules and regulations for their own government as well as for that of all persons in their service, and with reference to the transaction of the business of the association; also to make all contracts and employ all agents and servants; to regulate the speed of boats, fix the rate of transportation for persons and property, and to do all other acts necessary to the execution of the powers given to the association: *Provided*, That no by-law, rule or regulation shall be adopted contrary to the constitution and laws of the United States or of this State.

(331.) SEC. IX. Every association, formed as aforesaid, shall be vested with power—first, to engage and carry on the business of building and equipping steamboats, or other vessels or crafts propelled in whole or in part by the power of steam or sails; second, in the making of engines and all other machinery and apparatus necessary to the safe and convenient use of such boats, vessels or crafts; third, in the transportation of persons and property, or either, upon such boats, vessels or crafts; fourth, in the erection or construction of docks or places in which to place boats or other vessels for being repaired, and in repairing the same; fifth, in making wharfs or stationary boats, for the purpose of receiving and discharging freight, and of taking care of and protecting the same; also, in building wharfs on the shores of rivers and lakes, and keeping the same in repair; sixth, to have and hold such lots of real estate, with such improvements, furnaces, machinery and apparatus, as may be necessary to the convenient and economical transaction of the business of the association.

(332.) SEC. X. Every association formed as aforesaid, shall, under the direction of the directory thereof, keep regular accounts of all receipts and disbursements, and the secretary shall keep a regular record of the proceedings and action of the board of directors; which accounts and record shall be subject to the inspection and examination of the members of the association, at any regular or special meeting, or of any committee appointed to examine the same.

(333.) SEC. XI. All the accounts of each association shall be made up and balanced annually, and the profits arising from the business of the association shall be divided among the members, in proportion to the amount paid upon such share of stock: *Provided*, That any association may state the accounts as aforesaid, and divide the profits semi-annually.

(334.) SEC. XII. The president shall be the financial agent of such association, and, as such, receive and disburse the funds thereof: *Provided*, however, That any association may provide for the appointment of a treasurer, to keep the cash accounts and receive and disburse the funds.

(335.) SEC. XIII. Every member of any association shall be bound to pay the amount subscribed as stock, at such time and in such sums as may be required by the directors thereof; and a failure to pay any sum or instalment as required, shall operate as a forfeiture to the association of all previous payments, and the party in default shall, moreover, be liable to pay any balance that may be due on his, her or their subscription, to be recovered in an action of assumpsit before any court having jurisdiction of the amount claimed.

(336.) SEC. XIV. All boats and vessels used by associations incorporated under the provisions of this act, for the transportation of persons, shall be

so constructed as to accommodate passengers of any description with rooms and berths, separated from the rooms and berths occupied by the officers and laborers employed in the navigation thereof; and any boat or vessel, used as aforesaid, shall be supplied with a sufficient number of skillful, sober engineers, pilots and hands, to manage the same with safety.

(337.) SEC. XV. Neither gunpowder, or any article or material liable to spontaneous combustion, shall be transported by any association in any vessel propelled by steam, unless the same be placed in air-tight boxes, made of sheet iron, zinc, tin or other suitable material, so that fire falling on or coming in contact with such boxes, will not readily or immediately communicate with the contents thereof.

(338.) SEC. XVI. Boats and vessels used by associations formed under the provisions of this act, shall be subject to and regulated by the laws of the United States, so far as applicable to the same.

(339.) SEC. XVII. No boat used by any such association shall be permitted to run any race with or against any other boat, nor to make any trial of speed with any other, for the purpose of deciding which boat can be made to reach any port or place before the other, or of deciding which can be made to run from any port or place to any other in the least time; nor shall any such boat be permitted to be run from any port or place to any other for the purpose of ascertaining whether or not the trip can be made in any given time, or of ascertaining the shortest time required to make such trip; and for any violation of the provisions of this section, the person or persons having charge of the boat shall be subject to indictment, and upon conviction, to a fine not exceeding one thousand dollars; and the judgment of the court shall be that the party shall stand committed to the jail until the fine and costs are paid.

(340.) SEC. XVIII. All the property, rights, credits and effects of every association formed under the provisions of this act, shall be held in trust for the use of creditors; and all conveyances, transfers and assignments, made with intent to secure the payment of any one or more creditors, in preference to others, as well as all sales of any part of the means aforesaid, with such intent, shall be void in respect to all other creditors.

(341.) SEC. XIX. The individuals comprising every association formed under the provisions of this act, shall be liable to creditors for all sums due on account of stock or otherwise, subject to recovery by suit in chancery, or by proceedings against them as garnishees, and no transfer or assignment of stock shall be made so as to change or affect any liability existing at the date thereof.

(342.) SEC. XX. Any violation of any of the provisions of this act, or failure to comply with and conform to the same, shall subject the association to indictment by the corporate name; and upon conviction, the judgment of the court shall be that the corporate powers of the association shall be and stand revoked, and that all the property, rights, credits and effects owned by the corporation, shall vest in the people of the State of Illinois, subject to be disposed of under orders of the court to be made in said cause.

(343.) SEC. XXI. In every case of conviction and judgment under the foregoing section, the court shall appoint one or more trustees to take charge of the property, rights, credits and effects of the corporation, and vest such trustee or trustees with power to convert the same into money, upon such

terms as may be deemed reasonable, and to appropriate the same—first, in paying the expense of and allowances to trustees; second, in paying the costs of the prosecution against the corporation; third, in paying the debts and claims against the corporation; and the balance to be divided among the stock or shareholders, in proportion to the amount paid on the shares; but in case the costs, expenses, debts and claims against the corporation exceed the amount of the trust fund aforesaid, then such debts and claims shall be paid, after deducting the costs and expenses, *pro rata*, or in proportion to the amount due to each.

(344.) SEC. XXII. No such association shall issue or make any promissory note, due bill, certificate of deposit, bill of exchange, order or draft, or any other instrument, to pass or circulate in lieu of money, or bank notes, or bills, or as a substitute for money, bank bills or notes. This act shall take effect on its passage.

## DIVISION XII. BLIND.

SECTION
345. Trustees.
346. School to be continued.
347. Location.
348. Duties of trustees.
349. Persons to be admitted.
350. Limitation.
351. Liabilities of trustees.
352. Officers of corporation.
353. Term of trustees; how appointed.
354. Officers of school.
355. Privileges of scholars.
356. Tax levied.
357. How kept and disbursed.
358. Appropriation.
359. Bonds required.

SECTION
360. Tuition of State pupils free; when act to take effect.
361. Officers, term of, limited; how appointed; vacancies, how filled.
362. Officers of hospital for the insane, term of office limited; how appointed; vacancies, how filled.
363. Additional tax.
364. Tax to be collected for two years.
365. Appropriation, and refunding the same.
366. Tax, how collected; for what purpose.
367. Trustees.
368. Failure to collect tax.
369. Appropriation, and refunding the same.
370. When act to take effect.

An Act to establish the Illinois Institution for the Education of the Blind.

[Approved Jan. 13, 1849. Laws, 1849, p. 39.]

(345.) SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That Samuel D. Lockwood, Dennis Rockwell, James Dunlap, William W. Happy and Samuel Hunt, are hereby constituted a body politic and corporate, by the name of the "Illinois Institution for the Education of the Blind," and by that name they and their successors shall have perpetual succession and existence, with power to contract and be contracted with, to sue and be sued, to plead and be impleaded, to make and use a common seal and alter the same at pleasure, to take or receive by grant, deed, devise, bequest or otherwise, property, real, personal and mixed, and have, hold, use, enjoy and convey the same; to adopt by-laws not inconsistent with the constitution and laws of the land, and to do all other acts necessary to the proper exercise of the powers herein conferred.*

(346.) SEC. II. The object and duty of the corporation shall be to continue and maintain the school for the education of the blind established in Jacksonville; and to qualify, as far as practicable, that unfortunate class of persons for the enjoyment of the blessings of free government, obtaining the

means of subsistence, and the discharge of those duties, social and political, devolving upon American citizens.

(347.) SEC. III. The school shall be continued in or near Jacksonville, and the corporation shall, as early as practicable, purchase a suitable lot of ground, containing not less than ten nor more than forty acres, and proceed to erect thereon suitable buildings, and make such improvements as are necessary for the school.

(348.) SEC. IV. The persons named in the first section of this act, and their successors, shall be the trustees of the school, to whom power is given to employ the principal and all teachers, prescribe their duties, fix their compensation and the price of instruction; prescribe the course of study, fix the price of board, and all other expenses in the school; employ a steward, and all other persons necessary to the maintenance and to carry on the operations of the school.

(349.) SEC. V. All blind persons residing in Illinois, of suitable age and capacity to receive instruction, shall be received and taught in the said school, and no one of such persons shall be excluded from the privilege and benefits thereof by reason of the reception of persons from other States or territories.

(350.) SEC. VI. The said corporation shall not take or hold property of any kind or description, or by any tenure, except such as may be for the use of the school, and other purposes contemplated in this act.

(351.) SEC. VII. The trustees for the time being shall be severally liable for the faithful application of all property, funds and effects which may be received for the use of the institution; and property, funds and effects received by gift, grant, donation, devise or bequest shall be applied as directed by the person from whom received.

(352.) SEC. VIII. The officers of the corporation shall be a president, secretary and treasurer, who shall be appointed by the board of trustees; the president to be selected from their own number; the trustees to serve without compensation.

(353.) SEC. IX. The trustees mentioned in the first section of this act, shall serve as follows, to wit: three shall serve for the term of four years, and two for the term of two years, and until their successors are appointed and qualified. The trustees shall meet within thirty days after the passage of this act, and organize, and determine by lot the three that shall serve four years, and the two that shall serve two years. The governor shall appoint their successors, whose appointments shall commence on the fourth of March, and continue for four years, and until their successors are appointed and qualified.

(354.) SEC. X. The officers of the school shall be a principal, who shall have the general charge of the school, and such teachers as may from time to time be appointed. The academic and literary degrees usually conferred by institutions for the education of the blind, shall be conferred by this institution, and diplomas granted accordingly.

(355.) SEC. XI. Blind persons who may be placed in this school by or under the authority of the State, or any county, city, town or other public corporation, shall be kept, taught and permitted to enjoy all the benefits and privileges of the school; be furnished with books, boarding, lodging, washing, fuel, lights, and allowed the use of the library, at not exceeding one

hundred dollars for the academic year of forty-two weeks. The provisions of this section to apply only to scholars sent from other States.

(356.) SEC. XII. To aid in the establishment of the school, there shall be paid to the said trustees, for the use of the institution, the proceeds of a tax of one-tenth of a mill upon every dollar's worth of taxable property in this State; which tax shall be assessed and collected annually with the taxes assessed and collected for the ordinary purposes of government.

(357.) SEC. XIII. The treasurer of State shall receive the tax collected for the institution, and keep the same as a separate fund, to be known as the fund for the blind, and pay out the same, from time to time, in such amounts as may be necessary, in the judgment of the board of trustees, in conducting the business of the institution. The treasurer shall pay out the money on the warrants of the auditor, issued on the order of the governor, who is authorized to make the order on the application of the board of trustees.

(358.) SEC. XIV. For the purpose of enabling the trustees to commence the building of said institution, there is hereby appropriated, out of any money in the treasury not otherwise appropriated, the sum of three thousand dollars; which shall be paid to the trustees on the warrant of the auditor of public accounts, who is authorized to issue the warrant on the order of the governor, who shall give the order upon the application of the trustees.

(359.) SEC. XV. The trustees, before entering upon the duties of their office, shall give bonds, payable to the people of the State of Illinois, conditioned for the faithful discharge of their duties, to be approved by the governor.

(360.) SEC. XVI. The blind of this State, who are of suitable age and capacity, shall be received and taught in the school, and enjoy all the benefits and privileges of the same, free of charge. This act to take effect from and after its passage.

An Act to amend an Act entitled "An act to Establish the Illinois Institution for the Education of the Blind."

[Approved Feb. 15, 1851. Laws, 1851, p. 100.]

(361.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the term of office of the president and trustees of the Illinois Institution for the Education of the Blind, shall be and is hereby limited to two years; the trustees now in office shall continue in office until the governor, by and with the advice and consent of the senate, shall appoint others; and it shall be the duty of the governor, by and with the advice and consent of the senate, immediately after the passage of this act, to appoint five trustees for said institution; and the governor shall biennially hereafter, by and with the advice and consent of the senate as aforesaid, appoint five trustees for said institution; and the board of trustees shall have the power, from time to time, to fill vacancies that may happen by death, resignation or otherwise, in their own body, between the biennial appointments made by the governor. The board organized under the provisions of this act shall have all the powers, act under the same responsibilities, and perform the same duties as the present board.

(362.) SEC. II. That the term of service of the president and trustees of the Illinois State Hospital for the Insane, shall be and it is hereby limited to two years. The trustees now in office shall continue in office until the

governor, by and with the advice and consent of the senate, shall appoint others; and it shall be the duty of the governor, by and with the advice and consent of the senate, immediately after the passage of this act, to appoint nine trustees for said institution; and the governor shall biennially hereafter, by and with the advice and consent of the senate as aforesaid, appoint nine trustees for said institution. And the board of trustees shall have the power, from time to time, to fill vacancies that may happen, by death, resignation or otherwise, in their own body, between the biennial appointments made by the governor. The board organized under the provisions of this act shall have all the powers, act under the same responsibilities, and perform the same duties as the present board.

(363.) SEC. III. That in addition to the tax of one-tenth of a mill on every dollar's worth of taxable property in the State, required to be assessed and collected by the act entitled "An act to establish the Illinois Institution for the Education of the Blind," approved on the thirteenth day of February, one thousand eight hundred and forty-nine, to aid in establishing and maintaining said institution, there shall be assessed and collected for the years one thousand eight hundred and fifty-one and one thousand eight hundred and fifty-two, a tax of one-tenth of a mill upon every dollar's worth of taxable property in the State; the proceeds of which shall be applied to the completion of the building now in the course of erection, and which additional tax shall be assessed and collected in the same manner as the one-tenth of a mill provided for in the act above recited.

(364.) SEC. IV. That if in any county the tax required to be assessed and collected by this act shall not be collected for either or both of said years herein provided for, the same shall be assessed and collected for a subsequent year or years, so that said tax shall be assessed and collected in every county in this State for two years.

(365.) SEC. V. That the sum of five thousand dollars is hereby appropriated to aid in the completion of the building for the Institution for the Blind, payable during the present year, out of any money in the treasury not otherwise appropriated; which said sum of five thousand dollars shall be refunded to the treasury out of the proceeds of the tax provided for in this act.

(366.) SEC. VI. That the special tax required to be assessed and collected by the act to establish the Illinois State Hospital for the Insane, shall be assessed and collected for the years one thousand eight hundred and fifty-one and one thousand eight hundred and fifty-two, in the manner and for the purpose expressed in the said act.

(367.) SEC. VII. The number of trustees for the Hospital for the Insane shall be reduced to seven.

(368.) SEC. VIII. That if in any county there has been or shall be a failure to assess and collect the special tax, for any one or more years required to be assessed and collected for the use of the Hospital for the Insane, the said tax shall hereafter be assessed and collected in any such county the one or more years in addition to the years provided for in this act, so that the said tax shall be assessed and collected in every county in the State an equal number of years.

(369.) SEC. IX. That the sum of six thousand dollars shall be and the same is hereby appropriated to aid in the completion of the building of the

Hospital for the Insane, payable out of the treasury in sums of one thousand dollars, as the same may be required for use; which said sum of six thousand dollars shall be refunded to the treasury, out of the tax authorized to be collected under the provisions of this act.

(370.) SEC. X. This act shall take effect from and after its passage.

### DIVISION XIII. DEAF AND DUMB ASYLUM.

SECTION	SECTION
371. Persons created body politic; name and style; powers.	385. Proceeds of farm, how applied.
372. Number of directors.	386. Act repealed.
373. Object.	387. Appropriation.
374. Location.	388. Appropriation to complete building.
375. Powers.	389. Appropriation to buy lot.
376. Application of funds: report to legislature.	390. When act to take effect.
377. Guardian of deaf and dumb person.	391. Directors to be divided into classes; term of 1st class; term of 2nd class; term of 3rd class; proviso.
378. Auditor to pay to president and directors; proviso.	392. Number of trustees for blind; classes; term of service; proviso.
379. Powers of directors.	393. Business; expenses.
380. Power of legislature.	394. Accounts.
381. Act to be public; when to be in force.	395. Acceptance of office.
382. Appropriation increased; proviso.	396. Vacancies; when act to take effect.
383. Additional fund.	
384. Drawn monthly; proviso.	

An Act to establish the Illinois Asylum for the Education of the Deaf and Dumb.

[Approved Feb. 23, 1839. Laws, 1839, p. 162.]

(371.) SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That Thomas Carlin, Daniel G. Whitney and Thomas Cole, of Adams county, Otway Wilkinson, Samuel D. Lockwood, Joseph Duncan, Dennis Rockwell, William Thomas, Julian M. Sturdevant, George M. Chambers, Samuel M. Prosser, Porter Clay and Mathew Stacy, of Morgan county, Richard F. Barrett and Samuel H. Treat, of Sangamon county, Cyrus Walker, of McDonough county, Benjamin F. Morris of Hancock county, William E. Withrow and James McCrosky, of Schuyler county, and Thomas Worthington, of Pike county, be, and they are hereby, created a body politic and corporate, to be styled and known by the name of "The President and Directors of the Illinois Asylum for the Education of the Deaf and Dumb," and by that name and style to remain and have perpetual succession, with power to sue and be sued, plead and be impleaded, in all courts of law and equity; and they and their successors in office may have and use a common seal, and may change and alter the same at their pleasure; and shall be capable in law, by the name and style aforesaid, of purchasing, holding and conveying any real and personal estate for the purposes of this incorporation, and for none other: *Provided,* That the individual property of the commissioners shall be bound for the faithful expenditure of all moneys appropriated for the purposes provided for in this act.

(372.) SEC. II. The number of directors shall not exceed nineteen, exclusive of the principal or superintendent of said asylum, who shall, *ex officio*, be a member of the board of directors, and exclusive of the president of the board.

(373.) SEC. III. The object of said corporation shall be to promote, by all proper and feasible means, the intellectual, moral and physical culture

of that unfortunate portion of the community who, by the mysterious dispensations of Providence, have been born, or by disease become, deaf, and, of course, dumb, and by a judicious and well-adapted course of education to reclaim them from their lonely and cheerless condition, restore them to the rank of their species, and fit them for the discharge of the social and domestic duties of life.

(374.) SEC. IV. Said asylum shall be located at any eligible site within four miles of the town of Jacksonville: *Provided,* Said president and directors can obtain a donation of five acres of ground within said limits, suitable for the use of the same.

(375.) SEC. V. The president and directors aforesaid shall have power, from time to time, to prescribe and regulate the course of study to be pursued in said institution; to fix the rate of tuition, room-rent and other expenses; to appoint instructors and such other officers and agents as may be needed in managing the concerns of the institution; to define their duties, powers and employments; to fix their compensation; to displace and remove either of the instructors, officers or agents; to fill all vacancies among the instructors and agents; to erect necessary buildings and workshops in which to prosecute the intellectual, moral and physical instruction of the pupils; to purchase books, maps, charts and other necessary apparatus for the use of the institution; and to make such by-laws as may, from time to time, be necessary, relative to the management of the affairs of the corporation and the regulation of the persons exercising any of the offices aforesaid, not contrary to law.

(376.) SEC. VI. The president and directors aforesaid shall faithfully apply the funds of the institution, according to the best of their judgment, in erecting suitable buildings; in compensating the necessary instructors, officers and agents; in procuring books, maps, charts, and other apparatus necessary in promoting the education of the deaf and dumb children of this State gratuitously, so far as the funds of the institution will admit; and it shall furthermore be the duty of the said president and directors to present to the speaker of the senate and house of representatives, respectively, at each regular session of the legislature, within the first week of the session, a statement of the funds and expenses of the institution, and of the number of children received and educated therein, designating the parts of the State whence they have come, and distinguishing between those who have been supported gratuitously and others.

(377.) SEC. VII. Whenever the parent, guardian, or nearest friend of an indigent deaf and dumb person, is desirous to have him or her instructed, application shall be made to two justices of the peace of the county wherein such deaf and dumb person shall reside, who shall certify to the inability of the parent or guardian to pay for his or her board and tuition, which certificate, being produced, shall authorize the directors of the institution aforesaid to receive such deaf and dumb person as a pupil; and each indigent pupil, so received into the institution, shall be provided with board, lodging and tuition gratuitously, so far as the funds of the institution will admit.

(378.) SEC. VIII. In order to aid the funds of said asylum, the auditor of public accounts is hereby authorized and required, annually, before making an apportionment and distribution of the interest upon the school, college

in current money of the United States, and shall be drawn from the treasury

expiration of the term of service of those first appointed under the provisions of this act, those composing each class shall serve two years, and until

successors are appointed and entered upon their duties: *Provided*, That the principal of said institution shall continue to be a member of said board, and that a majority of the directors authorized to be appointed under this act shall reside without the county of Morgan.

(392.) SEC. II. That the number of trustees of the institution for the education of the blind shall hereafter be six, inclusive of the principal, who shall, *ex officio*, be a member of the board. The said trustees shall be divided into two classes, to consist of three members in each; those appointed during the present session of the general assembly, to compose the first class, shall serve two years, and those appointed to compose the second class shall serve four years, and until successors are appointed and enter upon their duties; and thereafter successors in each class shall serve two years, so that after the expiration of the term of service of those first appointed under the provisions of this act, the successors in each class shall serve two years, and until successors are appointed and enter upon their duties: *Provided*, That a majority of the trustees authorized to be appointed under this act, shall reside without the county of Morgan.

(393.) SEC. III. The directors and trustees of said institutions for the education of the deaf and dumb and blind, respectively, shall meet for the transaction of business half-yearly, and at such other times as may be necessary to a proper discharge of their duties; and the traveling and personal expenses incurred in attending the meetings by those residing out of the county of Morgan, shall be paid out of the funds of said institutions respectively, upon order of the board.

(394.) SEC. IV. The accounts of said institutions shall be settled with the governor quarterly; and at every settlement, all money previously paid or advanced shall be fully accounted for, and the vouchers for the same filed with the auditor.

(395.) SEC. V. The acceptance of the office or place of director, or trustee of any one of said institutions, or of the hospital for the insane, shall vacate the office or place previously held in either of said institutions.

(396.) SEC. VI. The law authorizing the members of said boards to fill vacancies in their respective bodies, is hereby repealed, and vacancies shall hereafter be filled by the governor. This act shall take effect on its passage.

#### DIVISION XIV. PLANK ROADS.

SECTION	SECTION
397. May form company: notice: amount of stock; stockholders to subscribe articles; affidavit.	407. Duty of county court: three commissioners may be appointed; commissioners to take oath; their duty; shall assess damages; to hear all persons interested; compensation.
398. Evidence of incorporation.	408. Orchards, &c., not to be injured; streams not to be obstructed.
399. Duty of directors	409. Route as surveyed; company to purchase lands
400. To keep office, book, &c.; book to be evidence; penalty of officers.	410. In case of inability of owner to sell land; company may petition.
401. Shares personal property.	411. Duty of judge.
402. Directors may require payment of subscriptions; notice.	412. County court to assess and determine damages; to hear testimony; assessment of court final.
403. Board of directors: number; by whom elected; how elected; vacancy.	413. Trial by jury.
404. May procure right of way; cause survey.	414. Cases for trial.
405. To apply to county court; public notice.	
406. Parties to appear.	

SECTION	SECTION
415. Lands owned by married women, non-residents, &c.: notice.	436. On expiration of charter, value of superstructure to be appraised.
416. Circuit court; verdict of jury.	437. General application of provisions of this act: <i>proviso</i> .
417. Duty of company to pay.	438. Penalty: amount; how recovered.
418. Non-resident may be proven by affidavit.	439. When act to be in force.
419. How constructed.	440. Roads not to be over eight feet wide; <i>proviso</i> .
420. Inspectors; to take oath.	441. Powers of company; <i>proviso</i> .
421. Road to be inspected; compensation; to certify.	442. Penalty for refusal to pay tolls; disposition of fines.
422. May erect toll gates: rates of toll.	443. Should a rival road be laid out; authority of first company.
423. Liability of stockholders.	444. Shares deemed personal property, and assignable.
424. Amount of debts of company: liability for excess.	445. Act applicable to all plank road companies.
425. Parties to suits; judgment and execution; satisfaction of execution.	446. Plank roads over bottoms, &c.; <i>proviso</i> .
426. Fees for service.	447. Tolls.
427. Taxation.	448. Counties may take stock; <i>proviso</i> .
428. Forfeiture of corporate privileges.	449. When act shall take effect.
429. Company to cease if not in operation in two years.	450. Forfeit amount of stock on failure to pay assessments.
430. County court authorized to take stock.	451. Right of way.
431. Limitation of responsibility of stockholders.	452. When act to be in force.
432. When act to be in force.	453. Transfer of plank road to railroad company; conditions.
433. Company may acquire lands, &c.: manner: duty of company.	454. When act to take effect.
434. Survey to be made and certified.	
435. Disputes, how settled; <i>proviso</i> .	

An Act to provide for the Construction of Plank Roads, by a General Law.

[Approved Feb. 12, 1849. Laws, 1849, p. 138.]

(397.) SECTION I. *Be it enacted by the People of the State of Illinois represented in the General Assembly.* Any number of persons, not less than five, may be formed into a corporation for the construction of a plank road, by complying with the following requisitions, to wit: Notice shall be given in each county through which any plank road is intended to be constructed, of the time and place or places where books for subscribing to the stock of such road will be opened, by publication three weeks consecutively in at least one newspaper [published] in said county or counties; or, if there be no newspaper published in said county, by posting up printed or written notices, for three weeks, on the door of the court-house, and on the door of the post-office nearest each terminus of the proposed road. When stock to the amount of five hundred dollars for every mile of the road intended to be constructed shall be subscribed, and five per cent. paid thereon, the subscribers may, upon due and proper notice, elect directors for the said company, not less than three in number, who shall hold their offices until others are elected. The stockholders shall severally subscribe articles of association, in which shall be set forth the name of the company; the number of years that it is to exist, which shall not exceed thirty years from the date of said article; the number of shares of which the said stock shall consist; the names of the directors first elected; the places from and to which the proposed road is to be constructed, and each township, town or city through which it is intended to pass, and its length, as near as may be; the name of each subscriber and his place of residence, and the number of shares of stock subscribed by him. Upon the filing of said articles of association, with an affidavit of at least three directors affixed thereto, that the foregoing requisitions have in good faith been complied with, in the office of the secretary of State, the subscribers of stock as aforesaid, and all persons who shall from time to time become stockholders in said association, shall be a body corporate, and shall possess and exercise all the powers and privileges of bodies corporate.

(398.) SEC. II. A copy of any articles of association filed in pursuance of this act, with a copy of the affidavit, certified by the secretary of State,



shall in all courts and places be presumptive evidence of the incorporation of said company, and of the facts therein stated.

(399.) SEC. III. Within two weeks after the formation of any company by virtue of this act, the directors thereof shall designate some place within a county, in which, according to the articles of association of such company, its road, or some parts thereof, is to be constructed, as the office of said company, and shall give public notice thereof by publication in a public newspaper, published in such county, (if there be a newspaper so published,) for three successive weeks, and shall file a copy of such notice in the office of the clerk of the county court of every county in which any part of such road is to be constructed. And if the place of such office shall be changed, like notice of such change shall be published and filed as aforesaid, before it shall take place, in which notice the time of making the change shall be specified. Every notice, summons or other paper required by law to be served on such company, may be served by leaving the same at such office, with any person having charge thereof, at any time between nine o'clock A.M. and noon, and between two and five o'clock P.M., of any day, except Sundays and the fourth day of July.

(400.) SEC. IV. It shall be the duty of the directors of said company to keep at their office, by the secretary, treasurer or clerk, a book containing the names of all persons who are, or shall, within six years, have been stockholders of such company, a statement of their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the holders of stock, which book shall, in office hours, as defined in section three of this act, be open for the inspection of all persons who may desire to examine the same, and every and any person shall have the right to make extracts from such book. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff, in any suit or proceeding against said company, or against one or more stockholders. Every officer or agent of any company, who shall neglect to make any proper entry in such book, or shall neglect or refuse to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as provided by this section, shall be deemed guilty of misdemeanor, and for every such refusal or neglect of such officer or agent, the company shall forfeit and pay to the party injured, a penalty of fifty dollars, and all the damages resulting therefrom. Every company that shall neglect to keep such book open for inspection as aforesaid, shall forfeit the sum of fifty dollars for every day it shall so neglect, which penalty, when recovered, shall be paid into the treasury of the county, or, if there be more than one, into the treasuries of the counties, in equal proportions, in which the road is constructed.

(401.) SEC. V. The shares of any company formed under this act shall be deemed personal property, and may be transferred as shall be prescribed by the by-laws of such company; but no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of such company, according to the provisions of this act, unless such transfer shall be entered on the book required to be kept as aforesaid at the office of the company, and such entry shall show to and from whom transferred, and the date of transfer.

(402.) SEC. VI. The directors of any company incorporated under this

act, may require payment of the sums subscribed to the capital stock, at such times, and in such proportions, and on such conditions, as they shall see fit, under the penalty of the forfeiture of their stock, and all previous payments thereon: and they shall give notice of the payments thus required, and of the place and time when and where the same are to be made, at least thirty days previous to the payment of the same, in one newspaper printed in each county in or through which the road is located, or by sending such notice to such stockholder by mail, directed to him at his usual place of residence.

(403.) SEC. VII. The business and property of each company shall be managed and conducted by a board of directors, consisting of not less than three nor more than nine, who, after the first year, shall be elected at such time and place as shall be provided by the by-laws of such corporation, and public notice shall be given of the time and place of holding such election, not less than twenty days previous thereto, in a newspaper printed in each county in or through which the road of such company may be located; or if no newspaper be published in such county, by posting up notices. The election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he shall own shares of stock, and the persons having the greatest number of votes shall be directors, and shall hold their offices for one year, and until others are elected. No person shall be a director unless he is a stockholder in the company, and no stockholder shall be permitted to vote at any election for directors, on any stock except such as he has owned for the thirty days next preceding the election. Whenever any vacancy shall happen in the board of directors, such vacancy shall be filled for the remainder of the year by the remaining directors.

(404.) SEC. VIII. Any company formed under the provisions of this act may procure, by purchase or gift, from the owners thereof, any lands, or the right of way over any lands, necessary for the construction of the proposed road; and may also agree to the use of any part of a public highway for the construction of a plank road, with the county court of the county in which such highway may be situated. Such agreement with said court shall be in writing, and shall be filed and recorded in the office of the clerk of the said court. Before constructing the road over such land as may be acquired by gift or purchase, or over any highway by agreement with the county court, such company shall cause an accurate survey of such road, or section of road, to be made by a practical surveyor, signed by two of the directors, acknowledged by them as conveyances of real estate are required to be acknowledged, and filed in the office of the clerk of the county court.

(405.) SEC. IX. Whenever said company shall be desirous of constructing a plank road over any land not acquired by them by gift, purchase or agreement, application shall be made to the county court of the county in which such land shall be, for authority to lay out and construct such road, and to take the land necessary for such purposes; which application shall set forth the route of the proposed road as the same shall have been described in the articles of association. Public notice shall be given of such application, by publication for four successive weeks in a newspaper published in said county, if there be one published, and by posting up, for four successive weeks, a written or printed notice thereof, on the door of the court-house of said county.

(406.) SEC. X. Upon the hearing of the said application, all persons residing in said county, and all persons having any interest in any real estate through which said road is intended to be constructed, may appear and be heard. Such county court may take testimony in relation to such application, and may adjourn the hearing from time to time, in its discretion.

(407.) SEC. XI. The county court, if such an application be granted, shall appoint three persons, having no interest in the stock of the proposed road, nor in the land over which said road is intended to be constructed, as commissioners to lay out said road. If such company shall intend to construct its road continuously in or through more than one county, three commissioners shall be appointed by the county court of each county, and the joint commissioners so appointed shall lay out the whole route. The said commissioners, after taking an oath justly and fairly and impartially to perform their duty, shall cause an accurate survey and description to be made of such route, and of the land necessary to be taken for the construction of such road, and the necessary buildings and gates, which survey shall be acknowledged, as deeds are required to be acknowledged, and filed in the office of the clerk of the county court. Where joint commissioners act, appointed by different counties, they shall make a separate survey for each county, to be acknowledged and filed as aforesaid. The commissioners appointed by each county court shall, at the same time, assess the damages which each owner or owners of land, in their respective counties, will sustain, over and above the additional value which such lands will derive from the construction of the road, and make a report thereof in writing, signed by a majority of the commissioners, to the county court appointing them. The said commissioners shall hear all persons interested who shall apply to them to be heard. The company shall pay each of said commissioners two dollars for every day spent by him in the performance of his duties, and his necessary expenses.

(408.) SEC. XII. No road shall be laid out through any orchard, to the injury or destruction of fruit trees, or through any garden, nor through any dwelling-house or buildings connected therewith, or any yards or enclosures necessary for the use and enjoyment of such dwelling, without the consent of the owner; nor shall any such company bridge any stream, where the same is navigable by steam-boats, or in any manner that will prevent or endanger the passage of any flat-boat or raft of the width of twenty-five feet.

(409.) SEC. XIII. The route laid out and surveyed as aforesaid shall be the route of said road, and such company may enter upon and take and hold, subject to the provisions of this act, all such lands as the said survey shall describe as necessary for the construction of such road, and the necessary buildings and gates. But before entering upon any such lands, the company shall purchase the same of the owners thereof, or, pursuant to the provisions of this act, acquire the right to enter upon and hold the same.

(410.) SEC. XIV. If any owner of any such land shall, from any cause, be incapable of selling the same, or if such company cannot agree with such owner for the purchase thereof, or if, after diligent inquiry, the name and residence of any such owner cannot be ascertained, the company may present to the county judge of the county in which the lands lie, a petition setting forth the grounds of the application, a description of the lands in question,

and the name and residence of the owner, if known, and the means that have been taken to ascertain the name and residence of such owner, if unknown, and praying that the damages of the owner of the lands described in the petition may be ascertained.

(411.) SEC. XV. Upon receiving such petition, the said judge shall appoint a time, at some regular or special term of the county court, for the hearing of the petition. At least ten days' notice of the time and place of the hearing of the petition, shall be served personally upon each owner of the lands described in the petition, if he reside in the State of Illinois, and such notice shall be served on all other owners in like manner, or by publication thereof, for four successive weeks, in some newspaper published in the county in which the lands lie; or if there are none published in such county, then in the nearest newspaper, the first of which publications shall be sixty days before the hearing.

(412.) SEC. XVI. At the time appointed for the hearing, if the assessment of damages reported by the commissioners be objected to by either party, by the consent of both parties, or those legally authorized to represent them, the county court shall assess and determine the damages which the owner of any lands will sustain, over and above the value the owner will derive from the building of the road. The court shall, in such assessment, hear any competent testimony either party may present, and shall have power, upon cause shown, to adjourn the hearing from time to time. The court shall, at the time of making the assessment of damages, also determine the amount that ought to be paid to the owner for the time spent and necessary expenses incurred by him in respect to the proceedings to determine the damages, which shall be paid by the company. The assessment of the court, which shall contain the name of the owner and an accurate description of the lands to be taken, shall be entered of record, and such assessment shall be final.

(413.) SEC. XVII. At the time appointed for [the] hearing before the county court, if the assessment of damages reported by the commissioners be objected to by either party, and a trial by jury demanded, or if there be no person legally authorized to act for the owner, it shall be so entered of record in the county court; and such entry, with a copy of the application, shall be certified by the clerk of the county court, and filed by him in the office of the clerk of the circuit court, who shall docket the same.

(414.) SEC. XVIII. Such case shall stand for trial in its order on the docket, at the term of the circuit court next after the filing of the papers by the county clerk as aforesaid, if the owner appears in person or by attorney, or if satisfactory evidence be furnished to the court by affidavit, or the return of a sworn officer, that notice of the time and place of the hearing of the petition before the county court had been served upon the owner personally, or by publication, as provided in section fifteen of this act.

(415.) SEC. XIX. In case any lands described in the petition shall be owned by any married woman, infant, idiot or insane person, or by a non-resident of the State, and no person legally authorized to represent him, her, or them, shall appear, the circuit court shall appoint some competent and suitable person, having no interest adverse to the owner, to take care of the said owner's interest in the proceedings to assess damages to be paid to the

owner. And all such notices as in the further progress of the case are required to be served on any owner, shall be served in like manner on the person so appointed, but any person so appointed may at any time be superseded by the owner.

(416.) SEC. XX. Cases of assessment of damages, except so far as is otherwise provided by this act, shall be conducted in the circuit court, according to the rules of practice of said court, so far as such rules are applicable. The jury, after hearing the evidence of the parties, shall, by a verdict, ascertain and determine the damages which the owner of any lands will sustain over and above the value the owner will derive from the construction of the road, and also the amount that ought to be paid to him for the time spent and the necessary expenses incurred by him in the proceeding to assess damages, to be paid by the company. Such verdict shall be in writing, signed by the jury, and shall contain a particular description of the land in respect to which it is found, and be entered of record. The court may, in its discretion, on the application of the company, direct two or more similar cases standing for trial at the same term, to be submitted to the same jury.

(417.) SEC. XXI. Within thirty days after the rendition of any such verdict, or if a new trial be granted, or an appeal taken, within thirty days after the final trial or decision in the appellate court, or within thirty days after the assessment of damages by the county court, if made by that court, the company shall pay to the person entitled to receive the same, the amount awarded by the county court, if tried by consent by that court, or awarded by the jury if tried in the circuit court, or shall make a legal tender thereof to him; and the company may thereupon enter upon the lands in respect to which an assessment of damages has been made, and take and hold the same so long as it shall be used for the purposes of such a road as such company was formed to construct.

(418.) SEC. XXII. If any person be not a resident of this State, or cannot be found therein after diligent search, the company may furnish to the county judge satisfactory proof, by affidavit, of such fact, and he shall thereupon make an order, that the amount to be paid to the owner shall be deposited with the county treasurer of the county in which the lands lie, for the use of the owner, and notice of such payment to be given by publication for four successive weeks in some newspaper published in said county, or if none be published in said county, in the nearest newspaper. Upon satisfactory proof being made to the judge, by affidavit, of such payment to the county treasurer, and publication, he shall make an order authorizing the company to take possession of the land in respect to which the damages have been thus assessed and deposited, under which order the company may enter upon, take and hold such land in the same manner, and with the same effect, as if payment had been made to the owner personally. The orders and affidavits made under this section shall be filed in the office of the clerk of the county court.

(419.) SEC. XXIII. Every plank road made by virtue of this act, shall be so constructed as to make a secure and permanent road, the track of which shall be made of plank, and in such manner as to permit wagons and other vehicles conveniently and easily to pass each other, and also so as to permit all vehicles to pass on and off where such road is intersected by other roads.

(420.) SEC. XXIV. In each county of this State, in which there shall be any plank road constructed by virtue of this act, the county court shall appoint three inspectors of such roads, who shall not be interested in any plank road, and who shall hold their offices during the pleasure of the court. Before entering on their duties, they shall take an oath faithfully to perform the duties of their office, and file the same in the office of the clerk of the county court.

(421.) SEC. XXV. Whenever any such company shall have completed their road, or any two consecutive miles thereof, application may be made to any two of the inspectors, to be appointed as aforesaid by the court of the county in which the road, or the part thereof to be inspected, is constructed, to inspect the same; which inspectors shall be allowed two dollars per day for the time necessarily employed, to be paid by the company whose road they inspect; and if they find that the road so inspected, or two or more miles thereof, is constructed according to the true intent and meaning of this act, and is fit for use, they shall sign a certificate to that effect.

(422.) SEC. XXVI. Upon filing a certificate as aforesaid, of the inspectors, or two of them, in the office of the clerk of the county court, the company may erect one or more toll-gates upon the road, and may demand and receive toll not exceeding the following rates: For every vehicle drawn by one animal, two cents per mile; for every vehicle drawn by two animals, three cents a mile; for every vehicle drawn by more than two animals, three cents a mile, and one half cent additional a mile for every animal more than two; for every ten of neat cattle, one cent a mile; for every ten of sheep or swine, one cent a mile; and for every horse and rider, or led horse, one cent per mile.

(423.) SEC. XXVII. The stockholders of every company incorporated under this act, shall be liable in their individual capacity for the payment of the debts of such company, for an amount equal to the amount of stock they severally have subscribed or hold in said company over and above such stock, to be recovered of the stockholder who is such when the debt is contracted, or of any subsequent stockholder; and any stockholder who may have paid any demand against such company, either voluntarily, or by compulsion, shall have a right to resort to the rest of the stockholders liable, for contribution. The dissolution of any company shall not release or affect the liability of any stockholder, which may have been incurred before such dissolution.

(424.) SEC. XXVIII. The debts and liabilities of any company formed under this act, shall not exceed in amount, at any one time, fifty per cent. of the amount of its capital actually paid in; and if such debts and liabilities shall at any time exceed such amount, the stockholders who were such at the time any excess of debts or liabilities shall be created or incurred, shall be jointly and severally individually liable for such excess, in addition to their other individual liability as provided in this act.

(425.) SEC. XXIX. In any action against any company formed under the provisions of this act, the plaintiff may include as defendants any one or more of the stockholders of such company, who shall, by virtue of the provisions of this act, be claimed to be liable to contribute to the payment of the plaintiff's claim; and if judgment be given against such company, in favor of the plaintiff, for his claim, or any part thereof, and one or more stockholders, so made defendants, shall be found to be liable as aforesaid,

judgment shall be given against him or them, and shall show the extent of his or their liabilities individually. The execution upon such judgment shall direct the collection of the sum for which it may be issued, of the property of such company liable to be levied upon by virtue thereof; and in case such property sufficient to satisfy the same cannot be found, that the deficiency, or so much thereof as the stockholders who shall be defendants in such judgment shall be liable to pay, shall be collected of the property of such stockholders respectively. And if in any such action any one or more of such stockholders shall be found not to be liable for the demand of the plaintiff, or any part thereof, judgment shall be given for the stockholders so found not to be liable, but no verdict or judgment in favor of any such stockholders shall prevent the plaintiff in such action from proceeding therein against the company alone, or against the company and such defendants who are stockholders as shall be liable for such demand, or some portion thereof. Suits may be brought against one or more stockholders who are claimed to be liable for any debt owing by the company, or any part of such debt, without joining the company in such suit, but no such suit shall be so brought, until judgment on the demand shall have been obtained against the company, and execution thereon returned unsatisfied in whole or in part, or the company shall have been dissolved; and in such suit there may be a verdict and judgment in favor of any defendant not liable as aforesaid, but such verdict and judgment shall not prevent the plaintiff in such suit from proceeding therein against any defendant who shall be liable as aforesaid.

(426.) SEC. XXX. Where any services shall be rendered by any officer or person in the proceedings under this act, and no specific fees have been fixed by law, the compensation to be paid by the company to such officer or person, shall be taxed by the court under whose direction the services may have been rendered.

(427.) SEC. XXXI. Any plank road and its appurtenances, that may be constructed by virtue of this act, shall, for revenue purposes, be deemed real estate, and be liable as such to taxation.

(428.) SEC. XXXII. All companies formed under this act, shall, for any violation of its provisions, to be determined by a judicial investigation, forfeit their corporate privileges. Such companies shall at all times be subject to visitation and examination by the legislature, or a committee appointed by either house thereof, or by any officer or agent in pursuance of law.

(429.) SEC. XXXIII. Every company incorporated under this act shall cease to be a body corporate, if, within two years from the filing of their articles of association, they shall not have commenced the construction of their road, and actually expended thereon at least ten per cent. of the capital stock of such company; or if, within five years from such filing of the articles of association, such road shall not be completed according to the provisions of this act.

(430.) SEC. XXXIV. The county court of any county is hereby authorized to subscribe to the stock of any plank road lying in said county, to an amount not exceeding one-third of said stock, and such county shall be subject to all the liabilities and have all the rights of a stockholder, as provided by this act.

An Act to amend an Act entitled "An act to provide for the Construction of Plank Roads by a General Law."

[Approved Jan. 28, 1851. Laws, 1851, p. 11.]

(431.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the twenty-seventh section of an act entitled "An act to provide for the construction of plank roads by a general law," approved February 12, 1849, be and the same is hereby so amended, that any subscriber to the capital stock of any plank road to be constructed in this State, under said law, shall not be responsible beyond the actual amount of stock so by him subscribed; and so much of the said law as conflicts herewith, shall be and the same is hereby repealed.

(432.) SEC. II. This act to be in force from and after its passage.

An Act to amend an Act entitled "An act to provide for the Construction of Plank Roads by a General Law," approved February 12, 1849.

[Approved Feb. 1, 1851. Laws, 1851, p. 15.]

(433.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the eighth section of the act to which this is amendatory shall be so construed that any plank road company, formed and organized under the provisions of said act, may procure, by purchase or gift, from the owners thereof, any lands, or the right of way over any lands, necessary for the construction and convenience of the proposed road, and may also agree to the use of any part of a State or county road or public highway, for the construction of a plank road, with the county court, or with the board of supervisors (in case such county shall be organized under the township organization law,) in which such highway may be situated; such agreement with such court or board of supervisors shall be in writing, and filed and recorded in the office of the clerk of the county court; or may agree with the mayor and aldermen or corporate authorities of any town or city incorporated under or by virtue of any law of this State, for the use of any public street or public ground within the limits of such corporation, for the construction of a plank road, or for the use of such plank road company, which said agreement shall be in writing, and filed and recorded in the office of the clerk of the county court of the county wherein such corporation or city may be situated; and in all cases for the agreement for the use of any public highway or street, as aforesaid, the said company shall possess the right and power to cause the same to be opened the full width that the same was originally laid out or surveyed, or of the width that the same may have been declared by law, and upon giving twenty days' notice, by their secretary or treasurer, to the owners, occupiers or claimants of land over which any such public highway or street may have been laid or declared, it shall be the duty of such owner, occupier or claimant, to remove all fences or other obstructions to which he or they may lay claim from off such highway or street, and in case default be made in the removal of any such fence or other obstruction, within thirty days after the date of service of notice as aforesaid, the said company may remove any and all such fences or other obstructions, placing the same (if a fence) upon the proper line, doing as little damage as the nature of the case will admit, and the said company shall have the right to demand and recover a reasonable price for such work and labor from the owner, occupants or claimants of such lands, in any county having jurisdiction thereof.

(434.) SEC. II. Before constructing the road over any such lands as may be acquired by purchase or gift, or over any highway or street, by agreement with the county court, board of supervisors or corporation, as aforesaid, such company shall cause an accurate survey of such road or roads, street or streets, or parts thereof, to be made by a practical surveyor, by him certified, signed by two of the directors, and by them acknowledged before some officer authorized to take the acknowledgment of deeds, that the said survey is correct, and file the same in the office of the clerk of the county court wherein such land, roads or parts thereof may be situated.

(435.) SEC. III. That in all cases where a dispute may arise in relation to the track or location of any public road, highway or street, or part or parts thereof, so as aforesaid agreed for by any plank road company, and the original survey or plat thereof does not distinctly show the location of the same, or whenever the survey and plat cannot be found in the proper office, the same shall be surveyed and located upon the track or ground which has been used and traveled as such road or street for the three years next preceding such agreement: *Provided*, that the owner or owners of any such lands over which such road or street may pass, may agree with such company to alter or vary the location of such road or street, or parts thereof, across his or their said lands, and in that event, the old track shall thereby be vacated to the same extent as other lands are given in lieu thereof.

(436.) SEC. IV. At the expiration of the corporate existence of any plank road company, by expiration of their term fixed by its articles of association, if said road shall have been constructed upon any public highway or street, the county in which said road is situated, shall pay to said company the value of the plank superstructure of said road, at the time of said expiration, unless said company and said county shall again contract for the right of way over such public highway or street, upon a renewal of said company's charter. The value of such superstructure shall be ascertained by reference to three disinterested citizens of such county, one of whom shall be appointed by the board of supervisors or county court (as the case may be) of said county, one other by said company, and they two shall choose the third, and their decision, under oath, to be binding and final upon both parties.

(437.) SEC. V. That the provisions of this act, and of the act to which this is amendatory and supplemental, (as amended,) shall apply and be extended to any and all plank road companies organized under said general law; and all the acts legally done or performed by such company, or contracts made for the use, or right of way over any lands or public highway, with the county court of any county, or with the board of supervisors of any county, be and the same are hereby confirmed in such plank road company: *Provided*, that in case any company has failed or omitted to acknowledge and file the survey of their said road as required by this act, the same shall be so made and filed within ninety days from the passage of this act; and all such plank road companies organized under this act, or the act to which this is an amendment, may construct their said road by a single or double track of plank, as such company may deem for their interest.

(438.) SEC. VI. If any person or persons shall wilfully cut down, or

break, deface or injure any mile post or posts on any such road, or shall wilfully cut or throw down, break or injure any gate, fence or appendage, erected on any such road, or wilfully tear up, displace, break, or injure in any way, any such road or any thing thereunto belonging, or being an appendage, or for the use and convenience of any such road, he or they shall respectively and individually forfeit and pay to the company owning such road, three times the amount of damage actually done, and, in every instance, he or she shall forfeit and pay at least the sum of twenty-five dollars. If any person, to avoid the legal tolls chargeable on said road, shall turn off such road, and pass around and avoid any gate on such road, he or she shall forfeit and pay to such company, for every offense, the sum of ten dollars. If any person shall forcibly pass any toll-gate on any such road, without having paid the legal toll, without the permission of the toll collector, he or she shall forfeit and pay to such company owning such road, the sum of twenty-five dollars for each offense. All penalties and forfeitures incurred under this act may be recovered by action of debt in any court having cognizance thereof, and where the penalty or forfeiture does not exceed the sum of one hundred dollars, the same may be prosecuted and recovered before any justice of the peace of the county where the offender or offenders may be committed. All and any suits arising under this act, or the act to which this is amendatory, may be brought and prosecuted to judgment in the name assumed by any such plank road company, as the name and style thereof may be set forth in their articles of association.

(439.) SEC. VII. This act to be in force from and after its passage.

An Act to amend an Act entitled "An Act to provide for the Construction of Plank Roads by a General Law."

[Approved Feb. 17, 1851. Laws, 1851, p. 146.]

(440.) SEC. I. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the law to which this an amendment shall not be so construed as to require the plank track of any plank road to be over eight feet wide: *Provided*, that the earth or dirt track shall be so constructed as to afford convenient turn-outs for teams.

(441.) SEC. II. Any company that shall have been or may hereafter be formed under the law to which this is an amendment, may build so much of the road contemplated in their organization as may be for the interest of the company, or for the traveling public, being not less than one mile in all, and shall be entitled to all the rights and privileges upon said finished portion of said road which are granted by the general plank road law and its amendments, for the full term of their organization: *Provided, however*, that such portions of the road so contemplated as may be unfinished after the lapse of five years from the organization of said company, may be vacated, or if at any time after the formation of any company, any other plank road company shall propose to organize for the construction of any unfinished portion of any company's road, it shall be lawful for the company having control of such road, to surrender such unfinished portion of said road contemplated by their organization to the said newly formed company, by filing such surrender in the county clerk's office in the county wherein said road may be situated.

(442.) SEC. III. That any team or teams that may travel on any plank road, otherwise than to cross the same at the regular laid-outs, when the

termini of the journey of any such teams shall be on different sides of any toll-gate, and shall not pay the regular toll for the use of said road so traveled upon, when demanded, or if they shall leave the road without paying the toll, whether formally demanded or not, such team or teams, and the owner or owners thereof, shall be liable to a fine of ten dollars, to be collected in an action of debt or trespass, before any court of this State having jurisdiction thereof, and in any county in the State where the trespasser may be found; and said fine, when collected, shall be paid to the treasurer of the plank road company instituting such suit, who shall keep a true and accurate account of all moneys received by reason of fines, and shall annually, on the first Monday of January in each year, pay over one half of the net proceeds of the same to the county treasurer, for the use of the county where said plank road is located, retaining the other half for the use and benefit of said plank road company.

(443.) SEC. IV. That if any road shall have been or shall be laid out parallel with or in the same general direction with any plank road, within the distance of eighty rods on either side of such plank road, which road the said company shall believe was laid out with the express intention and for the purpose of interfering with such plank road, such plank road company is hereby authorized to file, in the circuit court of the proper county, a petition, setting forth the facts; and if, upon free hearing, the judge of such court shall be satisfied that such was the intention, he is hereby authorized, by an order to be entered of record, to vacate such road.

(444.) SEC. V. The shares of any company formed under the act to which this is amendatory, shall be deemed personal property, and may be transferred by assignment; which transfer shall be entered upon the books of said company, and such transfers shall show to and from whom transferred.

(445.) SEC. VI. The provisions of this act, and all amendments to which this is amendatory, shall apply to all plank road companies, whether formed under the general plank road law, or whether incorporated under special acts, or otherwise, so far as the same may not impair the provisions of special acts of incorporation.

An Act to amend an Act entitled "An Act to provide for the Construction of Plank Roads by a General Law," approved February 12, 1849.

[Approved June 22, 1852. Laws, 1852, p. 124.]

(446.) SEC. I. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That companies may be incorporated under and by virtue of the act to which this is an amendment, for the construction of plank roads across river or creek bottoms liable to overflow, and when formed they shall be allowed to take toll on the same when completed, as required by the said act, although the distance may be less than two consecutive miles: *Provided,* that the provisions of said act shall be otherwise strictly observed in forming the companies and building said roads.

(447.) SEC. II. It shall be lawful for said company to charge and take such rates of toll on roads across river or creek bottoms built by them, as they may agree upon with the county court of the county in which such roads may lie, and the said courts shall have power to regulate the rates of tolls to be taken by such companies, by an order fixing the same, and entered of record.

(448.) SEC. III. It shall be lawful for counties to become stockholders in companies formed under this amendatory act, to the amount of one-half of the stock of such companies: *Provided,* that the plank road made or to be made by any such company, shall lie within the county taking stock.

(449.) SEC. IV. This act to be in force from and after its passage.

An Act to amend an Act to provide for the Construction of Plank Roads by General Laws and the several Laws amendatory thereto.

[Approved Feb. 12, 1853. Laws, 1853, p. 202.]

(450.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all stockholders of plank road companies formed under the acts to which this is an amendment, shall be liable to pay all calls or assessments made upon them until their whole capital stock is paid, upon notice being given as required by said act, and that upon default in the payment of such calls, the directors are authorized to sue for and collect, in the name of such company, of such stockholders, the amount of such calls, or to cause the said stock of such stockholders to be forfeited, under the provisions of said act, as they may in their judgment elect.

(451.) SEC. II. Companies formed under the acts to which this is an amendment may proceed to obtain the right of way for their said road under an act entitled "An act to amend the law condemning the right of way for purposes of internal improvement," passed June 22, 1852, and to appraise the damages occasioned thereby, under the provisions of the said act. The directors of such roads, also, in their discretion, shall have the power to increase the capital stock of such company from time to time, as they may judge necessary.

(452.) SEC. III. This act shall take effect from and after its passage.

An Act to amend the General Plank Road Law.

[Approved Feb. 22, 1855. Laws, 1855, p. 145.]

(453.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever it shall be necessary for the construction of any railroad on the line of any plank road now constructed or hereafter to be constructed by any company, organized under the provisions of said law, said plank road company are hereby authorized to negotiate and transfer such plank road to said railroad company, upon the conditions following: That before said transfer shall be made, the vote of a majority of the stockholders shall be given in favor of such transfer, and further, that the consent of the county court of the county in which said plank road is situated, or board of supervisors, shall first [be] granted, and entered upon the records of said court.

(454.) SEC. II. This act to take effect from and after its passage.



## DIVISION XV. TELEGRAPHS.

## SECTION

455. Any person may organize company.  
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## SECTION

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An Act for the Establishment of Telegraphs.

[Approved Feb. 9, 1849. Laws, 1849, p. 158.]

(455.) SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any number of persons may associate for the purpose of constructing a line of telegraph through this State, or from and to any point within this State, upon such terms and conditions, and subject to the liabilities prescribed in this act.

(456.) SEC. II. Such persons, under their hands and seals, shall make a certificate, which shall specify—

1st. The name assumed to distinguish such association, and to be used in its dealings, and by which it may sue and be sued.

2d. The general route of the line of telegraph, designating the points to be connected.

3d. The capital stock of such association, and the number of shares into which the stock shall be divided.

4th. The names and places of residence of the shareholders, and the number of shares held by each of them respectively.

5th. The period at which such association shall commence and terminate: which certificate shall be proved or acknowledged and recorded in the office of the clerk of the county where any office of such association shall be established, and a copy thereof filed in the office of the secretary of State; such acknowledgment may be taken by any officer authorized to take the acknowledgment of deeds of real estate at the place where such acknowledgment is taken.

(457.) SEC. III. Upon complying with the provisions of the last preceding section, such association, and their successors and assigns, shall be, and hereby are, declared to be a body politic and corporate, by the name so as aforesaid to be designated in said certificate; and a copy thereof, duly certified by the clerk of the county where the same is filed and recorded, or by the secretary of State, may be used as evidence in all courts and places, for and against any such association.

(458.) SEC. IV. Such association shall have the power to purchase, receive and hold such real estate as may be necessary and convenient in accomplishing the objects for which such association may be formed, and may appoint such directors, officers and agents, and employ such servants, and make such prudential rules, regulations and by-laws as may be necessary in the transaction of the business, not inconsistent with the laws of this State, or of the United States.

(459.) SEC. V. Such association is authorized to construct lines of telegraph, and maintain such as are already constructed, along and upon any of the public roads and highways, and across any of the waters, and across and over the lands, whether public or private, within the limits of this State,

by the erection of the necessary fixtures, including posts, piers or abutments for sustaining the cords or wires of such lines: *Provided,* The same shall not be so constructed as to incommode the public use of said roads or highways, or injuriously interrupt the navigation of said waters, nor shall this act be so construed as to authorize the erection of any bridge across any of the waters of this State.

(460.) SEC. VI. If any person over whose lands said lines shall pass, upon which said posts, piers or abutments shall be placed, shall consider himself aggrieved or damaged thereby, it shall be the duty of the circuit judge within whose district such lands are, on the application of such persons, and on notice to said association, (to be served on the president or any director,) to appoint three discreet and disinterested persons or appraisers, who shall severally take an oath before any person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act. And it shall be the duty of said appraisers, or a majority of them, to make a just and equitable appraisal of all the loss or damage sustained by said applicant by reason of said lines, posts, piers or abutments, duplicates of which said appraisal shall be reduced to writing and signed by said appraisers or a majority of them, and one copy shall be delivered to the applicant, and the other to the president, or any director or officer of said association or corporation, on demand; and in case any damages shall be adjudged to said applicant, the association or corporation shall pay the amount thereof, with costs of said appraisal; said costs to be liquidated and ascertained in said award, and said appraisers shall receive for their services two dollars for each day they are actually employed in making said appraisal.

(461.) SEC. VII. Any person who shall unlawfully and intentionally injure, molest or destroy any of said lines, posts, piers or abutments, or the materials or property belonging thereto, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars, or imprisonment in the penitentiary not exceeding one year, or both, at the discretion of the court having cognizance thereof. Prosecutions under this act shall be by indictment in any court having criminal jurisdiction.

(462.) SEC. VIII. It shall be lawful for any association of persons organized under this act, by their articles of association, to provide for an increase of their capital, and of the number of the association, and of the extension of new lines of telegraph from time to time, as they may think proper.

(463.) SEC. IX. If any association or associations organized under this act shall refuse to receive dispatches from and for other telegraph lines or associations, and shall refuse to transmit the same in good faith and with impartiality, such association or associations so offending, shall forfeit all rights and privileges acquired under this act, and the same shall cease and be dissolved.

(464.) SEC. X. The legislature may at any time alter or repeal this act.

(465.) SEC. XI. It shall be the duty of all persons employed in transmitting messages by telegraph, to transmit them in the order in which they are received, and any person who shall fail so to transmit messages, or who shall suppress a message, or who shall make known the contents of a mes-

sage, to any person other than the one to whom it is addressed, or to his attorney, shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding one thousand dollars.

(466.) SEC. XII. Process or notice served upon any clerk or agent of any of said companies formed under this act, at any of the offices of such company, shall be sufficiently served for all purposes whatsoever.

(467.) SEC. XIII. This act is hereby declared to be a public act, to take effect on its passage.

## DIVISION XVI. AGRICULTURAL SOCIETIES.

### SECTION

468. Name of society.  
469. Object.  
470. Powers.  
471. May alter or amend constitution, &c.  
472. When act shall be in force.  
473. Appropriation out of State treasury.  
474. How to be expended.  
475. When act shall take effect.  
476. Association, how formed.  
477. Notice; officers.

### SECTION

478. Proceedings to be recorded.  
479. Power to make alterations or amendments; *proviso*.  
480. Capital stock.  
481. Election.  
482. Not to confer banking powers.  
483. Stock regarded as personal property.  
484. Dividends; *proviso*.  
485. Power to dissolve association.  
486. When act to take effect.

An Act to Incorporate the Illinois State Agricultural Society.

[Approved Feb. 8, 1853. Laws, 1853, p. 230.]

(468.) SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly.* The Illinois State Agricultural Society shall, by that name and style, be hereafter known as a body politic and corporate.

(469.) SEC. II. The object of the society being to promote the agricultural, horticultural, manufacturing, mechanic and household arts, they shall be allowed, for those purposes only, to take and hold real and personal estate, the former to the amount only of twenty-five thousand dollars.

(470.) SEC. III. The society shall have the right to contract and be contracted with, to sue and be sued, to plead and be impleaded, to answer and be answered unto, in all the courts of law and equity of this State, and shall further enjoy all the privileges incident to incorporations of said character, and not inconsistent with the laws of this State.

(471.) SEC. IV. The society shall have power to alter and amend their present constitution, and to make, alter and repeal such by-laws as may be deemed necessary for carrying out the objects of the society.

(472.) SEC. V. This act shall be in force from and after its passage.

An Act to encourage the Formation of County Agricultural Societies.

[Approved Feb. 14, 1855. Laws, 1855, p. 131.]

(473.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever the president and treasurer of any county agricultural society shall certify that the sum of (at least) fifty dollars has been collected, and is in the hands of the treasurer, for the use of said society, the treasurer of this State shall, when called upon for that purpose, pay to the said treasurer or fiscal agent or officer of said

society, the sum of fifty dollars, and the receipt of said treasurer of such society therefor shall entitle the said treasurer of this State to a credit for that amount in the settlement of his account as such State treasurer.

(474.) SEC. II. The said sum of fifty dollars, thus appropriated, shall be expended in the purchase of premiums, to be procured and distributed under the direction of said societies respectively, in the manner prescribed in the constitution, by-laws or other regulations of said societies.

(475.) SEC. III. This act shall take effect and be in force from and after its passage.

A Bill for a General Act of Incorporation of Agricultural and Horticultural Societies and Associations for improving the Breeds of Domestic Animals.

[Approved Feb. 15, 1855. Laws, 1855, p. 132.]

(476.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever any number of persons, not less than ten, may be desirous of associating themselves together as a society for the promotion, advancement or improvement of agriculture or horticulture, or the breeding and rearing of domestic animals, under corporate rights and privileges, it shall be lawful for such persons, having first raised and actually having on hand for such purpose, in cash, a joint capital of not less than one hundred dollars, to make and subscribe for their government a constitution, in which shall be set forth the name of the society or association: but no person shall become a member of such society or association until he shall actually have paid into the treasury of such society or association at least one dollar.

(477.) SEC. II. The persons associated according to the provisions of section one, or a majority of them, desiring corporate rights and privileges for their society or association, may meet at the county seat of the county in which a majority of said members reside, after having given at least three weeks' notice of such meeting, by advertisement set up in at least three public places in said county, and if there be a public newspaper printed and published in said county, then also by publishing said notice for three consecutive weeks in such newspaper. The members of such society or association, or a majority of them, shall at such meeting choose, by acclamation or otherwise, as a majority of such meeting may determine, a president *pro tempore*, and a secretary *pro tempore*. The meeting being thus organized, shall elect a president, a vice president, a treasurer and a secretary of the society or association, whose duties shall respectively be such as the constitution and the by-laws of the society or the association shall assign to each, and who shall hold their offices respectively for one year, and until their successors shall be elected and enter upon the discharge of their duties. There shall also be elected, at the same meeting, a board of five directors, for the government and general direction of the society or association, and whose duties shall be such as may be prescribed by the constitution or by-laws of such society or association, not inconsistent with this act or with the laws of this State.

(478.) SEC. III. The secretary *pro tempore* of said meeting shall keep a correct minute of the proceedings of said meeting, which, being certified by said secretary and the president *pro tempore* of said meeting, shall, within five days after said meeting, be filed for record in the recorder's

office of the county within which said meeting is by this act organized to be held; and it is hereby made the duty of the recorder to record said minutes and certificate in some book kept for recording deeds. A copy of the constitution of said society or association shall also be filed in said office, where the same shall be preserved for the inspection of the public. And whenever such constitution shall be altered or amended by such society or association, a copy of the altered or amended constitution shall also be filed in said office, to be there preserved in like manner. The recording officer, for recording and also for filing the documents by this act required to be respectively filed and recorded, shall be allowed the same fee as is now allowed by law for similar services, which fee shall be paid by the society or association. On filing in said office a certified copy of the proceedings of said meeting, and also a copy of the constitution of said society or association, in pursuance of this act, (the previous steps herein required having been properly taken,) the persons whose names [are then] subscribed to the constitution of said society or association, together with all others who, after that time, may become members of the same, shall become a body corporate and politic, by the name assumed and set forth in their said constitution, with perpetual succession, and by that name may have and use a common seal, sue and be sued, answer and be answered, in all the courts of this State, whether of law or equity; may sue for and collect all voluntary subscriptions or donations, and by that name may acquire and hold real estate, not exceeding in quantity five hundred acres; and may construct and erect all necessary improvements and buildings thereon for agricultural and horticultural experiments, and for rearing domestic animals, and for improving the breeds of the same, and for taming and improving and breeding of such animals as are commonly found wild; and for such purposes said society or association may have and employ capital, apparatus, implements, machinery and live stock, altogether not exceeding in value ten thousand dollars.

(479.) SEC. IV. Said society or association shall have power to make any alteration or amendment in its said constitution which experience may show to be requisite: *Provided*, that the name of said society or association set forth in its first constitution shall not be laid aside or altered, nor any other act done to delay or impair the rights of creditors or others having claims upon such society or association.

(480.) SEC. V. The whole capital stock of said corporation shall be divided into shares of not less than one dollar nor more than five dollars, to be fixed by the constitution; and at all elections to be held by said society or association, each member of the same, or his personal representatives, shall be entitled to give one vote for each share held by him or her, and the voting may be in person or by proxy.

(481.) SEC. VI. At the expiration of one year from the time of holding the first election herein provided for, a president, vice president, secretary, treasurer and directors shall be chosen by such society, on the same notice being given as is required in the second section of this act: but if from any cause an election shall not be held at the regular time, such omission shall not work any forfeiture of corporate rights and privileges.

(482.) SEC. VII. This act shall not be construed to confer banking powers or privileges on any society or association organized in accordance with its provisions.

(483.) SEC. VIII. Shares in the stock of such society or association shall be regarded in law as personal property, and shall be transferable and assignable on the books of the association; and every person holding a share shall be regarded as a member of said association, and be entitled to give one vote for each share held by him or her.

(484.) SEC. IX. Until the whole capital stock of the society or association, including money, implements, apparatus, machinery, live stock and property of every description, whether real, personal or mixed, shall amount to ten thousand dollars, the profits, if any there be, arising from the operations and experiments of the society or association, shall not be divided among the stockholders, but shall accumulate as capital stock until the said capital shall reach the sum of ten thousand dollars; but after said capital stock shall have reached the sum of ten thousand dollars in value, then a dividend of profits shall from time to time be made among the stockholders, in proportion to the number of shares held by each: *Provided*, This section shall not be construed to restrain the society or association from offering or giving premiums to any amount which the society or association may think proper.

(485.) SEC. X. Whenever a majority in interest of the shareholders shall desire to dissolve the society or association, and shall, at a regular annual meeting, vote for a dissolution of the same and for a division of the capital stock, the directors shall have power to sell all the property of the society or association, and, after the payment of all existing debts, claims, demands and liabilities, to divide the residue of the proceeds of such sale among the several stockholders, according to the number of shares held by each; and said society or association shall thereupon be dissolved.

(486.) SEC. XI. This act shall take effect and be in force from and after its passage.

## DIVISION XVII. CEMETERIES.

SECTION  
487. Formation of cemetery associations; powers.  
488. Officers, how chosen.  
489. Election.  
490. Voters.  
491. Land to be surveyed.

SECTION  
492. May establish by-laws and rules.  
493. Proceeds of sale.  
494. Property exempt from taxation.  
495. Act to be public; when to take effect.

An Act to provide for the Incorporation of Cemetery Associations by General Law.  
[Approved Feb. 14, 1855. Laws, 1855, p. 189.]

(487.) SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That when five or more persons shall associate themselves together for the purpose of forming a cemetery association in any incorporated city or town, or any township, precinct, village or neighborhood in this State, such persons shall have the power to adopt a corporate name, and by that name shall be known as a body corporate, and by that name shall have perpetual succession, and be invested with all powers, rights, privileges, liabilities and immunities incident to corporations. Said persons, so associated, shall have power to acquire, by gift, grant or purchase, any lot or lots of land, not exceeding fifty acres, and lay out the same for

a burial place for the dead, with convenient aisles, and to sell the same for such purpose and for no other purposes, reserving a sufficient portion thereof for the burial of the stranger and indigent persons. Said persons, so associated, may have a common seal, and may alter or change the same at their pleasure. Said association shall have power to enclose and ornament said burial ground, to build and erect a hearse house, and keep the same in proper repair; to purchase a hearse or hearses, and do all other necessary acts, to the end that all the appliances, conveniences and benefits of a public and private cemetery may be desired or obtained.

(488.) SEC. II. The officers of said corporation shall be a president, a treasurer, who shall act as secretary, and three directors, which said officers shall be chosen annually, by ballot, and shall hold their office until their successors are chosen. Any neglect to choose their officers on the day fixed upon for that purpose, shall not operate as a forfeiture of their act of incorporation, in accordance with provisions of this act.

(489.) SEC. III. The first election of officers by the persons associating according to and for the purpose specified in the first section of this act, shall be at the time and place designated and agreed upon by a majority of the persons so associating themselves together; and no other than such persons shall vote at said election.

(490.) SEC. IV. At each subsequent election of officers of said incorporation, the owner or owners of a lot or lots in said burial grounds shall be entitled to one vote in the election of officers of said corporation, and no more; and shall, by virtue of such membership, be a member of said corporation.

(491.) SEC. V. The persons associating together in accordance with the provisions of this act, shall cause the land designed as a burying ground to be surveyed and platted; and a plat of said ground, so surveyed, shall be recorded in the recorder's office in the county where such land is situated; each lot shall be duly numbered by said surveyor, and such number shall be marked on said plat, and recorded as aforesaid.

(492.) SEC. VI. The said corporation shall have power to establish and change by-laws, and prescribe rules and regulations for its government, and the duties of its officers and the management of its property.

(493.) SEC. VII. The proceeds arising from the sale of lots in the foregoing sections of this act provided for, after deducting all expenses of purchasing and laying out lots, shall be applied, appropriated and used in improving and ornamenting the burial ground, or for other purposes named in this act.

(494.) SEC. VIII. The property of the corporation, its ground, lots and appliances, shall be exempt from taxation, and shall not be liable to sale on execution.

(495.) SEC. IX. This act is hereby declared a public act, and shall take effect from and after its passage.

PRIOR LAWS. An act to incorporate the subscribers to the State bank of Illinois; in force March 22, 1819. Repealed Feb. 1821. Laws, 1819, p. 151.

An act establishing the State bank of Illinois; in force Feb. 1821. Laws, 1821, p. 80.

An act supplemental to an act entitled "An act establishing the State bank of Illinois," passed Feb. 1821; in force Feb. 12, 1821. Laws, 1821, p. 144.

An act relative to the State bank; in force Feb. 18, 1823. Laws, 1822-3, p. 181.

An act to incorporate such persons as may associate for the purpose of procuring and erecting public libraries in this State; in force Jan. 31, 1823. Laws, 1823, p. 101. Rev. Laws, 1833, p. 357.

An act to authorize the incorporation of manufacturing companies; in force Dec. 16, 1824. Laws, 1824-5, p. 15.

An act providing for the examination of the Shawneetown branch bank, and for other purposes; in force Dec. 16, 1824. Laws, 1824-5, p. 16.

An act to provide for the recording of town plats; in force Jan. 24, 1825. Laws, 1824-5, p. 55.

An act supplementary to "An act establishing the State bank of Illinois;" in force Jan. 10, 1825. Laws, 1824-5, p. 82.

An act to incorporate the inhabitants of such towns as may wish to be incorporated; in force March 1, 1831. Rev. Laws, 1833, p. 362.

An act providing for the recording of town plats; in force Feb. 27, 1833. Rev. Laws, 1833, p. 599.

An act supplemental to the several acts for finally closing the affairs of the State bank and branches; in force Feb. 25, 1833. Rev. Laws, 1833, p. 583.

An act to incorporate the subscribers to the bank of the State of Illinois; in force Feb. 12, 1835. Laws, 1835, p. 7.

An act to incorporate the president, directors and company of the bank of Illinois, at Shawneetown; in force Feb. 12, 1835. Laws, 1835, p. 15. This bank was originally chartered by the territorial legislature, Dec. 28, 1816.

An act concerning religious societies; in force March 1, 1835. Laws, 1835, p. 147.

An act for the incorporation of fire companies; in force Feb. 12, 1835. Laws, 1835, p. 174.

An act further defining the powers and duties of trustees of incorporated towns; in force Jan. 31, 1835. Laws, 1835, p. 175.

An act supplemental to an act to incorporate such persons as may associate for the purpose of procuring and erecting public libraries in this State, approved Jan. 31, 1833; in force Jan. 31, 1835. Laws, 1835, p. 181.

An act supplemental to "An act to incorporate the subscribers to the bank of the State of Illinois;" in force Jan. 16, 1836. Laws, 1836, p. 237.

An act supplemental to an act entitled "An act to incorporate the president, directors and company of the bank of Illinois, at Shawneetown;" in force Feb. 28, 1837. Laws, 1837, p. 17.

An act authorizing a subscription to the capital stock of the State bank of Illinois; in force March 2, 1837. Laws, 1837, p. 18.

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 improvements;" in force March 4, 1837. Laws, 1837, p. 18.

An act for the safe keeping and security of the public money; in force March 4, 1837. Laws, 1837, p. 23.

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 4, 1837; in force July 21, 1837. Special Session, 1837, p. 5.

An act to suspend for a limited time certain laws in relation to the banks of this State; in force July 21, 1837. Special Session, 1837, p. 6.

An act authorizing the settlement of the accounts of James Turney, late attorney general, and for establishing two additional branches of the bank of Illinois; in force March 2, 1839. Laws, 1839, p. 272.

An act to prohibit the circulation of bank notes of a less denomination than five dollars; in force Dec. 4, 1838. Laws, 1839, p. 79.

An act relating to service of process against corporations; in force Feb. 19, 1839. Laws, 1839, p. 160.

An act in relation to the State bank of Illinois; in force Jan. 31, 1840. Laws, 1840, p. 15.

An act to provide for the payment of certain debts due from the State to the banks; in force Feb. 26, 1841. Laws, 1841, p. 39.

An act to amend an act entitled "An act in relation to the State bank of Illinois," approved Jan. 31, 1840; in force Feb. 27, 1841. Laws, 1841, p. 40.

An act concerning the State bank of Illinois; in force Feb. 27, 1841. Laws, 1841, p. 40.

An act to incorporate academies and seminaries of learning; in force March 6, 1843. Laws, 1843, p. 6.

An act in relation to the State bank of Illinois and bank of Illinois; in force Dec. 22, 1842. Laws, 1843, p. 21.

An act to diminish the State debt and put the State bank into liquidation; in force Jan. 24, 1843. Laws, 1843, p. 21.

An act supplemental to an act entitled "An act to diminish the State debt and put the State bank into liquidation;" in force Jan. 27, 1843. Laws, 1843, p. 27.

An act to put the bank of Illinois into liquidation; in force, March 3, 1843. Laws, 1843, p. 27.

An act to reduce the public debt one million of dollars, and to put the bank of Illinois into liquidation; in force Feb. 25, 1843. Laws, 1843, p. 30.

An act in relation to specie in the bank of Illinois, at Shawneetown; in force March 4, 1843. Laws, 1843, p. 36.

An act to repeal the charter of the bank of Cairo; in force March 4, 1843. Laws, 1843, p. 36. This bank was chartered Jan. 9, 1813, by the territorial legislature.

An act to prohibit the reception of depreciated paper in payment of public dues; in force Feb. 23, 1843. Laws, 1843, p. 39.

An act to prevent cities or towns from issuing warrants to circulate as money; in force March 4, 1843. Laws, 1843, p. 67.

DECISIONS. The bills of the old State bank were not bills of credit. *Snyder v. State Bank of Illinois*, Breese, 122. *Overruled in Lynn v. State bank of Illinois*, 1 S. 87.

The omission of the president and directors of the old State bank to have a note protested as required by the 22d section of the bank law, does not release the securities upon the note. *Moreland et al. v. State Bank of Illinois*, Breese, 203.

An incorporated township for common school purposes, is a quasi public corporation. *Bush v. Shipman et al.*, 4 S. 186. *Ballingall et al. v. Carpenter et al.*, 4 S. 305.

The charter of the bank of Illinois, and the several amendments thereto, were constitutional. *The People v. Marshall et al.*, 1 G. 672. *Williams v. Bank of Illinois*, 1 G. 667.

The laying out or recording of a town plat vests the legal title to the streets and public grounds in the corporation. *Canal Trustees v. Havens*, 11 Ill. 554. *Hunter v. Middleton*, 13 Ill. 50.

A purchaser of a town lot acquires no title beyond the limits of his lot. *Idem*.

Corporate towns, under the act of Feb. 12, 1831, had no power to grant grocery licenses. *The Town of Ottawa v. The County of LaSalle*, 12 Ill. 339.

Under the act of Feb. 25, 1843, entitled "An act to reduce the public debt one million of dollars, and to put the bank of Illinois into liquidation," the assignees of the bank had authority to sell the real estate of the bank at public or private sale. *Atwood v. Caldwell et al.*, 12 Ill. 96.

A debtor of the bank of Illinois may pay his indebtedness, (except stock subscription,) in the notes and certificates of the bank. *Dunlap v. Smith et al.*, 12 Ill. 399.

Stocks deposited with the treasurer under the banking law, are not entitled to a share in the distribution of the two mill tax. *Marine Bank of Chicago v. The Auditor, &c.*, 14 Ill. 185.

The auditor may allow stocks to be withdrawn, and others equally valuable to be deposited in their stead. *Idem*.

Where the State bank of Illinois acquired real estate subsequent to the assessment of taxes thereon, the tax was a lien on the land, which the bank was bound to pay. *Manly et al. v. Gibson*, 14 Ill. 136.

The assignees of the bank of Illinois are bound, while assets remain in their hands, to pay taxes assessed on money owned by the bank. *Ryan v. Gallatin County*, 14 Ill. 78.

The assignees of said bank are a quasi corporation. *Idem*.

Under the act of Feb. 23, 1843, appointing assignees of the bank of Illinois, the bonus to the State ceased, and the assets became taxable as property. *Idem*.

To secure the payment of existing debts to the State bank of Illinois, the bank might, under its charter, purchase in prior liens upon land mortgaged to the bank. *Brown v. Hogg*, 14 Ill. 219.

Under the general banking law, the bank franchise is forfeited, unless the quarterly statement is made to the auditor within the time prescribed by the act. *The People, &c., v. Campbell, Auditor*, 14 Ill. 400.

The legislature has power to repeal so much of an act incorporating a city, as authorizes such city to grant licenses to sell ardent spirits. *Gutzwiller v. The People*, 14 Ill. 142.

A corporation is presumed to reside in the State of its creation, and where its principal office or place of business is. *The Sangamon and Morgan R. R. Co. v. The County of Morgan et al.*, 14 Ill. 163.

When a corporation has authority under its charter to take materials from the lands of others by paying a compensation therefor, it is liable for the conduct of those to whom it sublets the work, in taking such materials; such lessees are its agents. *Leshner et al. v. Wabash Navigation Company*, 14 Ill. 86; *Hinde v. Wabash Navigation Company*, 15 Ill. 72.

The trustees of the insane hospital may remove their superintendent for any of the causes mentioned in the act. *The People v. Higgins*, 15 Ill. 110.

A city ordinance declaring the sale of spirituous liquors a nuisance, is valid, if within the limits of the corporate powers conferred upon the city. *Goddard v. Jacksonville*, 15 Ill. 588.

## CHAPTER XXVI.

## COSTS.

## SECTION

1. Bond for costs required, in what cases; nature and form of bond.
2. If suit be commenced without bond, suit to be dismissed at cost of plaintiff's attorney; if plaintiff become non-resident or unable to pay, after commencement of suit, bond may be required, and on refusal to file one, suit may be dismissed.
3. If plaintiff be poor person.
4. When plaintiff has judgment in matter personal to himself, he shall have costs.
5. In what case defendant may have costs.
6. If plaintiff in replevin be non-suited, defendant may have costs.
7. Costs on overruling demurrer.
8. Costs when pleas adjudged insufficient.
9. When counts in declaration insufficient, costs to be awarded.
10. One of several defendants in tort, on acquittal, shall recover costs.
11. Costs on *scire facias*.
12. How many witnesses may have costs.

## SECTION

13. When there is irregularity or failure to prosecute, defendant may have costs.
14. State or county may recover costs; when defendant in action brought by State or county may not recover costs.
15. Costs against complainant on dismissal of his bill in equity.
16. Person to whose use suit is commenced, shall be liable for costs.
17. On appeals or writs of *certiorari* from judgments of justices of the peace, how costs awarded.
18. In appeals from probate court.
19. Costs on writs of error to supreme court.
20. If, on writ of error, judgment be affirmed, damages may be given in certain cases; *proviso*.
21. Costs, when divided between the parties.
22. Clerks of courts of record shall tax and subscribe all bills of costs.
23. On application of aggrieved party, court may re-tax bill of costs; clerk improperly taxing, to forfeit his fees, and refund.
24. If costs not paid in certain cases, how to be collected.

[Approved March 3, 1845. Rev. Stat. 1845, p. 125.]

SECTION I. 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 institutes 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. }  
vs. } — Court,  
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 —, 18—.

E. F."

SEC. II. 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. III. 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 said officers.

SEC. IV. If any person shall sue in any court of this State in any action, real, personal or mixed, or upon any statute for any offense 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. V. If any person shall sue in any court of record of this State, in 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. VI. 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. VII. If, in any action, judgment upon any demurrer, by either party to the action, shall be given against the plaintiff or demandant, 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 exception for the same.

SEC. VIII. 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. IX. 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. X. 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. XI. 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* or *non-pros'd*, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs.

SEC. XII. In no case in the circuit court shall the fees of more than four witnesses be taxed against the party against whom judgment shall be 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. XIII. 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 therefor.

SEC. XIV. 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 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. XV. 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 in the discretion of the court to award costs or not; and the payment of costs, when awarded, may be compelled by execution.

SEC. XVI. 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.

SEC. XVII. In all cases of appeal or *certiorari* upon the judgments of justices 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: 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.



SEC. XVIII. In all cases of appeal from the decision of a court of probate, the costs shall be in the discretion of the circuit court.

SEC. XIX. 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.

SEC. XX. 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 therefor: *Provided*, The supreme court shall be of opinion that such appeal or writ of error was prosecuted for delay.

SEC. XXI. 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.

SEC. XXII. 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 rates 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.

SEC. XXIII. 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 re-tax the same, according to law. If the said court shall find any charge allowed 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.

SEC. XXIV. In all cases where either party shall be adjudged to pay costs before final judgment, by reason of setting aside, a *non-suit*, default or *non-pros'*, 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*.

PRIOR LAWS. See parts of "An act regulating the practice in the supreme and circuit courts of this State, and for other purposes;" approved March 22, 1819. Laws, 1819, p. 139.

See also parts of "An act regulating the practice in the courts of chancery in this State;" approved March 22, 1819. Laws, 1819, p. 170.  
An act concerning costs; in force June 1, 1827. Rev. Laws, 1827, p. 102; Rev. Laws, 1833, p. 165.

DECISIONS. A bond for costs, given by a non-resident after the commencement of the suit, but before trial, is sufficient. *White v. Stafford*, Breese, 38.

A security for costs may be discharged in order to be made a witness, and another security substituted. *Kimmel v. Schwartz*, Breese, 216.

A judgment need not state the amount of costs *in numero*. *Sims v. Klein*, Breese, 292.

Under the statute "concerning costs," a judgment for costs cannot be rendered against an administrator in his personal character. *Church et al. v. Jewett et al.*, 1 S. 55; *Bailey v. Campbell*, 110.

The board of canal commissioners, like other litigants, are liable to pay costs, out of the canal fund, in suits commenced by the board for the benefit of the fund. *The People ex rel. v. The Board of Commissioners, &c.*, 3 S. 545.

The State never gives bond for costs in any case, nor ever pays costs except in some special way required by statute. *People v. Pierce*, 1 G. 553.

In a suit, by a resident of the State, for the use of another, affidavits of the insolvency of the person for whose use the suit was brought, and motion for security for costs, were made. The motion was denied, as the nominal plaintiff was a citizen, and liable for costs. *Buckmaster for use, &c., v. Beames et al.*, 3 G. 1.

In the supreme court, a motion founded on affidavit was made, to dismiss the writ of error, unless the beneficial plaintiff should indemnify the nominal plaintiff against costs. Motion allowed. If a bond for costs is objected to, the burthen of proof to show it to be sufficient, is on the party presenting it. *Buckmaster for use, &c., v. Beames et al.*, 3 G. 97.

An equitable assignee of a chose in action, may sue on it in the name of the legal owner, but must indemnify such party against costs. *Henderson v. Welch*, 3 G. 340.

An attachment bond under the statute was sued on in the name of the sheriff for the use of the party in interest. Upon writ of error on such suit, in the supreme court, ordered, that indemnity against costs be given the sheriff, or the writ of error be dismissed. *Young v. Campbell et al.*, 4 G. 156.

Motions for security for costs are addressed to the discretion of the court, and decisions thereon cannot be assigned for error. An administrator is not personally liable for costs. *Selby v. Hutchinson, Administrator*, 4 G. 319.

A non-resident commencing an action either in the circuit or supreme court, without first filing security for costs, such action must be dismissed. *Hickman v. Haines*, 5 G. 20.

In all actions on official bonds, for the use of any one, the person for whose use the suit is to be brought, must, before commencing suit, file security for costs, whether the action be commenced in the circuit or probate court. *Robertson et al. v. County Commissioners, &c.*, 5 Gil. 559.

An action was brought in the probate court, on an official bond, without filing security for costs. No motion to dismiss the suit, for that cause, was made in that court: *Held*, that the party by omitting to make such motion, had waived his right to do so when the case was taken to the circuit court. *Idem*.

Under the 17th Section, Chapter XXVI, Revised Statutes, 1845, when the unsuccessful party before a justice of the peace, prosecutes an appeal to the circuit court, which results in an affirmance of the judgment below, the circuit court should charge the appellant with the costs of the appeal. *O'Reer v. Strong*, 13 Ill. 688.

A motion for security for costs against a non-resident, is too late if made after the time when the defendant should have pleaded in abatement. *Randolph v. Emerick*, 13 Ill. 344.

Under the 12th Section, Chapter XXVI, Revised Statutes, 1845, the successful party in a suit in the circuit court, can recover the fees of no more than four witnesses, unless the court certify that a greater number was necessary. *Peoria & Bureau V. R. R. Co. v. Bryant*, 15 Ill. 438.

## CHAPTER XXVII.

COUNTIES, COUNTY COMMISSIONERS' COURTS, AND  
COUNTY COURTS.

## SECTION

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5. Terms to be one, two and three years, as lots shall designate.
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11. When office of clerk becomes vacant, *pro tempore* appointment may be made, until vacancy be filled.
12. How vacancy may be filled.
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- fiscal concerns; same to be posted up in clerk's office: penalty for neglecting, how recovered.
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[Approved March 3, 1845. Rev. Stat. 1845, p. 129.]

(1.) SECTION I. Each county which has heretofore been or may hereafter be established in this State, according to the laws thereof, shall be a body politic and corporate, by the name and style of "The county of —," and by that name may sue and be sued, plead and be impleaded, defend and be defended against, in any court of record, either in law or equity, or other place where justice shall be administered.

(2.) SEC. II. There shall remain, as at present established, in each county of this State, and shall be established in each county hereafter created, a court of record, to be constituted, composed of three commissioners, elected by the people as hereinafter provided, to be styled "The county commissioners' court of — county."

(3.) SEC. III. Such commissioners shall be elected as provided in chapter thirty-seven (title "ELECTIONS,") of the Revised Statutes. Previous to entering upon their duties, they shall be sworn, before some justice of the peace, judge of the circuit court, or clerk of the circuit court, faithfully to perform the duties of their office to the best of their knowledge and ability.

(4.) SEC. IV. At the first meeting of such commissioners after they shall have been so elected and sworn, the clerk of said county commissioners' court, shall prepare three tickets, upon one of which he shall write 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 clerk with the writing thereon concealed, to such county commissioners, and each of said commissioners shall draw one of said tickets.

(5.) SEC. V. The term of service of the commissioner who draws the ticket upon which is written "one year," shall expire at the end of one year; the term of service of the commissioner who draws the ticket upon which is written "two years," shall expire at the end of two years; and the term of service of the commissioner who draws the ticket upon which is written "three years," shall expire at the end of three years; the result of which drawing shall be entered by the clerk upon the records of the court.

(6.) SEC. VI. The two preceding sections shall be deemed to apply only to commissioners elected at the first elections to be held in counties hereafter to be organized. Thereafter in all such new counties, as well as in all counties now organized according to law, one commissioner shall be elected at the general election in each year, as provided in chapter thirty-seven, (title "ELECTIONS,") to supply the place of the commissioner whose term of office shall then expire; it being intended that after such first election, each commissioner shall hold his office for the term of three years.

(7.) SEC. VII. 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 precincts 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.

(8.) SEC. VIII. There shall be elected in each county, a county commissioners' clerk, who shall hold his office four years, and until his successor is elected and qualified. In counties hereafter to be organized, they shall be elected at the first election of county commissioners, and in like manner every four years thereafter. In counties now existing, they shall be elected at the periods and in the order of time by law established.

(9.) SEC. IX. Each clerk so elected and qualified, 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, to be approved by them, 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.

(10.) SEC. X. The county commissioners' court of any county, may, for misconduct in office, gross neglect of duty, incompetency, or other good cause shown, to be entered upon the record of their said court, remove their clerk, whose office shall be considered vacant.

(11.) SEC. XI. Whenever, by reason of death, resignation, removal, or any other cause, the office of clerk shall become vacant, the court may appoint a clerk, *pro tempore*, who shall perform the duties of such office until such vacancy shall be filled.

(12.) SEC. XII. Such vacancy shall be filled in the same manner as is provided in section seven of this chapter, for filling vacancies in the office of county commissioner.

(13.) SEC. XIII. Every clerk who shall refuse or neglect, after going out of office, to deliver to his successor in office, all papers, books, moneys, and all and every thing appertaining to his office, shall forfeit and pay any sum not over five hundred dollars, and be imprisoned any time, not exceeding thirty days, at the discretion of the court before which he may be tried; such forfeiture and payment to be independent of, and in nowise discharging or diminishing the obligation of his official bond.

(14.) SEC. XIV. 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.

(15.) SEC. XV. 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.

(16.) SEC. XVI. 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 chapter, 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.

(17.) SEC. XVII. 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.

(18.) SEC. XVIII. 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. 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.

(19.) SEC. XIX. 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 be brought by or against their respective counties.

(20.) SEC. XX. 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.

(21.) SEC. XXI. All the counties of this State, or which shall hereafter be erected, which are or shall be bounded, or which may front on either the Mississippi or Wabash rivers, shall respectively have and exercise jurisdiction upon such rivers so far as the counties shall respectively be bounded by the rivers aforesaid; which jurisdiction shall be exercised concurrently by the counties aforesaid, with the contiguous States and territories bounded by said rivers, so far and to such extent as the said rivers shall form the boundary of the counties aforesaid respectively; and also the boundary between this State and contiguous States or territories.

(22.) SEC. XXII. There shall be four sessions of the county commissioners' court in each county in this State, to be holden at the usual place of holding courts, or at the office of the clerk, to commence on the first Mondays of March, June, September and December of each year, and continue six days, if the business shall not be sooner completed.

(23.) SEC. XXIII. Two commissioners shall constitute a quorum to do business. Should a quorum 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, the business therein to stand continued to the next court in course.

(24.) SEC. XXIV. 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.

(25.) SEC. XXV. The said courts shall have jurisdiction throughout their respective counties in all matters and things concerning the county revenue, and regulating and imposing the county tax, and shall have power to grant licenses 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 proceedings by the clerk, throughout the State, which are necessary to the execution of the power and jurisdiction with which such courts are or may be vested by law.

(26.) SEC. XXVI. 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 they shall be, and 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.

(27.) SEC. XXVII. 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. All such process shall run "*In the name of the People of the State of Illinois,*" and may be executed and returned as other process, by the sheriff or any constable of the county.

(28.) SEC. XXVIII. 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.

(29.) SEC. XXIX. There shall be nothing contained or construed in this chapter to give the said court any original or appellate jurisdiction in civil or criminal suits or actions wherein the State is a 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 them by law.

(30.) SEC. XXX. 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 in the same kind of funds received by them.

(31.) SEC. XXXI. 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.

(32.) SEC. XXXII. There shall be allowed to each county commissioner, in full for his services for each day's attendance in holding courts, the sum of one dollar 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.

(33.) SEC. XXXIII. That commissioner who shall be oldest in commission, shall preside at all meetings of the court.

(34.) SEC. XXXIV. 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.

(35.) SEC. XXXV. 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 courthouse 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.

(36.) SEC. XXXVI. The county commissioners' courts in each county shall have power to contract for 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.

(37.) SEC. XXXVII. The county commissioners' courts of any county in this State, are hereby authorized to lease such vacant room or rooms, as offices, as may be in the court-house of said counties, and not occupied by and furnished for the sheriff, clerk of the circuit court, clerk of the county commissioners' court, and probate justice of the peace of said counties, for any term not exceeding one year, and for such rent or rents as they may think right and proper.

(38.) SEC. XXXVIII. The county commissioners of said counties shall have the care and custody of said court-houses; any law or usage to the contrary notwithstanding.

(39.) SEC. XXXIX. Hereafter, in all cases of division of any county in this State, by petition or otherwise, it shall not be lawful to establish any boundary line within less than ten miles of the seat of justice of the county to be divided.

(40.) SEC. XL. Hereafter no county in this State shall be curtailed in its limits so as to reduce the territory to less than four hundred square miles, nor shall any county be created hereafter, the territory of which shall contain less than four hundred square miles.

(41.) SEC. XLI. It shall be the duty of the commissioners' court of each county, to cause a complete statement, in writing, of the fiscal concerns of the county to be made out, at their March term, annually, which shall specify the amount of money paid out of the county treasury during the preceding year, to whom paid, and for what purposes; and likewise the amount of the county orders issued and unredeemed during the same year; 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.

(42.) SEC. XLII. 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 appeal from judgments of justices of the peace; and if a county be interested, the summons shall issue against the county commissioners of such county.

(43.) SEC. XLIII. The circuit courts shall have jurisdiction to hear and determine all such appeals, and shall give such judgment, in respect to the rights 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.

(44.) SEC. XLIV. The county commissioners' courts of the several counties in this State, are hereby authorized and required, whenever the finances of any county in this State shall justify such expenditure, to cause to be erected a fire-proof recorder's office, on some suitable lot at their respective county seats, and pay for the same in the same manner as court-houses and jails are paid for: *Provided*, That if the county commissioners' court of any county, as aforesaid, shall be of opinion that any one of the rooms unappropriated in their court-houses respectively can be made fire-proof, they shall be required and authorized, as aforesaid, to cause such improvements or additions to be made to any such room as will render the same fire-proof; in which said fire-proof buildings or room, the records and office of county recorder shall be kept.

(45.) SEC. XLV. The provisions of the foregoing section may, at the discretion of the county commissioners' court of any county in this State, be deemed to apply to the offices of clerks of the county commissioners' and circuit courts, respectively.

(46.) SEC. XLVI. In all cases when orders for money are issued by the clerk of any county commissioners' court in any county of this State, upon the treasurer of such county, the said orders, before they are delivered to the person or persons for whose benefit the same are drawn, shall be severally presented by the clerk to the said treasurer, who shall personally countersign the same; and shall also enter in a book, to be kept for that purpose, the date, amount and number of each of said orders, and the name or names of the person or persons in whose favor such orders are drawn respectively.

(47.) XLVII. No county treasurer shall countersign any county order before the same is filled up, nor until he shall examine the records of the

court, and be satisfied that the order to be issued is warranted by the order of the county commissioners' court.

An Act in relation to the Election of County Officers.

[Approved Feb. 27, 1845. Laws, 1845, p. 28.]

(48.) SEC. I. *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, A. D. 1847, the tenure of office of all justices of the peace, constables, probate justices of the peace, county recorders, county commissioners' clerks, county surveyors and county treasurers, shall continue for two years only, after their election, and until their successors shall be elected and qualified.

(49.) SEC. II. On the first Monday in August, in the year eighteen hundred and forty-seven, and on the first Monday of August, every two years thereafter, there shall be elected in each county in this State, one probate justice of the peace, one county recorder, one county commissioners' clerk, one county surveyor, a county treasurer, and such justices of the peace and constables, as are now by law required to be elected.

(50.) SEC. III. All laws and parts of laws coming within the meaning and purview of this act, are hereby repealed.

An Act authorizing County Commissioners' Courts to provide for the safe keeping and preserving all the Public Records belonging to said Counties.

[Approved March 3, 1845. Laws, 1845, p. 46.]

(51.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the respective county commissioners' courts of this State be, and they are hereby, authorized to erect, build and provide permanent fire-proof rooms, houses or vaults, for the purpose of placing therein and preserving from injury, damage, loss or destruction by fire, the records and documents of their respective counties.

An Act to encourage the Apprehension of Horse Thieves.

[Approved Feb. 26, 1845. Laws, 1845, p. 36.]

(52.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be lawful for the county commissioners' courts of the several counties in this State, by an order to be entered upon their records, to fix upon a sum, not exceeding fifty dollars, as a reward to be paid to any person or persons who shall hereafter pursue and apprehend, beyond the limits of the county where the offense shall have been committed, any person guilty of stealing any horse, mare or mule; which reward shall be paid, on conviction of the thief, by the county in which the offense was committed: *Provided,* That said reward shall not disqualify the person entitled thereto from being a witness.

An Act requiring County Orders to be countersigned by County Treasurers.

[Approved Jan. 23, 1845. Laws, 1845, p. 33.]

(53.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That, in all cases hereafter, when orders for money are issued by the clerk of any county commissioners' court in any county in this State, upon the treasurer of such county, the said orders,

before they are delivered to the person or persons for whose benefit the same are drawn, shall be severally presented by the said clerk to the said treasurer, who shall personally countersign the same; and shall also enter in a book to be kept for that purpose, the date, amount and number of each of said orders, and the name or names of the person or persons in whose favor such orders are drawn, respectively.

(54.) SEC. II. No county treasurer shall countersign any county order before the same is filled up, nor until he shall examine the records of the court and be satisfied that the order to be issued is warranted by the order of the county commissioners' court.

An Act concerning certain Counties therein named.

[Approved Feb. 28, 1845. Laws, 1845, p. 50.]

(55.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the acts of the county commissioners' courts of the several counties of this State, in loaning out at interest that portion of the internal improvement fund which fell due said counties under the act of February twenty-seventh, one thousand eight hundred and thirty-seven, establishing a general system of internal improvements, be and the same is hereby, legalized.

(56.) SEC. II. That said county commissioners' courts are also empowered to collect the money so loaned as is provided for by law for the collection of other indebtedness.

(57.) SEC. III. *And be it further enacted,* That it shall be the duty of said county commissioners' courts, and they are hereby required, to cause to be renewed all bonds given as evidence of indebtedness to said fund, with good and sufficient security.

(58.) SEC. IV. That upon the debtor's compliance with the third section of this act, no higher interest shall be collected from said debtor, from and after the renewal of any such bond, than six per cent. per annum: *Provided,* That this provision shall not extend to any portion of said funds which have by law been constituted a portion of the common school fund of any county in this State.

(59.) SEC. V. *And be it further enacted,* That the county commissioners of the several counties of this State may apply all such money when collected, to any and all purposes they may think proper. This act to be in force from and after its passage.

An Act to fix the Pay of County Commissioners.

[Approved Jan. 16, 1847. Laws, 1847, p. 38.]

(60.) SEC. I. *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 may, by an order of said court, allow to each commissioner any sum, not exceeding two dollars and fifty cents per day, for each day's attendance in holding courts.

An Act to provide for the Apprehension of Fugitives from Justice.

[Approved Feb. 27, 1847. Laws, 1847, p. 48.]

(61.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be lawful for the county



commissioners' courts of the several counties in this State, by an order to be entered upon their records, to fix upon a sum not exceeding one hundred dollars, as a reward to be paid to any person who shall hereafter pursue and apprehend, beyond the limits of the county where the offense shall have been committed, any person guilty of any felony or other high crime, which reward shall be paid by the county where the offense was committed, on the conviction of the criminal: *Provided, nevertheless*, That said reward shall not disqualify the person entitled thereto from being a witness.

(62.) SEC. II. It shall be lawful for the county commissioners' courts of the several counties in this State, to enter an order upon their records, allowing to any person or persons, who shall have aided or assisted in the pursuit or arrest of any person or persons suspected or accused of any felony, or other high crime, committed in their county, such reasonable sum as said county commissioners shall deem just, to defray the expenses of the person or persons in aiding or assisting in the pursuit or arrest of such offender or offenders, in making such pursuit or arrest; which sum so allowed, shall be paid out of the county treasury, in the same manner that other county expenses are paid.

An Act establishing County Courts, and providing for the Election of Justices of the Peace and Constables, and for other Purposes.

[Approved Feb. 12, 1849. Laws, 1849, (1st Sess.) p. 62.]

(63.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That there shall be established in each of the counties of this State, now created and organized, or which may hereafter be created or organized, a court of record, to be styled "the county court of (the proper) county," to be held by and consist of one judge, to be styled "the county judge of — county."

(64.) SEC. II. The said county judges shall be elected on the Tuesday after the first Monday in November, in the year eighteen hundred and forty-nine, and on the Tuesday after the first Monday in November quadrennially forever thereafter, by the qualified voters of the respective counties, and shall hold their offices for the term of four years, and until their successors are elected and qualified.

(65.) SEC. III. Each of the said county judges shall, before entering upon the duties of his office, take an oath "faithfully and impartially, promptly and without delay, to perform all the duties of his office, according to the best of his knowledge and abilities, according to law." Also, an oath to support the constitution of the United States and of this State, and also the oath prescribed in the twenty-sixth section of the thirteenth article of the constitution of this State; which oaths may be administered by any justice of the peace, or judge of any court of record, and shall be indorsed by the officer administering such oaths, on the commission of said county judge, and, with the commission, recorded by the clerk of said court.

(66.) SEC. IV. The county judges, respectively, shall be entitled to a compensation for their services of two dollars and fifty cents per day, for every day employed by them in holding courts, to be paid quarterly out of the county treasuries of the respective counties, on the certificate of the clerk of said court.

(67.) SEC. V. Said courts shall sit in the court-house, or usual places

of holding courts in the several counties of this State, for the transaction of business, on the first Monday of every month, except the months of December, March, June and September, and on the third Mondays of said months, and shall continue open from day to day until all the business before them shall be disposed of. Said courts shall each have a seal. The clerks of said courts shall be the keepers of the seals thereof, and shall issue all process legally emanating from said courts; which process shall bear date when issued, be tested in the name of and signed by the clerk, and sealed with the seal of said court. And the clerk of said court shall perform all the ministerial duties heretofore performed by the probate courts, and shall be entitled to the fees and emoluments allowed by law: *Provided*, that granting letters testamentary, or of administration, except to collect, all letters of guardianship, and repealing the same, and allowing or disallowing claims against estates or persons, determining who are entitled to said letters requiring the settlement of estates, and directing the issuance of citations and attachments, shall be considered as general judicial powers under this act.

(68.) SEC. VI. Whenever a vacancy shall happen in the office of county judge, by death, resignation, removal from the county, or any other cause, it shall be the duty of the clerk of said court in the county in which the vacancy may happen, to issue his orders to the judges of election in the different precincts in the proper county, requiring them, on a certain day therein named, not less than twenty days from the issuing of such order, to hold an election to fill such vacancy; which orders shall be immediately delivered by said clerk to the sheriff of the proper county, and by him, within five days after the receipt thereof, delivered to the respective judges of election to whom directed, and the judges of election shall, in pursuance of said orders, hold said election. And the clerk of said court shall, at the time of making the orders to the judges of election, make out and deliver to the sheriff as many notices of said special election for judge as there are precincts in the county; and the sheriff shall, within the said five days, cause one of the said notices to be posted up in one of the most public places in each of said precincts.

(69.) SEC. VII. There shall be elected at the same time and places of electing the judges of said court, in each of the counties of this State now organized, or which may hereafter be organized, by the qualified voters thereof, a clerk of said county court, who shall hold his office for the term of four years, and until his successor shall be elected and qualified.

(70.) SEC. VIII. Every clerk so elected shall keep his office at the county seat, or place of holding court, for each county respectively. And each and every clerk, before entering upon the duties of his office, shall take an oath to support the constitution of the United States and of this State, the oath prescribed in the twenty-sixth section of the thirteenth article of the constitution of this State, and also an oath "faithfully and impartially to discharge all the duties pertaining to said office of clerk of the county court, to the best of his abilities and knowledge, according to law;" which shall be indorsed on the commission of said clerk, and, with the commission, spread on the records of said court. (Said oaths may be taken in open court, or before any judge or justice of the peace.) He shall also enter into bond, with good and sufficient securities, to be approved by said court, in the sum

of three thousand dollars, payable to the people of the State of Illinois, for the use of any person injured—or the county, if injured, conditioned for the faithful discharge of the duties of said office of clerk of the county court, and for the delivering up to his successor in office, all the books, records, papers and proceedings of said court, whole, safe and undefaced, as well as all property of every kind belonging to said office, when superseded in said office; which bond, when approved by the court, shall be spread on the records thereof, and afterward transmitted to the secretary of State and filed in his office.

(71.) SEC. IX. When a vacancy shall happen in the office of county clerk, it shall be filled by election, in the same manner as a vacancy in the office of judge. And the judge shall issue the orders for the election, and shall make out the notices for the same, and receive the returns of the election in the same manner that the clerk is required to do in the case of a vacancy in the office of county judge. And the judge shall aid in comparing the returns of a special election for clerk, and make returns to the office of secretary of State, for the purpose of procuring the commission of the clerk so elected, in the same manner that the clerk is required to do in case of elections of other officers: *Provided*, That if a clerk *pro tem.* shall be appointed and qualified within five days after any such vacancy shall occur, such clerk *pro tem.* shall perform the duties in this section required of the judge.

(72.) SEC. X. When a vacancy shall happen in the office of clerk of the county court, from any cause whatever, the county judge shall appoint a clerk *pro tem.*, to continue in office till a clerk be elected and qualified. And the clerk so appointed *pro tem.*, shall take the same oaths, and execute bonds with like conditions, with security and penalty in the discretion of the judge. And the clerk *pro tem.* shall have all the powers, perform all the duties, and be entitled to all the fees and emoluments, for the time he may act as such, that the regularly elected clerk of said court would possess, be bound to perform, or be entitled to.

(73.) SEC. XI. Every clerk who shall refuse or neglect, after giving out of office, to deliver to his successor in office, all books, records, papers, money, property, and every thing appertaining to said office, shall be subject to indictment, and, on conviction, to fine and imprisonment, in the discretion of the court before which he may be tried: *Provided*, The fine shall not exceed one thousand dollars, and the imprisonment one year.

(74.) SEC. XII. The clerk of the circuit court shall be recorder of deeds, and shall perform all other duties now required by [of] the county recorder; and if any recorder now in office should die, resign, or otherwise vacate his office, before this act takes effect, in such case, the clerk of the circuit court shall immediately take the office so vacated, and be entitled to receive such fees as are now, or may be, from time to time, allowed by law.

(75.) SEC. XIII. The county court shall be and is hereby vested with all the powers and jurisdiction of the probate court, as now established by law, and appeals may be taken from, and writs of *certiorari* prosecuted upon, its judgments rendered under the powers conferred in this act, in the manner prescribed by law in case of similar judgments rendered by the probate court. The county court shall have concurrent jurisdiction with the circuit court in hearing and determining all applications for the sale of real estate of deceased persons, for the payment of debts for said decedents, and may

make all orders and render all judgments on such applications that the circuit court might or could make or render in similar cases. And the orders and judgments of said court shall have the same force, power and effect as the orders and judgments of the circuit court in like cases. And final process may issue as from the circuit court.

(76.) SEC. XIV. The county judge shall be a conservator of the peace, and shall have the same civil and criminal jurisdiction as the justices of the peace in this State; and shall have the same power and authority to preserve order in the court, and punish contempts offered the courts while in session, that the circuit court now possesses.

(77.) SEC. XV. The said judge, with two justices of the peace designated and provided for, shall, in all cases whatever, sit as a county court; have, exercise and possess all the power, jurisdiction and authority heretofore conferred by law on the county commissioners' court of this State; and shall sit for the transaction of county business on the first Mondays of December, March, June and September, in every year, and shall continue open until the business before them is disposed of; and called or special terms for the transaction of county business may be held, as now provided by law for special terms of the county commissioners' courts. The sittings of said court shall be in the court-house, or usual places of holding courts in the respective counties.

(78.) SEC. XVI. On the Tuesday after the first Monday in November, in the year eighteen hundred and forty-nine, and on the Tuesday after the first Monday in November quadrennially forever thereafter, there shall be elected in each of the several counties of this State now organized, or that may hereafter from time to time be organized, and in the districts now established in pursuance of the laws of this State, or that may hereafter be established, and by the qualified electors thereof, the number of justices of the peace and constables to which such counties are now entitled by law, or to which they may hereafter from time to time be entitled; and said justices of the peace and constables so to be elected, shall exercise the powers and jurisdiction, and perform the duties, and be under the liabilities, in all respects whatever, of the justices of the peace and constables now in office, and be entitled to the same fees and emoluments, or such as may be provided by law.

(79.) SEC. XVII. There shall be elected at the same times and places in each of the said several counties, by the qualified electors thereof, and each county is hereby created a district for that purpose, two additional justices of the peace, whose jurisdiction shall be co-extensive with the counties, and who, together with the other justices of the peace and constables provided for in the next preceding section of this act, shall hold their offices for the term of four years, and until their successors are elected and qualified; shall, in like manner as the other justices, give bond, exercise the same jurisdiction and powers, be subject to the same liabilities, and perform the same duties; and shall, moreover, sit with the county judge as members of the court, for the transaction of all county business, and none other; and while sitting as members of the court, shall have an equal vote with the county judge on all questions and matters legally and properly before said court; shall each receive the same per diem compensation while holding courts. Any two of the three shall constitute a quorum to do business. The county judge shall be the presiding judge of the county court.

(80.) SEC. XVIII. The county judge, clerk of the county court, and the county and district justices of the peace, in this act provided for, shall be commissioned by the governor; and the constables shall receive from the clerk, to whom election returns are made, certificates of election.

(81.) SEC. XIX. Vacancies in the office of justice of the peace and constable shall be filled by special election, in the manner pointed out in the sixth section of this act, for filling a vacancy in the office of county judge: *Provided*, That in filling vacancies in the office of constable and district justices of the peace, the order for and notice of election shall be applicable to the proper district only.

(82.) SEC. XX. In addition to oaths to support the constitution of the United States and of this State, and an oath for the faithful and prompt discharge of the duties of their respective offices, the said justices of the peace and constables shall each take the oath prescribed in the twenty-sixth section of the thirteenth article of the constitution of this State.

(83.) SEC. XXI. The sheriff in each county shall, by himself or deputy, attend the sittings of the county court, preserve order in the same, and execute the legal commands thereof.

(84.) SEC. XXII. In all suits or proceedings whatever, originating in the county court, the process and service thereof shall be the same as if the proceeding originated in the circuit court, as near as circumstances will permit.

(85.) SEC. XXIII. The clerk of the county court shall provide, for the use of his office, two sets of books, for the purpose of entering and preserving the proceedings of said court, while acting with the justices of the peace for the transaction of county business, separate from those containing the proceedings and business of said court while acting judicially. And said clerk shall keep the papers and business of said court, in like manner, separate.

(86.) SEC. XXIV. In all cases where concurrent jurisdiction with the circuit court is given to the county court by this act, the rules of proceeding and practice shall be the same, and in all cases in which the probate court has heretofore exercised jurisdiction, the rules of proceeding and practice in the county court shall be the same as that held in the probate court. And in all cases in which the county commissioners' courts have heretofore exercised jurisdiction, the rules of proceeding and practice in the county court shall be the same as in the county commissioners' courts.

(87.) SEC. XXV. On the first Monday of December, eighteen hundred and forty-nine, the county judges, clerks of the county court, justices of the peace and constables, provided for in this act, shall enter upon the duties of their respective offices, and on said day the term of office of the county commissioners, clerks of the county commissioners' court, probate justice of the peace, justices of the peace and constables, then in office, shall expire: *Provided*, That the justices of the peace, constables, county commissioners, clerks of the county commissioners' courts and probate justices of the peace, who shall be in office on the first Monday in August next, shall continue in office until the first Monday in December next, and until the justices of the peace, county judges and clerk of the county court, provided for in this act, shall respectively be elected and qualified: *And provided further*, That a failure of any of the officers last mentioned to execute bond and take the

oath of office, within twenty days after notice to any such officer of his election, at any general or special election, shall create a vacancy in office, and be filled by election or appointment as hereinbefore provided.

An Act supplementary to the Act establishing County Courts, and providing for the Election of Justices of the Peace and Constables, and for other Purposes.  
[Approved Feb. 12, 1849. Laws, 1849, (1st Sess.) p. 68.]

(88.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the county recorders of the several counties in this State, now in office, shall hold their respective offices until the first Monday in December next: *Provided, however*, That in case any recorder, now in office, shall die, resign, or otherwise vacate his office, in such case the clerk of the circuit court of the county in which such vacancy shall happen, shall immediately become recorder, anything in the act to which this is a supplement conflicting with the provisions of this act, to the contrary notwithstanding. This act to take effect from its passage.

An Act to amend an Act entitled "An Act establishing County Courts, and providing for the Election of Justices of the Peace and Constables, and for other Purposes," approved February 12th, 1849.  
[Approved Nov. 3, 1849. Laws, 1849, (2d Sess.) p. 17.]

(89.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the fourteenth section of the act to which this is an amendment be so construed as to confer on the county judge all the power and jurisdiction, both civil and criminal, which the justices of the peace in this State possess, and that the said judge, while exercising such powers and jurisdiction, shall act in the capacity of justice of the peace, and not as county judge. And said county judge, while acting as justice of the peace, shall be entitled to the same fees as are now allowed by law to justices of the peace in this State, and shall, before entering on the duties of his office, give bond as is now required by law of other justices of the peace.

An Act to amend an Act entitled "An Act establishing County Courts, and providing for the Election of Justices of the Peace and Constables, and for other purposes."  
[Approved Feb. 17, 1851. Laws, 1851, p. 193.]

(90.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all and every person or persons, and any body corporate, who may hereafter consider himself, herself or themselves aggrieved by any decision or order of any of the county courts of this State, while sitting and exercising the powers and performing the duties heretofore conferred by law on the county commissioners' court of this State, shall be allowed to take an appeal from said decision or order to the circuit courts of their respective counties, by filing bond with the clerk of said court, to be approved by him within twenty days from and after the rendition of said decision or order; said bond to be made payable to the judge of the county court, or his successor in office, for the use of the people of the county in which said suit is pending; the condition of which shall be the same as bonds in appeals from justices of the peace.

(91.) SEC. II. *Be it further enacted*, That it shall be the duty of the several clerks of the county courts of this State, within five days from and

after the filing of the bonds as aforesaid, to make out a certified copy of the decision or order from which the appeal is taken, and transmit the same, together with all the papers in his possession appertaining or in any wise belonging to said cause, to the clerk of the circuit court, who shall file the same in his office, and docket the suit as in other cases of appeals.

(92.) SEC. III. *Be it further enacted*, That the clerks of the several county courts of this State are hereby authorized and empowered to grant letters testamentary or of administration, and citations in vacation, subject to the approval or disapproval of the court, at its next regular term, any thing in the law to which this is an amendment to the contrary notwithstanding.

An Act conferring additional Powers and Jurisdiction on the County Courts.

[Approved Feb. 11, 1853. Laws, 1853, p. 257.]

(93.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in addition to the powers and jurisdiction vested in the county courts by the thirteenth section of the act entitled "An act establishing county courts, and providing for the election of justices of the peace and constables, and for other purposes," in all counties wherein township organization has been or may hereafter be adopted and in force, the said court shall have power to issue writs of *ad quod damnum*, and is hereby vested with jurisdiction over all proceedings had therein; which proceedings shall be had in manner and form and in accordance with the provisions of the seventy-first chapter of the Revised Statutes of 1845, and the orders and judgments of said court therein made, shall have the same force and effect as the orders and judgments of the county courts in like cases in counties where township organization has not been adopted.

(94.) SEC. II. Said writs may be issued and proceedings had at any regular term of said court holden for probate or county purposes.

(95.) SEC. III. This act to take effect from and after its passage.

An Act to provide for a Change of Venue in the County Courts.

[Approved March 1, 1854. Laws, 1854, p. 16.]

(96.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That whenever the county judge of any county is interested in the estate of any deceased person, who was resident, at the time of his death, of the county where said judge resides, and of which he is judge, the said judge shall cause a certificate to be entered upon the probate records of said court, setting forth that he, the said judge, is interested in said estate, and shall designate some one of the adjoining counties to which a copy of the record of said certificate shall be sent.

(97.) SEC. II. Said certificate shall be in the following form, as nearly as may be:

"This may certify that I, A. B., judge of the county court of \_\_\_\_\_ county, am interested in the estate of C. D., deceased; it is therefore ordered that a copy of this certificate be delivered to the county clerk of the county of \_\_\_\_\_.

A. B., County Judge."

(98.) SEC. III. At any time after said certificate is entered upon said probate record as aforesaid, any person interested in said estate may have a copy of said record, which shall be certified to be a true copy of the record

by the clerk of the county court, and attested under his hand and the seal of said court.

(99.) SEC. IV. Upon presenting the same to the clerk of the county designated in said order, the said clerk shall enter the same upon the records of the probate court at large, and file and preserve said copy of said record.

(100.) SEC. V. Whenever said copy of said record is filed and entered upon said probate records as aforesaid, the county court of said county shall have full and complete jurisdiction of the subject matter of said estate, to the same extent and with like effect that it would have had had the deceased person been a resident of said county at the time of his death, and said court shall proceed to make such order for the settlement of such estate as is now provided by law in other cases.

(101.) SEC. VI. All orders, decrees and judgments made or rendered by said court in regard to said estate, shall have the same force and effect (both in courts of law and equity,) that they would have had if the deceased person had been a resident of said county at the time of his death.

(102.) SEC. VII. After the copy of said record is filed and entered of record, as provided for by this act, all other proceedings in regard to said estate shall be done, performed and executed in conformity with and according to the provisions of chapter 109 of the Revised Statutes, entitled "Wills," approved March 3rd, 1845, and the amendments thereto, and appeals may be taken from said county court as in other cases.

(103.) SEC. VIII. This act shall apply to all cases that now exist, as well as those that may occur hereafter.

(104.) SEC. IX. In all the cases contemplated in this act where a testamentary disposition is made of real property and estate, it shall be the duty of the county clerk of the county court to which the proceedings shall be transmitted, as soon as proof of the will and devise is taken and allowed, to transmit a certified copy of said will, and the probate thereof, to the county clerk of the county from whence the venue was changed, to be recorded and paid for as other papers affecting the title to real estate, and the same shall have the same force and effect as if the original was recorded there, and said county clerk shall be allowed to charge and receive such fees for his services, as in this section prescribed, as is allowed for recording wills and making official certificates.

(105.) SEC. X. Certified copies of all papers and proceedings transmitted under the provisions of this act, shall be admitted as evidence, and have the same force and effect as the original papers: *Provided*, That the fact that the county judge is a creditor of any such estate, shall not be such an interest as will authorize a change of venue.

(106.) SEC. XI. This act to take effect and be in force from and after its passage.

An Act to authorize Suits to be brought in the Name of the County Courts.

[Approved Feb. 15, 1855. Laws, 1855, p. 159.]

(107.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all official bonds of justices of the peace, made and executed to the county commissioners and their successors in office, previous to the organization of the county courts, shall be sued in

the name of the county courts of the several counties of this State, for the use and benefit of any person or persons injured or aggrieved by the official acts or misconduct of any such justice.

(108.) SEC. II. This act shall be in force from and after its passage.

An Act to amend an Act, entitled "An Act to Amend an Act establishing County Courts, approved February 12th, 1849, and extending the jurisdiction of the La Salle, Winnebago, Boone and McHenry County Courts, approved February 27th, 1854, extending the jurisdiction of the Grundy County Court."

[Approved Feb. 14, 1855. Laws, 1855, p. 160.]

(109.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in addition to the power heretofore conferred upon the county courts of this State, the county court of Grundy county shall have, and they hereby receive the same powers in jurisdiction in all civil cases, suits and actions and proceedings, which are conferred upon and are now in force in the county courts of La Salle, Winnebago, Boone and McHenry counties, by an act of general assembly, entitled "An act to amend an act establishing county courts, approved Feb. 12th, 1849, and extending the jurisdiction of the La Salle, Winnebago, Boone and McHenry county courts, approved Feb. 24th, 1854."

(110.) SEC. II. This act shall take effect and be in force from and after its passage.

An Act to amend an Act entitled "An Act establishing County Courts, and providing for the Election of Justices of the Peace and Constables, and for other Purposes."

[Approved Feb. 15, 1855. Laws, 1855, p. 172.]

(111.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all counties in this State which have adopted or shall hereafter adopt "township organization," the December, March, June and September terms of the county court shall commence on the first Mondays of said months respectively.

PRIOR LAWS. An act establishing the courts of county commissioners; approved March 22, 1819. Laws, 1819, p. 175; Rev. Laws, 1833, p. 142.

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. Laws, 1819, p. 184.

An act authorizing and requiring the county commissioners to cause jails to be erected in each and every county within this State; approved March 24, 1819. Laws, 1819, p. 237. Repealed in part, Feb. 18, 1823.

An act for the relief of the poor; approved March 5, 1819. Laws, 1819, p. 127.

An act regulating weights and measures; approved March 22, 1819. Laws, 1819, p. 169.

An act to regulate administrations and the descent of intestates' estates, and for other purposes; approved March 23, 1819. Laws, 1819, p. 223. Repealed in part, May 1, 1821.

An act to authorize non-resident peddlers to sell goods in this State; approved March 30, 1819. Laws, 1819, p. 352.

An act to license and regulate taverns; approved Feb. 27, 1819. Laws, 1819, p. 77.

An act to establish and regulate ferries; approved Feb. 20, 1819. Laws, 1819, p. 29.

An act providing for the valuation of lands and other property, and laying a tax thereon; approved March 27, 1819. Repealed Feb. 28, 1823. Laws, 1819, p. 313.

An act concerning petit jurors; approved March 25, 1819. Laws, 1819, p. 255.

An act authorizing the county commissioners to grant licenses for the erection of toll bridges and turnpike roads; approved March 27, 1819. Laws, 1819, p. 300.

An act for opening, repairing, improving and regularizing roads and highways, and creating a fund for that purpose; approved March 29, 1819. Laws, 1819, p. 333.

An act providing for the prosecution of county commissioners, sheriffs, coroners, justices of the peace, clerks of the circuit court, clerks of the county commissioners' court, recorders and constables, who may be guilty of mal-conduct, or palpable omission in the duties of their respective offices; approved Jan. 19, 1821. Laws, 1820, p. 20.

An act to amend an act entitled "An act for levying and collecting a tax on land and other property," approved Feb. 18, 1823; approved Jan. 17, 1825. Laws, 1824, p. 173.

An act to incorporate counties; in force July 1, 1827. Rev. Laws, 1827, p. 107.

An act requiring persons who petition the general assembly to give certain notices, &c.; in force June 1, 1827. Rev. Laws, 1827, p. 110.

An act to compel the payment of certain moneys into the several county treasuries; approved Jan. 11, 1823. Rev. Laws, 1833, p. 141.

An act to authorize additional poll books to be opened at the county seats of the several counties of this State; approved Feb. 9, 1831. Rev. Laws, 1833, p. 142.

An act requiring the several clerks of this State to keep their respective offices at the county seat; approved Jan. 11, 1823. Rev. Laws, 1833, p. 144.

An act concerning conveyances by county commissioners; approved Jan. 7, 1835. Laws, 1835, p. 46.

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. Laws, 1835, p. 29.

An act making the clerks of the county commissioners' courts, and county treasurers, elective by the people; in force Feb. 7, 1837. Laws, 1837, p. 49.

An act to increase the compensation of county commissioners; in force July 21, 1837. Laws, 1837, (2d Sess.) p. 16.

An act to authorize the county commissioners' courts to recover certain moneys by them heretofore loaned; approved Feb. 15, 1839. Laws, 1839, p. 119.

An act relating to the duties of county commissioners; approved March 2, 1839. Laws, 1839, p. 270.

An act to authorize county commissioners' courts to assess taxes for road purposes; approved March 4, 1843. Laws, 1843, p. 111.

An act to authorize county commissioners to lease certain rooms; approved Feb. 21, 1843. Laws, 1843, p. 128.

An act concerning the public revenue, and for other purposes; approved March 6, 1843. Laws, 1843, p. 239.

An act for the regulating of county treasuries and county funds; approved Feb. 25, 1843. Laws, 1843, p. 112.

DECISIONS. Under the act of March 24, 1819, county commissioners have no power to contract except as a court. *County Commissioners of Randolph County v. Jones, Breece, 103.*

Under the act of Feb. 17, 1827, county commissioners cannot grant a license to keep a ferry, to the trustees of a town, or other like corporation. The county commissioners' court is the mere creature of the statute, and though authorized to be created by the constitution, its powers and duties are limited and defined by law, and are partly judicial and partly ministerial. *Betts v. Menard, Appendix to Breece, 11.*

A county is not bound to pay interest on county orders. *Madison County v. Bartlett, 1 S. 67.*

A county order for any specific sum in dollars, or its equivalent in State paper, is an order either for that sum in specie, or for so many State paper dollars as will amount to that sum, at their current value. *Idem.*

Statutes defining the boundaries of a county are public acts, and the courts are bound judicially to notice them. In an action of *qu. cl. fr.*, proof that the trespass was committed in the section, township and range alleged, is sufficient, without proof that such section was in the county alleged. *Ross et al. v. Reddick, 1 S. 73.*

A contract, made by county commissioners, with a physician, to render professional services to a pauper, and not entered on record, may be proved by parol.

One, who has, at the request of the county commissioners, rendered aid to a person acknowledged as a pauper by the county commissioners, need not prove the pauper legally entitled to such aid, in order to entitle him to recover for such service.

Neither by the constitution, nor the act of March 22, 1819, has the court of county commissioners' jurisdiction to determine civil causes, or criminal suits, where the State, or individuals, or corporations, are parties.

County commissioners acting as a court only, can bind the county by their contracts. *Vermilion County v. Knight, 1 S. 97.*

Before the passage of the act of Jan. 7, 1835, county commissioners could not legally convey the real estate of their county. The act of 1835 makes conveyances of real estate of the county, executed by the county commissioners before that time in good faith, and even in their individual names and under their private seals, as county commissioners on behalf of the county, valid and effectual. *Williams v. Clayton et al., 1 S. 502.*

Money appropriated to counties under the "Act to establish and maintain a general system of internal improvements," could be loaned by the courts of county commissioners; and they might appoint agents to loan the same, and take bonds from such agents for the faithful discharge of their duties; and such bonds are valid. *Kitchens v. County Commissioners of Greene County, 4 S. 485.*

A county is not liable to the clerk of the circuit court for his fees on a *scire facias* upon a recognizance. *Edgar County v. Mayo, 3 G. 82.*

County commissioners have exclusive jurisdiction, and a discretionary power, limited by the statute, over all matters relating to roads in their counties. *Eyman et al. v. People*, 1 G. 4; *Nealy v. Brown et al., County Commissioners*, 1 G. 10.

On the trial of an indictment against county commissioners for refusal or neglect to repair a bridge, the defendants may prove a personal inspection of the bridge, in order to ascertain its condition, and that the supervisor had not used all the means in his control to make necessary repairs; and on such trial it must be shown that the omission of duty was willful. *Eyman et al. v. People*, 1 G. 4.

An error in judgment or policy, will not subject a tribunal having discretionary power, to punishment under an indictment for palpable omission of duty. *Idem.*

Under the statute, the county commissioners' court may enforce its orders, decrees and judgments, by attachment or other process, and may punish for contempts. *Ex parte Thatcher*, 2 G. 167.

A clerk of a county commissioners' court, appealed from an order of that court, removing him from office, and gave bond on such appeal: *Held*, that the appeal and giving bond operated as a supersedeas. *Idem.*

After such appeal, the county commissioners' court appointed a new clerk, and ordered the old clerk to deliver up the books, &c., of his office. Upon refusal to deliver, the county commissioners' court caused the old clerk to be arrested for a contempt: *Held*, that after such appeal, no successor of the clerk could be appointed, and that the court could not punish for a contempt in such case. *Idem.*

Counties can neither sue or be sued at the common law. Their rights and liabilities depend on statutory enactment. *Schuyler County v. Mercer County*, 4 G. 20.

All actions against a county must be commenced and prosecuted to judgment and execution in the circuit court of that county. All actions wherein a county is plaintiff, must be commenced and prosecuted to judgment in the county of the defendant. *Idem.*

Ordinarily, a law which in general terms speaks of plaintiffs and defendants, applies to persons only, and does not apply to States, counties and municipal corporations, unless expressly named. *Idem.*

Applications to the county commissioners' court, for reduction of assessments on property, are addressed to its discretion only, and cannot be reviewed elsewhere. *Morgan v. Smithson et al., County Commissioners*, 4 G. 368.

A statute providing for the division of a county, and the formation of a new county from the same territory, but to take effect only upon a majority of votes of the people being cast for such division, is not unconstitutional. *People ex rel. v. Reynolds*, 5 G. 1.

A county is a public corporation subject to the control of the legislature; and the legislature may release a penalty recovered in a popular action brought for the benefit of a county. *Holliday v. People*, 5 G. 214. See also, *Coles v. Madison County*, Breese, 115.

County commissioners in making settlements with collectors of the revenue, act as agents of the State, and do not adjudicate as a court. Their orders entered upon their records, are memoranda only, and only *prima facie* evidence of the correctness of the result stated. Mistakes made in such settlements may be inquired into and corrected. *Washington County v. Parlier et al.*, 5 G. 232.

Declarations of county commissioners, are not evidence against their county, unless made while officially representing the county, and while engaged in the transaction respecting which the declaration is made. *La Salle County v. Simmons*, 5 G. 513.

A book kept in the clerk's office of the county commissioners, under their direction, respecting the affairs of the county, though not a public record, is *prima facie* evidence against the county of the facts stated therein. *Idem.*

Counties are not liable to pay interest on their contracts, except in pursuance of an express agreement to do so. *Pike County v. Hosford*, 11 Ill. 170.

If a specific fund be given by the legislature to a county, to be held in trust for certain purposes, and the fund be diverted from its purpose, and mixed with the general funds of the county, a mandamus may be awarded, directing the payment of the fund to the proper purpose out of the general funds of the county. *Pike County v. The State*, 11 Ill. 202.

A conveyance of land to a county, in consideration that the county seat be located at a particular place, does not deprive the legislature of the power to remove the county seat. The donors of the land, if the conveyance be unconditional, cannot recover damages for such removal. An agreement that the land should revert, in case of removal, should be expressed in the conveyance, and cannot rest in parol. *Adams et al. v. Logan County*, 11 Ill. 336.

By the constitution, the right of a county to adopt township organization, is made to depend expressly upon the affirmative vote of a majority of all within the county entitled to vote on the question. The power of the county court, over the county business, continues until the organization is adopted by such vote. The township organization law of February 12, 1849, is in force in the counties that have adopted the organization by such affirmative vote. *People ex rel. v. Brown et al.*, 11 Ill. 478.

The money appropriated by the internal improvement act of Feb. 27, 1837, to the counties, through which no public works should be constructed, might, prior to the act of 1845, giving the money absolutely to certain counties, have been resumed or diverted by the legislature, and be as subject to its control. *Richland County v. Lawrence County*, 12 Ill. 1.

The legislature cannot abolish counties, and form their territory into one or more counties, nor take territory from one county and add it to another, nor remove a county seat, without submitting the act to a vote of the inhabitants affected by such changes. *The People ex rel. v. Marshall*, 12 Ill. 391.

The county court is a court of record, and has a general jurisdiction over a particular class of cases; its jurisdiction is limited but not inferior. *Probst. Exr. v. Meadows*, 13 Ill. 157.

The judge of the county court cannot entertain an insolvent proceeding, except when sitting as a court. *The People v. Wilkinsen*, 13 Ill. 660.

By implication, and a fair construction of all the statutes upon the subject, there is no doubt that the clerk of the county court succeeds to the office, powers and duties of the clerk of the county commissioners' court. *People v. Thurber*, 13 Ill. 554.

The term county court, as used in the 21st section of the act of Feb. 12, 1849, is intended to apply only to the sittings of the court for the transaction of county business. *St. Clair County v. Irwin*, 15 Ill. 54.

A county court, or board of supervisors, can remove a county treasurer only for causes specified in the statute; they have no general powers of removal. *Clark v. The People*, 15 Ill. 213.

## CHAPTER XXVIII.

## COUNTY TREASURERS AND COUNTY FUNDS.

## SECTION

1. County treasurer elected once in four years; how and when elected in new counties.
2. To take oath of office; form of oath.
3. Shall file bond; form thereof.
4. Treasurer of each county shall keep books of account: entries therein.
5. Shall keep account of moneys paid out; books open to inspection.
6. No money to be paid out, but by order of court, or as directed by law.
7. To report to county commissioners' court at each term: particulars to be reported.
8. Clerk shall file reports, &c.
9. Clerk shall not receive money.
10. Money not considered paid, until received by the treasurer: treasurer to give receipts.
11. Court shall settle with treasurer at June and December terms.
12. If treasurer be in default, to be dismissed from office and sued.

## SECTION

13. Embezzlement of public funds declared to be felony; how punished.
14. Court shall publish fiscal statement annually.
15. Court may call on treasurer at any time for a settlement.
16. If treasurer speculate in funds, how examined; may be dismissed.
17. If treasurer be dismissed, office, how filled.
18. If county officer neglect duty, he may be punished by fine, &c.
19. If sheriff, &c., refuse to pay over money collected, office to be vacated.
20. When, by whom, and in what manner, office of defaulters declared vacant.
21. Collectors of revenue not to speculate in auditor's warrants.
22. How punished therefor; penalty, how collected and applied.
23. Duty of county treasurers when orders are presented, to keep list thereof, &c.

[Approved March 3, 1845. Rev. Stat. 1845, p. 187.]

SECTION I. There shall be elected, in each county of this State, a county treasurer, who shall hold his office four years, and until his successor is elected and qualified. In counties hereafter to be organized, they shall be elected at the first election of county commissioners, and in like manner every four years thereafter. In counties now existing, they shall be elected at the periods and in the order of time by law established.

SEC. II. Each county treasurer, previous to entering on the duties of his office, shall take and subscribe the following oath, to wit:

"I, A. B., treasurer of the county of —, in the State of Illinois, do solemnly swear (or affirm) that I will honestly and faithfully pay over to the proper officers and individuals authorized by law to receive the same, any and all current money and other funds that may come into my possession by virtue of my office as treasurer of the county of —, and that I will not, directly or indirectly, exchange, lend or use any portion thereof for the purpose of speculation, nor will I



appropriate or apply any portion thereof to my own use or benefit, or for the use or benefit of another, and that I will faithfully and impartially, and to the best of my skill and judgment, perform the duties required of me by law as treasurer of the county of \_\_\_\_\_.

A. B.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

C. D., Justice of the Peace for \_\_\_\_\_ county."

SEC. III. Each 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 substance 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 \_\_\_\_\_, 18\_\_\_\_.

The condition of the above bond is such, that if the above bounden 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, moneys and other things belonging to said county and appertaining to his said office, then the above bond to be void, otherwise to remain in full force.

Signed, sealed and delivered  
in presence of G. H." }

A. B. [SEAL.]

C. D. [SEAL.]

E. F. [SEAL.]

SEC. IV. The county treasurers of the several counties in this State shall each of them keep a book, in which they shall keep a regular, just and true account of all moneys and revenues received by them respectively, stating therein particularly in what kind of funds each particular sum was received, whether in gold, silver, county orders or any other funds authorized to be received as revenue by the laws of this State. They shall also keep a regular, just and true account of the time when, of whom, and on what account, each particular sum in money, or other funds, may have been received by them.

SEC. V. They shall also keep a regular, just and true account of all moneys and funds paid out by them agreeably to law, stating therein particularly on what account each particular sum was paid out, to whom paid, the particular kind of money or funds paid out to each individual, and the time when such payment was made. The books and accounts aforesaid to be free for the inspection of any individual who may wish to examine the same.

SEC. VI. No money, county orders or other funds shall hereafter be paid out of any county treasury in this State, except in accordance with an order or decree of the county commissioners' courts respectively, or by virtue of a law specifically directing such payment to be made.

SEC. VII. It shall be the duty of the treasurers of each and every county to report to the county commissioners' courts of their respective counties, at the regular terms of said courts, the amount of money, county orders, or other public funds, in their possession; also, the amount of money, county orders and other public funds received by them since their last reports. They shall also state in said reports the amount they may have received from each and every source of revenue, by whom, on what account, in what kind of funds, and at what time, the same may have been paid into the treasury. The said treasurers shall also report to the county commissioners' courts of their respective counties, at the regular term of said courts, regular, just

and true accounts of all payments out of the treasury, stating particularly at what time, on what account, in what kind of funds, and to whom, each particular sum was paid out.

SEC. VIII. The clerks of the county commissioners' courts of the several counties in this State respectively, shall number, file and carefully preserve the reports mentioned in the seventh section of this chapter, and the said reports shall be free for the inspection of any individual who may wish to examine the same.

SEC. IX. No clerk of any county commissioners' court in this State shall receive any money claimed by or due to either of the counties of this State, from any source whatever, whether on account of revenue, costs or fines, or from merchants, grocers, tavern-keepers, showmen, peddlers or ferry licenses, or from any other source whatever.

SEC. X. No claim of any county, whether for revenue, costs or fines, or from merchants, grocers, tavern-keepers, showmen, peddlers or ferry licenses, or from any other source whatever, shall be considered as having been paid and satisfied, until the money or other funds shall have been paid to the treasurer of such county, and his duplicate receipts had therefor, which receipts shall specify the kind of money or other funds in which the payments shall have been made, one of which receipts shall be presented to the clerk of the county commissioners' court of the proper county, which said clerk shall number, file and carefully preserve the same in his office, which aforesaid duplicate receipts it shall be the duty of the treasurer to give to any person who shall pay into the county treasury any money or other funds as aforesaid.

SEC. XI. The county commissioners' court of each and every county in this State shall, at their June and December terms in each year, settle with their county treasurer, and count the funds then in the treasury of their county; and the clerk of said court shall then enter on the records of said court the amount and kind of funds found to be in the treasury at the time.

SEC. XII. Should the treasurer, at any such settlement, prove a defaulter, and be actually in arrears with the county, the county commissioners shall immediately dismiss him from office, and commence suit against him on his official bond.

SEC. XIII. If any State or county officer, school commissioner, or any other person charged by law with having the possession and the safe-keeping of any public money, auditor's warrants, county orders or other funds belonging to the State, or to any county in the State, or in any way pertaining to the school funds or any county or township therein, shall convert to his own use, in any way whatever, or shall use, by way of investment in any kind of property or merchandise, or for his own use shall loan, with or without interest, any portion of the public moneys, auditor's warrants, county orders or any other funds intrusted to him for safe-keeping, disbursement, transfer or for any other purpose, every such act shall be deemed and adjudged an embezzlement of so much of said money, auditor's warrants, county orders or other funds, as shall be thus taken, converted, invested, used or loaned, which is hereby declared to be a felony. Any officer of the State, or of any county, or of any township, and all persons advising or participating in such act, being convicted thereof

before any court of this State of competent jurisdiction, shall, in case the sum so embezzled, taken, converted, invested, used or loaned, be less than fifty dollars, be fined in a sum not exceeding two hundred dollars, or imprisoned in the jail of the proper county not exceeding three months, or both, at the discretion of the court before which such conviction shall be had; and in case the sum so embezzled, taken, converted, invested, used or loaned, shall exceed fifty dollars, then the said officer or other person so convicted, shall be fined in a sum double the amount of the sum so embezzled, taken, converted, invested, used or loaned, and confined in the penitentiary not exceeding ten years, nor less than one year: *Provided, however.* That this chapter shall not be so construed as to extend to any public officer or agent who shall loan any school or other fund in pursuance of any of the laws of this State.

Sec. XIV. The county commissioners' courts of this State shall publish annually, at their June terms, in a newspaper, if one is printed in the county, a full and perfect statement of the financial affairs of their respective counties; and if a newspaper is not published in said county, then the clerks of said courts shall post up the same in their respective offices, which shall be kept there for the inspection of all persons, at all seasonable hours, who may desire to examine the same.

Sec. XV. The county commissioners' court of any county in this State may, at any time when any two of them think it for the interests of the people of their county so to do, call through their clerk upon the treasurer of their county for a settlement, and should said treasurer neglect or refuse to appear and make settlement as notified to do, said commissioners shall declare his office vacant, and proceed upon his bond as required to do in this chapter.

Sec. XVI. Should the county commissioners' court of any county in this State be of opinion that the treasurer of their county has at any time used the funds of said county when current, and replaced the same in depreciated funds, they shall have the power to examine said treasurer under oath as touching said transaction, and if it shall appear that he has parted with any current funds belonging to the county, and replaced the same with funds less valuable, they shall immediately dismiss him from office.

Sec. XVII. Should any county treasurer be dismissed from office pursuant to the provisions of this chapter, it shall be the duty of the county commissioners' court to appoint some suitable person to fill the vacancy so occasioned, and the person so appointed shall give bond and security as now required by law of county treasurers, and shall perform all the duties enjoined upon the county treasurer until one is elected and qualified.

Sec. XVIII. If any clerk, county commissioner or treasurer of any county in this State, shall neglect or refuse to perform any of the duties required of them by this chapter, they shall severally forfeit a sum of not less than fifty dollars, and not exceeding one thousand dollars, according to the nature and aggravation of the offense, to be recovered by indictment in the circuit court of the proper county, or by action of debt by any person who shall sue therefor, one-half to the person suing, and the other half to the proper county.

Sec. XIX. Whenever any sheriff, coroner, constable, justice of the peace or probate justice of the peace in this State, shall, after proper demand

made, fail, neglect or refuse to pay over any sum or sums of money collected or received by such officer, in and by virtue of his office, his said office shall be forfeited and vacated.

Sec. XX. Whenever in pursuance of the laws of this State any judgment shall be had or taken against any sheriff, coroner, constable, justice of the peace, or probate justice of the peace, for any failure, neglect or refusal of such officer, to pay over any sum or sums of money collected or received by him, in and by virtue of his office, and it shall appear to the satisfaction of the court, that proper demand for the same has been made, it shall be the duty of the court or justice of the peace before whom such judgment is had or taken, further to adjudge and decree that the office of such officer, so failing, neglecting or refusing, as aforesaid, is forfeited and vacated, and such vacancy shall be filled as in other cases of vacancy, as is now provided by law.

Sec. XXI. The collectors of the State revenue in the several counties of this State, shall receive auditor's warrants in payment of any or all taxes due the State, in their respective counties, at par, and they shall not be permitted to take, buy, share or receive, directly or indirectly, by themselves or agent, any auditor's warrant or warrants, at less than the full sum due thereon to the holder of such warrant or warrants.

Sec. XXII. For any violation of the provisions of the preceding section by any collector or collectors aforesaid, he or they shall be liable to double the amount so made by purchasing or sharing said warrants at less than their face, in an action of debt, before any justice of the peace or court of record of the proper county; one-half of all sums so collected to go to the person complaining, and the other half to go to, and form a part of, the school fund of the county where such collector may reside.

Sec. XXIII. It shall be the duty of the county treasurer of any county in this State, whenever any county order is presented for payment, to indorse 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.

See Act, *ante*, p. 288, entitled "An act requiring county orders to be countersigned by county treasurers."

PRIOR LAWS. An act providing for the valuation of lands and other property, and laying a tax thereon; approved March 27, 1819. Laws, 1819, p. 313.

An act to amend an act entitled "An act for levying and collecting a tax on land and other property," approved Feb. 18, 1823; approved Jan. 17, 1825. Laws, 1825, p. 172.

An act to provide for raising a revenue; in force March 1, 1827. Rev. Laws, 1827, p. 325; Rev. Laws, 1833, p. 513.

An act to compel the payment of certain moneys into the several county treasuries; approved Jan. 11, 1823. Rev. Laws, 1833, p. 141.

See 135th Section, criminal code. Rev. Laws, 1833, p. 202.

An act in addition to an act, supplemental to an act, entitled "An act to provide for raising a revenue;" approved Feb. 12, 1835. Laws, 1835, p. 51.

An act making the clerks of the county commissioners' courts, and county treasurers, elective by the people; approved Feb. 7, 1837. Laws, 1837, p. 49.

An act to amend the several laws to provide for the distribution of the interest on the school, college and seminary fund; approved Jan. 7, 1841. Laws, 1841, p. 166.

An act in relation to official bonds; approved Jan. 23, 1843. Laws, 1843, p. 40.

An act for the regulating of county treasuries and county funds; approved Feb. 25, 1843. Laws, 1843, p. 112.

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**DECISIONS.** The treasurer of a county has no authority to take a note payable to himself as treasurer, nor to assign or transfer such a note, nor can a suit be maintained in his name as treasurer. *Berry v. Hamby*, 1 S. 468.

Under the township organization law, a county treasurer is allowed a commission of two per cent. on all sums received and paid into the State treasury, whoever may pay the money into the treasurer's hands; and this commission is in full of the compensation he is to receive from the State for the performance of his duties. *The People v. Long*, 11 Ill. 629.

## CHAPTER XXIX.

### COURTS.

#### SECTION

1. Supreme court, composed of a chief justice and eight associates; how chosen.
2. One session of supreme court in each year.
3. To be held at the seat of government, unless, &c.
4. Five justices constitute a quorum; decisions to be by a majority.
5. Justices to take oath; who may administer it.
6. May make rules of practice, &c.; chief justice shall examine clerk's office annually.
7. Appellate jurisdiction; general powers.
8. If no quorum, or court fails to sit, may adjourn from day to day.
9. Chief justice and associate justices shall hold circuit courts; when one is unable to hold court, another may supply his place.
10. Causes pending when court adjourns, may be continued.
11. Process, how tested, signed and sealed, and how returnable.
12. How process may be executed; power of court to punish for contempts.
13. Original jurisdiction of supreme court, in case of public officers; if bond of officer be defective, may proceed against officer, and compel him to account, and may give judgment; party to have notice; attorney general to prosecute.
14. Supreme court may appoint clerk; may remove him for cause; cause of removal to be entered of record.
15. Duty of clerk to issue process; keep record; shall be sworn; shall keep his office at the seat of government; shall give bond; its condition; bond to be filed in secretary's office.
16. Parties in circuit court may make agreed case, and submit same to supreme court.
17. Judge, if parties agree, may certify case to the supreme court; or, case may be certified by counsel; proceedings thereon in the supreme court.
18. Two preceding sections not to apply to suits respecting real estate.

#### SECTION

19. Opinions delivered in supreme court to be delivered in writing, filed and recorded.
20. Court shall appoint reporter.
21. Reporter shall be sworn; may, for cause, be removed from office.
22. Reporter shall deliver sufficient number of reports to secretary of State, for distribution and for State library.
23. Reports, how distributed.
24. Reports, how paid for.
25. Court may make rules of practice.
26. Salary of judges.
27. Vacancies when occurring during session of General Assembly, how filled; when during recess, how filled.
28. When judge does not attend circuit court on the first day of term, what proceedings had.
29. Judges to reside in respective circuits; powers.
30. Power of judges, as to issuing process.
31. Power to hear cases of treason, felony, &c.
32. Suits, where tried.
33. Clerks of circuit courts to be sworn.
34. Shall give bond, which shall be filed in office of secretary of State.
35. Clerks shall keep their offices at county seats; duties generally.
36. Their fees.
37. Judge may, for cause to be entered of record, remove clerk; removal of clerk not to discharge obligation of official bond.
38. Clerk going out of office, to deliver papers, &c., to successor; on refusal, compulsory process may be used.
39. Judges shall examine clerk's offices annually.
40. Clerks of circuit courts may issue process; how tested, dated, signed and sealed.
41. Judges may hold courts for each other; their powers in such cases.

#### SECTION

42. If judge fail to attend circuit court, how causes continued.
43. Judges of circuit courts may appoint special term for the hearing of chancery cases; powers in such cases; may appoint term for hearing of civil and criminal cases; jury, how summoned.
44. If judge be interested, cause transferred to another circuit.
45. If person in custody for crime desires a trial, how to proceed.
46. Duty of sheriff in such case; penalty for neglect; when no such special term shall be ordered.
47. How court shall proceed in such cases.
48. How process issued in such cases; shall be executed; power of courts to punish contempts, &c.
49. Clerks may issue subpoenas to any county.
50. Judges may, in vacation, appoint special term; proceedings in such cases.
51. Circuit court of Sangamon county to have original jurisdiction in cases in which State is plaintiff.
52. Suits to be brought in the name of the people, &c.
53. Attorney general may, on his official statement, without oath, cause writs to be issued in behalf of the State.
54. State not required to give bond.
55. Sheriffs, &c., throughout State to obey such writs; how defendants may be arrested and held to bail.
56. Defendants may recover costs against the State; how paid.
57. State officers to give notice of any delinquency to attorney general, who shall prosecute forthwith.
58. Duty of attorney general to enforce penalties of criminal code against officers guilty of embezzlement.
59. Official statements of officers to be evidence.
60. Process may go to any county; fees, &c.
61. Causes, how docketed; other courts of the State to have concurrent jurisdiction.
62. Process, by what officer served.
63. Construction of twelve preceding sections.
64. Sheriff of county in which supreme court is held, shall attend its sittings.
65. State to remain divided into nine judicial circuits; judges to hold courts therein, &c.
66. Name of court; to be a court of record.
67. Jurisdiction.
68. Process, rules, proceedings, &c.; *proviso*.
69. Regular terms; special terms; *proviso*; further *proviso*.
70. Recognizances; fines, penalties, &c.
71. Clerk to be appointed by judge; to give bond.
72. Grand and petit jurors.
73. Sheriff and prosecuting attorney.
74. Fees of officers.
75. When act to take effect.
76. Three port wardens to be appointed; term of office.
77. To take oath of office.
78. Their duties.
79. Further duties; damage to goods; certificate thereof.
80. Goods taken from wrecked or stranded vessels; when perishable, how to be disposed of.
81. Record required to be kept; bonds required from port wardens.
82. Fees.
83. Reduction of fees, how made.
84. When act to take effect.
85. Term of circuit and county court of Cook county; when holden; term of circuit court; *proviso*.
86. Party to file written notice; duty of clerk; vacation.
87. Default to be entered; *proviso*.
88. Judgment to be rendered in certain cases; special jury.
89. Judgments entered in vacation term.
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92. Open for the transaction of chancery business at all times.
93. Appeals and writs of error.
94. Notice.
95. Notice to take up motions to be given.
96. Injunctions.
97. Continuances.
98. Suits on contracts.
99. Creditor's bill; *proviso*; garnishee process.
100. Grand and petit juries.
101. Fees, when paid; judge's salary.

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102. Indictments.
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104. Conflicting laws repealed.
105. Portion of certain act repealed.
106. When act shall take effect.
107. Special terms.
108. Duty of governor; duty of judge.
109. Qualifications of jurors; *proviso*.
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111. Duty of prosecuting attorneys; compensation.
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115. Terms of court postponed.
116. Judges of other courts permitted to perform duties.
117. Rules applicable.
118. Posse may be summoned; compensation.
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136. Said court to have a seal.
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146. Vacancies; *proviso*.
147. State's attorney *pro tem*.
148. When act shall take effect.
149. Jurisdiction extended.
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151. Appeals and writs of error.
152. Appeals and writs of error prosecuted same as in circuit courts; exception; *proviso*.
153. Appeals; *proviso*.
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155. Power of judge.
156. Grand and petit jurors.
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158. Shall pay to clerk before process issues; justice of peace to furnish list of appeals.
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162. Inferior courts to have concurrent jurisdiction with circuit courts; *proviso*.
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110. Jurors' duties.
111. Duty of prosecuting attorneys; compensation.
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135. Judge to be called recorder; salary and fees; *proviso*.
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137. Process.
138. Recognizances returnable.
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141. Sheriff to perform duties; *proviso*.
142. Selection of jurors; *proviso*; further *proviso*.
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145. Terms of court, when held; *proviso*.
146. Vacancies; *proviso*.
147. State's attorney *pro tem*.
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152. Appeals and writs of error prosecuted same as in circuit courts; exception; *proviso*.
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157. Fees and compensation.
158. Shall pay to clerk before process issues; justice of peace to furnish list of appeals.
159. Exclusive jurisdiction.
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164. Writs of *ne exeat* and injunctions.
165. Causes transferred upon application.
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172. Judge to be appointed; clerk to be appointed; give bond; salary.
173. Trustees to provide a seal.
174. Governor to appoint prosecuting attorney; salary of attorney.
175. Grand and petit jurors, how selected; *proviso*; further *proviso*.
176. Terms of court, when to be held; *proviso*.
177. Writs to be executed, and by whom; fees.

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 179. Appeals.  
 180. Judge and attorney not to be appointed until a certificate be filed with corporate authorities of Cairo; *proviso*; further *proviso*.  
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[Approved March 3, 1845. Rev. Laws, 1845, p. 141.]

(1.) SECTION I. There shall remain, as at present established, a supreme court, to be composed of one chief justice and eight associate justices, to be chosen and continued in office in manner and for the term provided in article fourth of the constitution.

(2.) SEC. II. The supreme court shall hold one session in each year, to commence on the second Monday in December, and continue in session until all the business before it is disposed of.

(3.) SEC. III. The sessions of the supreme court shall be held at the seat of government, unless by reason of pestilence or any other public calamity, the justices thereof shall see fit to change the same until the cause of such removal shall cease.

(4.) SEC. IV. Five of said justices shall constitute a quorum for business; and all questions submitted for decision shall be determined by a majority of the justices present at the hearing.

(5.) SEC. V. The chief justice and associate justices of the supreme court, previously to 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, 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 indorsed by the person administering the same, on the back of the commission of such judge, and another certificate thereof filed in the office of the secretary of State.

(6.) SEC. VI. 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.

(7.) SEC. VII. 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 it in manner aforesaid, and shall be vested with all the power and authority necessary for carrying into complete execution all its 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 its judgments, decrees and determinations shall be final and conclusive on all the parties concerned.

(8.) SEC. VIII. 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; and if, from any cause, 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.

(9.) SEC. IX. 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.

(10.) SEC. X. If the said supreme court, or any of the circuit courts directed to be held by this chapter, 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.

(11.) SEC. XI. All process which shall be issued from the said supreme court, shall bear teste 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.

(12.) SEC. XII. 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.

(13.) SEC. XIII. 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 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, to make collections and settlements with the proper authority, if he or they have failed to do so, or shall hereafter fail 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.

(14.) SEC. XIV. The supreme court, or a majority of the justices thereof, shall appoint a clerk of said court, and may remove him from office at pleasure, for neglect of duty, mal-conduct in office, incompetency to perform the duties thereof, or for any other cause which shall be satisfactory to said court, or a majority thereof. The cause of such removal shall be entered upon the records of said court.

(15.) SEC. XV. 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 all moneys, papers, books, records and other things, appertaining to the same, whole, safe and undefaced, when lawfully required so to do; which bond so executed as aforesaid, shall be filed in the office of the secretary of State.

(16.) SEC. XVI. The parties in any suit or proceeding at law or in chancery, in any circuit court, may make an agreed case containing the points of law at issue between them, and file the same in the said court; and the said agreed case may be certified to the supreme court by the clerk of such circuit court, without certifying any fuller record in the case; and upon such agreed case being so certified and filed in the supreme court, the appellant or plaintiff in the error may assign errors, and the case shall then be proceeded in in the same manner as it might have been had a full record been certified to said supreme court.

(17.) SEC. XVII. Any judge of a circuit court may, if the parties litigant assent thereto, certify any question or questions of law arising in any case tried before him, to the supreme court, together with his decision thereon; or the parties in the suit may agree as to the questions or points of law arising in the case, and the same may be certified by the counsel or attorneys of the respective parties, who shall sign their names thereto; and upon such certificate being made, the same shall be filed in the circuit court, and a copy of such certificate certified by the clerk of said circuit court to the supreme court, and filed therein; and upon filing the same, the like proceedings may be had in the supreme court as if a full and complete record had been transcribed and certified to said court.

(18.) SEC. XVIII. The two preceding sections shall not apply to cases in which the title to real estate is in question.

(19.) SEC. XIX. In the decision of cases submitted to the supreme court, the opinions of the justices shall be delivered in writing, and filed with the other papers. Such opinions shall also be spread at large upon the records of the court.

(20.) SEC. XX. The 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.



(21.) SEC. XXI. The reporter, before entering upon his duties, shall be sworn by some one of the justices of the supreme court, faithfully to perform the duties of his said office. He may, for misconduct in office, neglect of duty, incompetency or other cause shown, to be entered of record, be removed from office.

(22.) SEC. XXII. It shall be the duty of the reporter to deliver to the secretary of State, as soon as convenient after publication, such number of copies of the respective volumes of the reports of said court, as may be necessary to enable the said secretary to distribute the same in the manner provided in the following section, together with one hundred copies in addition, to be deposited in the secretary's office, for the use of the State.

(23.) SEC. XXIII. It shall be the duty of the secretary of State to distribute the said reports in the manner following, to wit: He shall deliver one copy to each of the justices of the supreme court, one copy to the attorney general, each State's attorney, and to each clerk of a court of record in this State, except the supreme court; one copy to each probate justice, and five copies to the clerk of the supreme court; one copy to the executive of each State in the United States, and five copies to the executive department of this State, who are required to keep their offices at the seat of government.

(24.) SEC. XXIV. Upon the delivery of the requisite number of any volume of said reports, it shall be the duty of the secretary of State to deliver to said reporter a certificate, specifying the number of said copies of said reports which shall have been delivered to him, and on presentation of said certificate to the auditor of public accounts, he shall issue his warrant upon the treasury for such an amount as said volumes shall amount to, at the price for which said books shall be sold to individuals: *Provided*, Said price shall not exceed the ordinary price of law books of the same description, to be determined by the auditor, treasurer and secretary of State.

(25.) SEC. XXV. The supreme court shall have power, from time to time, by general rules, to establish, modify, alter and amend the practice in the said court, in matters not provided for by statute.

(26.) SEC. XXVI. Each justice of the supreme court shall receive a yearly salary of fifteen hundred dollars, payable quarterly, out of the public treasury.

(27.) SEC. XXVII. When any of the said judges shall die, resign, remove from the State, become incompetent or be removed from office, during the session of the General Assembly, his successor shall be chosen as provided in article four of the constitution; if such vacancy occur or exist during a recess of the General Assembly, it shall be filled by appointment of the governor, the person so appointed to continue in office until the close of the ensuing session of the General Assembly, and until his successor shall be appointed and qualified.

(28.) SEC. XXVIII. 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.

(29.) SEC. XXIX. The chief justice and the associate justices of the supreme court, shall be required to reside in the circuits assigned them respectively; and 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 and suits 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.

(30.) SEC. XXX. 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.

(31.) SEC. XXXI. 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.

(32.) SEC. XXXII. 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.

(33.) SEC. XXXIII. 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 of \_\_\_\_\_ county, do solemnly swear (or affirm) that I will truly and faithfully enter and 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." 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.

(34.) SEC. XXXIV. 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 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 undefaced, when lawfully required so to do; which bond, so executed, shall be transmitted to the office of the secretary of State, and filed therein.

(35.) SEC. XXXV. The clerks of the respective circuit courts shall keep their offices at the county seats of 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 in cases otherwise provided by law, and do and perform all other duties pertaining to their said offices, as may be required by law or the rules and orders of their courts respectively.

(36.) SEC. XXXVI. The clerks of the circuit courts shall be entitled to such fees and compensation for their services as shall be allowed by law, or by order of court.

(37.) SEC. XXXVII. The clerk of any circuit court may be removed from office by the judge of said court, for any neglect of duty, incompetency, misconduct in office, or any other cause which may be satisfactory to said court, the reasons for such removal to be entered at large upon the records of said court. The official bond of such clerk shall not be affected by such removal, but shall remain in full force, for the satisfaction of any breach of its conditions.

(38.) SEC. XXXVIII. 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 in 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.

(39.) SEC. XXXIX. 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.

(40.) SEC. XL. The clerks of the circuit courts may issue process in all cases arising therein, which process shall bear teste in the name of, and be signed by, such 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.

(41.) SEC. XLI. The chief justice, and the associate justices of the supreme court, 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 execat*, *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 sued by the proper justice or judge of the circuit.

(42.) SEC. XLII. Should the chief justice, or either of the associate justices, fail to attend in any county, in their respective circuits, on the day appointed for commencing the 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 the next term of the court, as effectually as if the same had been continued by the order of the court.

(43.) SEC. XLIII. The said 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 cases, 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.

(44.) SEC. XLIV. 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 therein, in all respects, as if the same had been originally instituted in his circuit.

(45.) SEC. XLV. Whenever any person shall be in the custody of the sheriff of any county, charged with a capital crime, or any felony or other offense punishable by confinement in the penitentiary, 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 the case of his absence or disability, to the next circuit judge nearest to the county where the offense 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.

(46.) SEC. XLVI. 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 chapter; 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 chapter; 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.

(47.) SEC. XLVII. The said circuit court, when met in pursuance of this chapter, 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 bystanders, or award a *venire de novo* for a grand or petit jury, as the case may require.

(48.) SEC. XLVIII. 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.

(49.) SEC. XLIX. The clerks of the several circuit courts may issue subpoenas for witnesses to any county in this State.

(50.) SEC. L. The circuit judges of the several judicial circuits of this State, shall have power in vacation, 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 a grand and petit jury, 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.

(51.) SEC. LI. The circuit court of Sangamon county shall have original jurisdiction in all causes, suits and motions, against every person or persons, body politic or corporate in this State, in which the State shall be a party, plaintiff or complainant, whether such causes, suits and motions grow out of contracts, express or implied, or out of *torts* of any nature or description whatever, affecting the interest or welfare of the State.

(52.) SEC. LII. All such suits, motions, causes and proceedings shall hereafter be instituted and prosecuted in the name of the People of the State of Illinois.

(53.) SEC. LIII. Writs of *ne exeat*, *capias*, attachment and injunction may issue in the causes, suits and proceedings aforesaid on behalf of the State, as in cases provided for by law between individuals; and such writs shall issue in all instances upon the official statement in writing of the attorney general, which statement shall conform to the law applying to the issuing

of those writs in other cases, only dispensing with the oath or affidavit of the attorney general.

(54.) SEC. LIV. The State shall in no case be required to give bond and security as is required of individuals in suing out such writs as aforesaid.

(55.) SEC. LV. It shall be the duty of the sheriffs and coroners throughout the State to obey the writs aforesaid, and serve the same in their respective counties; and whenever any person or persons, by virtue of any such writs of *capias* or *ne exeat*, shall be required to give bail or enter into bond or recognizance, for his, her or their appearance in the court aforesaid, as in other cases provided for by law, in default of giving bail, or entering into bond or recognizance, such person or persons shall be imprisoned in the county where he, she or they may be arrested, and there detained until he, she or they shall give such bail, or enter into such bond or recognizance, or be otherwise discharged by law; and in case he, she or they shall not be discharged from custody, the sheriff or coroner having him, her or them in custody, shall surrender him, her or them before the said court at the return day of such writ.

(56.) SEC. LVI. Any person or persons, body politic or corporate, against whom any such suit, cause, motion or proceeding as aforesaid, shall be instituted, shall recover payment for his, her or their costs, which shall be paid by the State, and for which the clerk of said court shall certify the same to the auditor, and the auditor of public accounts shall issue his warrant for the same on the treasurer, in the event that such cause, suit, motion or proceeding shall be determined or disposed of against the State.

(57.) SEC. LVII. It shall be the duty of the governor, secretary of State, treasurer, auditor and fund commissioner, to give immediate notice to the attorney general, of any delinquency or default of any person or persons, body politic or corporate, in any matter relating to the public revenue and public interests, growing out of contracts or *torts* as aforesaid, and it shall be the duty of the attorney general to proceed forthwith against such person or persons, body politic or corporate, in the most efficient manner allowed by law.

(58.) SEC. LVIII. It shall be the duty of the attorney general to enforce the penalties of the criminal code against all persons who may embezzle the public money, or who may be liable to prosecution for any delinquency or default pertaining to the public revenue in his district; and it shall be the further duty of the attorney general to give information and directions and instructions to the prosecuting attorneys of the State, of any such offenses as above in other parts of the State out of his district, so that prosecutions may be instituted against such offenders.

(59.) SEC. LIX. In all such suits, causes, motions and proceedings as aforesaid, the official statement of the governor, secretary of State, auditor, treasurer and fund commissioner, of any fact or facts, properly within the legitimate powers and duties of such officers, respectively, shall be deemed and taken as evidence for and against the State, as the case may be.

(60.) SEC. LX. All subpoenas, summonses, executions and other legal process in said suits, causes, motions and proceedings, shall issue and be directed to any county in the State, and be served as in other cases provided for by law; and the fees of the clerks, witnesses, sheriffs, coroners and other officers, shall be the same as in other cases.

(61.) SEC. LXI. The causes, motions, suits and proceedings aforesaid, shall be docketed in the court aforesaid, and tried and disposed of as other cases: *Provided*, That said court shall not have exclusive jurisdiction of such causes, motions and suits, but only concurrent jurisdiction with the other circuit courts of the State, where the defendant or defendants in said causes, motions and suits may happen to reside or be found.

(62.) SEC. LXII. The sheriff or coroner of the proper county shall hereafter serve and return all writs and process issuing out of the supreme and circuit courts, unless otherwise provided for by law.

(63.) SEC. LXIII. The twelve preceding sections hereof shall not be construed as repealing any other law of this State, relating to the interests of the State, but the same shall be considered a cumulative remedy in the enforcement of public justice.

(64.) SEC. LXIV. The sheriff of the county in which the supreme court is held, shall attend upon its sittings, and perform such duties, under the order and direction of said court, as are usually performed by such officer, and such as said court shall from time to time require.

(65.) SEC. LXV. The State shall remain as now, divided into nine judicial circuits, and the chief justice and eight associate justices shall hold circuit courts therein, and shall perform all the duties prescribed in this chapter, in the manner and at the times by law specified, and perform such other duties, as such judges, as shall hereafter be defined by law.

An Act to establish the Cook County Court.

[Approved Feb. 21, 1845. Laws, 1845, p. 74.]

(66.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That there shall be, and hereby is, created and established, a county court, in and for the county of Cook, in the State of Illinois, which court shall be called the "Cook county court," and shall be a court of record, with a seal and clerk, and be held by a judge to be chosen in the manner, and hold his office for the term prescribed in the constitution of this State, for the appointment of judges of courts of record: said judge shall, before he enters upon the duties of said office, take the usual oath of office.

(67.) SEC. II. The said court shall have jurisdiction concurrent with the circuit courts of this State, in all matters civil and criminal, and in all suits and proceedings, either at law or in equity, within the limits of said county, and shall have exclusive jurisdiction in all appealed cases arising within the same, and in all cases of misdemeanor, which are prosecuted by indictment.

(68.) SEC. III. The process of said court shall be tested in the name of the judge thereof, and be issued and executed in the same manner as process from the circuit court of said county; and the rules, proceedings and practice not herein otherwise provided for, shall conform, as near as may be, to the rules, proceedings and practice of the circuit courts of the State; and all orders, judgments and decrees of said court, shall have the same lien upon real and personal estate, and shall be enforced and collected in the same manner as orders, judgments and decrees rendered in the circuit courts of this State; and appeals from the orders, judgments and decrees of said county court, directly to the supreme court, shall be had in the same

cases, and taken and conducted in the same manner as is provided by the laws of this State, for the taking of appeals and writs of error from the circuit court: *Provided*, That the judge of the said court shall have full power to establish all such rules of practice, at law or in equity, as he may think necessary to expedite the business of said court; which rules of practice shall be binding and obligatory upon the parties to suits in said court, from the time they shall be entered of record.

(69.) SEC. IV. The judge of said court shall hold four terms of said court in each year, in a building to be provided by the county commissioners' court of said county, in the city of Chicago, commencing on the first Monday of May, August, November, and February, and shall continue each term until all the business before the same is disposed of. The said judge shall have power to appoint special terms of said court at such times as he may think proper, upon giving twenty days' notice thereof in the corporation newspaper of the city of Chicago: which notice shall be given by the clerk of said court, under the order of the judge of the said court: and the judge of the said court shall have the same powers in vacation as are now vested in the judges of the supreme court when acting as circuit judges in vacation; and shall have power, upon entering the proper order of record in said court, during any term thereof, to fix any number of days or times at which he will hear at his chambers, general and special motions, arguments of demurrers, and arguments upon agreed cases, and for the making up of issues, and for the making of orders thereupon, and for the making of all such interlocutory orders as may be necessary to expedite the proceedings in any cause; and the said court shall always be considered open for hearing all matters and applications on the chancery side thereof, and the granting of all such orders as may be required or necessary in the practice of said court: *Provided*, That no final order, judgment or decree shall be entered in vacation, except judgments by confession, which may be entered at any time, upon filing the proper papers with the clerk of said court, and have the same force and effect as if entered in term time: *And provided further*, That the judge of said court shall examine and sign the records of the general and special terms of said court, as also all orders entered on motion days, which orders shall have the same force and effect, and the judge shall have the same power to enforce the same, as if entered in term time.

(70.) SEC. V. That all recognizances taken before any justice of the peace within said county, in any criminal proceedings, shall be taken returnable to said court; and said justice shall return all the papers in criminal cases to the said court, in the same manner as now required by law, to the circuit courts; and all fines, penalties and forfeitures, had or taken in any criminal proceeding whatsoever, shall enure to the benefit of said county.

(71.) SEC. VI. The clerk of said court shall be appointed by the judge thereof, and shall, before entering upon the duties of said office, make and file with the clerk of the county commissioners' court, his bond with good and sufficient securities, to be approved of by the judge of said court, to the people of the State of Illinois, in the penal sum of five thousand dollars, conditioned, well, truly and faithfully to perform the duties of his said office, and to pay over and account for all such sums of money as may come into his hands by virtue of his said office, and a new bond with fur-

ther, other or additional securities given whenever the judge of said court shall direct.

(72.) SEC. VII. The grand and petit jurors of said court shall be selected by the county commissioners' court of Cook county, in the manner provided by law for the selection of jurors for the circuit court, and shall possess the same qualifications, be liable to the same penalties and punishments, have the benefit of the same excuses and exemptions, shall take the same oaths, and possess the same powers, and be governed in all their proceedings in the same manner as is prescribed, allowed and imposed in the case of jurors in the circuit court.

(73.) SEC. VIII. The sheriff shall perform the same duties, and have the same powers, and be liable to the same penalties in the said court as he may perform, has or may be subject to, in the circuit court; and there shall be elected by the legislature, a prosecuting attorney for said county, who shall hold his office for the term of two years, and until a successor is appointed and qualified.

(74.) SEC. IX. The clerk, jurors, sheriff and other officers of said court, shall receive the several fees and compensation that now are, or hereafter may be, allowed for similar services in the circuit courts of this State, to be received, collected and paid in like manner as such fees now are, or hereafter shall be; and the judge of said court shall receive a salary of six hundred dollars, and the prosecuting attorney two hundred dollars, to be paid quarterly out of the State treasury.

(75.) SEC. X. This act to take effect from and after its passage.

An Act to authorize the Circuit Court of Cook County to appoint Port Wardens, and prescribing their Duties.

[Approved Feb. 17, 1851. Laws, 1851, p. 156.]

(76.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the circuit court of Cook county, at any term thereof, shall appoint three competent and discreet persons, residing in the city of Chicago, to be port wardens for said county, who shall hold their respective offices for the term of four years, and until others shall be appointed by said court; and in case any such officer shall remove out of said county, such removal shall be deemed a resignation of his said office, and the circuit court shall fill such vacancy by a new appointment, at the next term thereof.

(77.) SEC. II. Before any person so appointed shall enter upon or perform any of the duties of his office, he shall make oath before the clerk of the circuit court of Cook county, faithfully and impartially to discharge all the duties of a port warden as by this act are hereinafter declared, and the clerk shall thereupon deliver to such port warden a certificate of his appointment, under the seal of the court.

(78.) SEC. III. It shall be the duty of either one of the said wardens, on application of any person, to repair on board any steamboat or other vessel navigating the lakes, rivers or waters within the precincts of said county, and examine the condition of said steamboat or vessel, or the condition of any cargo or lading on board the same, to survey and rate the same.

(79.) SEC. IV. It shall also be the duty of either one of said wardens, on application in writing to them, by any person or persons who may receive

or be about to receive any goods, wares or merchandise at the port of Chicago, from any steamboat or vessel, within twenty-four hours after said goods, wares or merchandise shall have been landed at said port, and there is reason to think that the same are damaged, to notify the master, owner or agent of such steamboat or vessel, of such application, and of the place and time of examining such goods, wares or merchandise, when and where it shall be the right of said master, owner or agent, to appear, and, if he thinks proper to call in one other warden to join in the survey and estimate of damage, he may do so, but if no objection is made, the said warden first selected shall proceed to examine, survey and estimate the damage on said goods, wares and merchandise, and state the cause of the same, from the best evidence presented to him by all parties, and give a certificate of the same; or if two port wardens shall jointly examine, survey and estimate, they shall give a joint certificate of the same, but in case of their disagreement, the two first wardens shall call in the third port warden to decide between them, and the certificate shall in that case be signed by them, or by the two agreeing in the facts respecting the damaged goods, wares and merchandise.

(80.) SEC. V. It shall also be the duty of either of said wardens, when any goods, wares or merchandise shall be brought to the port of Chicago, from any steamboat or other vessel wrecked or stranded in any of the lakes, rivers or waters within or adjoining this State, to receive the charge and care of the same, provided the person or persons having the same in possession do not, within twenty-four hours after the said goods, wares and merchandise shall have arrived at said port, arrange terms of settlement with the owner of said goods, wares or merchandise, or the agent or consignee thereof; the said warden or wardens so receiving said goods, wares or merchandise, shall pay all freight from said wreck or stranded steamboat or vessel, charges and other expenses as shall be justly established as being due on the same, for salvage, freighting and care thereof; and said wardens shall put in store, for safe-keeping, all or such part of the same as may not be in a perishing condition, and all of said goods, wares or merchandise deemed by him so to be in a perishing condition, shall be examined by three disinterested citizens who may have knowledge in such matters, and if, upon their opinion certified by them, that it is advisable the same should be sold without delay, for the best interest of those whom it may concern, then the said wardens shall proceed to give reasonable public notice of sale, and to sell the said goods, wares or merchandise pursuant to said notice, for the account of whom it may concern, taking care to record the sale and all the legible marks on said goods, wares or merchandise, in order that the rightful owner or owners thereof, or their agent or consignees, may claim the proceeds of the sale thereof; and the said warden (or wardens, if more than one is acting in the matter or case,) is authorized to pay the said owner or owners, or their agents, the proceeds of such sale, upon the legal establishment of their rights of property in the same, after first deducting all legal expenses in the case, of advertising and sale of said goods, wares or merchandise, together with all moneys advanced as aforesaid by said warden or wardens, and also their fees; and further, the said warden is authorized to deliver to the rightful owner or owners, or their agents, of said goods, wares or merchandise put in store for care and

keeping by said warden, the said warden or wardens being first paid for all moneys advanced as aforesaid for salvage, care, freight and drayage, and for storage on said goods, wares and merchandise.

(81.) SEC. VI. It shall also be the duty of each of said wardens to keep a fair record of their doings by virtue of said office, and to give copies and certificates thereof, under his hand and seal, to any person on application, and all such copies and certificates shall be taken and deemed *prima facie* evidence of the facts therein duly stated; and for the faithful performance of their duties the said port wardens shall give bonds, such as may be approved by the judge of the circuit court of Cook county, in an amount not to exceed two thousand dollars.

(82.) SEC. VII. There shall be paid to each port warden, for his services, the following fees, viz.: For inspecting of each steamboat or other vessel, or the cargo or storage thereof, not exceeding five dollars, to be paid by the person applying for such inspection; for examining and assessing damages, under and by virtue of the fourth section of this act, not exceeding five per centum on the whole value of the goods, wares or merchandise examined and assessed by him—said value to be ascertained by the invoices of said goods, or by the market value thereof—fees to be paid by the applicant; or if there be found no damage on said goods, the applicant shall pay for the service of said warden in examining said goods, a fee of one dollar, and if he is employed more than one hour, fifty cents for every additional hour. For duties under and by virtue of the fifth section of this act, on all sales of damaged goods, wares and merchandise, not exceeding five per centum on the gross amount of said sale or sales by said warden or wardens effected; and for certificate or copy of record, fifty cents.

(83.) SEC. VIII. The judge of the circuit court of Cook county is hereby authorized and empowered, on application made by petition to him from the board of trade of the city of Chicago, to reduce and fix the compensation allowed by this act to the said port wardens for their service.

(84.) SEC. IX. This act to take effect and be in force from and after its passage.

An Act to regulate the Practice in the Circuit Court of Cook County, and the Cook County Court of Common Pleas.

[Approved Feb. 12, 1853. Laws, 1853, p. 172.]

(85.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That there shall be held annually four terms of the circuit court of Cook county, and eight terms of the Cook county court of common pleas. The said terms of the circuit court shall be held on the first Monday of May, and fourth Monday of March and October, and third Monday of November; and the said terms of the Cook county court of common pleas shall be held on the first Monday of January, February, March, April, June, July and November, and the second Monday of September; and process may be issued returnable to either of said terms, or to the next succeeding term of said courts respectively, after the date of such process, or to any subsequent term which may commence within three months from the date of such process. The terms of said circuit court to be held on the first Monday of May and the third Monday of November, and the terms of said

court of common pleas to be held on the first Monday of February and the second Monday of September, shall be trial terms, at which jury trials shall have the preference of all other business, and all causes for trial shall be disposed of before any other business shall be taken up, excepting such business as may be incident to or necessary for the proper disposal of said jury trials: *Provided,* That in case the judges of said courts respectively shall direct the petit jury for any term, to be summoned to appear on the second week thereof, in such case any other causes may be tried or business disposed of during the first week of such term. The other terms of said courts herein provided for, shall be called vacation terms.

(86.) SEC. II. Any party desiring to have a motion, plea or other matter cognizable at a vacation term, disposed of, shall file a written notice thereof, together with the papers on which such motion is founded, in the clerk's office, and serve a copy of said notice on the attorney of the opposite party, or in case he has no attorney, then upon the opposite party, at least four days before the commencement of such term. The clerk shall make a list of such notices in the order in which the same are filed, and upon proof of due service thereof, the court shall take up and dispose of said matters in their order, unless satisfactory reasons for further delay be shown. Such vacation terms may be held at the court-house, or at the judge's chambers, at his discretion, and it shall be the duty of the clerk and sheriff to attend at such vacation terms.

(87.) SEC. III. Any party having commenced suit in either of said courts, shall be entitled to a default at any vacation term, upon proof of due service of process upon the defendant, and a copy of the declaration with a rule to plead, at least ten days before such term, unless such defendant, or the attorney of such defendant, if such defendant be a resident of such county, shall, before the expiration of said ten days, if the suit be founded on a contract, file a plea to said action, and also an affidavit setting forth that he believes he has a good defense to said suit upon the merits: *Provided, however,* That the defendant shall have a right to file a plea in abatement, demurrer or motion to quash said action, in which case said plea, demurrer or motion shall be in order to be disposed of at the term at which the same is filed, or at the next vacation term, in case the same shall be filed in vacation without service of notice. In all cases where it shall appear by affidavit or otherwise, that the defendant resides out of the county, the court may allow time to procure an affidavit of merits.

(88.) SEC. IV. In all cases where a demurrer, plea or motion shall be filed, which the court shall adjudge to be frivolous, the plaintiff shall be entitled to judgment, as in case of default. When the issue is made up in any cause at a vacation term, the parties shall determine whether the cause is to be tried by a jury, or by the court without the intervention of a jury, and an order of the court shall be made accordingly, and such cause shall be set down to be tried in the manner stated in said order, and not otherwise. A special jury may be summoned from the bystanders whenever the court may adjudge it necessary, at a trial term or a vacation term.

(89.) SEC. V. Causes may, by agreement, be tried before the judge at any vacation term, and judgment entered and execution issued thereon.

(90.) SEC. VI. In all cases where defaults have been taken, the court may, without the intervention of a jury, assess the damages, and execution may issue forthwith upon the rendition of judgment.



(91.) SEC. VII. All judgments rendered in either of said courts shall become liens from the time such judgment shall be entered on the judgment docket of such court: *Provided*, That as between judgment creditors and other parties claiming under the lien of such judgment rendered at the same term of the court, or on the same day in vacation, there shall be no preference or priority of the lien of one judgment over that of another.

(92.) SEC. VIII. The said courts shall always be open for the disposal of all matters in chancery, whether interlocutory or final, and shall possess all the power in vacation which they could exercise in term time, subject to such rules and regulations with respect to the practice as said courts may from time to time adopt: *Provided*, That no final decree shall be entered up, unless where specially authorized by statute, except at a vacation or regular term of said court.

(93.) SEC. IX. Appeals and writs of error shall lie to any final judgment rendered at any vacation term of said courts, and bills of exceptions may be allowed and signed in the same manner as is now provided by law.

(94.) SEC. X. Notice of a motion to set a cause in chancery for final argument, shall not be in order until the pleadings in the same are closed, and the cause is at issue.

(95.) SEC. XI. Any person desiring to take up any motion, demurrer or plea in chancery, may do so on giving ten days' notice thereof, in manner hereinbefore provided.

(96.) SEC. XII. One day's notice of a motion to dissolve an injunction shall be sufficient, unless satisfactory cause be shown for further delay, or the court or judge shall otherwise direct.

(97.) SEC. XIII. All motions for continuances of causes shall be made on the first or second days of trial terms, unless the cause for such continuances shall have arisen subsequently to such days, or unless said court shall, in their discretion, allow such motions to be made subsequently.

(98.) SEC. XIV. In all suits arising on contracts, brought to any term of said courts, the plaintiff shall be entitled to judgment, unless the defendant shall, with his plea, file an affidavit of merits, plea in abatement, demurrer or motion to quash, as hereinbefore provided.

(99.) SEC. XV. A creditor's bill may be filed or garnishee process issued in either of said courts before the return day of the execution: *Provided*, That the execution shall first be returned by the sheriff unsatisfied, either in whole or in part, and that the plaintiff, or some person for him, shall file an affidavit, setting forth that there is danger that the benefit of said judgment will be lost unless the said plaintiff be allowed to file such creditor's bill or issue such garnishee process before the return day of such execution; and such garnishee process may be issued and the bond filed, approved by the clerk, in vacation, as well as in term time. It shall be the duty of the judges of the said courts to establish rules of practice not inconsistent with this act, and they shall endeavor to make the same uniform in each of said courts.

(100.) SEC. XVI. No grand or petit jury shall be summoned for any vacation term of either of said courts, unless the judge thereof shall make an order for summoning such jury or juries, which order may be made in vacation as well as in term time.

(101.) SEC. XVII. The fees to be paid upon the commencement of

suits on confessions of judgments or the taking of appeals in the Cook county court of common pleas, shall hereafter be as follows: On confessions of judgments, two dollars for each confession; in suits on the law side of said court, two dollars and fifty cents in each suit; in appeal cases, one dollar and fifty cents in each suit; in chancery suits, three dollars in each suit; to be taxed, collected and paid, as provided in the fourth and fifth sections of "An act to provide for the election of certain officers therein named," approved February 6th, 1849. And the judge of said court shall hereafter receive the same salary from the State treasury that is paid to the respective judges of the circuit courts.

(102.) SEC. XVIII. All persons who may remain in custody under any indictment found in either of said courts, after the adjournment of any term thereof, shall be tried in the first term of either of said courts which shall be held, and all the papers and proceedings in the court in which such indictment may be pending, shall be transferred, if necessary, by the clerk, to the court which is required to try such indictment by the provisions of this section, who shall certify to the correctness of the same; and the proceedings had in such court to which such indictment may be transferred, shall have the same force and validity as if had in the court in which such indictment was originally found.

(103.) SEC. XIX. In all applications for change of venue in criminal cases, the applicant shall set forth in his petition the particular facts and circumstances upon which his belief or fears are founded, and the granting or refusing such application shall be discretionary with the judge or court to whom the application may be made.

(104.) SEC. XX. All laws and parts of laws conflicting with this act be and the same are hereby repealed.

An Act to amend an Act entitled "An Act to regulate the Practice of the Circuit Court of Cook County, and the Cook County Court of Common Pleas."

[Approved Jan. 16, 1855. *Laws*, 1855, p. 146.]

(105.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That so much of the first section of an act entitled "An act to regulate the practice of the circuit court of Cook county, and the Cook county court of common pleas," approved February 12th, 1853, as provides that a term of said Cook county court of common pleas shall be held on the first Monday of March, be and the same is hereby repealed.

(106.) SEC. II. This act shall take effect and be in force from and after its passage.

An Act to establish the Jurisdiction of the Circuit Courts of the State of Illinois.

[Approved Nov. 3, 1849. *Laws*, 1849, (2nd Sess.) p. 8.]

(107.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That special terms of the circuit courts may be held in the respective circuits, which shall have jurisdiction in all criminal cases hereafter arising within said circuits on indictment, as hereinafter specified.

(108.) SEC. II. The governor of the State of Illinois, whenever he is satisfied that it is essential to preserve law and order, and put down rebellion

or mobs, or combinations to prevent the execution of law, shall require, by notice in writing, the judge of the circuit court in which circuit such illegal and criminal offenses may be committed, to call a special term of the circuit court, to be holden in such part of his circuit as to him may seem convenient and suitable, within thirty days after such requisition and notice; and it shall be the duty of said judge immediately to fix upon a time and place of holding said special term, within the period aforesaid, and to issue a precept to each of the sheriffs of the several counties in his judicial circuit, (excepting such county or counties wherein such illegal and criminal offenses may be alleged to have been committed,) to summon from each of said counties, not excepted as aforesaid, a fair proportion, to be fixed by said judge, of grand and petit jurors, for said special term of the circuit court of his circuit. The said judge shall also cause notices of the time and place of holding said special term to be put up in three of the public places in each of the counties of his circuit, one of which notices shall be placed on the outer door of the court-house in each of the counties in said circuit.

(109.) SEC. III. The said jurors shall possess the same qualifications that are required for jurors now by law, except as to residence: *Provided*, That they shall be residents of said judicial circuit; and if at any time there be not in attendance upon such special term of the circuit court sufficient jurors, it shall be lawful to summon talesmen of said circuit.

(110.) SEC. IV. The grand jurors of said special term shall be sworn and proceed in all respects, in procuring and hearing testimony in behalf of the people of the State of Illinois, and finding bills of indictments, as at the regular terms of the circuit court, except that they shall not have power to try cases coming up from any part of said circuit, except from the county or counties which are set forth in the notice of the governor as being in a state of riot or combination against the laws.

(111.) SEC. V. The State's attorney of said judicial circuit shall be notified of the time and place of holding said special term, by said judge, and shall act as prosecutor for the people at said court, and the said court shall have power to appoint a prosecuting attorney *pro tem.*, or an assistant prosecuting attorney; which prosecutor *pro tem.*, or assistant prosecutor, shall be allowed for his services during said term, not exceeding two hundred dollars, to be certified by the judge and paid out of the treasury.

(112.) SEC. VI. The said judge, upon the receipt of the notice of the governor as aforesaid, shall appoint a marshal, who shall execute such bond, with such security as the said judge may require, to conform as near as may be to the official bond of sheriffs. The said marshal shall perform all the official duties arising out of or connected with said special term of the circuit court within said circuit, which is required of sheriffs in their respective counties in criminal cases.

(113.) SEC. VII. The clerk of the circuit court in and for the county in which such special term may be holden, shall perform all the official duties of clerk arising out of or connected with the holding of said special term, but the said clerk shall keep the record of the proceedings of said special term in a separate book or books from the proceedings of the regular term of the circuit court; and all copies from said record shall be certified to be copies of the record of the special term of the circuit court holden under the provisions of this act, by the clerk aforesaid, under his official seal as circuit clerk of the county in which such special term is held.

(114.) SEC. VIII. The process of said special term shall be issued to the marshal, and may be executed by him and by all the sheriffs and constables of the State of Illinois; it shall be tested in the name of the clerk aforesaid, and under the seal of the circuit court in and for the county in which said special term is held.

(115.) SEC. IX. In case the time fixed by said judge for holding said special term, shall interfere with the time of holding a regular term of the circuit court in the same circuit, it shall be the duty of the said judge to notify the clerk of the circuit court in and for the county in which such regular term was to have been holden, of the appointment of said special term, and said clerk shall cause notice to be posted up in every precinct of his county, that the said regular term of said circuit court will not be holden, and the said regular term of said court shall stand adjourned till the next regular term thereof, and all cases and matters therein pending continued.

(116.) SEC. X. If the said judge of the said circuit court shall, from any cause, be unable to attend the said special term, any other judge of the circuit court of this State may perform the duties, with like power and jurisdiction; and the judge presiding at said special term shall have power to call to his assistance at said court any other circuit judge in said State.

(117.) SEC. XI. All rules, proceedings and practice at said special term, shall conform as near as may be to the rules, proceedings and practice of the regular terms of the circuit court in criminal causes, and the judgments shall be of the same form and effect, and all the provisions of the criminal code shall be complied with, so far as may be applicable to the said special term.

(118.) SEC. XII. The said judge may, whenever he deems it necessary to execute process or enforce order, direct the marshal to summon such *posse* as said judge may think proper, to aid and protect the court in executing the laws, and giving persons charged with offenses an impartial trial; which *posse* shall be allowed one dollar each per day for their services, to be certified by the judge and paid out of the State treasury.

(119.) SEC. XIII. When any person or persons who may be indicted in any county at the regular term of the circuit court for the said county, for any crime or misdemeanor, shall afterwards be indicted for the same offense at a special term of said circuit court, holden under the provisions of this act, the said indictment in said special term shall operate as a *nolle prosequi* upon the former indictment; but nothing in this act shall be construed as depriving the circuit court, at its regular term in the proper county, of concurrent jurisdiction with the said circuit court at a special term, held under this act, at any time said special term is not being holden.

(120.) SEC. XIV. The said special term may be adjourned from day to day by the judge thereof, until all cases pending therein are disposed of.

(121.) SEC. XV. All costs, fines, penalties and forfeitures had or taken at any of said special terms, shall enure to the benefit of the State of Illinois, and cognizances taken and forfeited in said court, may be sued upon in the circuit court in any county where the cognizers or any of them reside.

(122.) SEC. XVI. Where imprisonment is part of the punishment, the defendant may be imprisoned in any jail in said circuit, and the said marshal may confine any person in his custody in any of said jails for safe-keeping.

(123.) SEC. XVII. Writs of error to the supreme court of this State

shall be allowed from said special term, in all respects as from the regular terms of the circuit courts.

(124.) SEC. XVIII. The marshal shall be allowed for his services the same fees as are allowed sheriffs for similar services in civil cases, and the clerk shall have the same fees as are allowed clerks of the circuit court in civil cases. The grand and petit jurors and witnesses in behalf of the people, shall be allowed one dollar each per day, and one dollar for every twenty miles necessary travel in going to and returning from said court; all of which fees shall be certified by said judge and paid out of the State treasury.

(125.) SEC. XIX. The auditor shall draw his warrant upon the treasury in favor of W. A. Denning, judge of the third judicial circuit, for the sum of four hundred dollars, for his extra services and expenses in holding the district court in Massac county under the proclamation of the governor.

(126.) SEC. XX. This act shall be in force and take effect from and after its passage.

An Act fixing the Times of holding the Supreme Court.

[Approved Jan. 6, 1849. Laws, 1849, (1st Sess.) p. 57.]

(127.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in lieu of the times now appointed, the supreme court shall be held as follows: In the first grand division, on the second Monday of November, annually; in the second grand division, on the second Monday in December, annually; and in the third grand division, on the second Monday in June, annually.

(128.) SEC. II. All process that has or may be used before the clerks of the courts receive notice of the passage of this act, shall be considered as returnable to the terms hereby appointed.

(129.) SEC. III. This act to take effect from and after its passage.

An Act to authorize the Purchase of Books for the use of the Supreme Court.

[Approved Jan. 26, 1848. Laws, 1849, (1st Sess.) p. 57.]

(130.) SEC. I. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That there be advanced and paid to the justices of the supreme court, out of any moneys not otherwise appropriated, the sum of five thousand dollars, to be applied in equal proportions to the purchase of law libraries for the use of the supreme court in the first and third grand divisions.

(131.) SEC. II. That upon a requisition, signed by two of the justices of the supreme court, the auditor shall issue his warrant upon the treasurer for any sum or sums, not exceeding the said sum of five thousand dollars, in such amounts as the said justices may require.

An Act relating to the Supreme Court Rooms.

[Approved Jan. 31, 1849. Laws, 1849, (1st Sess.) p. 57.]

(132.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the judges of the supreme court are hereby authorized to make the necessary alterations in and provisions for the court rooms for the supreme court in the several grand divisions, and

to provide the necessary furniture and fuel therefor, and to audit the accounts for the same. This act to be in force from and after its passage.

An Act to authorize the Judges of the Supreme Court to enter Orders and Judgments in Vacation.

[Approved Feb. 17, 1861. Laws, 1861, (1st Sess.) p. 152.]

(133.) SEC. I. *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, the judges of the supreme court, or a majority of them, shall have power and authority to enter orders and judgments in vacation, in any of the grand divisions of this State, in all cases which have been argued or submitted to the said court during any term thereof, and which have been taken under advisement.

An Act to establish the Recorder's Court of the City of Chicago.

[Approved Feb. 12, 1853. Laws, 1853, p. 147.]

(134.) SEC. I. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That there shall be established in the city of Chicago an inferior court of civil and criminal jurisdiction, which shall be a court of record, by the name of the "Recorder's Court of the City of Chicago," and shall have concurrent jurisdiction within said city with the circuit court in all criminal cases, except treason and murder, and of civil cases where the amount in controversy shall not exceed one hundred dollars. Said court, and the judge and clerk thereof, shall respectively have the like power, authority and jurisdiction, and perform the like duties, as the circuit court, and the judge and clerk thereof, in relation to all matters, suits, prosecutions and proceedings within the city of Chicago, so far as the same are not otherwise limited by this act. Said judge and clerk shall be elected by the qualified voters of said city, and shall respectively hold their offices for five years, and until their successors shall be elected and qualified. The first election thereof shall be held at the next annual election for mayor of said city, to be held on the first Tuesday of March, 1853; and like elections shall be held every five years thereafter. The person having the highest number of votes for said offices respectively shall be declared elected thereto, and shall be commissioned by the governor.

(135.) SEC. II. The said judge shall be called "the recorder of the city of Chicago," and shall receive an annual salary of one thousand dollars, to be paid quarterly from the state treasury, and shall receive the like fees in addition thereto as is received by the judge of the Cook county court of common pleas, to be paid and collected in the same manner as the fees of said judge last named are paid and collected; and the provisions of the statute in relation to the said Cook county court of common pleas, in relation to the duties, compensation and liabilities of the clerk of said Cook county court of common pleas, so far as the same can be made applicable and are not inconsistent with the provisions of this act, shall apply to and govern the clerk of said recorder's court, and be in force in relation to him and his duties and powers: *Provided,* That in case the compensation and emoluments of said judge shall exceed the sum of fifteen hundred dollars per annum, then the excess shall be paid into the State treasury.

(136.) SEC. III. Said recorder's court shall have a seal, to be provided by the city of Chicago; and said court shall be held in such place as shall

be provided by said city, and the expenses thereof, except as herein otherwise provided for, shall be paid by said city.

(137.) SEC. IV. The process of said court shall be tested in the name of the clerk thereof.

(138.) SEC. V. All recognizances, except in cases of treason and murder, taken before any judge, justice or magistrate in said city, in criminal cases, shall be made returnable to said recorder's court; and it shall be the duty of the officer taking the same, to return all the papers in such criminal cases to the said court; and all fines, penalties and forfeitures had or taken in any such criminal proceeding, shall enure to the benefit of said city, and shall, when collected, be paid into said city treasury.

(139.) SEC. VI. All appeals from decisions of justices of the peace within said city, shall be taken to said recorder's court: *Provided*, That when a term of the circuit court or Cook county court of common pleas shall intervene between the taking of any such appeals and the next term of the recorder's court, it shall be optional with the appellant to take his appeal to any one of said courts.

(140.) SEC. VII. The State's attorney of the judicial circuit in which said city is situated, shall be the prosecuting attorney of said court, and for his services therein shall receive an additional compensation of five hundred dollars per annum, to be paid out of the same fund in the same manner as his salary as State's attorney for said circuit is paid; and the board of supervisors of said county may allow and pay said State's attorney his fees in all cases of conviction in any court in said county.

(141.) SEC. VIII. The sheriff of the county of Cook shall perform the same duties, and have the same powers, and be liable to the same penalties in the said court as in the circuit court; and said sheriff and the clerk of the said recorder's court shall respectively be entitled to the like fees in all civil and criminal cases as are now allowed by law for similar services in criminal cases, to be collected out of defendants, if convicted: *Provided*, That if said defendant has no property on which to levy, the said fees shall be paid out of the city treasury.

(142.) SEC. IX. The grand and petit jurors of said court shall be selected from the voters of said city who have paid a city tax for the preceding year, in the following manner: Said council shall annually select five hundred names, who are qualified to act as jurors, and who are not exempt from such service, from the list of such voters, and transmit the same to the clerk of said court, who shall keep a record thereof in a book to be provided for that purpose, and deposite such names upon separate pieces of paper in a jury box, from which he shall draw the names of the grand and petit jurors, in the presence of the recorder of said court, the sheriff or his deputy, and such persons as may see fit to attend, at least ten days before the first day of each term of said court; notices of the time and place of such drawing having been given by said clerk, by posting the same upon the door of his office for five days immediately preceding such drawing: *Provided*, That the name of no person shall be put into said box who has been drawn as a juror therefrom for the preceding year, nor shall the names drawn therefrom in any year be replaced in said box during said year, but the names in said box shall be annually renewed: *Provided also*, That if for any cause said grand and petit jurors shall not be selected and drawn in the manner aforesaid, or in cases of

vacancies in the panel thereof, or of the exhaustion of the same, said court may direct the same to be summoned by the sheriff, as now provided by law. All venire for jurors in said court shall be issued by the clerk of said court and executed by said sheriff as in other cases; and all laws in relation to jurors, their compensation, duties, powers, authority and proceedings, as far as not inconsistent with the provisions of this act, shall be applied to said court.

(143.) SEC. X. Changes of venue in all cases, civil or criminal, may be taken from said court to either the circuit court or the Cook county court of common pleas of said county, in all cases, when the party praying for such change of venue, or his attorney, shall make affidavit that in his or her belief, justice and a fair and impartial trial requires such change of venue, stating in such affidavit the particular facts and circumstances upon which such belief is founded, and the judge of said court being satisfied of the truth of such affidavit, and no other or further change of venue shall be allowed.

(144.) SEC. XI. Appeals may be taken from said court to the circuit court of Cook county, in all cases, in the same manner that appeals may be taken to the supreme court, and upon such appeals errors may be assigned and the like proceedings had as upon assignments of error in the supreme court.

(145.) SEC. XII. The regular terms of said court shall be held on the first Monday of each month: *Provided*, That the common council of said city may diminish the number of terms or abolish any term or terms that they may deem unnecessary, not exceeding six in any one year.

(146.) SEC. XIII. Any vacancies in the office of judge or clerk of said recorder's court may be filled by election, at such time as may be appointed by the common council of said city; and the person elected to fill such vacancy shall hold his office until the next regular election for such office, as provided in this act: *Provided*, That a clerk *pro tem.* may be appointed by the judge thereof, when necessary.

(147.) SEC. XIV. In case the State's attorney should fail to attend upon said court at any term thereof, his place shall be supplied by a State's attorney *pro tem.*, who shall be appointed by the judge, and who shall, in the meantime, receive for his services such compensation as is allowed to the State's attorney under the provisions of this act.

(148.) SEC. XV. This act shall take effect and be in force from and after the first day of March next.

An Act to extend the Jurisdiction of the County Court of Lake County.  
[Approved Feb. 12, 1853. Laws, 1853, p. 262.]

(149.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly.* That the jurisdiction of the county court of Lake county, is hereby so extended that said court shall have concurrent jurisdiction with the circuit courts of this State, of all matters and suits at common law or by statute, except actions of ejectment within said county, where the amount in controversy shall not exceed five hundred dollars, and shall have exclusive jurisdiction of all misdemeanors, punishable by fine only, not exceeding one hundred dollars.

(150.) SEC. II. The process of said court shall be issued and executed in the same manner as the process of the circuit courts, and the rules,

proceedings and practice, not herein otherwise provided for, shall conform, as near as may be, to the rules, proceedings and practice of the circuit courts of this State, and all orders and judgments of said court shall have the same lien upon real and personal estate, and shall be enforced and collected in the same manner as orders and judgments rendered or made in the circuit courts of this State.

(151.) SEC. III. Appeals and writs of error may be prosecuted from all final orders and judgments of said court to the circuit court of said county (except in cases of judgment confessed), in the same manner as appeals and writs of error are prosecuted from the circuit courts of this State to the supreme court, but no writ of error shall be granted unless the same shall be applied for within six months after the rendition of the order or judgment complained of.

(152.) SEC. IV. The proceedings and practice in taking and prosecuting such appeals and writs of error, shall be the same as are provided in cases of appeals and writs of error from the circuit courts to the supreme court of this State, excepting that the writs of error shall be allowed by the judge of said circuit court; and in hearing and rendering judgments upon said appealed cases and cases in error, said circuit court shall be governed by the same rules as the supreme court upon the trial of appeals and writs of error: *Provided*, That in all appeals from said court to the said circuit court, the appellant shall lodge in the office of the clerk of the circuit court an authenticated copy of the record in said cause, on or before the first day of the next term of said circuit court.

(153.) SEC. V. All appeals from decisions of justices of the peace of said court shall be taken to said county court: *Provided*, That when a term of the circuit court of said county shall intervene between the taking of any such appeal and the next term of said county court, it shall be optional with the appellant to take his appeal either to the said circuit or county court.

(154.) SEC. VI. There shall be four terms of said court held in each year for the transaction of the business, with the jurisdiction whereof it is hereby vested, and also such other business as said court is by law authorized to transact, which said terms shall commence on the second Mondays of April, July and October, and on the fourth Monday of January, in each year, and each term shall continue until all the business before the same is disposed of; said terms to be held at Waukegan, in said county, in a building to be provided by the board of supervisors of said county; but no terms hereby provided for shall be held to change the regular terms of said court now provided by law.

(155.) SEC. VII. The judge of said court shall have power to prescribe, by rules to be entered upon its records, the manner in which judgments by confession and default may be entered in vacation; and all judgments entered in pursuance of such rules shall take effect from the time of such entry, and have the same force and effect as if they had been entered in term time.

(156.) SEC. VIII. The grand and petit jurors of said court shall be selected by the board of supervisors of said county, in the manner provided by law for the selection of jurors for the circuit courts, and shall possess the same qualifications and be liable to the same penalties and punishments, have the same benefit of the same excuses and exemptions, shall take the

same oaths and possess the same powers, and be governed in all their proceedings in the same manner as is prescribed, allowed and imposed in the case of jurors in the circuit courts.

(157.) SEC. IX. The clerk, jurors, sheriff and other officers of said court, shall receive the several fees and compensations that now are or hereafter may be allowed for similar services in the circuit courts of this State, to be received, collected and paid in like manner as such fees now or hereafter shall be.

(158.) SEC. X. Upon the commencement of every suit in said court, the plaintiff in such suit, before the process shall be issued, shall pay to the clerk of said court the sum of two dollars; and upon the taking of each appeal from the decision of a justice of the peace, whether bond be filed with the justice of the peace or the clerk of the said court, the sum of one dollar shall be first paid by the party taking such appeal, before the same shall be allowed; and before any judgment shall be entered by confession, if the amount of said judgment shall be for a sum less than fifty dollars, there shall be paid to the clerk the sum of seventy-five cents; if the judgment shall be for a sum exceeding fifty dollars and not more than one hundred dollars, there shall be paid to said clerk the sum of two dollars; and if the amount of said judgment shall exceed one hundred dollars and not more than three hundred dollars, there shall be paid to said clerk the sum of three dollars; and if the amount of said judgment shall exceed three hundred dollars, there shall be paid to the said clerk the sum of four dollars; which sums so paid, shall be by the clerk of said court paid over to the judge thereof, at the expiration of each quarter during each year; and it shall be the duty of each justice of the peace to make out and furnish to the judge of said court on the first day of each term, a list of all appeals granted by said justice of the peace to said court, and shall, at the same time, pay over to said judge all sums of money received by him in granting such appeals.

(159.) SEC. XI. Said county court shall also have exclusive jurisdiction of all applications for writs of *ad quod damnum*, under the provisions of chapter eighty-one of the Revised Statutes of this State, petitions of guardians to sell real estate of wards, and also of petitions for partition of real estate held by joint tenants or tenants in common; and upon the filing of said petitions or applications, and also upon the petitions of all executors or administrators for leave to sell real estate of deceased persons, the person filing the same shall pay to the clerk the sum of one dollar and fifty cents; and also upon the issuing of all letters of guardianship, letters testamentary and of administration, and of all citations and attachments in probate business, the person applying therefor shall pay to the clerk the sum of fifty cents; all of which sums so paid to said clerk, shall be paid over to the judge of said court at the expiration of each quarter during each year.

(160.) SEC. XII. The amount required by the tenth and eleventh sections of this act to be paid to the clerk of said county court upon the commencement of suit, confession of judgment, taking of appeal, filing of petition or application, or issuing of writs or letters, shall be taxed as costs in such proceeding or suit, and collected against the losing party, as other costs are.

(161.) SEC. XIII. This act shall take effect and be in force from and after its passage.

An Act concerning Inferior Courts in the Cities.

[Approved Feb. 15, 1855. Laws, 1855, p. 147.]

(162.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the inferior courts, now or which may hereafter be established in the cities in this State, shall have concurrent jurisdiction with the circuit courts in all civil and criminal cases, except in cases of murder and treason, any law now in force to the contrary notwithstanding; and the rules of practice in such inferior courts shall conform as near as may be to the rules of practice in the circuit court of the county in which the particular inferior court may be established: *Provided,* That this act shall not be held, in any way, to interfere with the act approved February 27th, 1854, providing for police magistrate's courts.

(163.) SEC. II. That in all cases where any suit, either at law or in chancery, shall be commenced in the recorder's court of the city of Chicago, and the amount in controversy shall exceed one hundred dollars, and the defendant or defendants, or either of them, or his, her or their attorney, shall at any time before final trial therein, file in said court a written request to have such suit transferred to either the circuit court of Cook county, or to the Cook county court of common pleas, all further proceedings in said recorder's court shall thereupon cease; and said suit shall be transferred agreeable to said request, and in the manner now required by law in cases of change of venue.

(164.) SEC. III. That neither the said recorder's court, nor the judge thereof, shall grant any writ of *ne exeat*, injunction, or other writ or process, which said court or judge shall have power to issue in civil cases, excepting original writs of summons, *capias* and attachment, and attachments in cases of contempt, unless the person against whom such writ is granted shall have had ten days' notice in writing, of the time and place of making application for such writ.

(165.) SEC. IV. That in all cases when any application shall be made to said recorder's court of the city of Chicago, or to the judge thereof, for any writ of *ne exeat*, injunction, or other writ or process, except as excepted in the third section of this act, and the person or persons or either of them against whom such application shall be made, or his, her or their attorney, shall, in writing, filed with said recorder's court or judge, request a transfer of such application to the circuit court of Cook county, or to the Cook county court of common pleas, all further proceedings upon such application before said recorder's court, or the judge thereof, shall be thereupon suspended; and the said application and all papers connected therewith, shall be transmitted to said circuit court of Cook county, or to the Cook county court of common pleas, as the person making said request shall desire; and if neither of said courts shall be in session, then to either judge of said courts, as the party making such request shall desire.

(166.) SEC. V. This act shall be in force from and after its passage.

An Act to extend the Jurisdiction of the Justices of the Peace and Police Magistrates of the County of Peoria.

[Approved Feb. 14, 1855. Laws, 1855, p. 154.]

(167.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the several justices of the peace and

police magistrates in the county of Peoria, shall have jurisdiction to hear and determine all complaints, suits and prosecutions mentioned and described in section seventeen of chapter forty-nine, (entitled "JUSTICES OF THE PEACE AND CONSTABLES,") of the Revised Statutes, in which the amount claimed to be due does not exceed three hundred dollars.

(168.) SEC. II. Said justices of the peace and police magistrates shall have jurisdiction to hear and determine all complaints, suits and proceedings, for all debts, penalties or demands, in which the action of debt, *assumpsit*, *trover*, or *trespass* on personal property, will lie, in which the amount claimed to be due does not exceed three hundred dollars.

(169.) SEC. III. Said justices of the peace and police magistrates shall have jurisdiction to hear and determine all actions on the case, (except libel and slander,) in which the amount claimed to be due does not exceed three hundred dollars.

(170.) SEC. IV. This act shall be taken to be a public act, and be in force from and after its passage.

An Act to establish the Court of Common Pleas of the City of Cairo.

[Approved Feb. 6, 1855. Laws, 1855, p. 155.]

(171.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That there shall be established in the city of Cairo an inferior court of civil and criminal jurisdiction in all cases except in cases of treason, and in cases wherein the demand exceeds the sum of fifty thousand dollars; which court shall be a court of record, by the name of "The Court of Common Pleas of the City of Cairo," and shall have concurrent jurisdiction within the city and within township seventeen south, and range one west of the third principal meridian, with the circuit court, except in the cases above excepted.

(172.) SEC. II. The judge of the court of common pleas of the city of Cairo shall be nominated and appointed by the governor, by and with the advice and consent of the senate, and shall hold his office for the term of five years from the date of his commission, and shall have power to appoint the clerk of said court. And the said clerk shall give bond, perform the same duties, be subject to the same liabilities, and be entitled to the same fees, as are or may be provided by law in relation to the clerk of the circuit court. The judge shall be called "The Judge of the Court of Common Pleas of the City of Cairo," and shall receive an annual salary of one thousand dollars, to be paid, quarterly, out of the State treasury.

(173.) SEC. III. The board of trustees, or the city council of said city, as the case may be, shall provide a seal for the court; and all process issued from the court shall be attested in the name of the clerk, and be impressed with the seal of the court, and shall be made returnable in the same manner as like process are made returnable into the circuit court.

(174.) SEC. IV. The governor, by and with the advice and consent of the senate, shall appoint a prosecuting attorney for the court of common pleas of the city of Cairo, whose powers, duties and fees shall be the same as now provided by law in relation to State's attorneys: *Provided,* That the said prosecuting attorney shall receive the same salary, payable quarterly, out of the State treasury, now allowed to a State's attorney.

(175.) SEC. V. The grand and petit jurors of the said court shall be



selected from the qualified voters, being householders of the said township seventeen, including the city of Cairo as part of said township, as the city council or the board of trustees of the said city may order and direct; and the said council or board of trustees are required to certify to the clerk of the said court a list respectively of the said grand and petit jurors, at least ten days before each term of the said court: *Provided*, That the said court may cause talesmen to be summoned, subject to the same restrictions, and in like manner, now provided by law in relation to the circuit court: *Provided, further*, That the said jurors shall be entitled to receive such compensation as the city council or board of trustees of the said city may order and direct.

(176.) SEC. VI. The regular terms of the said court shall be held on the first Mondays of January, April, July and October of every year, and shall continue in session until the business of the court shall have been disposed of: *Provided*, That the judge of the court may appoint and hold special terms of the said court, under the regulations, restrictions and authority now provided by law in respect to the judges of the circuit courts in that behalf.

(177.) SEC. VII. The marshal, or other equivalent officer of the said city, shall execute all writs, subpoenas and other process issued by or out of the said court of common pleas of the said city, or which may otherwise come to his hands, and make due return of the manner of executing the same, as now provided by law in relation to sheriffs; and when he shall have executed any criminal process, he shall take recognizance and make return thereof as is now provided by law, in like cases, in relation to sheriffs; and the said marshal or other officer shall be entitled to receive the same fees allowed by law to sheriffs.

(178.) SEC. VIII. Changes of venue, in all cases, may be taken from the said court to the circuit court of Alexander county, upon affidavit of the party or his attorney, setting forth the particular grounds of his or her belief, and averring his or her belief that justice and a fair and impartial trial require such change of venue: *Provided*, The judge of said court shall be satisfied of the truth of the affidavit: *Provided, further*, That no other or further change of venue shall be allowed.

(179.) SEC. IX. All appeals and writs of *certiorari* taken from the judgments of justices of the peace within the said township seventeen, shall be taken to the said court in like manner as is now provided by law in relation to appeals from justices of the peace to the circuit court, and shall be there heard and determined as in like cases in the circuit court; and appeals may be taken and writs of error prosecuted from the said court of common pleas of the said city to the supreme court, as is now provided by law in relation to appeals and writs of error from the circuit court to the supreme court.

(180.) SEC. X. The judge and prosecuting attorney of said court of common pleas, shall not be appointed until the necessity for the said court shall have been certified under the corporate seal of the city of Cairo: *Provided*, That if such necessity shall be so certified before the next session of the General Assembly, the governor shall have power and be required to appoint and commission said judge and the said prosecuting attorney, whose terms of office, under such appointment, shall only continue until the next

session of the General Assembly, after the appointment, and until his successor shall have been appointed as hereinbefore provided: *Provided, further*, That in the year eighteen hundred and sixty-one, and every sixth year thereafter, the said judge and said prosecuting attorney of the said court of common pleas shall be elected at the same time and in the same manner as the circuit judges, any thing in this act to the contrary notwithstanding.

#### TIMES OF HOLDING IN THE SEVERAL CIRCUITS.

##### FIRST CIRCUIT.

An Act to fix the Times of holding Courts in the First Judicial Circuit.

[Approved Feb. 12, 1853. *Laws*, 1853. p. 60.]

(181.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the spring term of the first judicial circuit of this State shall be held as follows, viz.: In the county of Morgan, on the third Monday in March; in the county of Scott, on the first Monday in April; in the county of Greene, on the second Monday in April; in the county of Macoupin, on the fourth Monday in April; in the county of Jersey, on the second Monday in May; in the county of Calhoun, on the third Monday in May, and in the county of Menard, on the fourth Monday in May. And the fall term of said circuit shall be held as follows, viz.: In the county of Macoupin, on the first Monday in September; in the county of Greene, on the second [Monday] in September; in the county of Calhoun, on the third Monday in September; in the county of Jersey, on the fourth Monday in September; in the county of Menard, on the first Monday in October; in the county of Scott, on the second Monday in October; and in the county of Morgan, on the third Monday in October.

(182.) SEC. II. All indictments, suits, causes, motions, recognizances, and other proceedings pending in said courts, shall stand for trial, hearing and judgment and disposition at the terms of the court fixed by this act, in the same manner and with like effect as if no change had been made in the times of holding said courts. All recognizances, writs and process heretofore or hereafter entered into, or issued, or returnable to the terms of the courts as hereafter arranged, shall be deemed and held to be returnable to the terms fixed by this act. New trials may be granted at the spring or fall terms of said courts in all cases, whenever the parties would be entitled to such new trial at the spring or fall terms as now authorized by law.

(183.) SEC. III. The secretary of State shall cause copies of this act to be transmitted to the clerk of the circuit court in each of said counties, immediately after the approval of this act.

(184.) SEC. IV. This act to take effect and be in force from and after its passage.

FORMER LAWS.—Laws, 1849, (1st Sess.) p. 57. Laws, 1847, p. 26-31. Laws, 1845, p. 43, 49. Laws, 1819, p. 378. Laws, 1821, p. 157. Laws, 1823, p. 161. Laws, 1825, p. 36, 170. *Rev. Laws*, 1827, p. 118, 120. *Rev. Laws*, 1833, p. 156, 159, 162. Laws, 1835, p. 167. Laws, 1839, p. 155, 208, 250, 86. Laws, 1841, p. 103. Laws, 1843, p. 129.

## SECOND CIRCUIT.

An Act Changing the Times of holding the Circuit Courts in the Second Judicial Circuit.

[Approved Feb. 14, 1851. Laws, 1851, p. 93.]

(185.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the circuit courts in the second judicial circuit shall be held at the times hereinafter mentioned: In the county of St. Clair, on the second Mondays of March and August; in the county of Madison, on the third Mondays after the second Mondays of March and August; in the county of Monroe, on the sixth Mondays after the second Mondays of March and August; in the county of Randolph, on the Mondays following; in the county of Perry, on the Mondays following; in the county of Washington, on the Mondays following; in the county of Clinton, on the Mondays following; in the county of Bond, on the Mondays following; in the county of Fayette, on the Fridays following; in the county of Montgomery, on the Wednesdays following, to continue until the business is disposed of.

(186.) SEC. II. All writs, subpoenas, and any other process which may have been or may be issued and made returnable to the terms of courts in the said circuit, as heretofore required to be holden, shall be deemed and taken to be returnable to said terms of courts as required to be holden under this act; and all notices which may have been given, either of publication, or otherwise, with reference to the terms as heretofore required to be holden, shall, by force of this act, refer to the terms of courts so required to be held under this act; and proceedings pending in any of said courts shall be taken up and disposed of according to law, as if no alteration had been made in the times of holding said courts.

(187.) SEC. III. This act shall, upon its passage, be published in the paper of the public printer, and the secretary of State shall immediately thereafter transmit a copy thereof to each of the clerks of said courts.

(188.) SEC. IV. All acts and parts of acts conflicting with the provisions of this act, are hereby repealed. This act to take effect from and after its passage.

FORMER LAWS.—See Laws, 1847, p. 29. Laws, 1845, p. 47. Laws, 1819, p. 378. Laws, 1821, p. 157. Laws, 1823, p. 161. Laws, 1825, p. 36, 170. Rev. Laws, 1827, p. 118, 120. Rev. Laws, 1833, p. 156, 159, 162. Laws, 1835, p. 167. Laws, 1836, p. 257. Laws, 1839, p. 234, 38, 87, 88. Laws, 1841, p. 103, 109. Laws, 1843, p. 131.

## THIRD CIRCUIT.

An Act to change the Times of holding Courts in the Third Judicial Circuit.

[Approved Feb. 14, 1855. Laws, 1855, p. 23.]

(189.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the circuit court in the third judicial circuit, shall be begun and held at the times hereinafter mentioned, to wit: In the county of Hardin, at Elizabethtown, on the second Mondays in March, and the fourth Mondays in August; in the county of Pope, at Golconda, on the Mondays following; in the county of Johnson, at Vienna, on the Mondays following; in the county of Williamson, at Marion, on the Mondays following; in the county of Franklin, at Benton, on the Mondays following; in the county of Jackson, at Murphysboro, on the Mondays

following; in the county of Union, at Jonesboro, on the Mondays following; in the county of Alexander, at Thebes, on the Mondays following; in the county of Pulaski, at North Caledonia, on the Mondays following; in the county of Massac, at Metropolis city, on the Mondays following.

(190.) SEC. II. All indictments, recognizances and suits, either of common law or in chancery, shall stand for hearing at the times herein specified for holding court, the same as though no change had taken place; and all writs and other process, civil or criminal, shall be and they are hereby made returnable the same as if there had been no change in the times of holding said courts; and all returns heretofore made, or that may hereafter be made, either according to this act or the acts hereby repealed, shall be taken to be returnable to the terms of court as hereby fixed, and shall be legal and valid in all respects as if no change had taken place.

(191.) SEC. III. All acts and parts of acts coming within the purview and in conflict with this act, be and the same are hereby repealed.

(192.) SEC. IV. This act shall take effect and be in force from and after the first day of July next.

FORMER LAWS.—See Laws, 1851, p. 30. Laws, 1849, (2nd Sess.) p. 16. Laws, 1849, (1st Sess.) p. 59. Laws, 1847, p. 42. Laws, 1819, p. 378. Laws, 1821, p. 157. Laws, 1823, p. 161. Laws, 1825, p. 36, 170. Rev. Laws, 1827, p. 118, 120. Rev. Laws, 1833, p. 156, 159, 162. Laws, 1835, p. 167. Laws, 1836, p. 257. Laws, 1839, p. 234, 38, 87, 88. Laws, 1841, p. 103, 109. Laws, 1843, p. 131.

## FOURTH CIRCUIT.

An Act to change the Limits and fix the Times for holding Courts in the Fourth Judicial Circuit.

[Approved Feb. 12, 1853. Laws, 1853, p. 64.]

(193.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the counties of Edgar, Clark, Crawford, Lawrence, Richland, Clay, Jasper, Cumberland and Coles shall hereafter compose the fourth judicial circuit; and that the circuit courts shall be holden at the respective county seats of the said counties at the times following, to wit: In the county of Crawford, on the first Monday of March and September; in the county of Lawrence, on the first Mondays thereafter; in the county of Clay, on the first Mondays thereafter; in the county of Jasper, on the Fridays thereafter; in the county of Cumberland, on the Wednesdays thereafter; in the county of Coles, on the Mondays thereafter; in the county of Edgar, on the Mondays thereafter; in the county of Clark, on the second Mondays thereafter.

(194.) SEC. II. All writs, subpoenas, recognizances and other process which may have been or may be issued and made returnable to the terms of the circuit court in said counties, as heretofore required to be holden, shall be deemed and taken to be returnable to said terms of the circuit court in said counties as herein required to be holden; and all notices which may have been given, either by publication or otherwise, with reference to the terms as heretofore required to be holden, shall, by force of this act, refer to the terms of the court required to be held under this act in said counties; and all proceedings pending in said courts shall be taken up and proceeded with as if no alteration had been made in times of holding said courts.

(195.) SEC. III. This act shall take effect and be in force from and after its passage.

FORMER LAWS.—See Laws, 1852, (2nd Sess.) p. 96. Laws, 1851, p. 110. Laws, 1649, (1st Sess.) p. 59. Laws, 1847, p. 30. Laws, 1845, p. 48. Laws, 1819, p. 378. Laws, 1821, p. 157. Laws, 1823, p. 161. Laws, 1825, p. 36, 170. Rev. Laws, 1827, p. 118, 120. Rev. Laws, 1833, p. 156, 159, 162. Laws, 1835, p. 167. Laws, 1836, p. 239. Laws, 1841, p. 103. Laws, 1843, p. 133.

#### FIFTH AND TWELFTH CIRCUITS.

An Act to regulate the Times of holding Courts in the Fifth and Twelfth Judicial Circuits.

[Approved June 22, 1852. Laws, 1852, p. 177.]

(196.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the circuit courts of the several counties composing the fifth judicial circuit, shall be holden at the times following: The spring terms of said courts shall be holden in the county of Pike, on the third Monday in March; in the county of Brown, on the second Monday in April; in the county of McDonough, on the third Monday in April; in the county of Schuyler, on the fourth Monday in April; in the county of Mason, on the first Monday in May; and in the county of Cass, on the second Monday in May. The fall terms of said courts shall be holden in the county of Pike, on the second Monday in September; in the county of Brown, on the first Monday in October; in the county of McDonough, on the second Monday in October; in the county of Schuyler, on the third Monday in October; in the county of Mason, on the fourth Monday in October; and in the county of Cass, on the first Monday in November.

(197.) SEC. II. That hereafter the circuit courts shall be holden in the twelfth judicial circuit, at the county seats of the respective counties, at the times following, to wit: In the county of White, on the first Monday in April and third Monday in August; in the county of Wabash, on the Mondays following; in the county of Edwards, on the Mondays following; in the county of Wayne, on the Mondays following; in the county of Marion, on the Mondays following; in the county of Jefferson, on the Mondays following, and continue there two weeks; in the county of Hamilton, on the Mondays following, and continue one week; in the county of Saline, on the Mondays following, for one week; and in the county of Gallatin, on the first Mondays of July and second Monday in December, and continue until the business be disposed of.

(198.) SEC. III. All writs, subpoenas and other process, which may have been or may be issued out of and made returnable to the terms of the circuit courts, as heretofore required by law to be holden in the counties composing the fifth and twelfth judicial circuits, shall be deemed and taken to be returnable to said terms as required to be holden under this act; and all notices which may have been given, either by publication or otherwise, with reference to the terms as heretofore required to be holden, shall by force of this act refer to the terms of courts as herein required to be holden, and all proceedings pending in said courts shall be taken up and disposed of as if no alteration had been made in the terms of holding said courts.

(199.) SEC. IV. This act shall take effect and be in force from and after its passage.

An Act to change the Time of holding the Circuit Court in the County of Gallatin.

[Approved Feb. 12, 1855. Laws, 1855, p. 128.]

(200.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter the circuit courts for the

county of Gallatin, in this State, shall be holden at the county seat thereof, on the Monday following the terms of the circuit court in the county of Saline, as now fixed by law, and shall continue in session until the business of said court be disposed of.

(201.) SEC. II. All writs, recognizances, subpoenas and other process which may have been or may be issued out of and made returnable to the next term of the circuit court, as heretofore required to be holden, shall be deemed and taken to be returnable to the next term of said court, as required to be holden under this act; and all notices which may have been or may be given, either by publication or otherwise, with reference to the next term of said court, as heretofore required to be holden, shall, by force of this act, refer to the next term of court, as herein required to be holden; and all proceedings pending in said court shall be taken up and disposed of as if no alteration had been made in the terms of holding said court.

(202.) SEC. III. This act shall take effect and be in force from and after its passage.

FORMER LAWS.—See Laws, 1849, (2nd Sess.) p. 12, 15, 16. Laws, 1847, p. 30, 43. Laws, 1845, p. 108. Laws, 1851, p. 13. Laws, 1825, p. 36, 170. Rev. Laws, 1833, p. 156, 159, 162. Laws, 1835, p. 167. Laws, 1836, p. 240. Laws, 1839, p. 155, 86. Laws, 1841, p. 103. Laws, 1843, p. 135.

#### SIXTH CIRCUIT.

A Bill for an Act fixing the Times of Holding Courts in the Sixth Judicial Circuit.

[Approved Feb. 14, 1855. Laws, 1855, p. 130.]

(203.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the circuit courts of the several counties composing the sixth judicial circuit, shall be holden at the county seats of the respective counties, at the times following, to wit:

*Spring Term.* Rock Island, on the third Monday of March; Henry, on the first Monday of April; Whiteside, on the second Monday of April; Lee, on the fourth Monday of April; Ogle, two weeks thereafter; Carroll, two weeks thereafter.

*Summer Term.* Rock Island, on the second Monday in June. There shall be no grand jury at said summer term, unless in the opinion of the judge of said court it shall be necessary; in which case he shall issue his order to the sheriff of said county, requiring him to summon a grand jury to attend said term; and the sheriff shall execute and return to said court said order, and the persons so summoned shall be a grand jury for said term.

*Fall Term.* Henry, on the first Monday of September; Whiteside, on the second Monday of September; Lee, on the fourth Monday of September; Ogle, two weeks thereafter; Carroll, two weeks thereafter; Rock Island, on Wednesday after the first Monday of November.

(204.) SEC. II. All indictments, suits, causes, motions, recognizances and other proceedings, pending in said courts, shall stand for hearing, trial, judgment and disposition at the terms of the court fixed by this act, in the same manner and with like effect as if no change had been made in the times of holding said courts. All recognizances, writs and process hereto-

fore or hereafter to be entered into, issued or returnable to the terms of said courts, as heretofore required to be holden, shall be deemed and held to be returnable to the terms as fixed by this act. No right which any party, plaintiff or defendant, in any action of ejectment had by virtue of any law now in force to a new trial in such action, shall be prejudiced or in any manner taken away by any change or alteration made by this act in the times of holding courts in any of the counties in said circuit, but new trials shall be granted at the spring or fall terms of said courts in all cases where parties would be entitled to new trials at the spring or fall terms of said courts, if the times of holding said terms had not been changed.

(205.) SEC. III. The judge of said court may, when he shall deem it for the public interest, call a special term of the circuit court in any county of said circuit for the transaction of either criminal, chancery or common law business exclusively; and when a special term shall be called for doing chancery business exclusively, no jurors shall be summoned; and when called for the transaction of common law business exclusively, no grand jury shall be summoned to attend said terms.

(206.) SEC. IV. This act shall take effect and be in force from and after its passage; and the secretary of State is directed to have the same printed, and to transmit, without delay, five copies thereof to the clerk of each circuit court in the sixth judicial circuit.

FORMER LAWS.—See Laws, 1852, (2nd Sess.) p. 239. Laws, 1849, (2nd Sess.) p. 12, 15. Laws, 1847, p. 27. Laws, 1835, p. 167. Laws, 1839, p. 153, 250, 88. Laws, 1841, p. 102.

#### SEVENTH CIRCUIT.

An Act providing Changes in the Seventh and Ninth Judicial Circuits, and for fixing the Times for holding Courts in the Sixth and Seventh Judicial Circuits.

[Approved Feb. 27, 1847. Laws, 1847, p. 27.]

(207.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the county of Winnebago be, and it is hereby, attached to the seventh judicial circuit, and the county of Grundy be attached to the ninth judicial circuit.

(208.) SEC. II. The courts in the seventh judicial circuit shall be held in the counties thereof, at the following times, to wit: In the county of Lake, on the fourth Monday in March, and the first Monday in September; in the county of McHenry, first Monday in April, and second Monday in September; in the county of Du Page, the third Monday in April, and fourth Monday in September; in the county of Iroquois, the fourth Monday in April, and first Monday in October; in the county of Will, the first Monday in May, and second Monday in October; in the county of Boone, the Tuesday next succeeding the third Monday in May, and the Tuesday next succeeding the fourth Monday in October; in the county of Winnebago, the fourth Monday in May, and the first Monday in November; in the county of Cook, on the second Monday in June, and the third Monday in November.

(209.) SEC. III. That the courts in said sixth judicial circuit shall be held at the following named places, to wit: At Dixon, Lee county, second Monday in April, and third Monday in August; at Sterling, Whiteside county, on the third Monday in April, and fourth Monday in August; Cambridge, Henry county, on the fourth Monday in April, and the first Monday in Sep-

tember; at Millersburg, Mercer county, on the first Monday in May, and the second Monday in September; at Rock Island, Rock Island county, on the second Monday in May, and the third Monday in September; at Mt. Carroll, Carroll county, on the third Monday in May, and the fourth Monday in September; at Galena, in Jo Daviess county, on the first Monday in October, and fourth Monday in May.

(210.) SEC. IV. 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.

(211.) SEC. V. Those cases now pending in the Ogle county circuit court, the venues of which have been changed from the county of Winnebago, except in cases where it appears from the record that said changes have been made in consequence of the prejudice of the inhabitants of the county of Winnebago, shall be remanded to the circuit court of Winnebago county.

(212.) SEC. VI. The circuit court in the county of Grundy shall be holden at such time as the judge of the ninth judicial circuit shall appoint.

(213.) SEC. VII. All laws and parts of laws conflicting with this act are hereby repealed. This act to be in force from and after its passage.

FORMER LAWS.—See Laws, 1847, p. 28, 31. Laws, 1845, p. 78. Laws, 1835, p. 167. Laws, 1839, p. 155, 73, 216, 250. Laws, 1841, p. 103. Laws, 1843, p. 128, 135.

#### EIGHTH CIRCUIT.

An Act to reduce the Limits of the Eighth Judicial Circuit, and to fix the Times of holding Courts therein.

[Approved Feb. 3, 1853. Laws, 1853, p. 63.]

(214.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the counties of Sangamon, Logan, McLean, Woodford, Tazewell, De Witt, Champaign and Vermilion, shall hereafter constitute the eighth judicial circuit; that the times of holding courts in said circuit shall be as follows, to wit:

*Spring Term.* Sangamon, on the third Monday of March; Logan, two weeks thereafter; McLean, one week thereafter; Woodford, two weeks thereafter; Tazewell, one week thereafter; De Witt, two weeks thereafter; Champaign, one week thereafter; Vermilion, the Friday thereafter.

*Summer Term.* Sangamon, on the second Monday in June; and there shall be no grand jury at said summer term.

*Fall Term.* Logan, on the first Monday in September; McLean, one week thereafter; Woodford, two weeks thereafter; Tazewell, one week thereafter; De Witt, two weeks thereafter; Champaign, one week thereafter; Vermilion, the Friday thereafter; Sangamon, on the third Monday of November.

(215.) SEC. II. That all process and the service thereof, which have been or may be hereafter made in conformity with the terms of the court as heretofore and now fixed by law, shall be taken and held as conforming to the terms as fixed by this act; and that this act shall be in force from and after its passage.

FORMER LAWS.—See Laws, 1849, (1st Sess.) p. 60. Laws, 1847, p. 31. Laws, 1845, p. 47. Laws, 1835, p. 167. Laws, 1839, p. 155, 199, 250. Laws, 1840, p. 5, 90. Laws, 1841, p. 103. Laws, 1843, p. 132.

## NINTH CIRCUIT.

An Act to fix the Times of holding Circuit Courts in the Ninth Judicial Circuit, and to provide for holding certain Special Terms.

[Approved Feb. 12, 1853. Laws, 1853, p. 62.]

(216.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the times of holding courts in the several counties comprising the ninth judicial circuit shall be as follows: In the county of Kendall, on the second Monday in March and third Monday in September; in the county of Bureau, on the fourth Monday in March, and the first Monday in October, and on the second Monday in January: *Provided*, That when the business of said court will admit, it shall be lawful for the judge of said court, at any October term of said court, to cause an order to be entered upon the records of said court, directing that the succeeding January term of said court shall not be holden, and when such order shall be entered, the January term mentioned in said order shall not be holden. In the county of Marshall, on the second Monday in April, and third Monday in October; in the county of Putnam, on the fourth Monday in April, and the second Monday after the third Monday in October; in the county of Livingston, on the first Monday after the fourth Monday in April, and on the second Monday in September; in the county of La Salle, on the second Monday in May, and the second Monday in November.

(217.) SEC. II. The judge of said circuit may, when he shall deem it for the public interest, call a special term of said court, to be holden in any county of said circuit, for the transaction of either criminal, chancery, or common law business exclusively; and when a special term of said circuit shall be called for doing chancery business exclusively, no jurors shall be summoned, and when called for the purpose of trying common law cases exclusively, no grand jury shall be summoned to attend said term.

(218.) SEC. III. All writs, subpoenas, recognizances, and other process which may have been or may be issued or taken and made returnable to the terms of courts in said circuit, as heretofore required to be holden, shall be deemed to be returnable to said terms of the court as required to be holden under this act; and all notices which may have been given, either by publication or otherwise, with reference to the terms as heretofore required to be holden under this act; and all proceedings pending in said court shall be taken up and disposed of as if no alteration had been made in the times of holding said courts.

(219.) SEC. IV. All acts and parts of acts conflicting with the provisions of this act are hereby repealed.

(220.) SEC. V. This act to take effect and be in force from and after its passage, but it shall not be construed so as to interfere with any special term of said court heretofore appointed by the judge of said court.

FORMER LAWS.—See Laws, 1852, (2nd Sess.) p. 207. Laws, 1851, p. 152. Laws, 1849, (2nd Sess.) p. 12, 15. Laws, 1847, p. 27, 31. Laws, 1835, p. 167. Laws, 1839, p. 155, 43, 250. Laws, 1841, p. 103, 110.

## TENTH CIRCUIT.

An Act to alter the Tenth Judicial Circuit, and fix the Times of holding Courts therein.

[Approved Feb. 14, 1855. Laws, 1855, p. 149.]

(221.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the tenth judicial circuit shall hereafter be composed of the counties of Fulton, Mercer, Henderson, Warren and Knox, and the circuit courts in the several counties thereof shall be held as follows, to wit: In the county of Fulton, on the second Monday of February, third Monday of May and second Monday of October; in the county of Mercer, on the last Monday of March and first Monday of September; in the county of Henderson, on the first Monday of April and the second Monday of September; in the county of Warren, on the second Monday of April and the third Monday of September; and in the county of Knox, on the fourth Monday of April and the fourth Monday of September, in each and every year.

(222.) SEC. II. All indictments, recognizances, writs and notices, either in criminal, common law or chancery cases, in the said several courts, shall be taken for, and returnable to, and stand for disposition at the several terms as herein provided for, as if no change had been made by this act; to be treated as if set for and returnable to the terms provided by this act, which correspond to the terms as before provided by law.

(223.) SEC. III. All laws and parts of laws coming within the purview of and in conflict with this act, are hereby repealed.

(224.) SEC. IV. It shall be the duty of the secretary of State to make, copy and certify, and transmit by mail, this act, to the circuit clerks of the several counties in said circuit, upon the passage hereof.

(225.) SEC. V. This act to be in force from and after its passage.

FORMER LAWS.—See Laws, 1853, p. 129. Laws, 1852, (2nd Sess.) p. 123. Laws, 1849, (2nd Sess.) p. 12, 15. Laws, 1835, p. 167.

## ELEVENTH CIRCUIT.

An Act to define the Times of holding Circuit Courts in the Eleventh Judicial Circuit.

[Approved June 21, 1852. Laws, 1852, p. 105.]

(226.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, The times of holding the circuit courts in the eleventh judicial circuit of this State shall be as follows: In the county of Will, on the second Monday in March, first Monday in September and third Monday in December of each year; in the county of Iroquois, on the Tuesday after the fourth Monday of April, and on the Tuesday after the third Monday in September of each year; in the county of Grundy, on the fourth Monday in March and the first Monday in October in each year; in the county of Du Page, on the second Monday of April and third Monday in October in each year.

(227.) SEC. II. All process, suits, recognizances or other legal proceedings, that have been or may be set or returnable in and to any of said courts, at the terms of said courts so arranged by law, prior to the passage of this act, shall be equally valid as though this act had not been passed, and shall moreover be considered as set and returnable to the terms of the courts as fixed and established by this act.

(228.) SEC. III. No grand jury shall be summoned for the December term of the Will county circuit court, unless the judge thereof shall, upon application of some person or persons in jail on some criminal charge, order the same.

(229.) SEC. IV. The circuit court sitting as a court of chancery, shall be always open in the county of Will, whenever the judge of the circuit court shall be present and ready to attend upon the same, but no jury shall be required to attend, unless upon special venire, except at regular terms.

(230.) SEC. V. This act to take effect on its passage.

FORMER LAWS.—See Laws, 1851, p. 159. Laws, 1849, (2nd Sess.) p. 12, 15, 61. Laws, 1835, p. 167.

#### TWELFTH CIRCUIT.—See *ante*, FIFTH CIRCUIT

#### THIRTEENTH CIRCUIT.

An Act fixing the Times of holding the Courts in the Thirteenth Judicial Circuit.

[Approved June 21, 1852. Laws, 1852, p. 53.]

(231.) SEC. I. *Be it enacted by the People of the State of Illinois represented in the General Assembly*, That the circuit courts in the thirteenth judicial circuit shall be held in the respective counties composing said circuit at the following times, viz.: In the county of Kane, on the second Mondays of February, May, August and November; in the county of McHenry, on the third Mondays of January and March, and second Monday in September; in the county of Boone, on the third Monday in April and first Monday in October; and in the county of De Kalb, on the first Monday in April and third Monday in October.

(232.) SEC. II. All writs, subpoenas, recognizances, and all other process which may have been or may be issued and made returnable to the terms of court in said counties, as heretofore required to be holden, shall be deemed and taken to be returnable to said terms of court as in this act is required to be holden; and all notices which may have been given, either by publication or otherwise, with reference to the terms of court as heretofore required to be holden, shall, by force of this act, refer to the terms of the court required to be holden under this act in said counties; and all proceedings pending in said courts shall be taken up and disposed of as if no alterations had been made in the times of holding courts in said counties.

(233.) SEC. III. This act to take effect and be in force from and after its passage.

An Act to change the Times of holding Circuit Courts in the counties of McHenry and Kane.

[Approved Feb. 11, 1853. Laws, 1853, p. 84.]

(234.) SEC. I. *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, the circuit courts in the county of McHenry shall be held on the third Monday in March and November, in each year; and that so much of an act to establish the thirteenth judicial circuit, approved February 4, 1851, as fixes the time of holding courts in said county, and dispenses with a grand jury and docketing criminal cases for trial, be and the same is hereby repealed.

(235.) SEC. II. The criminal courts in the county of Kane, shall hereafter be held in said county on the first Monday of November in each year, instead of the second Monday in November, as provided in said act.

FORMER LAWS.—See Laws, 1851, p. 20. Laws, 1835, p. 167. Laws, 1840, p. 92, 90.

#### FOURTEENTH CIRCUIT.

An Act to change the Times of holding Courts in the Fourteenth Judicial Circuit.

[Approved Feb. 15, 1855. Laws, 1855, p. 127.]

(236.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter the circuit courts shall be holden at the respective county seats of the counties composing the fourteenth judicial circuit, at the times following, to wit: In the county of Jo Daviess, on the third Monday in October, on the second Monday in March, on the third Monday in May, and on the third Monday in August; in the county of Stephenson, on the first Monday in September, on the first Monday in December, and on the third Monday in April; in the county of Winnebago, on the fourth of September, on the third Monday in February, and on the fourth Monday in April, in each and every year.

(237.) SEC. II. All writs and process which may have been or may be issued and made returnable to the terms of courts in said counties, as heretofore required to be holden, shall be deemed and taken to be returnable to said terms of the courts, as required to be holden under this act; and all notices which may have been given, either by publication or otherwise, with reference to the terms as heretofore required to be held, and all proceedings pending in said courts, shall be taken up and disposed of as if no alteration had been made in the time of holding said courts.

(238.) SEC. III. All acts and parts of acts conflicting with the provisions of this act shall be and the same are hereby repealed.

(239.) SEC. IV. This act to take effect and be in force from and after the first day of September next.

FORMER LAWS.—See Laws, 1851, p. 82. Laws, 1847, p. 42. Laws, 1835, p. 167.

#### FIFTEENTH CIRCUIT.

An Act to establish the Fourteenth and Fifteenth Judicial Circuits, and for other Purposes.

[Approved Feb. 12, 1851. Laws, 1851, p. 82. Repealed in part.]

(240.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the counties of Jo Daviess, Stephenson and Winnebago shall compose a judicial circuit, to be called the fourteenth judicial circuit, and that the circuit courts shall be holden at the respective county seats of the said counties, at the times following, to wit: In the county of Jo Daviess, on the second Monday in March, on the second Monday in May, on the fourth Monday in August, and on the fourth Monday in November; in the county of Stephenson, on the first Monday in April, on the second Monday in September, and on the second Monday in November; and in the county of Winnebago, on the fourth Monday in April, on the fourth Monday in September, and on the third Monday in November, in each and every year.



(241.) SEC. II. *And be it further enacted*, That the counties of Adams, Hancock, Henderson and Mercer shall hereafter compose a judicial circuit, to be called the fifteenth judicial circuit. The courts of the fifteenth judicial circuit shall be held at the county seats of the respective counties, as follows, to wit: In the county of Hancock, on the first Mondays of March, June and October; in the county of Adams, on the third Mondays of March, June and October; in the county of Henderson, on the third Mondays of April and September; and in the county of Mercer, on the first Mondays in May and September.

(242.) SEC. III. There shall be an election holden in the respective counties composing the said fourteenth and fifteenth judicial circuits, on the first Monday of May next, for the election of circuit judges and State's attorneys of said circuits; which election shall be conducted, and returns made and canvassed, in the manner provided by the constitution and laws of this State. Said judges and State's attorneys, when elected, commissioned and qualified, shall hold their offices until the next general election of judges and State's attorneys, as provided by the constitution, and until their successors are elected and qualified.

(243.) SEC. IV. It shall be the duty of the secretary of State to cause a certified copy of this act to be immediately transmitted to each of the clerks of the circuit and county courts of said counties; and the clerks of the county courts of said counties shall issue notices for said election to the sheriffs thereof, respectively, notifying the electors of said elections; which notices shall be posted up by them in the several towns or precincts, in the like manner as provided by the constitution and laws of this State for holding general elections therein.

(244.) SEC. V. The said circuit judges and State's attorneys, when elected, shall exercise all the powers, perform all the duties, and have all the jurisdiction and authority now had or hereafter to be required of or exercised by circuit judges and State's attorneys in this State, under the constitution and laws thereof, and shall receive the same compensation as other judges and State's attorneys are entitled to receive by the constitution and laws.

(245.) SEC. VI. The judges and State's attorneys, now having jurisdiction and exercising authority within said circuits, as above established, shall hold and exercise such jurisdiction and authority until the judges and State's attorneys in this act provided for shall have been elected, commissioned and qualified.

(246.) SEC. VII. The counties of Henry and Rock Island are hereby added to and made a part of the sixth judicial circuit; and the circuit court of the several counties composing the sixth judicial circuit, shall be holden at the county seats of the respective counties, at the times following, to wit: In the county of Ogle, on the second Monday in March and fourth Monday of August; in the county of Lee, on the fourth Monday in March and second Monday in September; in the county of Carroll, on the second Monday in April and fourth Monday in September; in the county of Whiteside, on the third Monday in April and first Monday in October; in the county of Henry, on the first Monday in May and third Monday in October; and in the county of Rock Island, on the second Monday in May and first Monday in November, in each and every year.

(247.) SEC. VIII. *And be it further enacted*, That the fifth judicial circuit of this State shall hereafter be composed of the counties of Pike, Brown, Schuyler, McDonough, Cass and Mason. The spring terms of the said circuit shall be held as follows: In the county of Pike, on the third Monday in March; in the county of Brown, on the second Monday in April; in the county of McDonough, on the third Monday in April; in the county of Schuyler, on the fourth Monday in April; in the county of Cass, on the first Monday in May; and in the county of Mason, on the second Monday in May. The fall terms of the said circuit shall be held in the county of Mason, on the first Monday in September; in the county of Cass, on the second Monday in September; in the county of Schuyler, on the third Monday in September; in the county of Pike, on the first Monday in October; in the county of Brown, on the fourth Monday in October; and in the county of McDonough, on the first Monday in November.

(248.) SEC. IX. All writs, subpoenas and other process which may have been or may be issued out of and made returnable to the terms of the circuit courts as heretofore required by law to be holden in the counties composing said fourteenth and fifteenth judicial circuits, or in the counties composing the sixth judicial circuit, as by this act constituted, shall be deemed and taken to be returnable to said terms of the courts as required to be holden under this act; and all notices which may have been given, either by publication, or otherwise, with reference to the terms as heretofore required to be holden, shall, by force of this act, refer to the terms of court as herein required to be held; and all proceedings pending in said courts, shall be taken up and disposed of as if no alteration had been made in the terms of holding said courts.

(249.) SEC. X. That the counties of Peoria, Fulton, Knox, Warren and Stark, shall remain the tenth judicial circuit, retaining the same judge and prosecuting attorney as heretofore, and that the terms of holding courts in said counties be as follows: In the county of Peoria, on the first Monday in March, the second Monday in May, the third Monday in August and the second Monday in November; in the county of Fulton, on the third Monday in March, on the first Monday in August and on the first Monday in November; in the county of Knox, on the second Monday in April and the second Monday in September; in the county of Warren, on the third Monday in April and on the third Monday in September; and in the county of Stark, on the fourth Monday in April and fourth Monday in September, in each and every year. And all writs and process which may have been or may be issued and made returnable to the terms of court in said counties, as heretofore required to be holden, shall be deemed and taken to be returnable to said terms of courts, as required to be holden under this act. And all notices which may have been given, either by publication or otherwise, with reference to the terms as heretofore required to be holden, shall, by force of this act, refer to the terms of court as herein required to be held. And all proceedings pending in said courts shall be taken up and disposed of as if no alteration had been made in the terms of holding said courts.

(250.) SEC. XI. This act to take effect and be in force from and after its passage.

An Act to add McDonough County to the Fifteenth Judicial Circuit, and fixing the Times of holding Courts in said County.

[Approved Feb. 11, 1853. Laws, 1853, p. 35.]

(251.) SEC. I. *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, the county of McDonough shall constitute part of the fifteenth judicial circuit; and the times for holding courts in said county, on the first Mondays in May and September in each year.

(252.) SEC. II. This act to take effect and be in force from and after its passage.

FORMER LAWS.—See Laws, 1855, p. 167.

#### SIXTEENTH CIRCUIT.

An Act to establish the Sixteenth Judicial Circuit in the State of Illinois.

[Approved Feb. 9, 1853. Laws, 1853, p. 127.]

(253.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the counties of Peoria and Stark shall compose a judicial circuit, to be called the sixteenth judicial circuit, and that the circuit courts of said circuit shall be held at the county seats of said counties at the times following, to wit: In the county of Peoria, on the first Monday of March, the second Monday of May, the second Monday in September, and the third Monday in November; in the county of Stark, on the third Monday in April and the second Monday in October, in each and every year.

(254.) SEC. II. There shall be an election held in said circuit on the second Monday of March next, for the election of a circuit judge for said circuit; which election shall be conducted and returns made thereof and canvassed in the same manner provided by the constitution and laws of this State. Said judge, when elected, commissioned and qualified, shall hold his office until the next general election of judges, as provided by the constitution, and until his successor shall be elected and qualified.

(255.) SEC. III. The State's attorney of the tenth judicial circuit shall be the State's attorney of the said sixteenth judicial circuit.

(256.) SEC. IV. It shall be the duty of the secretary of State to cause a certified copy of this act to be immediately transmitted to the clerks of the circuit and county courts of said counties, and the clerks of the county courts of said counties shall issue notices for said election to the sheriffs of said counties, notifying the electors of said counties; which notices shall be posted up by the sheriffs in the several towns or precincts in said counties, in the like manner as provided by the constitution and laws of this State for holding general elections.

(257.) SEC. V. The said circuit judge, when elected and qualified, and the said State's attorney, shall exercise all the powers, perform all the duties, and have all the jurisdiction and authority now had or hereafter to be required or exercised by the circuit judges and State's attorneys in this State, under the constitution and laws thereof, and shall receive the same compensation as other judges and State's attorneys are entitled to receive by the constitution and laws.

(258.) SEC. VI. All writs, subpoenas, recognizances and other process

which may have been or may be issued out of and made returnable to the terms of the circuit courts as hereinbefore required by law, in the said counties of Peoria and Stark, shall be deemed and taken to be returnable to said terms of the court as required to be holden under this act; and all notices which may have been given, either by publication or otherwise, with reference to the terms as hereinbefore required to be holden, shall, by force of this act, refer to the terms of the court as herein required to be held. And all proceedings pending in said courts shall be taken up and disposed of as if no alteration had been made in the terms of holding said courts.

(259.) SEC. VII. The judge of said circuit shall have power, upon entering the proper order of record during any term thereof, to fix any number of days or terms at which he will hear, at his chambers, general and special motions, arguments of demurrer, and arguments upon agreed cases, and for the making of all such interlocutory orders as may be necessary to expedite the proceedings in any cause; and the said court shall always be considered open for the hearing of all matters and applications on the chancery side thereof, and the granting of all such orders as may be required or necessary in the practice of said court: *Provided,* That no final order, judgment or decree shall be entered in vacation, except judgments by confession, which may be entered at any time upon filing the proper papers with the clerk of said court, and shall have the same force and effect as if entered in term time: *And provided further,* That the judge of said court shall examine and sign the records of the general and special terms of said court, as also all orders entered on motion days, which orders shall have the same force and effect, and the judge shall have the same power to enforce the same, as if entered in term time.

(260.) SEC. VIII. The judge of said circuit court shall have full power to establish all such rules of practice at law, or in equity, as he may deem necessary to expedite the business of said court, which rules of practice shall be binding and obligatory upon the parties to suits in said circuit from the time they shall be entered of record. The judge of the court invested hereby shall not be entitled to any compensation which may be provided for revising the laws of this State, and he shall receive one thousand dollars as salary for his services, and no more.

(261.) SEC. IX. This act shall take effect and be in force from and after its passage.

An Act to fix the Times of holding the Circuit Courts in the Sixteenth Judicial Circuit, and to regulate the Practice therein.

[Approved Feb. 9, 1855. Laws, 1855, p. 129.]

(262.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That there shall be holden in the county of Peoria, in each year, six terms of the circuit court, as follows, to wit: On the second Monday of February, on the first Monday of March, on the fourth Monday of April, on the second Monday of May, on the second Monday of September, and on the third Monday in November. That at the terms to be holden in the months of February, April and September, no causes on the civil docket shall be tried, and no business properly pertaining to causes on the civil docket shall be transacted by said court, but criminal business only. At the said last three terms, to be called criminal terms,

grand juries shall be elected and empaneled, and all criminal causes heard and tried, and all business properly pertaining to any criminal causes shall be transacted and disposed of, under the same rules and regulations as now provided by law. At the other three terms mentioned in this section, no grand jury shall be selected or empaneled, nor shall any criminal cases be heard and tried, nor any criminal business properly pertaining to any criminal causes be done or transacted by said court, but said court shall hear and try civil matters at law and in chancery only.

(263.) SEC. II. That all writs, subpoenas, recognizances and other processes or notices, in or pertaining to any criminal causes which may have been, or may be, issued out of, or made returnable to any term of, the circuit court of said county of Peoria, as heretofore required by law, shall be deemed and taken to be returnable to the term first to be holden in said county under the provisions of this act.

(264.) SEC. III. Changes of venue in all criminal cases in the circuit courts of said county, shall be granted for the causes now provided by law. In all applications for change of venue in criminal cases in said circuit, the applicant shall present his petition to the court, or to the judge thereof, in vacation, verified by affidavit, (reasonable notice of the intended application having been first given to district attorney of said circuit,) setting forth in said petition the belief of the applicant, that he or she cannot have a fair trial in the county where such case is pending, stating the particular facts and circumstances upon which such belief is founded; and the said court, or the judge thereof, in vacation, having heard such evidence as may be produced, and being satisfied of the truth of the petition, shall order a change of venue to the next nearest county where the cause or causes complained of do not exist, and no other or further change of venue shall be allowed in such cases.

(265.) SEC. IV. That in all suits at common law in the circuit courts of said circuit, where interlocutory judgments shall be given upon the default of any defendant, and the action is founded upon contract, whether such contract be in writing or otherwise, and the damages are unliquidated and do not rest in computation, the said court may, in its discretion, without the intervention or empanelling of jury, hear evidence, and assess damages, and enter final judgment therefor.

(266.) SEC. V. That the judge of said circuit shall have power, in vacation, to enter any final order or decree in any suit in chancery, in the county of Peoria, upon final hearing of any such cause, which order or decree shall have the same force and effect, and appeals shall be allowed, and writs of error may be prosecuted thereon, in the same manner as if such decree or order had been made and entered at a regular term of said court.

(267.) SEC. VI. Writs of *habeas corpus*, allowed in said circuit in vacation, may be heard and determined by said court in term time, and such writs allowed by the court in term time, may be heard and determined by the judge in vacation, whenever justice and the rights of the parties shall require.

(268.) SEC. VII. Nothing in this act contained shall be construed as to prohibit any person confined in jail in said circuit, on a charge of any criminal offense, from making application to the judge of said circuit to appoint

a special term for the trial of such person; and the judge on such application shall appoint such special term as is now required by law.

(269.) SEC. VIII. This act shall take effect and be in force from and after its passage.

FORMER LAWS.—See Laws, 1835, p. 167. Laws, 1839, p. 229, 90.

#### SEVENTEENTH CIRCUIT.

An Act to change the Times of holding Courts in the Seventeenth Judicial Circuit.  
[Approved Feb. 14, 1855. Laws, 1855, p. 129.]

(270.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly.* That the times of holding courts in the seventeenth judicial circuit hereafter shall be as follows, viz.: In the county of Christian, on the first Mondays of April and September; in the county of Montgomery, on the first Mondays thereafter; in the county of Bond, on the first Mondays thereafter; in the county of Fayette, on the first Mondays thereafter; in the county of Effingham, on the first Mondays thereafter; in the county of Shelby, on the first Mondays thereafter; in the county of Moultrie, on the first Mondays thereafter; in the county of Piatt, on the first Mondays thereafter; and in the county of Macon, on the first Mondays thereafter.

(271.) SEC. II. All writs, subpoenas, recognizances, and other process which have been or may be issued and made returnable to the terms of the circuit court in said counties, as heretofore required to be holden, shall be deemed and taken to be returnable to the said terms of the circuit court in said counties, as herein required to be holden; and all notices which may have been given, either by publication or otherwise, with reference to the term as heretofore required to be holden, shall, by force of this act, refer to the term of the court required to be held under this act in said counties; and all proceedings pending in said courts shall be taken up and proceeded with as if no alteration had been made in the time of holding said courts.

(272.) SEC. III. This act shall take effect and be in force from and after its passage.

FORMER LAWS.—See Laws, 1853, p. 61. Laws, 1835, p. 167.

The following Act should have been inserted *ante*, page 298, next after Sec. 108.

An Act to amend "An Act establishing County Courts, approved February 12th, 1849," and extending the Jurisdiction of the La Salle, Winnebago, Boone and McHenry County Courts.

[Approved Feb. 27, 1854. Laws, 1854, p. 230.]

(273.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in addition to the powers heretofore conferred upon the county courts of this State, the county courts of La Salle, Winnebago, Boone and McHenry counties, shall have jurisdiction in all civil cases, suits and actions and proceedings, when the amount due and claimed or the value of property shall not exceed the sum of one thousand dollars; and the judge of said courts shall have the same powers in vacation as are vested in the judges of the circuit courts in this State.

(274.) SEC. II. The writs and process of said county courts shall be issued and executed in the same manner as the writs and process of the circuit courts of this State, and the rules, proceedings and practice, not

herein otherwise provided for, shall conform, as near as may be, to the rules, proceedings and practice of the said circuit courts; and all fines, orders, judgments and decrees of said county courts shall be and remain a lien upon the lands, tenements and real estate of the person against whom the same may be obtained, for the period of seven years from the last day of the term in which the same shall be entered; but no final order, judgment or decree shall be entered in vacation, except judgments by confession, which may be entered at any time, upon filing the proper papers with the clerk of said courts, and shall have the same force and effect, from the time of entry, as if in term time.

(275.) SEC. III. There shall be four terms of said county courts held in said counties in each year, for the transaction of business, the jurisdiction whereof has been, hereby is, or may be conferred by the General Assembly upon said courts, and not otherwise provided for, which shall be called and known as the March, June, September and December terms, and shall commence on the first Mondays of said months, and may continue open two weeks, if the business is not sooner disposed of. If the judge of said courts shall not attend before four o'clock in the afternoon of the day when said courts should be held, the sheriff or clerk shall adjourn said courts till the next day; and if said judge shall not attend before six o'clock of the second day, the sheriff or clerk shall adjourn the courts without day.

(276.) SEC. IV. Appeals and proceedings in the nature of appeals, and writs of *certiorari*, taken and prosecuted from the decision and judgments of justices of the peace and other inferior tribunals in said counties, shall be taken to and prosecuted out of said county courts, except when a term of the circuit court of said counties shall intervene between the time of rendering judgment or making decision and the next term of said county court, in which case appeal may be taken to or writ sued out of either the circuit or county courts.

(277.) SEC. V. Appeals and writs of error from the orders, judgments and decrees of said county courts to the supreme court, shall be had and taken in the same cases, and prosecuted and conducted in the same manner, as is or may be provided by the laws of this State for taking appeals and writs of error from the circuit court.

(278.) SEC. VI. Traverse juries for the March and September terms of said courts shall be selected or ordered to be summoned or returned in the same manner that they are, or may be, selected and summoned or ordered returned for the circuit court in said counties; they shall be entitled to and paid the same fees, in like manner, and possess the same qualifications, and be liable to the same penalties and punishments; they shall have the benefit of the same excuses and exemptions; shall take the same oaths and possess the same powers, and be governed in all their proceedings in the same manner, as is or may be prescribed, allowed and imposed in the case of jurors in the circuit court; and the judge of said courts may, if he deem it necessary for the transaction of business, require a jury to be summoned and returned for the trying of all issues and matters at the June or December terms of said courts, and direct the issuing of process therefor; and said jurors shall be entitled to and subject to all the provisions in this section contained.

(279.) SEC. VII. The clerk, sheriff and other officers of said courts,

and witnesses, shall receive the several fees and compensation that now are, or may be, allowed for similar services and attendance in the circuit courts, and may be recovered, collected and paid in like cases and manner as such fees now are, or hereafter may be, in said circuit courts.

(280.) SEC. VIII. Upon the commencement of every suit or proceeding in said county courts by writ, bill, petition or otherwise, the plaintiff or relator shall pay the sum of two dollars, and upon taking an appeal, the appellant shall pay the sum of one dollar, which fees shall be paid to the clerk of said courts before any suit, appeal or other proceeding shall be entered upon the docket. Before entering any judgment by confession, there shall be paid to the clerk the sum of one dollar, if the judgment does not exceed the sum of one hundred dollars; and the sum of two dollars, if the judgment exceeds one hundred dollars, but does not exceed two hundred and fifty dollars; and the sum of three dollars, if the judgment exceeds the sum of two hundred and fifty dollars, but does not exceed five hundred dollars; and the sum of five dollars, if the judgment exceeds five hundred dollars; which sums so paid to the clerk, shall by him be paid to the judge of said courts, on or before the first day of each term, and the amount so paid may be recovered and taxed in favor of the party paying the same, on recovering judgment for costs.

(281.) SEC. IX. There shall be paid to the clerks of said courts, upon filing any application for letters testamentary or of administration, or of guardianship, the sum of fifty cents, and upon each application for citation or attachment, the sum of fifty cents; and upon filing any petition of securities or other person for relief, or for revoking or repealing letters testamentary, of administration or of guardianship, the sum of one dollar; and upon filing each petition for discharge, under the insolvent debtor act, the sum of two dollars; all which sums shall, by the clerk, be paid to the judge of said courts, at or before the end of each three months, and may be taxed and collected with the costs, by fee, bill or otherwise, according to the practice of the courts.

(282.) SEC. X. The clerk of said court shall provide all necessary books, stationery and fuel for his office, and presses for the safe-keeping of the archives thereof, and the board of supervisors of said counties shall, from time to time, make allowances for the same out of the county treasuries.

(283.) SEC. XI. The said county courts shall have jurisdiction in all cases of petition or bill for writs of *ad quod damnum*, for the sale of real estate and interest therein of wards by their guardian, for the partition of lands, real estate and interest therein, for the assignment and settlement of dower, for the removal of guardians and executors, for the settlement of estates of deceased persons, and for the sale of real estate and the interest therein of deceased persons, for the payment of debts of decedents by executors or administrators.

(284.) SEC. XII. This act to take effect and be in force from and after its passage.

PRIOR LAWS. An act regulating and defining the duties of the justices of the supreme court; approved March 31, 1819. Laws, 1819, p. 373.

An act supplemental to an act, entitled "An act regulating and defining the duties of the justices of the supreme and circuit courts;" approved March 31, 1819. Laws, 1819, p. 384.

An act regulating the practice in the supreme and circuit courts of this State, and for other purposes; approved March 22, 1819. Laws, 1819, p. 139.

An act establishing courts of probate; approved Feb. 10, 1821. Laws, 1821, p. 119.

An act changing the term of the circuit court and altering the circuits; approved Feb. 14, 1821. Laws, 1821, p. 157.

An act to regulate the terms of the circuit courts, and for other purposes; approved Feb. 17, 1823. Laws, 1823, p. 161.

An act constituting and regulating the supreme and circuit courts of this State; approved Dec. 29, 1824. Laws, 1825, p. 36.

An act to amend an act entitled "An act establishing courts of probate," approved Feb. 10, 1821; approved Jan. 12, 1825. Laws, 1825, p. 87.

An act supplemental to an act entitled "An act regulating and establishing the supreme and circuit courts of this State;" approved Jan. 17, 1825. Laws, 1825, p. 170.

An act to amend "An act constituting and regulating the supreme and circuit courts of this State," approved Dec. 29, 1824; approved Jan. 12, 1827. Rev. Laws, 1827, p. 118.

An act supplemental to an act entitled "An act to amend an act constituting and regulating the supreme and circuit courts of this State," approved Dec. 29, 1824; approved Jan. 12, 1827. Rev. Laws, 1827, p. 119.

An act changing the terms of the supreme and circuit courts of this State, and for other purposes; approved Feb. 17, 1827. Rev. Laws, 1827, p. 120.

An act to amend "An act concerning courts of law," approved Jan. 29, 1827; approved Dec. 30, 1828. Rev. Laws, 1833, p. 145.

An act relating to courts of probate; in force June 1, 1839. Rev. Laws, 1833, p. 145.

An act establishing a circuit court north of the Illinois river; approved Jan. 8, 1829. Rev. Laws, 1833, p. 147.

An act regulating the supreme and circuit courts; approved Jan. 19, 1829. Rev. Laws, 1833, p. 147.

An act supplemental to the act entitled "An act regulating the supreme and circuit courts," approved Jan. 19, 1829; approved Jan. 23, 1829. Rev. Laws, 1833, p. 153.

An act regulating the office of the clerk of the supreme court; approved Feb. 15, 1831. Rev. Laws, 1833, p. 153.

An act supplemental to the several acts regulating the supreme and circuit courts of this State; approved Feb. 16, 1831. Rev. Laws, 1833, p. 159.

An act fixing the time of holding circuit courts in the counties of Madison and Calhoun; approved Feb. 16, 1831. Rev. Laws, 1833, p. 162.

An act regulating the terms of holding the circuit courts in this State; approved March 2, 1833. Rev. Laws, 1833, p. 162.

An act to provide for issuing writs of *ne exeat* and *habeas corpus*, and for other purposes; approved Feb. 11, 1835. Laws, 1835, p. 32.

An act to establish a uniform mode of holding circuit courts; approved Jan. 7, 1835. Laws, 1835, p. 150.

An act regulating the times of holding the supreme and circuit courts, and fixing the salary of the circuit judges; approved Feb. 13, 1835. Laws, 1835, p. 167.

An act supplemental to an act changing the times of holding the circuit courts in the third judicial circuit, passed at the present session of the general assembly; approved Jan. 16, 1836. Laws, 1836, p. 228.

An act fixing the times of holding the circuit courts in the several counties therein named; approved Jan. 13, 1836. Laws, 1836, p. 239.

An act supplemental to the several acts regulating the circuit courts in this State; approved Jan. 16, 1836. Laws, 1836, p. 257.

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 Feb. 13, 1835; approved Jan. 12, 1836. Laws, 1836, p. 240.

An act in relation to the municipal court of Chicago, and for other purposes; approved July 21, 1837. Laws, 1837, p. 15.

An act dividing the State into judicial circuits; approved Feb. 23, 1839. Laws, 1839, p. 155.

An act fixing the times of holding the supreme court and the circuit courts in the first, sixth, seventh, eighth and ninth circuits; approved March 2, 1839. Laws, 1839, p. 250.

An act fixing the time of holding the circuit courts in the eighth judicial circuit; approved Feb. 1, 1840. Laws, 1840, p. 5.

An act fixing the time of holding the summer term of the supreme court; approved Feb. 1, 1840. Laws, 1840, p. 87.

An act to change the time of holding courts in the second judicial circuit; approved Jan. 7, 1841. Laws, 1841, p. 101.

An act fixing the times of holding courts in the sixth judicial circuit; approved Jan. 20, 1841. Laws, 1841, p. 102.

An act fixing the times of holding the circuit court in the first judicial circuit; approved Feb. 3, 1841. Laws, 1841, p. 103.

An act to establish circuit courts; approved Feb. 23, 1841. Laws, 1841, p. 103.

An act to change the times of holding courts in the third judicial circuit; approved Feb. 26, 1841. Laws, 1841, p. 109.

An act supplemental to "An act to establish circuit courts," approved Feb. 23, 1841; approved Feb. 26, 1841. Laws, 1841, p. 110.

An act re-organizing the judiciary of the State of Illinois; in force Feb. 10, 1841. Laws, 1841, p. 173.

An act fixing the times of holding circuit courts in the seventh judicial circuit; approved Feb. 6, 1843. Laws, 1843, p. 128.

An act to fix the time of holding circuit courts in the first judicial circuit; approved Feb. 14, 1843. Laws, 1843, p. 129.

An act changing the time of holding circuit courts in the ninth judicial circuit of the State of Illinois; approved Feb. 20, 1843. Laws, 1843, p. 129.

An act to change the time of holding courts in the second judicial circuit, and to include the county of Perry in the said second judicial circuit; approved Feb. 21, 1843. Laws, 1843, p. 130.

An act to change the time of holding courts in the third judicial circuit; approved Feb. 25, 1843. Laws, 1843, p. 131.

An act fixing the time of holding the courts in the eighth judicial circuit; approved Feb. 28, 1843. Laws, 1843, p. 132.

An act regulating the time of holding circuit courts in the fourth judicial circuit; approved March 1, 1843. Laws, 1843, p. 133.

An act in relation to the supreme court; approved March 3, 1843. Laws, 1843, p. 134.

An act to hold courts in the seventh judicial circuit; in force Dec. 5, 1842. Laws, 1843, p. 135.

An act to change the time of holding courts in the fifth judicial circuit; approved March 4, 1843. Laws, 1843, p. 135.

**DECISIONS.** The circuit court may, in its discretion, hear new testimony, after the commencement of the argument by the counsel. *Bloom v. Goodner*, Breese, 35.

Instructions as to the weight of evidence, given by the judge to the jury, are unnecessary and irregular. *Humphries v. Correll et al.*, Breese, 231.

No particular form is required to render an order of a court, a judgment. It is enough if it be final, and a party may be injured thereby. *Wells v. Hogan*, Breese, 264.

The power to punish for contempts is incident to our courts, independent of the statute; and the exercise of this power will not be reviewed by the supreme court. *Clark v. The People*, Breese, 266. *Contra*, See *Stuart v. The People*, 3 S. 395.

When the court has no jurisdiction of the subject, consent of parties will not give it. *Foiey v. The People*, Breese, 31; *Leigh v. Mason*, 1 S. 249.

Refusing to grant a new trial is no ground of appeal. Judgment will not be reversed because instructions are not given to the jury precisely as asked, if they be substantially so. *Littleton et al. v. Moss*, Appendix to Breese, 9.

When the supreme court are equally divided in opinion, the judgment below will stand affirmed. *Kerr et al. v. Whiteside*, Appendix to Breese, 6.

The statute fixing the time of holding courts, passed March 2, 1839, took effect from its passage, no time being fixed by the act. *Gould et al. v. Boynton et al.*, 1 S. 555.

By an act of March 2, 1839, the Spring term of the Cook circuit court was changed from March to the next April. The term was held in March. The proceedings at the term held, were *coram non iudice*, and its judgments illegal and void. *Idem*.

The criminal jurisdiction of the municipal court of the city of Chicago, is, by the act creating that court, confined to the territorial limits of the city. *Bell v. The People*, 1 S. 397.

The circuit courts are limited in their jurisdiction to the counties in which they are erected, except in cases where their jurisdiction is expressly extended by law. *Clark v. Harkness*, 1 S. 56.

If a court is held at a time unauthorized by law, all the judgments and proceedings of such term are void. *Galusha v. Butterfield et al.*, 2 S. 227.

The circuit courts are the only superior courts of the State possessing original unlimited jurisdiction. While exercising such jurisdiction within the county where it is held, it is a superior court and its jurisdiction is presumed; if it extends its jurisdiction extra territorially, its jurisdiction must appear. *Beaubien v. Brinkerhoff*, 2 S. 269, and notes to the case.

Under the statutes, a judge of a circuit court cannot appoint a special term of the court to commence at a time when he is required by statute to hold a court in another county. *Archer v. Ross*, 2 S. 303, and notes to the case.

The 13th section of the statute of 1841, p. 106, requires the court to try all persons confined in jail at the time of holding a special term, and confers on the court the power to summon a grand jury whenever one is necessary for such trial. *Gardner v. The People*, 3 S. 83.

A writ of error may be sued out of the supreme court to reverse a decision of the circuit court fining a person for contempt of court. *Stuart v. The People*, 3 S. 395.

The supreme court has jurisdiction to award a writ of *mandamus* to a circuit judge. Upon refusal to obey such writ, an attachment will issue for a contempt. *The People v. Pearson*, 3 S. 270.

By the "Act regulating the supreme and circuit courts," (Rev. Laws, 1833, p. 147,) the appellate

jurisdiction of the supreme court is confined to "matters of error or complaint from the judgment or decree of any of the circuit courts;" but the instruction of a circuit court to its clerk, respecting the taxing of costs in a cause, is neither "a judgment or decree," nor "matter of error or complaint," authorizing an appeal therefrom, within the meaning of the statute. *Miller v. Adams*, 4 S. 195.

The time of holding the circuit courts is fixed by law, and every person is presumed to know when that time is. *Rogers v. Miller*, 4 S. 333.

Every presumption is in favor of the jurisdiction of a court of general jurisdiction. *Wells v. Mason et al.*, 4 S. 84.

Terms of court fixed by law are still terms, whether there be any judge to hold the court or not. *Downey v. Smith*, 13 Ill. 671.

Original process can be issued to a different county from that in which the action is commenced, in the three following cases only: 1. Where the plaintiff resides in the county in which the action is commenced, and the cause of action accrued in such county; 2. Where the contract is specifically made payable in the county where the action is brought; 3. Where there are several defendants residing in different counties, and the action is commenced in a county in which some one of the defendants resides. When process is issued to a foreign county, the declaration should contain an averment of the facts necessary to authorize the issuing of the writ to such foreign county. An averment that the cause of action accrued in the county where the suit was brought, without averring that the plaintiff resided there at the time of the commencement of the suit, would be insufficient. An affidavit of the facts necessary to give the court jurisdiction, is not necessary to authorize the issuing of process to a foreign county; and if made, it is not a part of the record, nor does it dispense with the averment of those facts in the declaration. *Key v. Collins*, 1 S. 403; *Shepard v. Ogden*, 2 S. 257; *Wakefield v. Goudy*, 3 S. 133; *Brown v. Bodwell*, 4 S. 302; *Clark v. Clark*, 1 G. 33. See also, *Semple v. Anderson*, 4 G. 546; *Haddock v. Waterman*, 11 Ill. 474; *Linton v. Anglin*, 12 Ill. 284; *Boilvin v. Edwards*, 4 G. 115.

The general statement, under a *videlicet*, that at a particular time and place, the defendant was indebted, is no averment that the cause of action arose in that place. *Shepard v. Ogden*, 2 S. 257.

Circuit courts have general original jurisdiction, and exclusive jurisdiction in civil cases, except that given to justices of the peace; and they have jurisdiction, in civil cases, over all transitory actions, where the defendant comes, or is found within their territorial jurisdiction, though he may reside without or beyond it. *Brewster et al. v. Scarborough*, 2 S. 280. See also, *Semple v. Anderson*, 4 G. 546.

The circuit courts of this State are superior courts of general jurisdiction; and nothing shall be intended to be out of the jurisdiction of a superior court, except what specially appears to be so. The statute which prohibits the suing a defendant out of the county where he resides or may be found, confers a privilege, which he waives unless he makes his objection in apt time.

The cases of *Key v. Collins*, *Gillet v. Stone*, *Evans v. Crozier*, *Shepard v. Ogden*, *Wakefield v. Grundy*, *Clark v. Harkness*, *Clark v. Clark*, *Boilvin v. Edwards*, and *Semple v. Anderson*, are reviewed and partly overruled. *Kenney et ux. v. Greer*, 13 Ill. 432.

A corporation has its residence where it exercises corporate functions. The Aurora & Chicago Rail Road runs through the counties of Du Page, Kane and La Salle; but its chief office for business is in Cook county; this gives the courts of Cook county jurisdiction over it. *Bristol v. Chicago & Aurora R. R. Co.*, 15 Ill. 436.

## CHAPTER XXX.

### CRIMINAL JURISPRUDENCE.

#### DIVISION I. PERSONS CAPABLE OF COMMITTING CRIMES.

##### SECTION

1. Crime or misdemeanor, what constitutes.
2. Intention, how manifested.
3. Who capable of committing crimes.
4. Infant under ten years not capable.
5. Lunatic or insane not capable; proviso.
6. Idiot not capable.
7. Person counseling infant to commit offense, prosecuted as principal.
8. Married woman committing certain crimes under

##### SECTION

- coercion of husband, not punishable, but husband punishable.
9. Drunkenness not an excuse for crime, unless occasioned by the fraud of some other person, for the purpose, &c., in which case such person considered as principal.
10. Acts committed by misfortune not deemed criminal.
11. Person committing crime not punishable with death under threats, not guilty; persons compelling

##### SECTION

- commission of offense by such threats, liable as principal or principals.
12. Person becoming lunatic or insane after commission of crime, not to be tried during such lunacy; and if after verdict of guilty, and before judgment,

##### SECTION

such person become lunatic, then no judgment shall be given, and every person becoming lunatic after judgment and before sentence, execution thereof to be stayed till recovery; question of insanity to be tried by jury.

[Approved March 3, 1845. Rev. Stat. 1845, p. 151.]

(1.) SECTION I. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence.

(2.) SEC. II. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

(3.) SEC. III. A person shall be considered of sound mind who is neither an idiot nor lunatic, nor 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.

(4.) SEC. IV. An infant, under the age of ten years, shall not be found guilty of any crime or misdemeanor.

(5.) SEC. V. 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.

(6.) SEC. VI. An idiot shall not be found guilty, or punished for any crime or misdemeanor, with which he or she may be charged.

(7.) SEC. VII. Any person counseling, advising or encouraging an infant under the age of ten years, lunatic or idiot, to commit any offense, shall be prosecuted for such offense 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 offense directly, without the intervention of such infant, lunatic or idiot.

(8.) SEC. VIII. 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.

(9.) SEC. IX. 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 offense: 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 offense, if he, she or they had been possessed of sound reason and discretion.

(10.) SEC. X. 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.

(11.) SEC. XI. A person committing a crime or misdemeanor, not punishable with death, under threats or menaces which sufficiently show 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 offense, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense.

(12.) SEC. XII. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offense during the continuance of the lunacy or insanity. If, after verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. 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.

## DIVISION II. ACCESSORIES TO CRIMES.

SECTION 13. Accessories to crimes; when punished as principals.	SECTION 14. Accessory after the fact; how punished.
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[Approved March 3, 1845. Rev. Stat. 1845, p. 153.]

(13.) SECTION XIII. 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.

(14.) SEC. XIV. 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. 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.

## DIVISION III. WHO MAY BE WITNESSES IN CRIMINAL CASES.

SECTION 15. Party injured may be witness, unless incompetent by reason of infamy, &c.; jury to determine credibility.	SECTION 16. Black or mulatto person or Indian not evidence against a white person; who deemed mulatto or Indian.
SECTION 17. Approvers not to give testimony.	SECTION 18. Affirmation deemed sufficient, and false affirmation deemed perjury.

[Approved March 3, 1845. Rev. Stat. 1845, p. 153.]

(15.) SECTION XV. 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.

(16.) SEC. XVI. 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.

(17.) SEC. XVII. Approvers shall not be allowed to give testimony.

(18.) SEC. XVIII. 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 willful and corrupt perjury.

## DIVISION IV. CRIMES AGAINST THE GOVERNMENT AND PEOPLE.

SECTION 19. Crimes against government, &c., what shall constitute, and who may commit.	SECTION 20. Misprision, what shall constitute, and penalty therefor.
SECTION 20. Treason, what shall constitute, and penalty therefor; persons guilty of overt act out of this State,	SECTION 21. Misprision, what shall constitute, and penalty therefor.

[Approved March 3, 1845. Rev. Stat. 1845, p. 154.]

(19.) SECTION XIX. Crimes against the government and people shall consist in treason and misprison of treason, and can only be committed by persons owing allegiance to the State.

(20.) SEC. XX. 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 thereof 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 in this State, within the limits of which he may be found; and the offense may be charged to have been committed in the county where he may be arrested.

(21.) SEC. XXI. Misprisons 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.

DIVISION V. OFFENSES AGAINST THE PERSONS OF  
INDIVIDUALS.

SECTION	SECTION
22. Murder, what shall constitute, and how may be committed.	39. Homicide, when justifiable, person indicted shall be acquitted.
23. Express malice, what deemed.	40. Mitigation, burden of proof in, to devolve on accused.
24. Implied malice, what deemed; penalty for murder.	41. When mother shall conceal death of illegitimate issue, if born alive, whether it may have been murdered or not, being convicted thereof, may be imprisoned; <i>Provided</i> , mother may be indicted for murder.
25. Manslaughter, what constitutes, and how may be committed.	42. Distinction between petit treason and murder abolished.
26. Voluntary manslaughter, what shall be deemed provocation therefor.	43. Duelling, how punished.
27. The killing must be the result of violent passion, and if reasonable interval occur between provocation and act, to be considered deliberate revenge, and punished as murder.	44. Challenging or accepting challenge, penalty therefor.
28. Involuntary manslaughter, what deemed; <i>Provided</i> , that when in the commission of an unlawful act or of felonious intent, the offense to be deemed murder.	45. Persons conveying challenge, how punished; indictment, allegation thereof.
29. Punishment.	46. Poisoning, punishment for.
30. The killing, what shall make it murder or manslaughter.	47. Mayhem, what deemed, and punishment therefor.
31. Accused to be tried in county where the cause of death was administered; and if party killed and party killing be in different counties when cause of death administered, accused may be tried in either county.	48. Rape, what constitutes, who deemed guilty, and punishment therefor.
32. Justifiable homicide, what shall be deemed.	49. Emission not necessary to constitute rape.
33. Bare fear of offense not considered justification for homicide.	50. Crime against nature, what deemed, and punishment therefor.
34. Self-defense, what deemed.	51. Assault, what constitutes.
35. Officer assaulted while serving process, when justified in killing.	52. Assault with intent to commit murder, &c., how punished; with intent to inflict bodily injury, how punished.
36. Justifiable homicide, further defined.	53. Assault and battery defined.
37. Excusable homicide, what deemed; but if bounds of moderation be exceeded, and death ensue, shall be considered manslaughter or murder.	54. False imprisonment, what deemed, and how punished.
38. Other instances, when justifiable or excusable.	55. Kidnapping defined.
	56. Kidnapping, who may be guilty thereof, and punishment therefor.
	57. Kidnapping further defined, and punishment therefor.

[Approved March 3, 1845. Rev. Stat. 1845, p. 155.]

(22.) SECTION XXII. 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.

(23.) SEC. XXIII. 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.

(24.) SEC. XXIV. 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.

(25.) SEC. XXV. 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.

(26.) SEC. XXVI. 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 person, or an attempt by the person killed to commit a serious personal injury on the person killing.

(27.) SEC. XXVII. 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.

(28.) SEC. XXVIII. Involuntary manslaughter shall consist in the killing of a human being without any intent to do so, 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 of a human being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder.

(29.) SEC. XXIX. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the penitentiary for a term not exceeding eight years.

(30.) SEC. XXX. 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.

(31.) SEC. XXXI. 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.

(32.) SEC. XXXII. Justifiable homicide is the killing of a human being in necessary self-defense, or in the defense 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.

(33.) SEC. XXXIII. A bare fear of any of these offenses, 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.

(34.) SEC. XXXIV. If a person kill another in self-defense, 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 really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.

(35.) SEC. XXXV. If any 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.

(36.) SEC. XXXVI. 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.

(37.) SEC. XXXVII. 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.

(38.) SEC. XXXVIII. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

(39.) SEC. XXXIX. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

(40.) SEC. XL. 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.

(41.) SEC. XLI. 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.

(42.) SEC. XLII. 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.

(43.) SEC. XLIII. If any person hereafter shall willfully 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.

(44.) SEC. XLIV. 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.

(45.) SEC. XLV. 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 second or aid, or give countenance thereto, such person being thereof duly convicted, shall be subject to the same fines 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 alleged 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.

(46.) SEC. XLVI. Every person who shall willfully 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, 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.

(47.) SEC. XLVII. 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.

(48.) SEC. XLVIII. 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.

(49.) SEC. XLIX. It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature.

(50.) SEC. L. 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.

(51.) SEC. LI. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

(52.) SEC. LII. 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, 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.

(53.) SEC. LIII. Assault and battery is the unlawful beating of another.

(54.) SEC. LIV. False imprisonment is an unlawful violation of the personal liberties 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.

(55.) SEC. LV. 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.

(56.) SEC. LVI. 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.

(57.) SEC. LVII. 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.

#### DIVISION VI. CRIMES AND OFFENSES AGAINST HABITATIONS AND OTHER BUILDINGS.

SECTION 58. Arson, what deemed, and punishment therefor. 59. Arson, further defined, and punishment therefor.	SECTION 60. Burglary, what deemed, and punishment therefor.
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[Approved March 3, 1845. Rev. Stat. 1845, p. 159.]

(58.) SECTION LVIII. Every person who shall willfully and maliciously burn, or cause to be burned, any dwelling-house, kitchen, office, shop, barn, stable, store-house, warehouse, malt-house, stilling-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.

(59.) SEC. LIX. Every person who shall willfully 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.

(60.) SEC. LX. Every person who shall, in the night time, willfully and maliciously and forcibly break and enter, or willfully and maliciously, without force, (the doors or windows being open,) enter into any dwelling-house, kitchen, office, shop, store-house, warehouse, malt-house, stilling-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.

DIVISION VII. CRIMES AND OFFENSES RELATIVE TO  
PROPERTY.

<p>SECTION</p> <p>61. Robbery, its definition, and punishment therefor.</p> <p>62. Larceny, its definition, and punishment therefor.</p> <p>63. Stolen goods, buying or receiving, and punishment therefor.</p> <p>64. Right of owner to stolen property.</p> <p>65. Altering brands, marks, &amp;c., with felonious intent, how punished.</p> <p>66. Embezzlement, how punished.</p> <p>67. Defalcations of persons intrusted by law, to collect, disburse, receive or safely keep any moneys for public purposes, how punished.</p> <p>68. Destroying any deed, lease or bond, how punished.</p> <p>69. Landmarks, punishment for altering or removing.</p> <p>70. Embezzlement by clerk, apprentice or servant, deemed larceny, and punished accordingly.</p> <p>71. Bailee, converting money, &amp;c., to his own use,</p>	<p>SECTION</p> <p>deemed guilty of larceny, and punished accordingly.</p> <p>72. Lodger embezzling property which he or she is to use, deemed guilty of larceny, and punished accordingly.</p> <p>73. Persons guilty of trespass on State lands to be fined.</p> <p>74. Fines to be paid into State treasury.</p> <p>75. Act given in charge to grand jury.</p> <p>76. Penalty.</p> <p>77. Proceeding to be by indictment.</p> <p>78. Witnesses, who may be; additional penalty.</p> <p>79. Option of land owners.</p> <p>80. When act shall be in force; application.</p> <p>81. Penalty for obstructing railroad, &amp;c.</p> <p>82. Penalty for displacing.</p> <p>83. Penalty for removing.</p>
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[Approved March 3, 1845. Rev. Stat. 1845, p. 160.]

(61.) SECTION LXI. 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.

(62.) SEC. LXII. 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.

(63.) SEC. LXIII. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything, 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.

(64.) SEC. LXIV. 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.

(65.) SEC. LXV. 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 offenses 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.

(66.) SEC. LXVI. 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.

(67.) SEC. LXVII. If any officer or person who now is, or hereafter may be, intrusted 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 railroad fund of this State, or any county thereof, 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 thereafter be ineligible and disqualified from holding any office of honor or profit in this State.

(68.) SEC. LXVIII. 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.

(69.) SEC. LXIX. 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.

(70.) SEC. LXX. If any clerk, apprentice or servant, whether bound or hired, to whom any money, bank bill or note, or goods or chattels shall be intrusted 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.

(71.) SEC. LXI. 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.

(72.) SEC. LXXII. 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.

An Act for the Protection of State Lands.

[Approved Jan. 23, 1851. Laws, 1851, p. 6.]

(73.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any person who shall willfully cut, fell, box, bore, injure or destroy any tree or sapling, standing or growing upon any land which has been or may be donated, granted or conveyed to the State of Illinois, or the people of said State, or to any corporation or persons for the use of the State or people, under or by virtue of any law of the United States, or resolution of Congress to aid the State in the construction of any railroad or canal, or any levee or drain, or other work of improvement, or to be used for any such purposes, shall be liable to indictment, and, upon conviction, to be fined in not less than five nor more than

ten dollars, for every tree or sapling so cut, felled, boxed, bored, injured or destroyed; and the judgment of the court in all cases under this act, when the fine and costs are not replevied, shall be that the defendant stand committed until the fine and costs are paid.

(74.) SEC. II. Fines collected under the provisions of this act shall be paid into the State treasury, and applied to the purposes for which the land on which the trespass was committed is or may be held.

(75.) SEC. III. This act shall be given in charge to the grand jury of each county at each term of the circuit courts of this State, and the same shall be read at large to them.

An Act to amend Chapter CIV. Revised Statutes, entitled 'Trespass.'

[In force May 1, 1851. Laws, 1851, p. 7.]

(76.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That every person who shall knowingly and willfully, without color of title made in good faith, cut, box, fell, bore or destroy any tree or sapling standing or growing upon the land of any person or corporation, without the license or consent of the owner of such land, shall be adjudged guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than ten nor more than one hundred dollars, or imprisoned in the county jail for any term not exceeding three months, in the discretion of the court in which such conviction is had.

(77.) SEC. II. That all offenders against this act shall be proceeded against by indictment in the court of the proper county having cognizance of indictable offenses; on the trial of which indictment the owner or owners of the land upon which such trespass shall be committed, are hereby declared competent witnesses.

(78.) SEC. III. It shall be the duty of the court in all cases of conviction under this statute, 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, and any judgment for fine and costs hereafter rendered under this act, may be enforced by execution as in other criminal cases.

(79.) SEC. IV. Nothing in this act contained shall be so construed as to prevent the owner from having his election, and maintaining an action of trespass to recover damages for the trespasses declared criminal by this act, and that an indictment under this act shall be a bar to the recovery of the penalty given by the statute by action of debt.

(80.) SEC. V. This act shall be in force from and after the first day of May next, and shall not apply to any traveler or marketer passing upon the highway, who, for the purposes of encampment and building camp fires, shall violate the provisions of this act, by cutting such trees or saplings as may be necessary for above purposes.

An Act to amend the Criminal Code.

[Approved Feb. 11, 1853. Laws, 1853, p. 217.]

(81.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* If any person or persons shall willfully and maliciously displace or remove any switch, signal or rail of any railroad,



or shall break down, rip up, injure or destroy any railroad track or railroad bridge, or any portion thereof, or place any obstruction whatever on any such rail or railroad track, or bridge, or switch, or place any false signal upon or along the line of any railroad track, with intent that any person or property being or passing on and over said railroad should be injured thereby, every such person so offending, upon conviction thereof, shall be punished by imprisonment in the State penitentiary not less than one year and not exceeding five years.

(82.) SEC. II. If any person or persons shall willfully and maliciously displace or remove any switch, signal, or rail of any railroad, or shall break down, rip up, injure or destroy any railroad track or railroad bridge, or any portion thereof, or place any obstruction whatever on any such rail, railroad track, or bridge, or switch, or place any false signal upon or along the line of any railroad track, with intent that any person or property being or passing on and over said railroad, should be injured thereby, and in consequence of any such act done with the intent aforesaid, any person being or passing on and over said railroad shall actually suffer any bodily harm, or any property shall be injured, every such person so offending shall, upon conviction thereof, be punished by imprisonment in the State penitentiary for a term not less than three years, nor exceeding ten years.

(83.) SEC. III. If any person shall willfully and maliciously displace or remove any railway switch, signal or rail of any railroad, or shall break down, rip up, injure or destroy any railroad track or railroad bridge, or fence, or any portion thereof, or place any obstruction whatever on any such rail, switch, railroad track or bridge, or shall do or cause to be done any act or acts whatever, whereby any engine, machine or structure, or any matter or thing thereto appertaining, shall be stopped, obstructed, impaired, weakened, injured or destroyed, with intent that any person or property passing on and over said railroad should be injured thereby, and if, in consequence of such act done with intent aforesaid, any person is killed, or the life of any person is lost, every person so offending shall be deemed guilty of murder, and upon conviction thereof, shall be punished accordingly.

## DIVISION VIII. FORGERY AND COUNTERFEITING.

### SECTION

84. Counterfeiting and forgery, how punished.  
85. Gold or silver coin, counterfeiting or passing, with intent to defraud, how punished.  
86. Keeping in possession any counterfeit gold or silver coin, with intent to defraud, how punished.  
87. Passing or receiving from any other person, any forged note, bill, &c., with intent to pass, how punished.  
88. Passing or uttering, or having in possession, with intent to pass, &c., any fictitious bill, &c., forgery, and punished accordingly

### SECTION

89. Making or having in possession, any die, plate, or other apparatus for counterfeiting coin or bank notes, how punished.  
90. On trial of person for forging bill or note of incorporated company, act of incorporation may be proved by general reputation.  
91. Who may be witnesses.  
92. Seal of State, or of any court, &c., when forged or counterfeited, how offender punished.

[Approved March 3, 1845. Rev. Stat. 1845, p. 163.]

(84.) SEC. LXXIII. 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 indorsement 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.

(85.) SEC. LXXIV. 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.

(86.) SEC. LXXV. 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.

(87.) SEC. LXXVI. 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.

(88.) SEC. LXXVII. 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.

(89.) SEC. LXXVIII. 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 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 or machine, intended for the purposes aforesaid, shall be destroyed.

(96.) SEC. LXXIX. 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.

(91.) SEC. LXXX. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeit.

(92.) SEC. LXXXI. 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 willfully 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.

## DIVISION IX. CRIMES AND OFFENSES AGAINST PUBLIC JUSTICE.

SECTION	SECTION
93. Perjury defined, and how punished.	109. Rescuing person in legal custody on civil process, how punished.
94. Procuring conviction and execution of innocent persons by perjury or subornation of perjury, punishable with death.	110. Assisting prisoner to escape from jail, how punishable.
95. In indictment for perjury, what may be set forth.	111. Assisting prisoner to escape, or rescuing prisoner from custody, how punished.
96. Bribery, how punished.	112. If any sheriff, coroner, &c., having prisoner in legal custody, shall voluntarily suffer him to escape, how punished.
97. Bribery, further defined, and how punished.	113. When sheriff, &c., shall willfully refuse to receive or arrest any person charged with crime, how punished.
98. Bribery, finable in certain cases.	114. Compounding criminal offense, finable.
99. Any judge, justice, &c., who shall steal, embezzle, &c., any record, process, &c., or shall knowingly take off any issue, forfeited recognizance, &c., or shall forge any document, how punished.	115. Conspiracy to charge with criminal offense, how punished.
100. Jailor, inhumanity of, how punished.	116. Penalty for assuming right to exercise office.
101. Officer withholding the records, &c., appertaining to his office, from successor, or mutilating or destroying same, how punished.	117. Embracery, what constitutes, and how punished.
102. False personation, how punished.	118. Barratry, what deemed, and penalty therefor.
103. Resisting or assaulting officer in service of process, how punished.	119. Maintenance, what deemed, and penalty therefor.
104. Penalty for rescuing in certain cases.	120. If any judge, justice of the peace, &c., shall receive fee except as allowed by law, he shall be deemed guilty of extortion, and fined.
105. Further penalty for setting criminal at liberty in certain cases.	121. Omission of duty, malfeasance, &c., or other misconduct, by clerk, sheriff or other public officer, punishable by fine and removal from office; vacancy, how filled.
106. When warden of penitentiary, &c., shall fraudulently contrive, procure, or voluntarily suffer the escape of any convict, how punished.	122. Threatening to accuse of crime, or to injure person or property, how punished.
107. When warden of penitentiary, &c., shall negligently suffer convict to be at large, shall be fined.	
108. When any person shall convey to any convict any tool, &c., to assist his escape, how punished.	

[Approved March 3, 1845. Rev. Stat. 1845, p. 165.]

(93.) SECTION LXXXII. 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 willfully, 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.

(94.) SEC. LXXXIII. Every person who, by willful 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.

(95.) SEC. LXXXIV. In every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offense 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.

(96.) SEC. LXXXV. 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 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 anywise 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.

(97.) SEC. LXXXVI. 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.

(98.) SEC. LXXXVII. 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.

(99.) SEC. LXXXVIII. 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 willfully 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 or 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.

(100.) SEC. LXXXIX. Every jailer who shall be guilty of willful 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.

(101.) SEC. XC. 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 willfully and unlawfully withhold or detain from his successor or other person entitled thereto by law, the records, papers, documents or other writings 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 less than 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, her or their possession, and who shall willfully mutilate, destroy, withhold or detain the same as aforesaid.

(102.) SEC. XCI. 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.

(103.) SEC. XCII. If any person shall knowingly and willfully 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.

(104.) SEC. XCIII. 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 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.

(105.) SEC. XCIV. If any person shall set at liberty or rescue any person who before conviction stands charged or committed for any capital offense, 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 offense 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.

(106.) SEC. XCV. 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 for a term not exceeding three months, and by confinement to hard labor for a term not exceeding ten years.

(107.) SEC. XCVI. 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.

(108.) SEC. XCVII. 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.

(109.) SEC. XCVIII. 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.

(110.) SEC. XCIX. If any person shall aid or assist a prisoner lawfully committed or detained in any jail for any offense 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, (although 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.

(111.) SEC. C. 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.

(112.) SEC. CI. 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 offense, 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 offense, 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.

(113.) SEC. CII. If any sheriff, coroner, keeper of a jail, constable or other officer, shall willfully refuse to receive or arrest any person charged with a criminal offense, 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.

(114.) SEC. CIII. If any person shall take money, goods, chattels, lands or other reward, or promise thereof, to compound any criminal offense, such person or person 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 offense.

(115.) SEC. CIV. 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 offense, 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.

(116.) SEC. CV. If any person shall take upon himself to exercise or officiate in any office or place of authority in this State, without being law

fully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding two hundred dollars.

(117.) SEC. CVI. 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.

(118.) SEC. CVII. If any person or persons shall wickedly and willfully 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 counselor at law, he shall be suspended from the practice for any time not exceeding six months.

(119.) SEC. CVIII. If any person shall officiously intermeddle in any suit at common law or in chancery that in nowise 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.

(120.) SEC. CIX. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer of this State, ministerial or judicial, shall willfully 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 willfully 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.

(121.) SEC. CX. 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 willfully 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.

(122.) SEC. CXI. 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, chattels 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, chattels or valuable thing be demanded, such person so offending, shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding six months.

#### DIVISION X. OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

##### SECTION

123. Disturbing the peace, how punished.  
124. Persons assembling to disturb the peace, refusing to disperse when required by judge, justice or other public officer, liable to fine and imprisonment.  
125. Affray, what deemed.  
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##### SECTION

128. Riot, what constitutes, and penalty therefor.  
129. Failure of officer to preserve public peace upon knowledge of contemplated duel, such officer shall be fined.  
130. Publication of cowardice in refusing to accept a challenge to fight a duel, shall render writer or printer liable to fine and imprisonment.  
131. Libel, what constitutes, and liability therefor. Truth may be given in evidence.

[Approved March 3, 1845. Rev Stat. 1845, p. 171.]

(123.) SECTION CXII. If any person, at late and unusual hours of the night time maliciously or willfully 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.

(124.) SEC. CXIII. 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.

(125.) SEC. CXIV. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this State, the persons so offending shall be deemed guilty of an affray.

(126.) SEC. CXV. 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.

(127.) SEC. CXVI. 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.

(128.) SEC. CXVII. 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 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.

(129.) SEC. CXVIII. 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.

(130.) SEC. CXIX. If any person or persons shall, in any newspaper or handbill, 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, handbill or other publication, may be summoned as a witness, and shall be required to testify against the writer or writers of such handbill 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.

(131.) SEC. CXX. 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 offense, 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.

## DIVISION XI. OFFENSES AGAINST THE PUBLIC MORALITY, HEALTH AND POLICE.

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133. Bigamy, further defined, and penalty.	135. What marriages declared incestuous.

SECTION	SECTION
136. Incestuous intercourse, and punishment therefor.	158. Public worship, disturbance of, how punished.
137. Cohabitation of father and daughter, how punished.	159. Jurisdiction of justices of the peace, and officers above named.
138. Open lewdness, indecency and debauchery, how punished.	160. Offenses specified in the preceding five sections, how tried, &c.
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	185. When act shall be in force.

[Approved March 3, 1845. Rev. Stat. 1845, p. 173.]

(132.) SECTION CXXI. 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 imprisoned 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.

(133.) SEC. CXXII. 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.

(134.) SEC. CXXIII. 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 offense shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offense, such man or woman shall be severally punished twice as much as the former punishment, and for the third offense, treble, and thus increasing the punishment for each succeeding offense: *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.

(135.) SEC. CXXIV. Marriages between parents and children, including grand-parents and grand-children of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, are declared to be incestuous and absolutely void. This section shall extend to illegitimate as well as legitimate children and relations.

(136.) SEC. CXXV. Persons within the degrees of consanguinity within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and upon conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

(137.) SEC. CXXVI. If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years.

(138.) SEC. CXXVII. 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 tipping house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practise of fornication, or shall keep a common, ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, fornication or other misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

(139.) SEC. CXXVIII. 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.

(140.) SEC. CXXIX. 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.

(141.) SEC. CXXX. 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.

(142.) SEC. CXXXI. Every tavern keeper who shall suffer or permit any game or games, prohibited or intended to be prohibited by this chapter, 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 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 offenses as may be committed in their respective counties, contrary to the provisions of this chapter, whenever the same may in anywise come under their immediate observation. And if any officer, whose duty it is made to execute the provisions of this chapter, 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.

(143.) SEC. CXXXII. Every person who shall not have a legal license to keep a grocery, who shall barter, exchange or sell any wine, rum, brandy, gin, whisky 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 offense ten dollars.

(144.) SEC. CXXXIII. Every tavern keeper or other retailer of spirituous liquors, who shall barter, sell or exchange any wine, rum, gin, brandy, whisky or other spirituous 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 tavern keeper or not, who shall sell, barter or exchange any wine, rum, gin, brandy, whisky or other spirituous or mixed liquors, to any Indian or Indians in this State, shall, on conviction, be fined in the sum of ten dollars for each offense.

(145.) SEC. CXXXIV. 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 anywise 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 thereof had under the provisions of any law authorizing a writ of *ad quod damnum*, shall be no bar to a prosecution under this chapter.

(146.) SEC. CXXXV. If any person or persons shall knowingly sell any flesh of any deceased 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.

(147.) SEC. CXXXVI. 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 indorse any bond, promissory note or writing, bill of exchange or order, to be used as a general circulating medium, as or 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.

(148.) SEC. CXXXVII. 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 be 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.

(149.) SEC. CXXXVIII. 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 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 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 behavior, and betake himself to some honest employment for support, and that he shall not, nor his family, become a county charge, through, or by reason of, his idleness, immorality or profligacy.

(150.) SEC. CXXXIX. 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.

(151.) SEC. CXL. 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 offense, 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.

(152.) SEC. CXLI. 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 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.

(153.) SEC. CXLII. 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.

(154.) SEC. CXLIII. 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.

(155.) SEC. CXLIV. 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.

(156.) SEC. CXLV. The preceding section shall not be construed to prevent watermen from landing their passengers, lading and unlading their cargoes, or ferrymen from carrying over the water, travelers or persons moving with their families, on the first day of the week; nor to 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.

(157.) SEC. CXLVI. 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 conviction thereof, shall be fined in any sum not exceeding twenty-five dollars.

(158.) SEC. CXLVII. 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 worshipping 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 section shall not be so construed as to affect any person who may sell whisky or any other ardent spirits at his own distillery, store or dwelling-house.

(159.) SEC. CXLVIII. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offenses, 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.

(160.) SEC. CXLIX. Any person who shall be accused of either of the offenses specified in the five preceding sections, 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 in said section specified; 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 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.

(161.) SEC. CL. The judgments rendered under the six preceding sections, shall be subject to appeals as in cases of assault and battery and affrays, and shall be collected in the same manner.

An Act to amend an Act entitled "An Act relative to Criminal Jurisprudence," approved Feb. 26, 1833.

[In force Dec. 3, 1844. Laws, 1845, p. 33.]

(162.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any black, colored or mulatto man and white woman, and any white man and black, colored or mulatto woman, who shall live together in an open state of adultery or fornication, or adultery and fornication, shall be indicted, and on conviction, shall be severally fined in any sum not exceeding five hundred dollars, and confined in the penitentiary for any term not exceeding one year: *Provided*, That nothing in this act shall be construed to extend to any case in which the man and woman living together as aforesaid, shall both be white persons: *And provided further*, That the offense herein provided for, shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offense, such man or woman shall be severally punished twice as much as for the first offense, and for the third offense, trebling, and thus increasing the punishment for each succeeding offense.

(163.) SEC. II. This act to take effect from 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 this 3d day of December, A. D. 1844.

THOMPSON CAMPBELL,  
Secretary of State.

An Act relative to Criminal Jurisprudence.

[Approved Feb. 21, 1845. Rev. Stat. (Appendix), p. 579. Laws, 1845, p. 39.]

(164.) SEC. I. *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, where any person or persons have been or shall be bound by recognizance to keep the peace, or for their good behavior, and for appearance of the party in the circuit court, if the prosecutor shall fail to appear and prosecute, or if, upon the hearing, it shall appear that the prosecution was commenced maliciously, without reasonable or probable cause, the court may, in its discretion, give judgment against the prosecutor for the costs of prosecution and defense.

An Act to prohibit the Retailing of Intoxicating Drinks.

[Approved Feb. 1, 1851. Laws, 1851, p. 13.]

(165.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That every person who shall, by himself or agent, barter, sell or exchange any wine, rum, brandy, gin, whisky, or other vinous, spiritous or mixed liquors, by a less quantity than one quart, or who shall barter, sell or exchange the said liquors, or any of them, by any quantity, and suffer them to be drunk in any house, tavern, store, grocery, out-house, shed, or other building, occupied by him, her or them, shall, on conviction, be fined for every offense twenty-five dollars. The giving away of any of the aforesaid liquors, for the purpose of avoiding the provisions of this act, shall be construed as selling within the meaning of this act.

(166.) SEC. II. Every person who shall sell or give any of the liquors

specified in the first section of this act to any person, under the age of eighteen years, shall, on conviction thereof, be fined for every such offense in any sum not less than thirty dollars, nor more than one hundred dollars.

(167.) SEC. III. The fines herein provided for may be recovered either by indictment in any court having jurisdiction of such offense, or by action of debt in the name of the people of the State of Illinois, before any justice of the peace of the proper county.

(168.) SEC. IV. The provisions of this act shall not extend to druggists or physicians who shall sell or give away any of the said liquors in good faith, for purely medical, mechanical or sacramental purposes.

(169.) SEC. V. The circuit courts of the several counties in this State shall give, or cause to be given, in charge, the provisions of this act to the grand jury at every regular term of the court.

(170.) SEC. VI. All laws and parts of laws authorizing licenses to be granted to keep groceries, or for the sale of vinous, spirituous or mixed liquors, are hereby repealed, and the provisions of this act shall extend to all incorporated cities or towns in this State, anything in their charters to the contrary notwithstanding: *Provided*, That nothing contained in this act shall affect the rights, privileges or liabilities of persons to whom licenses have heretofore been granted.

(171.) SEC. VII. All fines collected under the provisions of this act, shall be paid into the proper county treasury, and set apart as a fund for the support of paupers in the county in which the same shall be collected.

An Act to repeal an Act entitled "An Act to prohibit the Retailing of Intoxicating Drinks," approved Feb. 1, 1851.

[Approved Feb. 7, 1853. *Laws*, 1853, p. 127.]

(172.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That an act entitled "An act to prohibit the retailing of intoxicating drinks," approved February 1, 1851, be and the same is hereby repealed.

An Act to prohibit the Sale of Intoxicating Drinks.

[Approved Feb. 12, 1853. *Laws*, 1853, p. 91.]

(173.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all laws, or parts of laws, which were in force in relation to the granting of license to persons for the purpose of retailing spirituous, vinous or mixed liquors, at the time of the passage of an act entitled "An act to prohibit the retailing of intoxicating drinks," approved February 1, 1851, be and are hereby re-enacted and in full force and effect, as if never repealed: *Provided*, That no license shall be granted to any person for a less sum than fifty dollars, nor more than three hundred dollars per annum. This act shall take effect from and after its passage. *And provided further*, That a grocery shall be deemed to include all houses and places where spirituous or vinous liquors are retailed by less quantity than one gallon. The act entitled "An act to amend an act to reduce the laws incorporating the city of Chicago, and the several acts amendatory thereof, into one act, and to amend the same," and to amend an act to charter the city of Peru, be and the same hereby is repealed, and the provisions therein repealed are hereby revived and re-enacted.

An Act to amend Chapter XXX. of the Revised Statutes, entitled "Bigamy."

m [Approved Feb. 8, 1853. *Laws*, 1853, p. 203.] m

(174.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in trials for bigamy the proof of the fact of either marriage shall not be otherwise made than by the legitimate record evidence of such marriage, and the parol testimony of a person or persons who were present at the celebration of such marriage, anything in the 121st section of chapter 30 of the Revised Statutes to the contrary notwithstanding: *Provided*, This act shall not be so construed as to exclude the necessary parol proof to identify the person of the accused with the record evidence in any case.

(175.) SEC. II. This act to take effect and be in force from and after its passage.

An Act requiring Druggists, and all Persons dealing in Medicines, to label all Medicines by them sold.

[Approved Feb. 12, 1853. *Laws*, 1853, p. 215.]

(176.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all druggists and other persons selling medicines at retail, shall be required to place upon each bottle, vial or package by them sold, a label, with the name of the medicine which such bottle, vial or package contains, written or printed thereon.

(177.) SEC. II. Any person who shall violate the provisions of the foregoing act, shall be subject to a fine of not less than one nor exceeding five dollars, to be recorded [recovered] before any justice of the peace in an action of debt: *Provided*, That the provisions of this act shall not apply to physicians in their practice.

An Act to prohibit the Killing of certain Wild Game, in certain Counties therein named, at certain Seasons of the Year.

[Approved Feb. 12, 1853. *Laws*, 1853, p. 254.]

(178.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That it shall be unlawful for any person to kill any deer, fawn, prairie hen or chicken, quail, wood cock or wood partridge, between the first day of January and the twentieth day of July of each year, in the counties of Lake, McHenry, Boone, Winnebago, Ogle, De Kalb, Kane, Du Page, Cook, Will, Kendall, La Salle, Grundy, Stephenson and Sangamon.

(179.) SEC. II. Any person who shall willfully violate any of the provisions of this act, shall forfeit and pay a fine of fifteen dollars for each deer or fawn so willfully killed, and for all other wild animals above enumerated, the sum of five dollars for each so unlawfully killed, to be sued for and recovered before any justice of the peace in an action of debt, or before any court having jurisdiction thereof, one-half of which penalty shall go to the complainant, and the other half to the county treasury; the action to be brought in the name of the county where such offense shall be committed.

An Act entitled An Act to preserve the Game in the State of Illinois.

[Approved Feb. 15, 1853. *Laws*, 1853, p. 133.]

(180.) SEC. I. *Be it enacted by the People of the State of Illinois represented in the General Assembly*, That it shall be unlawful for any person to

kill, ensnare or trap any deer, fawn, wild turkey, grouse, prairie hen or chicken, or quail, between the fifteenth day of January, and the first day of August of each and every year.

(181.) SEC. II. That it shall be unlawful for any person to buy, sell, or have in possession, any of the above mentioned animals or birds, which shall have been killed, ensnared, trapped or taken between the first day of January and the said first day of August of each and every year as aforesaid, and that the having or being in possession of any of the above mentioned animals, or birds aforesaid, by any person or persons, between the said first day of January and the first day of August, as aforesaid, shall be deemed and taken as *prime facie* evidence that the same was ensnared, trapped or killed by the person having possession of the same, in violation of the provisions of this act.

(182.) SEC. III. Any person who shall go upon the premises of any person or persons, or corporation, whether the same be enclosed or not, with intention to hunt, or to be found hunting, entrapping or ensnaring any of the above mentioned animals or birds, at or within the time aforesaid, he shall be deemed guilty of trespass, and may be prosecuted before any justice of the peace of the county wherein the said premises may lie, by the owner or person in possession of the same, in an action of trespass, and fined in any sum not less than five nor more than twenty dollars; to go to the owner or occupant of said premises: *Provided, however,* That a judgment obtained against any person for a violation of this act under the fourth section thereof, shall be a bar to any suit under the third section of this act.

(183.) SEC. IV. Any person who shall willfully violate any of the provisions of this act, shall forfeit and pay a fine of fifteen dollars for each deer or fawn thus killed, ensnared, entrapped, bought, sold or held in possession; and for any other wild game, animals or bird, above enumerated, either killed, ensnared, entrapped, bought, sold or held in possession, as aforesaid, the sum of five dollars shall be paid, to be sued for and recovered before any justice of the peace of the county in which the act shall have been violated, in an action of debt, or before any court having jurisdiction thereof; one half of said penalty shall go to the complainant and the other half to the school trustees of the township in which the act shall have been violated, to be added to the school fund of said township; the action to be brought in the name of the said county.

(184.) SEC. V. *Provided,* That nothing in this act shall apply to the counties of White, Wabash, Clay, Richland, Jasper, Lawrence, Crawford, Clark, Edgar, Coles, Moultrie, Effingham, Fayette, Bond, Cass, Menard, Pike, Schuyler, Brown, Scott, Washington, Jefferson, Marion, Hamilton, Clinton, Jackson, Johnson, Williamson, Gallatin, Saline, Franklin, Wayne, Edwards, McDonough, Alexander, Pulaski, Union, Hardin, Massac, Warren, Henderson, Monroe, Perry, Shelby, Cumberland, Jersey, Calhoun and Randolph, Pope, McLean, Knox, Fulton, Hancock, Adams, Stark, Vermilion, Montgomery and Christian.

(185.) SEC. VI. This act shall be in force from and after its passage.

## DIVISION XII. OFFENSES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

SECTION	SECTION
186. Fraudulent conveyance, penalty for making, and for knowingly receiving benefit of.	193. No second receipt to be issued while first outstanding.
187. False representations, &c., what constitutes, and how punished.	194. Transfer of goods prohibited without consent of person holding receipt.
188. False pretenses, person guilty of, deemed a cheat: punishment therefor.	195. Penalty, fine and imprisonment.
189. Fraudulent sale of lands or lots, how punished.	196. When act shall take effect.
190. False weights, use of, how punished.	197. False issue and transfer of stock by president, or other officer of corporation.
191. Fraudulent receipts prohibited.	198. Liability to indictment; penalty.
192. No person to issue receipts on property not his own.	199. When act shall take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 173.]

(186.) SECTION CLI. 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.

(187.) SEC. CLII. If any person by false representations of his own respectability, wealth, or mercantile correspondence and connections, 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.

(188.) SEC. CLIII. If any person or persons shall, knowingly and designedly, by any false pretense or pretenses, obtain from any other person or persons, any *chose* 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.

(189.) SEC. CLIV. 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.

(190.) SEC. CLV. 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.

An Act relating to Warehousemen, Wharfingers and other Persons, and to prevent Fraud.  
[Approved Jan. 28, 1851. Laws, 1851, p. 9.]

(191.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That no warehouseman, wharfinger or other person, shall issue any receipt or other voucher for any goods, wares, merchandise, grain or other produce or commodity, to any person or persons, purporting to be the owner or owners thereof, unless such goods, wares, merchandise or other produce or commodity, shall have been *bona fide* received into store by such warehouseman, or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt.

(192.) SEC. II. That no warehouseman, wharfinger, or other person, shall issue any receipt or other voucher upon any goods, wares, merchandise, grain or other produce or commodity, to any person or persons as security for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity, shall be, at the time of issuing such receipt, the property of such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt or other voucher as aforesaid.

(193.) SEC. III. That no warehouseman, wharfinger or other person, shall issue any second receipt for any goods, wares, merchandise, grain or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncanceled.

(194.) SEC. IV. That no warehouseman, wharfinger or other person, shall sell or encumber, ship, transfer or in any manner remove beyond his immediate control, any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt.

(195.) SEC. V. Any warehouseman, wharfinger or other person, who shall violate any of the foregoing provisions of this act, shall be deemed a cheat, and subject to indictment, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary of this State not exceeding five years; and all and every person aggrieved by the violation of any of the provisions of this act, may have and maintain an action on the case against the person or persons violating any of the foregoing provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under this act or not.

(196.) SEC. VI. This act shall take effect and be in force from and after its passage.

An Act to punish the Fraudulent Issue and Transfer of Certificates of Stock in Corporations.  
[Approved Feb. 14, 1855. Laws, 1855, p. 168.]

(197.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That every president, cashier, treasurer, secretary or other officer, and every agent of any bank, railroad, manufacturing or other corporation, who shall willfully and designedly sign, with intent to issue, sell, pledge, or cause to be issued, sold or pledged, any false, fraudulent or semi-related certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, the signing, issuing, selling or pledging of which by such president, cashier, treasurer or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, or by some amendment thereof, shall be adjudged guilty of felony, and every such person or persons shall be liable to indictment, and on conviction shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

(198.) SEC. II. That every president, cashier, treasurer, secretary or other officer, and every agent, attorney, servant or employee of any bank, railroad, manufacturing or other corporation, and every other person who shall, knowingly and designedly, and with intent to defraud any person or persons, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, transferred, assigned or pledged, any false, fraudulent or semi-related certificate or other evidence of ownership of any share or shares of the capital stock of any bank, railroad, manufacturing or other corporation, every such person so issuing, selling, transferring, assigning or pledging, or causing the same to be done, shall be adjudged guilty of felony, and shall be liable to indictment, and on conviction shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

(199.) SEC. III. This act shall take effect and be in force from and after its passage.

### DIVISION XIII. FRAUDULENT AND MALICIOUS MISCHIEF.

SECTION	SECTION
200. Malicious mischief, what constitutes, and how punished.	202. Firing woods or prairie, how punished.
201. Public jail, &c., injury to, how punished.	203. Dedication of land for cemetery purposes.
	204. Penalty for damages to such land.

[Approved March 3, 1845. Rev. Stat. 1845, p. 179.]

(200.) SECTION CLVI. If any person shall willfully 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 burned 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, willfully 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.

(201.) SEC. CLVII. If any person shall, willfully 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.

(202.) SEC. CLVIII. If any person or persons shall, at any time hereafter, willfully 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 inclosure, 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.

An Act to Provide for the Dedication of Land for Cemetery Purposes.

[Approved Feb. 15, 1851. Laws, 1851, p. 111.]

(203.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any person or persons desiring to dedicate any lot of land, not exceeding five acres, as a burying ground or place for the interment of the dead, for the use of any society, association or neighborhood, may, by deed duly executed or recorded, convey such land to the county in which it is situated, by the corporate name of such county, specifying in such deed the society, association or neighborhood for the use of which the dedication is desired to be made, and thereby vest the title to such land in perpetuity, for the uses stated in the deed, and such land shall be thereafter exempt from taxes for all purposes whatever.

(204.) SEC. II. If any person shall willfully or maliciously cut down, break down, level, demolish or otherwise destroy, injure or damage any railing, fence or other inclosure around or upon any land conveyed under the provisions of this act, or any gate or post thereon, or shall remove, break, injure or deface any tomb or other stone, or any post, plank or board, or any inscription thereon, or shall cut down, destroy, injure or remove any tree or

shrub standing or growing upon such land, shall be liable to indictment, and upon conviction thereof, be fined not less than ten dollars, nor more than one hundred dollars.

#### DIVISION XIV. OFFENSES RELATIVE TO SLAVES, INDENTURED SERVANTS AND APPRENTICES.

<p>SECTION 205. Colored slaves or servants, harboring, &amp;c., how punished. 206. Colored persons, indentured, illegal disposition of, how punished.</p>	<p>SECTION 207. Minors and apprentices, keepers of public houses prohibited from harboring, &amp;c.; fine and penalty therefor.</p>
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[Approved March 3, 1845. Rev. Stat. 1845, p. 180.]

(205.) SEC. CLIX. 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 anywise 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.

(206.) SEC. CLX. 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 offense 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.

(207.) SEC. CLXI. 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 mistress 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.

DIVISION XV. CONSTRUCTION OF THIS CHAPTER, AND  
DUTY OF COURTS.

<p>SECTION 208. Indictment, form of. 209. Exceptions to form of indictment. 210. Civil actions may be maintained for offenses under this chapter. 211. Judges of supreme court, their duty under this chapter. 212. Death, punishment of, how inflicted. 213. Body of criminal, how may be disposed of. 214. Females, provisions of this chapter extended to.</p>	<p>SECTION 215. Offenses herein defined, how prosecuted and punished. 216. When punishment discretionary, court shall determine the same. 217. Fines, how disposed of. 218. Benefit of clergy abolished. 219. Power of court in cases of fine. 220. Infamous, what crimes deemed, and disabilities therefor.</p>
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(Approved March 3, 1845. Rev. Stat. 1845, p. 151.)

(208.) SEC. CLXII. Every indictment or accusation of the grand jury, shall be deemed sufficiently technical and correct, which states the offense in the terms and language of this code, or so plainly that the nature of the offense may be easily understood by the jury. The commencement of the indictment shall be in substance as follows:

"STATE OF ILLINOIS, } Of the ——— term of the ——— circuit court, in the year of  
County, } ss. our Lord 18—.

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 offense, and time and place of committing the same, with reasonable certainty)."

(209.) SEC. CLXIII. 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 offense 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.

(210.) SEC. CLXIV. Nothing in this chapter 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 offense 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 offense.

(211.) SEC. CLXV. 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.

(212.) SEC. CLXVI. 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.

(213.) SEC. CLXVII. The court may order, on the application of any respectable surgeon or surgeons, that the body of the convict shall, after death, be delivered to such surgeon or surgeons for dissection.

(214.) SEC. CLXVIII. This chapter shall extend to females committing any of the offenses made punishable by this chapter, although they may not be expressly named. 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 in the penitentiary for any offense 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.

(215.) SEC. CLXIX. All offenses herein defined, shall be prosecuted and punished as by this chapter is prescribed, and not otherwise; and all other offenses 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.

(216.) SEC. CLXX. 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.

(217.) SEC. CLXXI. 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 offense 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.

(218.) SEC. CLXXII. The benefit of clergy, appeals of felony and trials by battle, shall be and are hereby forever abolished.

(219.) SEC. CLXXIII. The court shall have power in all cases of conviction under this chapter, 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.

(220.) SEC. CLXXIV. Each and every person who may hereafter be convicted of the crime of rape, kidnapping, willful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sodomy or the crime against nature, incest, 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.

DIVISION XVI. OF PROCESS, INDICTMENT, ARRAIGNMENT,  
TRIAL, JUDGMENT, EXECUTION, AND WRIT OF ERROR.

SECTION	SECTION
221. Recognizance, how taken.	only, and may find indictment on oath of one witness, except in cases of treason and perjury.
222. <i>Capias</i> shall be issued when indictment found a true bill.	234. Courts to be governed by common law, except otherwise provided in this chapter.
223. Subpœnas shall be issued, &c.; penalty for refusal to obey subpœnas; attachments for witnesses, how issued.	235. When jury retires, constable or other officer shall attend; provided, in certain cases, jury may return a sealed verdict.
224. <i>Venire</i> not necessary in criminal cases. <i>tales</i> may be ordered when panel exhausted.	236. Liability of officer while attending jury, and of other persons conversing with the jury.
225. Prosecutor to be indorsed on "true bill" found by grand jury, except in certain cases: when prosecution deemed malicious, prosecutor liable for costs.	237. Offenders to pay costs when convicted.
226. Persons charged with crime, to be furnished with copy of indictment and list of jurors and witnesses.	238. Property of persons convicted under provisions of this chapter, bound from time of arrest, and execution shall issue for fines.
227. Prisoner may plead "not guilty."	239. Judgment for fine and costs may be replevied.
228. When prisoner stands mute, plea of "not guilty" to be entered.	240. Executions may be issued into any county.
229. When prisoner pleads "guilty," court shall explain consequences, and if prisoner persists, court may render judgment.	241. When person confined in jail for criminal offense has no estate, may be discharged, except as otherwise provided.
230. Challenge of jurors allowed.	242. Sureties may be released in certain cases, and defendant delivered into custody of officer.
231. <i>Jury de mediate lingua</i> not allowed.	243. Bill of exceptions shall be allowed.
232. Offense committed on county line, may be tried in either county.	244. Writ of error may be allowed upon terms specified in this section.
233. Grand jury to hear witnesses on behalf of people	245. Writs of error considered writs of right, but shall not be a supersedeas unless allowed by supreme court, or one of the justices thereof; proceedings on such application.

[Approved March 3, 1845. Rev. Stat. 1845, p. 183.]

(221.) SEC. CLXXV. 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 offense, bailable by law, to be indorsed 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.

(222.) SEC. CLXXVI. 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 offense is bailable; or if the offense 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 commissioners' court of the county where such indictment shall be 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 indorsement, 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.

(223.) SEC. CLXXVII. It shall be the duty of the clerks of the circuit courts, to issue subpœnas, 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 subpœnaed, and shall neglect or refuse to attend any circuit court, pursuant to the requisitions of such subpœna, 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 subpœna 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.

(224.) SEC. CLXXVIII. 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 *talesmen*, returnable *instanter*, until a full jury shall be obtained.

(225.) SEC. CLXXIX. No bill of indictment for false imprisonment, or willful and malicious mischief, shall be found "a true bill" by any grand jury, unless a prosecutor is indorsed 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 indorsed 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 circuit 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.

(226.) SEC. CLXXX. 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.

(227.) SEC. CLXXXI. Upon the arraignment of a prisoner, it shall be sufficient, without complying with any other form, to declare, orally, by himself or herself, 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.

(228.) SEC. CLXXXII. 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."

(229.) SEC. CLXXXIII. 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 offense.

(230.) SEC. CLXXXIV. 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 offense 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.

(231.) SEC. CLXXXV. In no case shall the right to a trial by jury *de mediatate lingue*, be allowed in criminal prosecutions.

(232.) SEC. CLXXXVI. Where an offense shall be committed on a county line, the trial may be in either county divided by such line; and where any offense shall be committed against the person of another, and the person committing the offense 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.

(233.) SEC. CLXXXVII. In all complaints 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 of 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.

(234.) SEC. CLXXXVIII. All trials for criminal offenses shall be conducted according to the course of the common law, except when this chapter points out a different mode, and the rules of evidence of the common law shall also, unless changed by this chapter, be binding upon all courts and juries in criminal cases. Juries in all cases shall be judges of the law and the fact.

(235.) SEC. CLXXXIX. 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.

(236.) SEC. CXC. 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.

(237.) SEC. CXCI. In all cases where any person or persons shall be convicted of any crimes or misdemeanors specified in this chapter, or of any offenses at common law, the court shall give judgment that the offender or offenders so convicted shall pay the costs of the prosecution.

(238.) SEC. CXCI. The property, real and personal, of every person who shall be convicted of any of the offenses punished by this chapter, 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.

(239.) SEC. CXCH. It shall and may be lawful for any person or persons, convicted of any criminal offense, to replevy the judgment for the 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 freeholder, 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 chapter 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.

(240.) SEC. CXCV. 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.

(241.) SEC. CXCVI. 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 offense, 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.

(242.) SEC. CXCVI. In all cases of bail for the appearance of any person or persons charged with any criminal offense, the security or securities of such person or persons may, at any time before judgment is rendered upon *scire facias* to show 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.

(243.) SEC. CXCVII. 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 exceptions 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.

(244.) SEC. CXCVIII. 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 indorsed 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.

(245.) SEC. CXCVI. 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 indorsed 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 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 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.

#### DIVISION XVII. LIMITATIONS OF INDICTMENTS AND PENAL ACTIONS.

SECTION 246. Limitation of time of finding indictment, except for treason, murder, arson and forgery; when	SECTION time fixed by statute: proceedings when indictment quashed.
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[Approved March 3, 1845. Rev. Stat. 1845, p. 189.]

(246.) SECTION CC. No person or persons shall be prosecuted, tried or punished, for any offense 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 offense shall have been done or committed. Nor shall any person be prosecuted, tried or punished for any misdemeanor or other indictable offense 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 offense, 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 offense.

#### DIVISION XVIII. GENERAL PROVISIONS.

SECTION 247. Conservators of the peace, who are constituted under the provisions of this chapter, their duties. 248. Duty of officers, when felonious offense is committed. 249. How and by whom offender may be arrested, and his examination. 250. Recognizance of prosecutor. 251. Recognizances, how taken. 252. Recognizances may be taken in vacation, except in certain cases. 253. Warrant, by whom shall be issued, and what officers shall execute. 254. Any person, not an officer, may be authorized to execute warrant.	SECTION 255. Prisoner may be conveyed from the place of arrest, through other counties, to county where offense was committed. 256. Warrant valid, if not under seal. 257. Search warrant, when may be issued, and disposition of stolen goods, when found. 258. When offender committed to jail, names, &c., of witnesses to be indorsed on warrant. 259. When copy of warrant of commitment demanded by prisoner, duty of officer, &c. 260. Habeas corpus, when issued, duty of court or judge. 261. On hearing of habeas corpus, judge to examine witnesses.
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[Approved March 3, 1845. Rev. Stat. 1845, p. 190.]

(247.) SECTION CCI. The judges of the supreme and 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 offenses, 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 to the next 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. 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.

(248.) SEC. CCII. When any felonious offense 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 imprisoned not exceeding three months.

(249.) SEC. CCIII. 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 offense in this State, or that a criminal offense 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 offense, 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 the 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 offense 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.

(250.) SEC. CCIV. 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 anything material to prove the offense 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 offense 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.

(251.) SEC. CCV. 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.

(252.) SEC. CCVI. 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 offense 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 indorse on the warrant of commitment, in bailable cases, in what sum bail ought to be taken.

(253.) SEC. CCVII. When a charge shall be exhibited upon oath, before any judge or justice of the peace, against any person for a criminal offense, 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 or constable, or other person, may pursue such offender into such adjoining county and make the arrest, as if such offender had been found in the county of the officer in pursuit.

(254.) SEC. CCVIII. 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.

(255.) SEC. CCIX. 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 offense be bailable, or be otherwise discharged by due course of law.

(256.) SEC. CCX. It shall not be necessary to the validity of any warrant for the apprehension of any person charged with an offense 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 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 offense such prisoner or prisoners shall have been committed.

(257.) SEC. CCXI. 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 or 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 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.

(258.) SEC. CCXII. 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 offense 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.

(259.) SEC. CCXIII. Whenever any prisoner in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer, a copy of said warrant of commitment, said sheriff or jailer shall indorse 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 jailer who shall neglect to indorse the name of said witness or witnesses on any copy of said commitment, each justice, judge, sheriff or jailer offending in the premises, shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name and for the use of any person who shall sue for the same in any court of record.

(260.) SEC. CCXIV. 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.

(261.) SEC. CCXV. 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 offense mentioned in the warrant of commitment as aforesaid, whether said offense 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.

PRIOR LAWS. An act respecting crimes and punishments; in force March 23, 1819. Laws, 1819, p. 212.

An act for the prevention of vice and immorality; in force March 5, 1819. Laws, 1819, p. 123.

An act for the prevention of vice and immorality; in force Jan. 31, 1821. Laws, 1821, p. 48.

An act relative to criminal jurisprudence; in force Aug. 1, 1827. Rev. Laws, 1827, p. 124.

An act relative to criminal jurisprudence; in force July 1, 1833. Rev. Laws, 1833, p. 171.

An act to punish the crime of incest; in force Feb. 7, 1843. Laws, 1843, p. 155.

An act to establish a mode to register births and deaths. Seventh Section; in force March 3, 1843. Laws, 1843, p. 212.

DECISIONS. In stating time in an indictment, it is necessary to mention the "year of our Lord." *Whitesides v. The People*, Breese, 4.

An indictment must on its face show that it is carried on "in the name and by the authority of the People of the State of Illinois." *Idem*.

Where an indictment charges the defendants with making a great noise and disturbance of the peace, the manner of making the noise should be stated. *Idem*.

Before a prisoner can be tried upon an indictment, it must be indorsed "a true bill," by the foreman of the grand jury. *Nomaque v. The People*, Breese, 109.

Objections to the forms of indictments must be made before trial. An omission in an indictment that the same was found on the "oaths" of the grand jury, will not reverse the judgment on error. *Cartiss v. The People*, Breese, 197.

When a proper application for a change of venue is made by one of several defendants in an indictment, it is error in the court to refuse it. *Clark v. The People*, 1 S. 120.

In an indictment for arson, the value of the property burned must be stated. Without this averment, the indictment is defective. *Idem*.

Under the 110th Section of the act of July 1, 1833, a justice of the peace may be indicted for taking up and corruptly causing animals to be appraised before him. *Wickersham v. The People*, 1 S. 128.

Upon a plea of "guilty," under an indictment for burglary, the court must fix the time of imprisonment in the penitentiary. *Blevings v. The People*, 1 S. 172.

In all cases of trial by jury, the jury fix the time of imprisonment; and in all cases where the defendant pleads guilty, the same must be done by the court. *Idem*.

Four persons were indicted jointly for a riot; one made application for a change of venue under the act of January 23, 1827, which was allowed: the indictment was sent to the county to which the venue was changed; afterwards, it was returned to the clerk of the court where it was found, and the other three defendants tried and convicted: *Held*, that there was no error in the proceedings, although there was no formal order directing the return of the indictment. *Hunter et al. v. The People*, 1 S. 454.

The caption is not part of an indictment. *Duncan v. The People*, 1 S. 456.

Quashing the first count of an indictment does not, where there are two counts, affect the caption. *Idem*.

An alien is not a competent juror in criminal cases. *Guykowschi v. The People*, 1 S. 481.

A verdict rendered by twelve men, one of whom is an alien, is not the verdict of twelve legal jurors, and no legal judgment can be entered on the same. *Idem*.

But this is the law in capital cases only. *Greenup v. Stoker*, 3 G. 202.

The people cannot prosecute a writ of error in a criminal case. *The People v. Dill*, 1 S. 257; *The People v. Royal*, 1 S. 557; *Gerard v. People*, 3 S. 363.

An indictment for an assault with an intent to commit murder, must charge the act to have been done feloniously. *Curtis v. The People*, 1 S. 285.

Appeal bonds in criminal cases are not amendable under the act of May 1, 1827. *Rev. Laws*, 1833. *Swafford v. The People*, 1 S. 289.

In cases of indictments for larceny, the jury must find the value of the property stolen. *Highland v. The People*, 1 S. 392.

Under the act incorporating the municipal court of the city of Chicago, the grand jurors could only be selected from the city, and such fact must appear on the face of the indictment. *Bell v. The People*, 1 S. 397.

The making, uttering or passing a counterfeit check, purporting to have been drawn by the canal commissioners, is a forgery within the meaning of the criminal code, and punishable by indictment, as such. *Crofts v. The People*, 2 S. 442.

Upon the trial of an indictment for bigamy, either marriage may be proved by such evidence as is competent to prove a marriage in other cases. *Jackson v. The People*, 2 S. 231.

An indictment against a justice of the peace for refusing to issue a subpoena, should state that he willfully and corruptly refused. *Jones v. The People*, 2 S. 477.

An indictment for having in possession instruments for counterfeiting coin, need not charge the offense to have been committed feloniously. *Miller v. The People*, 2 S. 233.

An indictment for an assault with intent to commit murder: *Held* sufficient under the statute. *Nixon v. The People*, 2 S. 267.

In an indictment for forgery, it is not necessary to allege a felonious intent. *Quigley v. The People*, 2 S. 301.

On an appeal to the circuit court in a criminal case, the trial is *de novo*. *Shirtliff v. The People*, 2 S. 7.

Objections to the mode of summoning jurors should be taken by motion to quash the indictment, or by challenge of the array, and not in the first instance on a motion for a new trial. *Stone v. The People*, 2 S. 326.

After a jury is empaneled, and it is discovered that one is an alien, the court may discharge him and supply his place. *Idem*.

The circuit courts by their common law powers have authority to direct the summoning of a new grand jury, after the regular jury is discharged. *Idem*.

Closing the doors of a court-house during a trial, to prevent noise and confusion, is no infringement of that clause of the constitution which guarantees to a party accused a public trial. *Idem*.

In an indictment for murder, the particular character of the wound which caused the death need not be stated. *Idem*.

Upon the trial of an indictment, upon a change of venue, it is sufficient if the record shows that the grand jury returned a "true bill," without showing that such indorsement was made on the back of the bill by the foreman of the grand jury. *Gardner v. The People*, 3 S. 86.

Objections of a formal character to the certificate of the record upon a change of venue, should be taken in the circuit court before trial. *Idem*.

It is not error to arraign a prisoner and compel him to plead once in the county where the indictment is found, before a change of venue, and again in the county where the cause is tried. But the latter arraignment is unnecessary. *Idem*.

A juror in a criminal case is not disqualified, unless he has formed or expressed a decided opinion as to the guilt or innocence of the accused. *Idem*.

Witnesses whose names are not indorsed on the back of the indictment, may, in the discretion of the court, be examined on the part of the people. *Idem*.

It is not necessary in an indictment against a person for having in his possession forged bank bills with intention to utter and pass the same, to allege that they were bank bills "for the payment of money;" the term "bank bills" is familiar, and conveys a definite meaning. *Townsend v. The People*, 3 S. 326.

A juror who has expressed a decided opinion in a criminal case, as to the guilt of the defendant, is incompetent. *Sellers v. The People*, 3 S. 412.

Where there are several good counts in an indictment and others which are bad, if there is a general verdict of guilty, the verdict must stand. *Townsend v. The People*, 3 S. 326.

All objections to the forms of indictments merely, must be made before trial. An indictment will be considered sufficient which states the offense in the language of the criminal code, or so plainly that the nature thereof may be easily understood by the jury. *Connolly v. The People*, 3 S. 474; *Swain v. The People*, 4 S. 178.

If persons are seen drinking and playing for money at a grocery, the jury may infer that it was done with the permission of the owner of the house, and for his gain. *Stolts v. The People*, 4 S. 168.

It is not necessary that there should be an unlawful assemblage in order to constitute a riot in this State. If two or more persons, being together, do an unlawful act against the person or property of another, or a lawful act in a violent and tumultuous manner, this is a riot. *Dougherty et al. v. The People*, 4 S. 179.

Under an indictment for an assault with intent to commit murder or mayhem, a defendant cannot be convicted of an assault with intent to commit a bodily injury. *Carpenter v. The People*, 4 S. 197.

Harboring an indentured negro servant is an indictable offense. *Chambers v. The People*, 4 S. 351.

The 149th section of the criminal code of 1833, (*Rev. Laws*, 1833, p. 206,) did not conflict with the constitution, nor the laws of Congress, in relation to fugitives from justice: it was a State police regulation merely, and under it all persons harboring or secreting slaves were liable to indictment. *Willard v. The People*, 4 S. 462; *Eells v. The People*, 4 S. 498.

An indictment for harboring a slave need not state the name of such slave. *Eells v. The People*, 4 S. 498.

Nor is it necessary to aver that the defendant had knowledge of the fact that the person harbored was a slave. *Idem*.

The owner of property in possession of the same, may legally resist an officer who attempts to levy an attachment thereon, against another person who is not the owner. *Wentworth v. The People*, 4 S. 550.

An error in judgment by the county commissioners of a county or other judicial tribunal, possessing discretionary powers, will not be considered the subject of indictment. *Eaman et al. v. The People*, 1 G. 4.

If a party by a voluntary contract pleads "guilty" of manslaughter, to an indictment for murder, and on such plea is sentenced to imprisonment in the penitentiary, he will not be discharged on a writ of habeas corpus, notwithstanding the law under which the plea was made had been repealed—without any saving clause relating to prior offenses. *Sellers v. The People*, 1 G. 183.

In the supreme court the record of an indictment and conviction for murder need not show that the names of the witnesses were indorsed on the indictment. *McKinney v. The People*, 2 G. 551.

Such want of indorsement is waived by plea, and can only be taken advantage of by motion to quash, and preserving that fact on the record of the circuit court. *Idem*.

It will be presumed by the supreme court, if not disclosed by the record, that a prisoner on trial was furnished with a copy of the indictment and list of witnesses and jurors, as provided by the statute. Such copy and list are waived by plea. *Idem*.

Also, that the jury were kept together during the trial, as required by the law. *Idem*.

Before a juror is sworn by the uplifted hand, it is unnecessary that he should state that he has conscientious scruples about being sworn upon the gospels. *Idem*.

When an application is made for a change of venue in a criminal case on the ground of prejudice of the people, the cause should be sent to an adjoining county, and not to one which does not join the county where the indictment is pending. *Baxter v. The People*, 2 G. 579.

A verdict rendered upon an indictment for receiving stolen goods is defective, unless it finds the value of the goods. *Sawyer v. The People*, 3 G. 53.

The record in a criminal case must show that an indictment was found and returned by the grand jury. *Rainey v. The People*, 3 G. 71.

An indictment for resisting an officer, need not state the mode of resistance. *McQuoid v. The People*, 3 G. 76.

In such indictment, an averment that the process is a lawful one, is equivalent to an averment of jurisdiction in the officer who issued it. *Idem*.

Such indictment must distinctly charge that the person resisted was an officer, and that while acting in such capacity he was opposed or resisted. The process under which he acted need not be set out in "hæc verba." *Idem*.

A plea of former acquittal must state that the offenses charged in the two indictments are the same. *Idem*.

A defendant in a criminal case cannot assign for error a decision in his favor. *Idem*.

An indictment for obstructing an officer must state that the process held by him at the time of the obstruction was a lawful one. *Cantrill v. The People*, 3 G. 356.

Sunday is not a judicial day. A verdict may be rendered and received, but no judgment can be pronounced, on Sunday. *Baxter v. The People*, 3 G. 368.

Motions for continuances in criminal cases are addressed to the discretion of the court. The decisions of the courts thereon cannot be assigned for error. *Idem*. See also, *Pate v. The People*, 3 G. 644; *Holmes v. The People*, 5 G. 478.

It is no objection to the competency of a witness that he has received a reward for apprehending a criminal. *Baxter v. The People*, 3 G. 368.

On a trial for murder, one of the jurors was sick and did not comprehend the argument of one of the counsel for the defendant. This is no ground for setting aside the verdict. *Idem*.

The distinction between accessories before the fact, and principals, is abolished by the statutes of this State. All may be indicted as principals. *Idem*.

When a verdict in a criminal case is rendered on Sunday, the court may, at a subsequent day or term, pronounce judgment on the verdict. *Idem*.

If it appears, by the record of a criminal proceeding, that the jury were permitted to disperse, it will be presumed that this was done by the consent of the defendant. *Pate v. The People*, 3 G. 644.

So also, it will be presumed that the jury were placed in charge of a sworn officer. *Idem*. See also, *Holmes v. The People*, 5 G. 478.

Motions for new trials in criminal cases are addressed to the discretion of the courts; their decisions thereon cannot be assigned for error. *Holiday v. The People*, 4 G. 111.

A general verdict will be sustained when there is one good count in an indictment. *Idem*.

In cases of misdemeanors merely, a verdict may be received in the absence of the prisoner. *Idem*.

Before a party can be convicted under the statute for having in possession counterfeit bank bills, with intention to pass the same, it must be shown that he had such bills in possession, that he knew them to be counterfeit, and that he intended to pass them fraudulently. *Brown v. The People*, 4 G. 439.

The court may give (in writing) such instructions in a criminal case as it sees proper, notwithstanding the statute which prohibits oral instructions. *Idem*.

A judge may appoint a special term either in term or vacation, or revoke an order appointing a special term. *Idem*.

A pardon for a criminal offense does not remit the costs which were adjudged against the party convicted. *Holiday v. The People*, 5 G. 214.

The General Assembly have power to release a penalty due to a county after verdict. *Idem*.

When a person finds property in the road, which has been lost by another, about which there are no marks by which the owner can be identified, and converts the same to his own use, this is not larceny. *Lane v. The People*, 5 G. 305.

If an applicant for a change of venue swears that information of the fact that the inhabitants of the county were prejudiced against him, came to his knowledge to-day, this is equivalent to a statement that he had then received the information for the first time. *Barrows v. The People*, 11 Ill. 121.

Where an exception is contained in the same clause of a statute which imposes a duty, the exception should be negated in the indictment; otherwise, if it is contained in a subsequent clause. *Loquat v. The People*, 11 Ill. 330; *Metzker v. The People*, 14 Ill. 101.

An indictment against a supervisor for not putting up guide boards, must state at what places or crossings the omission was made. *Loquat v. The People*, 11 Ill. 330.

A supervisor of roads is only bound to open and keep in repair roads so far as the road labor under his control will enable him to do it. *Idem*.

Appeal bonds in criminal cases are not amendable. *Walsh v. The People*, 12 Ill. 77.

The appellant in a case of assault and battery, has not a right, as a matter of course, to amend his appeal bond. *Stephens v. The People*, 13 Ill. 131.

To sustain an indictment against parties for living together in an open state of fornication or

adultery, the parties must live together openly and notoriously in such manner as to raise a presumption of illicit intercourse. *Seards v. The People*, 13 Ill. 597.

There was no appeal from the decision of a justice of the peace for a penalty under the "act to prohibit the retailing of intoxicating drinks," approved April 18, 1851. *Ward v. The People*, 13 Ill. 635.

A person who has formed a decided opinion in a criminal cause, is an incompetent juror. *Neely v. The People*, 13 Ill. 685.

The legislature may repeal so much of an act incorporating a city as confers upon its officers authority to grant licenses to sell ardent spirits. *Gutzwiller v. The People*, 14 Ill. 142.

The act of Feb. 1, 1851, in relation to the retailing of intoxicating drinks, is not unconstitutional. *Jones v. The People*, 14 Ill. 196.

Under this act a defendant may be committed until the fine and costs are paid. *Metzker v. The People*, 14 Ill. 101.

A refusal to grant a new trial on the ground that the verdict is against evidence, cannot be assigned for error in a criminal case. *Jones v. The People*, 14 Ill. 196.

The court, in its discretion, may permit witnesses whose names are not indorsed on the indictment to be sworn on the part of the prosecution. *Gates v. The People*, 14 Ill. 434; *Perry et al. v. The People*, 14 Ill. 497.

An indictment for obtaining goods under false pretenses, is sustained by proof of some of the pretenses stated in such indictment. *Cowen et al. v. The People*, 14 Ill. 349.

Criminal cases from the recorder's court of the city of Chicago, can be removed to the supreme court only by writ of error. No appeal lies. *Perry v. The People*, 14 Ill. 439.

The act establishing the recorder's court of the city of Chicago is constitutional. *Perry et al. v. The People*, 14 Ill. 497.

The act of Feb. 12, 1853, relating to the sale of ardent spirits, revived and continued in force "an act to prohibit the retailing of intoxicating drinks," approved Feb. 1, 1851. *Sullivan v. The People*, 15 Ill. 233.

The act of Feb. 9, 1853, authorizes amendments of appeal bonds in cases of assaults and batteries, but did not authorize the appeal to be taken except in the manner already provided by law, before the clerk of the circuit court. *Ham v. The People*, 15 Ill. 302.

A person tried on an indictment for murder, convicted of manslaughter, a new trial granted, cannot afterwards be punished or convicted for murder. The first conviction of manslaughter is an acquittal of the murder. *Brenan et al. v. The People*, 15 Ill. 511.

## CHAPTER XXXI.

## CUMBERLAND ROAD AND CANAL.

- | SECTION   | SECTION  |
|---|--|
| 1. Removing materials from road, or injuring works on same, how punished.   | 13. Three commissioners shall be appointed: vacancies.   |
| 2. Trespass upon road, what deemed and penalty therefor.  | 14. President of the board, secretary and treasurer; meetings, how called; adjournments. Agents, engineers, &c.; United States engineer. |
| 3. Arrests, how made.   | 15. Commissioners shall take an oath, and give bond; their compensation.   |
| 4. Jurisdiction of justices and courts, and right of appeal.  | 16. Treasurer shall take an oath, and give bond; additional security; removal of treasurer from office.                                  |
| 5. County commissioners to have jurisdiction over roads.  | 17. Duty of the commissioners to fix the route of the canal; surveys, and levels, maps, &c.  |
| 6. Supervisors, their jurisdiction and duties.  | 18. Alternate sections, when selected.   |
| 7. Commissioners appointed to open a canal between the Illinois river and lake Michigan.  | 19. Notice, and sale of land; certificate of purchase; patents; town lots; sales to be for money.  |
| 8. Commissioners to elect a president and to employ an engineer and others, and pay them for their services.                            | 20. Treasurer to keep an office. Certificate of purchase at private sale. Books and entries therein.                                     |
| 9. Territory contiguous to the canal to be examined, and maps and surveys to be made.   | 21. Drafts on the treasurer. Detailed statements to the General Assembly.  |
| 10. Commissioners to make calculations and estimates of the expense of completing said canal, and make report to next General Assembly. | 22. Commissioners may sue or be sued; their power over private property.   |
| 11. Commissioners, &c., to correspond with governors of Ohio and Indiana.   | 23. Dimensions of canal. Reasonable expenses, how paid.  |
| 12. Auditor to issue his warrant to a majority of the commissioners for six thousand dollars.   | 24. Board of commissioners constituted; name and duties. Governor to fill vacancies in the board.  |
|   | 25. One to be acting commissioner; shall give bond;  |

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26. Oath: compensation. Successor, how appointed. Substitutes, when sick, or absent. Duties of acting commissioner.
27. Treasurer, his duties: compensation; *proviso*.
28. Duties of board of commissioners; their compensation.
29. No further sale of canal lands by private entry; *proviso*.
30. Subdivision of land for sale.
31. Board may employ engineer; his duties.
32. Town of Ottawa.
33. Mouth of the Fox river: ground reserved.
34. Canal commissioners: their rights and duties, in using building materials, and reserving land.
35. Donations for seats of justice.
36. Dimensions of canal.
37. Calumet. Railroad. When excavation shall commence.
38. Repealing clause.
39. Office of canal commissioners abolished.
40. Shall deliver over all moneys, books, &c., in their possession.
41. Treasurer of canal fund shall deliver as above.
42. Auditor, attorney general and treasurer to adjust the affairs of the said commissioners and treasurer.
43. Shall report their proceedings to the legislature; when act to take effect.
44. Penalty for trespassing on canal lands.
45. Duty of sheriffs and other officers in relation thereto.
46. Of prosecuting attorneys.
47. When act to be in force.
48. Governor authorized to negotiate a loan on the faith of the State.
49. Certificate of stock: faith of the State pledged.
50. Transferring of stock.
51. Certificates of stock to be sold; *proviso*.
52. Moneys to be deposited in bank.
53. What constitutes canal fund; *proviso*.
54. Governor to appoint board; vacancy, how filled.
55. Term of service.
56. Salary.
57. Incorporation of board.
58. To appoint a secretary.
59. Commissioners to be sworn; *proviso*.
60. When money due, treasurer may draw check on bank.
61. Commissioners to obtain a quarterly report from bank, and lay it before board.
62. Commissioners to contract for material and labor. Conduct of all officers; to enforce duties; to examine state of canal, and have superintendence thereof.
63. Description of canal; *proviso*.
64. Measures for constructing.
65. Inspect accounts.
66. Furnish means.
67. Powers.
68. May use lands, water streams, &c.
69. To employ agents, engineers, &c.
70. Notice of entering into contracts.
71. Proposals.
72. To let out contracts.
73. Contracts to be returned to auditor.
74. Materials exempt from execution.
75. Death of contractor; *proviso*.
76. Rules and regulations.
77. To be posted up, &c.
78. Filled in auditor's office.
79. To select canal route, town site, and lay off lots.
80. To sell lots in Chicago and Ottawa; *proviso*; further *proviso*.
81. To make out a list of lots, &c., and certify the same to the treasurer: second sale; *proviso*.
82. Terms of sale; waste.
83. Secretary and treasurer to be as register and receiver.
84. Treasurer to grant certificate.
85. Moneys to be deposited in bank.
86. No commissioner to purchase lands or lots; penalty; *proviso*.
87. Persons combining at sale not to bid against each other; *proviso*.
88. Revenue, tolls, &c., pledged.
89. Make report to the governor quarterly.
90. Annual report.
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90. Commencement and termination of canal.
91. Act repealed.
92. Election by vote of both houses for three commissioners. Additional duties of president and treasurer.
93. Duties of commissioners.
94. Shall require a survey of route by engineer, who shall report to board of commissioners. Engineer to take oath of his estimates and surveys.
95. Said board shall authorize survey of canal route.
96. Commissioners shall take and subscribe oath; form of.
97. Commissioners shall have power to sell parts of canal lands in Chicago township, to produce one million of dollars; *proviso*.
98. Commissioners shall have power to cause surveys, &c.
99. Navigable feeder to be constructed.
100. Judge of circuit court shall appoint three commissioners, to determine questions of damages; their duties; *proviso*; further *proviso*.
101. Commissioners shall insist upon the right of the State to the right of way.
102. Compensation of persons appointed to assess damages.
103. Board to deliver copies of their reports to each of the parties.
104. Commissioners shall cause plats of Chicago and Ottawa to be recorded; *proviso*.
105. Governor to borrow on credit of the State, the sum of \$500,000.
106. Part of act repealed; regulations and restrictions to be published.
107. Estimates to be made of work executed under the direction of the board and engineer.
108. 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.
109. All former acts conflicting with this act repealed.
110. Portion of section of this act repealed.
111. Agents to be elected.
112. Shall visit all residents; may permit after taking bond; *proviso*.
113. Persons residing upon their own land, &c., how considered.
114. Bond with securities; penalty; form of bond.
115. Obligees of bond.
116. Penalty for injury done.
117. Timber taken from canal land; liability.
118. If provisions are violated; person liable to action; duty of sheriffs.
119. Offender liable, how recovered; *proviso*.
120. Action of assumpsit; *proviso*; further *proviso*.
121. Jurisdiction of circuit court; duty of clerks.
122. Sheriff, &c., to be liable.
123. Canal lands, what they include.
124. Duty of commissioners, &c.
125. Governor to cause to be published in newspapers, proclamation.
126. Release from penalties.
127. Confirmation of agents.
128. When not needed, governor may discharge.
129. Bonds taken by agents.
130. If any agent of State refuse to act, governor to appoint successor.
131. Power given to canal commissioner to sell land.
132. No two sections to be sold together.
133. Terms of sale.
134. Duty of governor in negotiating loans.
135. Navigable feeder.
136. Re-survey to be made.
137. Bason may be enlarged.
138. Block fourteen when appraised.
139. Duty of treasurer of board of commissioners.
140. Governor authorized to negotiate loan.
141. Act repealed in respect to purchasers, on conditions; time of payment; failure to work forfeiture.
142. What bills to be received by canal commissioners in payment of debts.
143. What contractors entitled to monthly payments.
144. Right of legislature.
145. Part of tenth section repealed.
146. Duty of auditor to open accounts between State and canal.
147. Interest to be charged.

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148. Auditor shall notify governor: duty of governor to examine accounts.
149. Duty of commissioners.
150. Injury done to lands.
151. Service of assessors not required.
152. Lands to be drained.
153. Claims of same improvement.
154. Per cent. retained from contractors.
155. One improvement upon two lots.
156. Sale of lots; *proviso*.
157. Number sold at one place. Notice of sale. Valuation of lots.
158. Leases to contain reserve.
159. Quantity of water.
160. Leases to be recorded.
161. Recording, how paid.
162. Condition.
163. Power of board.
164. Board to take measures to carry into effect this act.
165. Walls of houses.
166. Sealed proposals.
167. Purchasers to give bond.
168. Provisions of sections of law applicable.
169. Power of taking lots, &c., reserved to State.
170. Sale of lots regulated; terms of sale.
171. Conditions of sales.
172. Certificates of purchase.
173. Certificates evidence of title.
174. Powers of commissioners extended.
175. Judgment against contractor; board may pay judgment; *proviso*.
176. Checks on bank, how signed; to whom payable; duplicate receipts.
177. Check to remain with secretary.
178. Treasurer's accounts; bank accounts; *proviso*.
179. Estimates of work; half of estimate, when paid.
180. New measurement may be granted; conditions.
181. Provisions, &c.
182. Lots may be sold at valuation.
183. Certificate of purchase; purchaser to file affidavit; form of.
184. Commissioners may diverge to Calumet river; shortest route.
185. Circuit judge to appoint assessors; vacancies.
186. No damage allowed for use of water.
187. Islands, &c., deemed canal lands.
188. Purchasers may pay amount due any time.
189. When State agents may purchase canal lands.
190. When contractor may have the benefits of this act.
191. Contractors paid at Ottawa and Lockport.
192. Where work can be done cheaper without contract.
193. Sale may continue twenty days.
194. Agents discharged. Commissioners to appoint agents.
195. Duty of agents; *proviso*.
196. Crops may be removed.
197. Agents may sell wood, &c.
198. Persons removing stone liable.
199. Agents may be removed.
200. Money how accounted for.
201. Rights of persons to whom permits granted.
202. Stone quarries may be opened.
203. Persons failing to deliver premises; *proviso*.
204. Judgment on bond.
205. Canal lands and lots, how paid for. Bonds cancelled. Lien of State not affected.
206. Act to extend to heirs.
207. Improvements, how valued.
208. Lands selected to be sold.
209. Commissioners may purchase.
210. Valuation of lots, how made.
211. First section in force for one year; fifth and sixth, for six months.
212. Commissioners to pay W. B. Archer, G. S. Hubbard, and Wm. F. Thornton.
213. Forfeited lots reserved from sale.
214. Governor authorized to borrow \$4,000,000, additional to former loans.
215. To execute bonds; how signed.
216. Faith of the State pledged to pay interest on bonds.
217. Name of bonds.
218. Agent to sell.
219. How money kept and used.
220. Certain right reserved to State.

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221. No bonds to be sold for less than par.
222. State to receive the money as needed for expenditure.
223. Lots donated to religious societies. Conditions. Title, how vested.
224. Lots for school-houses.
225. Commissioners of canal to give lots to religious societies when so requested.
226. Title to lots.
227. Money borrowed to be deposited in bank.
228. Canal commissioners to pay interest.
229. Temporary loan; amount of loan; *proviso*.
230. Canal commissioners to sell lands and lots; *proviso*.
231. Timber land divided in small lots; purchase money; restriction.
232. Principal engineer; resident engineer; assistants; salaries; *proviso*.
233. Damages claimed, how adjusted; *proviso*.
234. Board of public works may employ engineers.
235. Salaries of engineers.
236. Act changed.
237. Auditor to settle accounts of canal agents; *proviso*.
238. Commissioners to issue checks to pay contractors; to bear six per cent. interest; *proviso*.
239. Purchasers may select lands.
240. Purchaser shall relinquish lands to State.
241. Balance, how paid.
242. Part of lot may be relinquished.
243. Payment may be placed on land other than lot.
244. Record of proceedings under this act.
245. Rights may be transferred; *proviso*.
246. Obstructions to be removed.
247. Governor hereby authorized to negotiate a loan of \$1,000,000 on credit of canal, &c.
248. Who are entitled first to subscribe for and take loan; class entitled to said loan; not taken by first or second class, may be taken by any other persons.
249. Board of trustees established; governor to appoint one and subscribers two of said trustees. Vacancy, how filled.
250. Time and place of electing trustees by subscribers. Term of office of trustees.
251. Subsequent elections, how conducted.
252. Number of votes for each stockholder.
253. Elections to be by ballot; president.
254. Powers and duties of trustees; to take oath and give bond.
255. Disposition to be made of bonds, &c., when holders become subscribers for said loan.
256. Canal and canal lands granted to trustees as security for the payment of said loan, and the bonds, &c., owned by the subscribers to said loan.
257. Subscribers to enter into agreement with governor; terms of agreement; *proviso*; further *proviso*.
258. Certificate to be issued to stockholders; nature of certificate; principal and interest, how paid.
259. Trustees to proceed to complete canal, and how; *provisos*.
260. Canal, when and how to be completed. Trustees required to keep account of their transactions, and report to governor; *proviso*.
261. Trustees to establish rates of toll; rules, by-law.
262. Annual dividends to be declared; *proviso*; further *proviso*.
263. Governor to appoint appraisers to assess damages of contractors.
264. Time when act shall take effect; conflicting laws repealed.
265. Upon fulfillment of trust, canal property to revert to State.
266. Faith of the State pledged to supply defects in this act.
267. Bond holders and others failing to subscribe for said loan, governor to effect a contract; *proviso*; further *proviso*.
268. Chief engineer to be employed; to give bond, and take oath.
269. Laws repealed.
270. Certain officers continued in office for a limited time.
271. Commissioners to receive evidences of indebtedness in payment of bonds, &c.



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272. When act shall take effect.
273. Commissioners of Illinois and Michigan canal to give certificates for money due contractors for work on canal; *proviso*.
274. Persons who have made improvements on canal, to receive same in certain cases; *proviso*.
275. Trustees of Illinois and Michigan canal may sell certain water power and lots at Ottawa; *proviso*.
276. Settlers who are not entitled to pre-emptious.
277. Assessments on canal lands.
278. When tax not paid, extent of sales.
279. Sales heretofore made, considered as within the purview of this act.
280. Duty of assessors in describing the land; description to be filed.
281. Right of purchaser to continue payments agreed by original purchaser.
282. Payments to be made in gold or silver.
283. Agent to be appointed.
284. To receive two dollars per day; how paid; *proviso*.
285. To give bond.
286. Penalty for cutting timber; how recovered.
287. Fallen timber to be used; *penalty*.
288. Penalty for removing stone, rock or coal.
289. Penalty for injuring or destroying canal materials.
290. Judges to give this act in charge to jury.
291. Actions not to be dismissed on account of error.
292. Powers of commissioners increased; agents to report.
293. Parts of acts repealed; suits commenced; how prosecuted.
294. Authorized to sell timber, stone, &c.
295. To offer for sale canal lands; conditions of sale; *proviso*; further *proviso*.
296. When act to take effect.
297. Governor to execute and deliver deed of trust.
298. Decision of a majority conclusive.
299. When sufficient sum not subscribed; *proviso*; further *proviso*.
300. When amount due for arrears is extinguished.
301. How preliminary expenses paid.
302. If canal not completed within three years.
303. Tax of one mill levied; three mills; three and one-half mills.
304. How tax to be appropriated.
305. Governor required to make semi-annual payments of interest.
306. Lot in town of Chicago to be appropriated. Lots exchanged.
307. Power of trustees to make arrangements, &c.
308. Donation of lot.
309. Terms of donation.
310. When act to be in force.
311. Time for registering canal bonds. American subscribers' rights.
312. Name and style of suits against canal.
313. State trustee to prosecute and defend suits, when.
314. Former act modified.
315. Board to determine number of lots, &c.; saving clause.
316. Sales, when made; *proviso*.
317. May withhold timber, &c., from sale; exception.

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318. Lots, &c., may be taxed.
319. Governor to issue canal indebtedness on awards.
320. When act to take effect.
321. Former act in force.
322. State trustee.
323. Powers. Not to diminish value of canal lands.
324. Suits.
325. Religious society may sell lot; *proviso*.
326. Trustees to give deeds. Special provision.
327. Governor to issue patent; when act to take effect.
328. Governor required to issue certificates to certain canal contractors.
329. Claims to be filed in secretary of State's office.
330. Canal claims to be proven.
331. Internal improvement claims before auditor.
332. Claims barred, if not filed.
333. Certificate; testimony; perjury.
334. When act to be in force.
335. Contractors may surrender amount.
336. Governor to compute interest on scrip or canal indebtedness, and issue certificates therefor.
337. Shall keep a complete record of said scrip, &c.
338. Bonds chargeable to canal fund.
339. Officers authorized to administer oaths.
340. Oaths to have full force.
341. Perjury to be punished.
342. Certificate to be evidence.
343. Copy of rules, &c., in force.
344. When act to be in force.
345. Street vacated.
346. Slip authorized; *proviso*; when act to be in force.
347. Penalties, when recovered before justice of peace.
348. Penalty for injuring canal banks, &c.
349. Re-appraisement of lands and lots may be made.
350. Vacancy in board of appraisers, how filled.
351. When act to be in force.
352. Consent on the part of the State, to create surplus water, to settle with owners of land, &c. to make conveyances, &c.
353. Trustees authorized to acquire control of water power.
354. Doings of trustees to be binding on State.
355. Commissioners, their duties.
356. Testimony on the part of the claimants.
357. Clerk. Compensation of commissioners.
358. Witnesses; *proviso*.
359. Notice to claimants.
360. Oath.
361. Attorney for the State.
362. Qualification.
363. Deeds admitted to record without proof or acknowledgment.
364. Trustees authorized to construct certain bridge over canal.
365. When act to take effect.
366. Commissioners appointed.
367. Examine claims and hear testimony; *proviso*.
368. To make report; *proviso*.
369. Claimants to make oath; *proviso*.
370. Majority of commissioners have power to act and appoint attorney and clerk.
371. Notice.
372. Compensation; *proviso*.
373. Act public; when to be in force.

## CUMBERLAND ROAD.

[Approved March 3, 1845. Rev. Laws, 1845, p. 194.]

(1.) SECTION I. If any person or persons shall be guilty of removing any materials for the construction of the Cumberland road, in this State, now made or hereafter to be made and constructed, or deface, injure or destroy any of the works, or steal or destroy any tool, instrument or materials belonging to the United States, or to any person for the use of said road, he or they shall be deemed guilty and punished under the laws then existing and in force for the punishment of similar offenses on individual and State property.

(2.) SEC. II. If any person or persons shall store any combustible or other matter in or near any of the culverts or bridges, or obstruct them in

any manner whatever, or encamp or build fires within or near them, or obstruct or damage any of the culverts, ditches, grades or drains, remove or deface any mile stones, or stop with teams to feed on the road, he or they shall be deemed guilty of trespass, and shall be held accountable under the existing laws; and suits may be brought against said trespassers, by any agent of the government or any other person who may take upon himself to attend to the same, for all such offenses.

(3.) SEC. III. In cases arising under the provisions hereof, the individual may be taken by *capias*, or warrant founded on affidavit, and held to bail or committed to jail.

(4.) SEC. IV. Suits may be brought before any justice of the peace or court having competent jurisdiction to try and hear such cases, and the right of appeal to the circuit court is reserved as in similar cases provided by law.

(5.) SEC. V. The county commissioners' courts in each county through which the Cumberland road now passes, or may hereafter pass, shall have supervisory control over the same, whenever the same shall not be under the care or supervision of some person or persons authorized by the United States, and cause the same to be kept in repair, in the same manner as prescribed by the laws of this State for keeping in repair the State and county roads in the several counties in this State, and may make such order and regulation concerning the same as they shall deem necessary and proper for the repair and preservation of the same.

(6.) SEC. VI. It shall be the duty of the supervisor in each road district, whenever the county commissioners' court of the county shall direct, according to the provisions of this chapter, to cause the said road to be kept in repair through his road district, in the same manner as is provided by law for keeping in repair other State and county roads, and shall cause the same to be worked upon by the persons residing in his road district; and if such supervisor shall fail, neglect or refuse to do so, he shall be liable to the same penalties for such failure, neglect or refusal, as is provided by law on other roads in his district. And if any person subject to work upon public roads in any such road district, shall fail, neglect or refuse, when required by the supervisor of such road district, to work on said road, he shall be liable to the same penalties for such failure, neglect or refusal, as is provided for like cases on other public roads, and to be recovered in the same manner, to be collected and paid as in other cases of public roads in this State.

## CANAL.

An Act to provide for the Improvement of the Internal Navigation of this State.

[Approved Feb. 14, 1823. Laws, 1823, p. 151.]

(7.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That Emanuel J. West, Erastus Brown, Theophilus W. Smith, Thomas Sloo, junior, and Samuel Alexander, be, and they are hereby, appointed a board of commissioners, to consider, devise and adopt such measures as shall or may be requisite to effect the communication, by canal and locks, between the navigable waters of the Illinois river and lake Michigan; and in case of the death or resignation of any of the said commissioners, in the recess of the General Assembly, the governor, or the person administering the government of this State, shall*



appoint another commissioner or commissioners to supply such vacancy or vacancies, who shall continue in office until the end of the next session of the General Assembly.

(8.) SEC. II. *Be it further enacted*, That the said commissioners shall choose one of their number to be president of said board, who shall have power to call a meeting of the same, whenever, in his opinion, it shall be requisite and necessary; and the said board may adjourn from time to time, to meet at any time and place they may deem most conducive to the public good: and further, the said commissioners shall have power to employ an engineer, and such other persons as may be necessary to enable them to fulfill and discharge the duties imposed upon them by this act; and to allow and pay the said engineer and other persons, so by them employed, for their respective services, such sum or sums of money as may be adequate and reasonable.

(9.) SEC. III. *Be it further enacted*, That it shall be the duty of the said commissioners, as soon as may be after the passage of this act, to cause that part of the territory of this State which may lie upon or contiguous to the probable courses and ranges of the said canal, to be explored and examined for the purpose of fixing and determining the most proper and eligible route for the same, and to cause all necessary surveys and levels to be taken, and accurate maps, field books and drafts thereof to be made: and further, to adopt and recommend proper plans for the construction and formation of the said canal, and of the locks, dams and embankments, tunnels, culverts and aqueducts, which may be necessary for the completion of the same; and to cause all necessary plans, drafts and models thereof, to be executed under their direction.

(10.) SEC. IV. *Be it further enacted*, That it shall be the duty of the said commissioners to make, or cause to be made, with as much accuracy and minuteness as may be, calculations and estimates of the sum or sums of money which may or will be necessary for completing the said canal, according to the plan or plans which may be adopted and recommended by them for the construction and formation of the same, and to cause the said calculations and estimates, and all surveys, maps, field books, plans, drafts and models, authorized and directed by this act, or so many thereof as may be completed, together with a plain and comprehensive report of all their proceedings, under and by virtue of this act, to be presented to the General Assembly of this State, at the commencement of their next regular session, or at the commencement of an extra session of the present General Assembly, should the governor convene the same.

(11.) SEC. V. *Be it further enacted*, That the said commissioners are authorized and required to invite the attention of the governors of the States of Ohio and Indiana, and, through them, the legislatures of their respective States, to the importance of improving and connecting the navigation of the Wabash and Maumee rivers, by canal communications, and to recommend the adoption of preparatory measures to effect that object; and that the said commissioners report, as required in the preceding section of this act, all their correspondence and proceedings in relation to effecting the aforesaid communication.

(12.) SEC. VI. *Be it further enacted*, That it shall be the duty of the auditor of this State, whenever a majority of the said commissioners shall

require it, to issue his warrant on the treasury, to pay to the order of a majority of the said commissioners, out of any money in the treasury not otherwise appropriated, any sum or sums of money, in the whole not exceeding six thousand dollars, and for which the said commissioners shall account to the auditor, on or before the tenth day of the next regular session of the General Assembly.

An Act to provide for Constructing the Illinois and Michigan Canal.

[Approved Jan. 22, 1829. Laws, 1829, p. —.]

(13.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the governor shall biennially nominate, and by and with the advice and consent of the Senate, appoint, three commissioners, whose duty it shall be to consider, devise and adopt such measures as may be required to facilitate and effect the communication, by means of a canal and locks, between the navigable waters of Illinois river and lake Michigan. And in case of the death, resignation or refusal to act, during the recess of the legislature, of either of said commissioners, the vacancy thereby occasioned shall be filled by the governor.

(14.) SEC. II. The said commissioners shall choose one of their number to be president of the board, and shall appoint some suitable person or persons to be their secretary and treasurer, who shall be allowed and paid quarter yearly, such compensation, out of the canal fund, as the said commissioners shall deem reasonable and just. And the president of the board shall have power to call a meeting of the commissioners, whenever, in his opinion, the public interest requires it, or a majority of the commissioners may request it. And the said board may adjourn, from time to time, to meet at any time or place they may deem most conducive to the public good. And the said commissioners shall have power to employ such agents, engineers, surveyors, draftsmen and other persons, as in their opinion may be necessary to enable them to fulfill and discharge the duties imposed upon them by this act, and to pay them such compensation for their services as they may think them justly entitled to: *Provided*, That if the government of the United States furnishes an engineer, it shall be the duty of the said commissioners to accept of his services, for the purposes contemplated by this act.

(15.) SEC. III. It shall be the duty of the said canal commissioners, before they enter upon the discharge of the duties imposed upon them by this act, to take an oath, well and faithfully to execute the duties of their office, and severally to enter into bond to the people of the State of Illinois, to be approved by the governor, with at least two good and sufficient securities, in the penal sum of twenty thousand dollars, faithfully to account for all moneys that may come into their hands, by virtue of their office; and they shall respectively receive, as a compensation for their services, three dollars per day, for each day they may be necessarily engaged in discharging the duties imposed by this act, out of the canal fund, and the treasurer shall pay the same.

(16.) SEC. IV. The treasurer, before entering upon the discharge of the duties of his office, shall take an oath well and faithfully to execute the duties of treasurer, and shall enter into bond, with two or more good and sufficient securities, to the canal commissioners, to be approved by them,

conditioned for the faithful discharge of all the duties imposed on him by this act, or which shall hereafter be imposed upon him by law, and to account faithfully for all sums of money and effects that may come to his hands, as treasurer. And it shall be the duty of the canal commissioners, whenever the money in the possession of the treasurer, or to be received by him, shall exceed the sum in which he shall have given bond, to require him to give additional bond, with additional security, sufficient to cover the amount received, or to be received, by said treasurer; and for failure to give such bond, or for any culpable neglect of duty, said commissioners may remove him from office, and may appoint another in his place.

(17.) SEC. V. It shall be the duty of the canal commissioners, as soon as practicable after the passage of this act, to cause those parts of the territory of this State which lie upon or contiguous to the probable course or range of said canal, to be explored and examined for the purpose of fixing and determining the most proper and eligible route for the same; and to cause all necessary surveys and levels to be taken, and accurate maps, field books and drafts thereof to be made; and as soon thereafter as they may be able to command sufficient funds, and deem it expedient, they shall commence the work by opening a canal, and constructing locks, aqueducts, dams and embankments, to effect a navigable communication between lake Michigan and the Illinois river.

(18.) SEC. VI. The canal commissioners shall select, or cause to be selected, as soon as practicable, in conjunction with such commissioner as shall be appointed by the commissioner of the general land office, under the direction of the president of the United States, the alternate sections of land granted to this State by the provisions of an act of Congress entitled "An act to grant a quantity of land to the State of Illinois, for the purpose of aiding her in opening a canal to connect the waters of the Illinois river with those of lake Michigan," approved 2nd March, 1827. And if no commissioner shall be appointed on the part of the general government, the said commissioners, or either of them, shall proceed to make such selection; and shall, without delay, forward to the governor a duplicate copy of the list containing the numbers of each section by him or them selected, who shall forward a copy of the same to the commissioner of the general land office.

(19.) SEC. VII. As soon as said lands shall have been selected, and a duplicate list thereof furnished as aforesaid, it shall be the duty of said commissioners to give the necessary public notice, and proceed to sell the same, at any place, either in this State or elsewhere, as they may think best, in half quarter sections, quarter or fractional sections. The sale shall be conducted in the same manner, and the land sold upon the same terms and conditions, in all respects, as the lands of the United States are now sold. Any one of said commissioners may superintend said sales, and the treasurer shall have the same power, and perform the same duties in the disposal of said lands, that are exercised by the receivers of public moneys of the United States. And it shall be the duty of the said superintending commissioner or commissioners, to grant to the purchaser or purchasers a certificate of purchase, containing a description of the number of acres purchased, and the price for which the same was sold; duplicates of all which said commissioner or commissioners shall forward to the auditor of public accounts, who shall record the same. And the person holding such certifi-

cate shall, upon presenting the same to the governor, receive a patent for the land described in the same, signed by the governor, and countersigned by the secretary of State, with the seal of the State annexed thereto. The said commissioners shall have power to lay off such parts of said donation into town lots, as they may think proper, and to sell the same at public sale in the same manner as is provided in this act for the sale of other lands. No sale shall be made otherwise than for cash. No land shall be sold at private sale, until the same shall have been offered at public sale.

(20.) SEC. VIII. The treasurer at all times (except the times of public sale) shall keep an office open at some point on the route of said canal, at which persons may enter any of the lands included within the said donation, at one dollar and twenty-five cents per acre, in cash, in the same manner in which lands may be entered in any of the land offices of the United States. And at all such private sales the treasurer shall grant a certificate of purchase to the purchaser, containing a description of the quantity of land, and the price for which the same was sold; upon presenting which to the governor, the party shall be entitled to receive a patent for the same, as above provided. It shall be the further duty of the treasurer to make entries of sales of lands made by him, in a book or books to be kept by him for that purpose, containing a faithful description of the quantity of acres in each tract sold by him, and the price at which the same was sold, and he shall make monthly returns therefor to the auditor of public accounts.

(21.) SEC. IX. It shall be the duty of the commissioners (a majority of whom may act in all cases whatever,) to draw upon the treasurer in favor of all persons to whom the board may become indebted; and said treasurer shall pay out no money except upon the order of said commissioners, or as is herein expressly provided for; and he shall take receipts therefor. Duplicates of all orders shall be kept by said commissioners, and it shall be the duty of said commissioners and treasurer, to furnish duplicates of all orders and receipts, and a complete and detailed statement of the amount of sales and receipts, the quantity of land sold, the prices for which the same was sold, and of all their proceedings, to each called or regular session of the General Assembly, accompanied with such plans, remarks and observations as they may be enabled to make, respecting the further progress and execution of said work.

(22.) SEC. X. Said commissioners may sue and be sued, and defend in the name of "the Board of Commissioners of the Illinois and Michigan Canal." And to enable said commissioners to accomplish the object herein contemplated, it shall be lawful for them to enter, and take of and use, any lands, waters and streams, necessary for the prosecution of the works intended by this act.

(23.) SEC. XI. The canal contemplated by this act shall have the following dimensions, to wit: At least forty feet in width at the summit water line, twenty-eight feet wide at the bottom, and of sufficient depth to contain at least four feet water. And it shall be furnished with such locks, aqueducts and dams, as may be required to insure a safe and convenient navigation for boats of at least seventy-five feet long, thirteen feet six inches wide, and drawing three feet water. The reasonable expenses incurred by said commissioners in carrying the provisions of this act into effect, shall be paid out of the funds arising from the sales of the aforesaid lands.

An Act to amend an Act to provide for the Construction of the Illinois and Michigan Canal.  
*[Approved Feb. 15, 1831. Laws, 1831, p. 39.]*

(24.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the board of canal commissioners, authorized to be appointed by the act to which this is an amendment, shall hereafter consist of three members, who shall be appointed by the governor, by and with the advice and consent of the senate, and who shall be subject to re-appointment biennially. Said commissioners shall constitute a board, to be known under the style and description of "the Board of Canal Commissioners of the Illinois and Michigan Canal." They shall select one of their number to be the president thereof, and shall also designate one of their number to keep the records and proceedings of their meetings, unless they may impose said duties on the treasurer of the board, for which they shall allow him such additional compensation as they may think just and reasonable, not exceeding thirty dollars per annum. And in case of the death, resignation or refusal to act, of the treasurer, the board shall appoint a successor to fill the vacancy occasioned thereby. And in case of the death, resignation or refusal to act, of either of said commissioners, the president (and if there be no president, then one of the board) shall certify such vacancy to the governor, who shall fill the same.

(25.) SEC. II. The governor shall appoint one of the commissioners of said board as acting commissioner, who shall be constantly employed on the canal route, when necessary, and may be removed by the governor, upon the representation of the board, for malfeasance, neglect or omission of duty, who shall appoint a successor to said office. He shall give bond to the governor, for the use of the canal fund, with sufficient security, to be approved of by the president of the board, in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of his office; and upon the breach of the condition thereof, may be sued upon the same, and the amount of whatever judgment may be recovered against him, when collected, shall be paid to the treasurer, and made a part of the canal fund. He shall also take an oath well and faithfully to discharge the duties of his office; and as a compensation for his services, he shall receive the sum of three dollars per day, for every day he may be necessarily employed on said canal route, or on the business of the canal, out of the canal fund, to be paid quarter yearly, upon the certificate of the board of canal commissioners or the president thereof. And in case of his death, or resignation, or refusal to act, the same shall be certified to the governor, by the president, or one of the board of canal commissioners, and the vacancy occasioned thereby shall be filled by an appointment of a successor by the governor. In case of the sickness, or temporary absence granted to said commissioner, by the board or president thereof, the board or president may select one of said board to fill the vacancy thereby occasioned, until said commissioner renews the discharge of his duties if such temporary appointment may be necessary; and the commissioner so selected shall be entitled to receive the amount to which the superintending commissioner was entitled, while absent; and if the superintending commissioner is sick, then to receive such compensation as the board may think just. The said superintending commissioner shall, under the consent and direction of said board, employ such agents, engineers, surveyors, draftsmen and other persons, as in their opinion may be necessary,

to enable them to fulfill and discharge the duties imposed upon them by this act, or the one to which this is an amendment. He shall also, under the consent and direction of said board, fix the prices, and let out contracts for excavations, embankments, dams, aqueducts, culverts, and make all other contracts necessary to the excavation and construction of said canal. He shall reduce all contracts to writing, and file the same, or an abstract thereof, with the treasurer, showing the date, the amount, and the party with whom the same were made; and shall draw, from time to time, on the treasurer, for the amount of any contract he shall have made, or so much thereof as may be due, in favor of the person entitled to the same; he shall keep duplicates of all such drafts or orders as he may draw on the treasurer, and shall present them, together with a statement of the contracts and disbursements, at each regular meeting of the board.

(26.) SEC. III. The treasurer shall discharge the duties assigned him by the act to which this is an amendment, excepting as is herein otherwise provided. He shall make all his returns of sales to the board of commissioners, together with all his receipts and disbursements. He shall pay all sums on the draft or order of the superintending commissioner, in all cases where the contract or abstract of the contract, has been filed by said commissioner in his office; which drafts or orders he shall number and preserve on file, and submit them to the examination of the board of commissioners at each regular meeting, and which the said board shall mark as canceled. And the board of canal commissioners shall allow him annually for his services, such compensation, to be paid quarter yearly, as they may think proper, provided the same does not exceed six hundred dollars. And when it shall be necessary for the treasurer to employ one or more clerks, the board of canal commissioners may make such an allowance therefor as they may think just and reasonable: *Provided*, That nothing herein contained shall be construed as to allow any additional compensation for expenses sustained by said commissioners, or losses sustained while in service.

(27.) SEC. IV. The said board of canal commissioners shall hold two regular annual meetings at such time and place as they may think proper, and may convene at any time they may think advisable in cases of emergency, at the request of the superintending commissioner. A majority of said board, exclusive of the superintending commissioner, shall constitute a quorum to do business. They shall inspect the accounts, books, state of the treasury, and all the proceedings of the treasurer and superintending commissioner, at each regular meeting, and report the same to the governor, who shall lay the same before the legislature, for their examination; they shall have full power to contract, and be contracted with; to sue, and be sued; plead, and be impleaded; to defend, and be defended, in all matters relating to said canal; and shall have full powers, control and authority in all things relating to the same, that are not herein expressly provided for; they shall, by order of the board, furnish, to the superintending commissioner, all means that are necessary to enable him to discharge the duties imposed upon him by this act. And they shall receive, as a compensation for their services, three dollars per day, for every day they may sit as a board, to be certified by the president to the treasurer, who shall pay the same out of the canal fund.

(28.) SEC. V. There shall be no further sale of canal lands by private

entry, until said lands are so far disposed of, that the board of commissioners may deem it expedient, by an order of their board, to be given to the treasurer, a copy of which shall be published four weeks successively, in some public newspaper, printed in this State, when the same shall be sold at private sale, as is provided for in the act to which this is an amendment. The said board shall make an order, directing said lands to be sold at public sale, from time to time, as they may think most conducive to the interest of said canal, in the same manner and under the same regulations as are provided in the act to which this is an amendment: *Provided, however,* That the superintending commissioner shall superintend said sales, which shall in all respects be conducted, certificates made out and signed, and patents issued, as is provided for in the seventh section of the act to which this is an amendment. Said commissioners may arrest said sales when they think proper.

(29.) SEC. VI. Said commissioners may cause such tracts of land as they may think proper and conducive to the public interest, to be sold in tracts of forty acres; and they may sub-divide such other tracts into smaller quantities or lots, and sell the same as they may think most profitable to the canal fund.

(30.) SEC. VII. They shall have power to employ an engineer, without regard to any that has been promised on the part of the general government, to survey the whole line of the canal, or so much thereof as may be necessary for superintending and aiding in the construction of said canal, and for all other purposes connected with the same; they shall also have power to cause said engineer to examine the Illinois river, from the mouth of Fox river, down to the head of steamboat navigation; and if, in their opinion, the navigation of the Illinois river can be improved by dams and locks or otherwise, so as to secure its navigation as far upwards as the mouth of Fox river, with as little expense, and as much utility, as canalizing from Fox river to the Little Vermilion, or foot of the rapids, they shall have power to terminate said canal at the mouth of Fox river.

(31.) SEC. VIII. The superintending commissioner shall so alter the survey and plat of the town of Ottawa, as to present the front street of said town on the verge of the second bank of the Illinois river. Said street shall be laid off at least one hundred and twenty feet wide; and the plat of said town, together with the streets and alleys, shall be so altered as to conform thereto.

(32.) SEC. IX. Said commissioners shall have power so to improve the mouth of Fox river, if they may deem it proper to terminate said canal there, as to open a channel under the bluff of the town of Ottawa, of sufficient depth for steamboat navigation; which channel may be extended to a point at or near the termination of said bluff. All the ground between the bluff and the Illinois river, in the town of Ottawa, shall be reserved from sale.

(33.) SEC. X. Nothing in this act, or the one to which this is an amendment, shall be so construed as to prevent said commissioners, or their successors in office, from using any stone, timber, ground or water, or other material, for the purpose of making or aiding said canal, which may be required in its construction; and in all sales of said lands this right is hereby expressly reserved free from any cost, charge or liability whatever.

And the said commissioners may reserve from sale any tract or tracts of land, which they may think useful, on account of its timber, rock, or other advantages, in the construction of said canal.

(34.) SEC. XI. Said commissioners are authorized, if they may be of opinion that it will increase the value of lots in any town laid off on the canal lands, that have, or may have become seats of justice, to give a quantity of lots in said town, not exceeding ten acres, to aid in the erection of public buildings; for which donation the governor shall issue his patent as in other cases.

(35.) SEC. XII. The said superintending commissioner, and such engineers as may be employed on the part of the State, are hereby empowered to give to such canal, such dimensions as they may think most advisable, upon survey and examination thereof, suitable to canal boat navigation.

(36.) SEC. XIII. It shall be the duty of the superintending commissioner, to cause the engineer employed by him, to ascertain as early in the spring as the weather will permit, whether the Calamic will be a sufficient feeder for the part of the canal between the Chicago and Des Plaines rivers, "or whether the construction of a railroad is not preferable, or will be of more public utility than a canal." And if the commissioner shall be satisfied of the sufficiency of said river, and that a canal will be of more public utility than a railroad, it shall be their duty to commence the excavations without delay. And if they shall be of opinion that it would not, all further proceedings in relation to said canal, and sales of land, shall be deferred until the next meeting of the legislature: *Provided, however,* That said commissioner shall cause such a commencement to be made in the progress of the said canal, as to bring the State within the act of Congress making said grant, so as to save said grant to the State, if they shall be of opinion sufficient has not been done already.

(37.) SEC. XIV. So much of the act to which this is an amendment as is inconsistent with the provisions of this act, be and the same is hereby repealed.

An Act to abolish the Office of Canal Commissioners.

[Approved March 1, 1833. Rev. Laws, 1833, p. 118.]

(38.) SEC. I. *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.

(39.) SEC. II. 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.

(40.) SEC. III. And the treasurer of said board shall, in like manner, deliver and pay over to the treasury 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.

(41.) SEC. IV. 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, 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.

(42.) SEC. V. 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.

An act to prevent Trespassing on the Canal Lands of this State

[Approved Feb. 9, 1835. Laws, 1835, p. 34.]

(43.) SEC. I. *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 lands, 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 offense.

(44.) SEC. II. 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 offense or offenses against the first section of this act has been committed.

(45.) SEC. III. 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.

(46.) SEC. IV. This act to be in force from and after its passage.

An Act for the Construction of the Illinois and Michigan Canal.

[Approved Jan. 9, 1836. Laws, 1836, p. 145.]

(47.) SEC. I. *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.

(48.) SEC. II. 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 re-imbursable 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.

(49.) SEC. III. The governor shall take and use all proper means and measures for the transferring of the said stock.

(50.) SEC. IV. 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.

(51.) SEC. V. It shall be the duty of the governor to cause the said moneys, 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.

(52.) SEC. VI. 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 moneys 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.

(53.) SEC. VII. The governor of this State, by and with the advice of the Senate, shall appoint three practical and skillful 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.

(54.) SEC. VIII. 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.



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 per centage 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.

(72.) SEC. XXVI. 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.

(73.) SEC. XXVII. All materials procured, or partially procured, under 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 material 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.

(74.) SEC. XXVIII. 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.

(75.) SEC. XXIX. 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 offense, exceed the sum of fifty dollars over and above the amount of actual damage done.

(76.) SEC. XXX. 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.

(77.) SEC. XXXI. 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.

(78.) SEC. XXXII. 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.

(79.) SEC. XXXIII. 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 parts 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 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.

(80.) SEC. XXXIV. 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 said removal.

(81.) SEC. XXXV. 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.

(82.) SEC. XXXVI. 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.

(83.) SEC. XXXVII. 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 lands or lots purchased, and the price



(55.) SEC. IX. The acting commissioner shall be allowed a compensation 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.

(56.) SEC. X. 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.

(57.) SEC. XI. The board shall appoint a secretary, whose duty it shall be to keep a true record of all their proceedings; they shall hold quarterly 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.

(58.) SEC. XII. 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*, That the governor may at any time require additional bonds of said treasurer, whenever he may think that the safety of the funds requires it.

(59.) SEC. XIII. 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.

(60.) SEC. XIV. It shall be the duty of the acting commissioner to obtain from the cashier of the bank or banks, in which the said funds shall have been deposited, a quarterly report, exhibiting a true account of all moneys 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.

(61.) SEC. XV. 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;

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;

3rd. 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 superintendence of the canal, and all matters relating thereto.

(62.) SEC. XVI. 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.

(63.) SEC. XVII. 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 superintendence thereof.

(64.) SEC. XVIII. 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.

(65.) SEC. XIX. 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.

(66.) SEC. XX. 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.

(67.) SEC. XXI. 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.

(68.) SEC. XXII. 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.

(69.) SEC. XXIII. Public notice shall be given of the time and place at which proposals will be received for entering into contracts; 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.

(70.) SEC. XXIV. 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.

(71.) SEC. XXV. 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

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.

(84.) SEC. XXXVIII. All moneys paid to the treasurer for the purchase of 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.

(85.) SEC. XXXIX. 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 commissioners, 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 offense shall be commenced within ten years after the commission of the same.

(86.) SEC. XL. 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 offenses: *Provided*, That all such prosecutions shall be commenced within ten years after the commission of the offense.

(87.) SEC. XLI. 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 net 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.

(88.) SEC. XLII. 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 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.

(89.) SEC. XLIII. They shall annually, on the first Monday of December, make a report to the governor, setting forth all of their acts 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.

(90.) SEC. XLIV. 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.

(91.) SEC. XLV. 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, shall 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.

An Act to amend an Act entitled "An Act for the Construction of the Illinois and Michigan Canal," approved Jan. 9, 1836.

[Approved March 2, 1837. Laws, 1837, p. 89.]

(92.) SEC. I. *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 commissioner. 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.

(93.) SEC. II. 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 set out upon by the commissioners in the year 1836, in all respects.

(94.) SEC. III. That the said commissioners shall require a survey and examination of the route of said canal as now established, by some skillful engineer, who shall also 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.

(95.) SEC. IV. 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 Aug-sau-ge-nash-ke swamp and 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.

(96.) SEC. V. 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."

(97.) SEC. VI. 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 in all respects to 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.

(98.) SEC. VII. 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, subdivisions 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.

(99.) SEC. VIII. 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.

(100.) SEC. IX. That the judge of the circuit court within whose cir-

cuit 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 appraisal 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 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 clerk's 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 they 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 defense 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 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 costs 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.

(101.) SEC. X. 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 22nd, 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.

(102.) SEC. XI. 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.

(103.) SEC. XII. 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.

(104.) SEC. XIII. 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, indorsed 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.

(105.) SEC. XIV. 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.

(106.) SEC. XV. 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 contracts, and to protect the rights and interests of the State; and to insure the faithful execution and completion of contracts, they 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.

(107.) SEC. XVI. 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.

(108.) SEC. XVII. 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 disbursement of the canal funds that may at any time come into his hands.

(109.) SEC. XVIII. 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.

(110.) SEC. XIX. 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.

An Act to protect the Canal Lands against Trespassers.

[Approved March 4, 1837. Laws, 1837, p. 44.]

(111.) SEC. I. *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.

(112.) SEC. II. The said agents 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 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.

(113.) SEC. III. 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.

(114.) SEC. IV. 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:

"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."

(115.) SEC. V. 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 agents 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, the agents of the State shall have the right to take possession of the premises, with all improvements thereon.

(116.) SEC. VI. 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.

(117.) SEC. VII. 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, before any justice of the peace or circuit court having jurisdiction of the amount.

(118.) SEC. VIII. 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 required to act upon the said certificates, and call to their aid the power of the county when necessary, to remove any person as aforesaid.

(119.) SEC. IX. 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.

(120.) SEC. X. 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.

(121.) SEC. XI. 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.

(122.) SEC. XII. 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 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 proceedings against him; he shall, moreover, be liable to an action upon his bond for damages, as for other violation or neglect of duty.

(123.) SEC. XIII. 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.



(124.) SEC. XIV. 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.

(125.) SEC. XV. 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.

(126.) SEC. XVI. 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.

(127.) SEC. XVII. 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.

(128.) SEC. XVIII. 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 interests of the State.

(129.) SEC. XIX. 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.

An Act supplementary to an Act entitled "An Act to protect the Canal Lands against Trespassers."

[Approved March 4, 1837. Laws, 1837, p. 48.]

(130.) SEC. I. *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, entitled "An act to protect the canal lands against trespassers," 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.

An Act to provide for the Sale of certain Canal Lands, and for other Purposes.

[Approved July 21, 1837. Laws, 1837, (Special Sess.) p. 10.]

(131.) SEC. I. *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 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.

(132.) SEC. II. No two quarter sections of land shall be sold under the provisions of this act, which shall adjoin each other.

(133.) SEC. III. 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.

(134.) SEC. IV. 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.

(135.) SEC. V. 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.

(136.) SEC. VI. The canal commissioners are authorized to make a re-survey 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 interests of the State.

(137.) SEC. VII. The canal commissioners are authorized to enlarge the natural basin 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 basin; 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.

(138.) SEC. VIII. 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 appraisal 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 at 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 at 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 appropriated, as herein provided, and block number seven shall be subject to sale as other lots in Chicago now are.

(139.) SEC. IX. 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 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.

(140.) SEC. X. 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.

An Act for the Relief of Purchasers of Canal Lands and Lots.

[Approved July 21, 1837. Laws, 1837, (Special Sess.) p. 9.]

(141.) SEC. I. *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 anywise 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.

(142.) SEC. II. 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.

(143.) SEC. III. 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.

(144.) SEC. IV. 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.

An Act to repeal part of an Act entitled "An Act to provide for the Sale of certain Canal Lands, and for other Purposes."

[Approved Jan. 5, 1839. Laws, 1839, p. 41.]

(145.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That so much of the tenth section of an act entitled "An act to provide for the sale of certain canal lands, and for other purposes," approved twenty-first of July, 1837, as provides that the loan therein mentioned should not be made until the whole of the means, available under existing laws, should first be exhausted, be and the same is hereby repealed.

An Act to provide for settling the Accounts between the State and the Illinois and Michigan Canal.

[Approved Jan. 12, 1839. Laws, 1839, p. 42.]

(146.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in order to ascertain the full amount expended by the State in the construction of the Illinois and Michigan canal, and in the preliminary steps taken by the State in relation thereto, and to perpetuate the evidence of said expenditure, the auditor of public accounts shall open an account, in a book to be provided for that purpose, between the State and canal, with each and every sum of money heretofore paid out of the State treasury for the use or on account of said canal, noting the date and amount of each payment, and referring to the law or resolution under which it was made, and credit the canal with each and every sum of money received into the treasury belonging to the canal fund, noting the date and the amount, and referring to the law or resolution under which the money was raised; and also, by one dollar and twenty-five cents per acre, for all canal lands donated or granted to individuals by the State, referring to the law making such donation or grant.

(147.) SEC. II. In making the account required by the foregoing section, interest shall be charged upon the debts and credits at the rate of six per cent. per annum, and shall be added to the principal annually; and the said account shall be continued to the ninth day of January, one thousand eight hundred and thirty-six, at which time the balance shall be ascertained and struck; and from that date, the balance struck shall bear interest at the rate of six per cent. per annum, until paid.

(148.) SEC. III. When said accounts shall be completed, the auditor shall notify the governor thereof, who shall carefully examine the same, and after correcting errors, if any be discovered, the governor shall certify at the footing of said account, that upon a careful examination he has found the said account to be correctly stated; and the amount thus stated and certified shall be conclusive evidence between the State and the said canal fund, as to the state of accounts between the State and said canal.

An Act making further Provisions for the Sale of Canal Lands.

[Approved Feb. 22, 1839. Laws, 1839, p. 157.]

(149.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in selecting lands for sale, in the execution of the laws authorizing the sale of canal lands, the commissioners shall, so far as may be consistent with the public interest, select those lands on which improvements were made previous to the first day of March, one thousand eight hundred and thirty-five, and in valuing said lands, the price shall be fixed without reference to improvements, and as though it had never been occupied or used. The improvements shall also be valued separately; and whatever injury or deterioration of value the lands may have sustained by reason of the occupation or use thereof, shall be deducted from the present value of the improvements, and added to the value of the land; and upon making sale of said land, purchasers shall be required to pay in advance the value of such improvements ascertained and (after making the deduction aforesaid,) settled upon the principles aforesaid, in addition to the ten per cent. upon the price of the land, which

sum shall be paid to the owner of the improvement, in case such owner is not the purchaser thereof.

(150.) SEC. II. When the injury to lands, by reason of the occupation or use of the same, shall be estimated to exceed the value of the improvements, the owner of the improvement shall not be entitled to any compensation therefor.

(151.) SEC. III. It shall not be necessary for the board of canal commissioners to require the service of assessors in ascertaining damages accruing to individuals by reason of the use of land, water or timber, where said board can agree with the claimant for such damages.

(152.) SEC. IV. In constructing the canal, the commissioners shall, whenever it be found practicable, cause the water to be drained from canal lands subject to inundation, in case they shall be satisfied the value of such land will be enhanced thereby to an amount sufficient to justify the expense of such draining.

(153.) SEC. V. If, in any case, two or more persons shall claim to be owners of the same improvement adverse to each other, and the question of right is not decided before a sale of land on which such improvement is situated, the price paid for the improvement shall be retained until the question is decided; and the board shall also retain out of the money all costs which may be adjudged against the board in the settlement of such question.

(154.) SEC. VI. Hereafter the per centage retained from contractors upon estimates of work done, shall not exceed twenty nor be less than ten per cent. upon the amount of the estimate; and this section shall be held and considered as a part of the act entitled "An act to amend the several laws in relation to the Illinois and Michigan canal," passed at the present session of the General Assembly.

(155.) SEC. VII. In cases where one improvement is situated upon two lots of land required to be sold separately, the valuation of the improvements shall be made with reference to the lots of land and the lines dividing the same.

An Act to provide for selling Water-Lots and Privileges on the Illinois and Michigan Canal.

[Approved Feb. 22, 1839. Laws, 1839, p. 150.]

(156.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the board of commissioners of the Illinois and Michigan canal may order a sale or sales of lots of ground for manufacturing purposes, and the use of surplus water to propel machinery, for a term of years not exceeding ninety-nine, at those points and places on the line of the canal where lots have or may be laid off for that purpose, upon the terms and conditions following: *Provided,* That, until the further action of the General Assembly, not more than three lots shall be sold at any one place or point.

(157.) SEC. II. Each lot, with the privilege of using water to propel machinery to be erected thereon, shall be sold separately, at public auction, to the person bidding the highest annual rent therefor. The place of sale shall be fixed by the board. A notice, stating the time and place of the sale, and describing the lots and water to be sold, shall be published, once a week, for eight weeks, in at least four newspapers in the State, and four without

the State, immediately preceding the sale. Previous to any sale, the commissioners shall value the lots and privileges separately, at a fair and reasonable value, as they are required to do in relation to lots and canal lands; and no sale shall be made for less than such valuation. Upon making any sale, the board shall execute a lease, under their seal, for such term of years as may have been directed, in the name and behalf of the people of the State, to the purchaser; and, in such lease, the rent bid by the purchaser shall be reserved. Triplicate leases shall be made, and shall be signed by the purchaser, and covenants shall be inserted for the annual payment of the rent, at such place within the State, and to such person, as may at any time be required by law, with condition that, in case of default in making any annual payment for the period of one year, the lease shall become void, and all the rights thereby granted forfeited to the State.

(158.) SEC. III. Leases shall also contain a reservation of the right wholly to resume the water conveyed and the privileges thereby granted, and to control and limit the use of such water and privileges, whenever, in the opinion of the board or of the legislature, the necessary supply of water for the use of the canal, or the safety of the canal or works connected therewith, shall render such resumption, control or limitation necessary; and a provision that, when such resumption is made, or control or limitation imposed, no compensation or damage shall be allowed for any improvements or erections made in consequence of such lease; and a further reservation shall be made of the right of the State, without making any compensation to the purchaser, wholly to abandon or destroy the work by the construction of which the water privileges shall have been created, whenever, in the opinion of the legislature, the occupation and use of such works shall cease to be advantageous to the State.

(159.) SEC. IV. Leases shall contain specific descriptions, by actual measurement, of the lots leased, and shall specify the quantity of water to be used per day or month.

(160.) SEC. V. One copy of each lease shall be delivered to the purchaser, who shall, without delay, cause the same to be recorded by the recorder of the county in which the premises leased are situated; one copy shall be filed and kept by the board, and the other copy shall be by the board delivered to the auditor of public accounts.

(161.) SEC. VI. All the expenses of executing and recording leases shall be paid by the purchaser.

(162.) SEC. VII. There shall also be inserted in every lease a condition inhibiting the manufacture of spirituous or vinous liquors upon lots leased.

(163.) SEC. VIII. The board shall have power to fix a time within which the lessee, his heirs or assigns, shall put in operation the machinery intended to be used upon lots leased, and to insert a condition of forfeiture in every lease, on failure to comply with the conditions thereof, either as to time or manner; and also to insert conditions requiring the lessees, their heirs and assigns, to keep the buildings and machinery under insurance in some safe office; and in case of failure in this condition, that the board or the State shall have the right to effect such insurance, and to add the cost and expense of such insurance to the amount of rent reserved.

(164.) SEC. IX. The board shall take and use all means and measures requisite to carry into effect the objects of this act, and shall fix the places

at which water is to be taken from the canal, and provide for the withdrawal thereof in such manner as to prevent injury to the canal, and also provide safe conveyances for the return of the water into the canal, or for its running off without injury to the State or individuals.

(165.) SEC. X. The board shall have power to direct the material with which the walls of the houses erected on leased lots shall be made, with a view to permanency, and to avoid injury from fire.

(166.) SEC. XI. Sealed proposals shall be received for purchases under the provisions of this act, and each proposal shall specify the use intended to be made of the lot and water, the time within which the first buildings shall be commenced and completed, and the time of commencing the use of water for manufacturing purposes; and also the dimensions of the buildings as to width, length and height, and shall also be accompanied with the names of two or more responsible persons, to be bound as security for the performance of the covenants, so far as relates to the erection of buildings.

(167.) SEC. XII. Each purchaser shall give a bond, with two or more securities, payable to the State, with conditions that the purchaser will, within the time limited, erect one or more buildings, such as may be agreed on, and, in case of default, that the State shall be paid three times the amount of rent reserved by the terms of the lease, from the date thereof to the date of obtaining judgment upon the bond.

(168.) SEC. XIII. The provisions of the thirty-ninth and fortieth sections of the act entitled "An act for the construction of the Illinois and Michigan canal," approved on the ninth day of January, one thousand eight hundred and thirty-six, shall be applicable to sales made under the provisions of this act.

(169.) SEC. XIV. The power of taxing the lots and privileges sold under the provisions of this act, and all improvements made thereon, is reserved to the State; but this power to be exercised according to the provisions of the constitution, and the same rules to be observed in assessing and collecting the taxes as are applied to other property in the State.

An Act to amend the several Laws in relation to the Illinois and Michigan Canal.

[Approved Feb. 26, 1839. Laws, 1839, p. 177.]

(170.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the sales of the canal lands and town lots heretofore authorized by law, shall be regulated as follows: The terms of sale shall be, that each purchaser shall pay, at the time of sale, ten per cent. on the amount of the purchase, and shall be bound to pay an interest of six per cent. per annum upon the balance, at the end of every year, for twenty years, at which time the principal shall be paid. The lands and lots heretofore valued shall be re-valued, before being offered for sale under the provisions of this act; and if the sales of lands selected for sale under the provisions of the act entitled "An act to provide for the sale of certain canal lands and for other purposes," approved on the twenty-first day of July, one thousand eight hundred and thirty-seven, shall not amount to four hundred thousand dollars, within three months from the termination of the last public sale thereof, the commissioners are authorized to select other lots of land, under the provisions of said act, and, after valuing them as required by law, offer them for sale upon the terms herein

provided, and continue to make selections, valuations and sales, after the expiration of three months from the termination of the last sale, until the sales shall amount to the aforesaid sum of four hundred thousand dollars.

(171.) SEC. II. In all sales of lands and lots under the provisions of this act, the following conditions shall be annexed, and shall compose part of the contract :

First. That the purchaser will not appropriate or use the lot or land so as to reduce its value by means of the use thereof.

Second. That, on failure to make payment of interest and principal, according to the terms of sale, all rights acquired by the purchase, and the money paid, shall be forfeited to the State.

Third. That payments upon purchases shall be made at Chicago, Ottawa, or Lockport, as may be provided by law, to the person or persons who may be authorized to receive the same.

Fourth. That timber upon land purchased shall not be sold, except upon being converted by the owner of the land into furniture or machinery, and shall be used only, with the exception, for ordinary farming or agricultural purposes, upon the land of the purchaser.

Fifth. That a violation of any one of the conditions of sale shall work a forfeiture of all rights acquired by the purchaser.

Sixth. That a lien shall exist in favor of the State, as well upon all improvements, buildings and machinery, which may be made or placed upon lands or lots, for the payment of the purchase money and interest, as upon the said lands or lots.

Seventh. That in case of forfeiture of any lot or land for non-payment of interest or principal of purchase money, or for any violation of the conditions of sale, the purchaser shall be liable to pay the difference between the price for which the land may be subsequently sold and the price agreed to be paid by such purchaser: *Provided*, That such difference shall have been occasioned by any act of the purchaser, or shall be a consequence resulting from improper use of the premises or any part thereof.

Eighth. That no buildings or fixtures shall be removed from any lot or land sold under the provisions of this act, without the consent of the board or State.

Ninth. That no stream of water passing through the canal lands shall pass, by the sale, so as to deprive the State of the use of such water, if necessary to supply the canal, without charge for the same.

Tenth. That the State, the board of canal commissioners, the agents of each, and all contractors acting under the authority of the board or State, shall have a right of way over and upon said land in the construction and use of the canal, free from charge: *Provided*, That purchasers or owners may select the ground on which roads for the uses aforesaid shall pass, if there be no road at the time of purchase.

Eleventh. Lands situated upon streams which have been meandered by the surveys of public lands by the United States, shall be considered as bounded by the lines of those surveys, and not by the streams.

Twelfth. Lands sold under the provisions of this act, and all improvements made thereon, shall be subject to taxation from the date of sale, according to the laws of the State which may be enacted with reference to other estate; the taxes to be assessed and collected under and according to

the revenue laws of the State. Upon the terms and conditions specified in this act, the board shall execute the laws heretofore enacted authorizing sales of canal lots and lands, notwithstanding the time limited for those sales may have expired.

(172.) SEC. III. Purchasers of canal lots and lands shall be entitled to certificates of purchase from the treasurer of the board, upon making the first payment of the purchase money, which shall contain a description of the lot or land purchased, and specify the terms of sale, and the condition upon which purchasers will be entitled to patents; which certificate shall be surrendered to the board when full payment of the purchase money is made; and purchasers shall, upon such surrender, be entitled to final certificates, which are required to be given by the thirty-seventh section of the act entitled "An act for the construction of the Illinois and Michigan canal," approved on the ninth day of January, one thousand eight hundred and thirty-six; and such final certificates may be given to assignees or transferees, upon making proof of assignments and transfers, as required by the act entitled "An act in relation to the title of school and canal lands," approved sixteenth of January, one thousand eight hundred and thirty-seven; and patents shall issue upon all final certificates to purchasers, their heirs or assigns, as required by the above recited acts; and purchasers of lots and lands heretofore sold shall be entitled to certificates under the provisions of this section.

(173.) SEC. IV. Certificates of the purchase of canal lots and lands shall be evidence of title in the purchaser, his, her or their heirs or assigns, except as against the State or a patent.

(174.) SEC. V. The authority conferred upon the board of commissioners of the Illinois and Michigan canal, to make rules and regulations from time to time in respect to persons employed about the canal, shall extend to authorize the board to require each contractor to furnish to the board, quarterly or monthly, satisfactory evidence, by the oath of one or more persons or otherwise, that the persons employed have been paid for their services to the date of the previous payment; and, in default of furnishing said evidence, to withhold payment upon estimates until the same is furnished, but the amount withheld not to exceed the sum which may appear to be due for services aforesaid.

(175.) SEC. VI. In case any person employed by contractors upon the canal shall obtain a judgment against the contractor for services rendered upon the canal, and the contractor shall not, within twenty days, pay such judgment, the board is hereby authorized to pay the same; and such payment shall be a valid set-off against any claim of the contractor upon his contract, or for any services rendered the board or the State; *Provided*, That no judgment shall be paid from which an appeal may be prosecuted, until the decision of the case in the appellate court.

(176.) SEC. VII. In making payments to contractors, the board is authorized to deliver checks upon the bank in which the canal fund shall be deposited, in such amounts as may suit the convenience of the contractor; the checks shall be signed by the president of the board, countersigned by the acting commissioner, and made payable to the order of the treasurer; and, upon making payments, the treasurer shall take duplicate receipts containing a descriptive list of the checks delivered, one of which shall be filed

with the secretary of the board, and the other retained by the treasurer; and the secretary shall make weekly reports to the bank of the delivery of such checks, giving in such report a description thereof.

(177.) SEC. VIII. The checks, being signed by the president and acting commissioner, shall remain in possession of the secretary, under the direction of the board, and shall be delivered to the treasurer when required for use, who shall execute a receipt to the secretary, containing a descriptive list of the checks delivered; but no check shall be delivered to the treasurer, except upon the requisition of the acting commissioner or president of the board.

(178.) SEC. IX. At the end of every month, or oftener, if deemed necessary, the board shall examine and settle the accounts of the treasurer, and make entries on the books of the secretary, showing the true state of the accounts; and the acting commissioner shall settle the accounts with the bank in which the canal fund may be deposited, every three months, upon which settlement the bank shall be entitled to credit for the amount of checks returned to the said commissioner, which checks, when returned by the bank, shall be delivered to the secretary of the board, and may be again used by the treasurer in making payments, upon the terms and in the manner required in the first instance; and no money shall be drawn from the bank except upon checks executed and delivered as required by this act: *Provided*, That no check shall be made under the provisions of this act upon any bank out of this State.

(179.) SEC. X. In making estimates of the amount and value of work executed upon contracts, regard shall be had in fixing the price or value as well to the work to be performed as that executed, and the price shall bear a rateable proportion to each; and the amount to be retained from contractors, as security for their performance, shall have relation to the amount and value of work to be performed as well as to that executed; and in all cases of payments upon estimates, the amount retained shall be graduated and reduced in the proportions following: At every alternate estimate, one-half of the amount retained at the previous estimate shall be paid, until the contract shall be more than half completed; after which time, the first payment shall include one-half of the whole amount retained upon previous estimates; and at every alternate estimate thereafter, three-fourths of the amount retained at the previous estimate may be paid, until the completion of the contract.

(180.) SEC. XI. Contractors who feel themselves aggrieved by the estimates or measurements of engineers, may apply to the board to order a new measurement, and such application shall be granted upon condition that, in case the second estimate does not exceed the first, the contractor shall pay the cost of making the second estimate; and in such case the measurement shall be made by a different engineer from the one who made the first.

(181.) SEC. XII. In order to afford facilities to contractors, the canal commissioners may purchase, and keep on hand for their use, provisions, powder, tools, iron and steel, upon the plan heretofore adopted, and deliver such articles in payment of estimates at the cost thereof.

(182.) SEC. XIII. When contracts have been or may be forfeited or abandoned by contractors, the canal commissioners may, in accordance with

the practice, make new contracts without advertising for proposals, provided the price does not exceed the estimates of the engineer.

(183.) SEC. XIV. Town lots and land, valued and offered for sale by the board of canal commissioners, and not sold at public auction, may be purchased at their valuation, at any time within three months after being offered at public sale; the sale to be made by the secretary of the board, and the treasurer to give a certificate of purchase upon receiving a certificate of the deposit of the amount of the purchase money in one of the banks of this State; but no one person or company shall be permitted to purchase at private sale more than three lots, nor more than three hundred and twenty acres of land, nor shall any such sale be made except to persons who intend *bona fide* to improve and occupy the lot or land purchased; and every purchaser, before being permitted to purchase at private sale, shall make and file with the secretary of the board an affidavit, in the words following:

"I, A. B., do swear (or affirm, as the case may be,) that I desire to purchase the (here insert the description of the lot or land,) for the purpose of improving and occupying the same *bona fide*; that the purchase is not for the use of nor in trust for any person or persons whatever, except for myself."

(184.) SEC. XV. The board of canal commissioners shall proceed to the construction of the canal diverging from the main trunk of the Illinois and Michigan canal, through the Saganaskee swamp and Grassy lake, to intersect the Calumet river at the most practicable point, the survey of which was authorized by the fourth section of the act entitled "An act to amend the act entitled 'An act for the construction of the Illinois and Michigan canal, approved January 9, 1836,'" approved March 2, 1837, whenever they shall be notified that the State of Indiana has commenced the construction of a corresponding work, to connect her system of internal improvements with the Illinois and Michigan canal, and the cost of such construction shall be paid out of the canal funds. In forming a junction with the Illinois and Michigan canal, and at the Calumet river, and in the location throughout, the board shall adopt the most natural connection and route, keeping in view the shortest, best and cheapest route, and the interest of the State, in lands and otherwise. The said canal shall be deemed and considered as part and parcel of the Illinois and Michigan canal, and the laws and regulations adopted with reference to the construction thereof, the duties of canal commissioners, the making and executing contracts, shall be held and deemed applicable to the canal directed to be constructed by this act.

(185.) SEC. XVI. Each judge of a circuit court of any county through which the canal passes, is authorized and required to appoint a board of assessors, not exceeding six in number, under the provisions of the act recited in the fifteenth section of this act, and to fill all vacancies which may occur in said board. The powers and duties of the board, and the qualifications of the members thereof, shall be the same as those in the act aforesaid; but no more than three of said board shall be authorized to act upon any one case.

(186.) SEC. XVII. No damage shall be allowed to any person for the use of water in any river or stream, the bed of which, or some part thereof, does not belong to the claimant, nor for the use of water in any stream, whether navigable or not, if the boundaries of the land through which it passes are fixed by land-marks, and not by the stream itself.

(187.) SEC. XVIII. Islands and inundated lands, situated within the limits of sections of lands granted to the State by the United States, shall be deemed occupied and held as canal lands.

(188.) SEC. XIX. Purchasers of canal lots and lands may pay the amount due upon the purchase at any time, and receive final certificates from the treasurer, as herein provided.

(189.) SEC. XX. The provisions of the thirty-ninth and fortieth sections of the act entitled "An act for the construction of the Illinois and Michigan canal," approved on the ninth day of January, one thousand eight hundred and thirty-six, are hereby made applicable to sales made under the provisions of this act, with this exception, that, after any lots or lands have been subject to private sale under the provisions of this act, for the period of one month, any of the board of canal commissioners, or other agent of the State, may purchase not exceeding one block of town lots, or three hundred and twenty acres of land on which to reside; but this provision is not to extend to more than one purchase, and the terms of sale to be the same as those imposed upon other purchasers.

(190.) SEC. XXI. No contractor shall be entitled to the benefit of the provisions of this act until he shall have filed with the board of canal commissioners a writing, under his hand and seal, agreeing that his contract shall be deemed and considered as having been executed under the provisions of this act, and that he will be bound to comply with and conform to the provisions hereof as fully as if this act had been in force at the date of the contract.

(191.) SEC. XXII. Payments shall hereafter be made to contractors at Ottawa and Lockport, the place to be at the option of the contractor; but this provision shall not interfere with any arrangement which may be made by contractors with the board in reference to the place of payment.

(192.) SEC. XXIII. If, in the construction of the canal, the board shall be satisfied that any section of the work can be executed with less cost to the State by the employment of laborers and executing the work, than by the execution thereof by contract, they are authorized to adopt that plan of execution.

(193.) SEC. XXIV. The laws authorizing the sale of lots and lands by the canal commissioners shall be construed as conferring power upon the board to continue sales from day to day for any number of days not exceeding twenty.

An Act to amend an Act entitled "An Act to protect the Canal Lands against Trespassers," approved March 4, 1837.

[Approved Feb. 26, 1839. Laws, 1839, p. 165.]

(194.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That each and every agent elected or appointed under the provisions of an act of the General Assembly, entitled "An act to protect the canal lands against trespassers," approved on the fourth day of March, one thousand eight hundred and thirty-seven, shall be, and they are hereby, discharged from all further duty under the act aforesaid; and, immediately upon the passage of this act, the board of canal commissioners shall appoint one or more agents, not exceeding three, under the provisions of said act, and vest them, jointly and severally, with all the

power, and require them to perform all the duties specified in said act, and such other duties as the board may deem requisite to the protection of the interest of the State and the protection of the public property.

(195.) SEC. II. The agents to be appointed under the provisions of this act, shall notify each person residing upon canal lands, or who may cultivate any part thereof, that unless he or she will execute bond as required by the act to which this is an amendment, and agree to comply with the provisions thereof, as amended by this act, that he or she must, within twenty days after such notice given, abandon the occupation or cultivation of the same; and each and every person who shall fail or refuse to abandon the occupation, possession or cultivation of any canal lands, upon being notified as aforesaid, shall be liable to pay the sum of five dollars for every day which he or she shall continue in the occupation, possession or cultivation of such lands, after the expiration of the time limited by this notice of the agents; which sum may be recovered in an action of debt or assumpsit, in the name of the State of Illinois, before the circuit court of any county in the State, or any justice of the peace of any county where such person may reside or be found; and separate actions may be maintained for every day's violation of the law, or actions may be maintained for the penalties incurred by two or more days' violation thereof: *Provided*, That this section shall not apply to improvements upon lots owned by the State adjoining Ottawa, or to any lots situated within the limits of any town or village laid off by the canal commissioners.

(196.) SEC. III. Persons who have or may execute bonds to the State, under the provisions of this and the act to which this is an amendment, shall be permitted, in all cases, to remove the crops growing upon lands occupied or cultivated at the time of the sale thereof by the State; and the same privilege is extended to those who remove from land without having executed such bond.

(197.) SEC. IV. The agents appointed under the provisions of this act may, under the direction of the board of canal commissioners, sell wood or timber lying upon the ground on canal lands; but no tree standing or growing upon said land shall be sold, under any pretense whatever.

(198.) SEC. V. If any person shall, without authority of law, quarry and remove from any canal lands any rock or stone, or shall remove from said lands any rock or stone already quarried, or if any person shall use any rock or stone taken from canal lands, each and every such person shall be liable to pay at the rate of five dollars for each perch of such stone, to be recovered by action in favor of the State, under the provisions of the act to which this is an amendment, as though such rock or stone had been embraced in said act.

(199.) SEC. VI. Agents appointed under this act shall be subject to be displaced at any time by the board of canal commissioners, and shall be bound to perform any service required by the board, as well as the duties specially pointed out by law; and the board shall have power to appoint others in the place of those displaced, and keep agents in service so long, and at such times, as in their judgment the interest of the State may demand; and the agents shall be paid by the board a reasonable sum, which shall not exceed four dollars per day.

(200.) SEC. VII. Money collected by the agents under the provisions of



this act, shall be accounted for to the board of canal commissioners, and shall compose a part of the canal funds.

(201.) SEC. VIII. The agents may, under the direction of the board of canal commissioners, include any quantity of land in permits; and the persons to whom permits are given, shall have all the rights that are granted by permits under the provisions of the act to which this is an amendment; and the obligations of such persons upon the bond shall extend to the whole land included in the permit; and permits may be given to persons who do not reside on or cultivate canal lands.

(202.) SEC. IX. Said agents may, also, under the direction of the board of canal commissioners, authorize the opening of stone quarries and banks of stone, coal, or either, upon such terms as may be deemed reasonable, or shall be agreed on; and contracts made in relation to the use of such stone and coal shall be in the name of the State of Illinois, and shall be valid to all intents and purposes.

(203.) SEC. X. If any person, to whom a permit has been or may be given to occupy or cultivate canal lands, shall fail to deliver possession of the premises to the purchaser thereof, within sixty days after being requested to deliver and surrender the same, such person shall be liable to pay to the purchaser five dollars for every day of retaining such possession after the expiration of the said term of sixty days; which may be recovered, by action of debt or assumpsit, before any court or justice of the peace having jurisdiction of the amount claimed: *Provided, however,* That crops growing or standing upon land shall, in all cases, be removed by the owner thereof, at the season of the year when such crops are usually taken from lands.

(204.) SEC. XI. If, at any time, a judgment shall be obtained upon the bond of any person to whom a permit has been or may be given to occupy or cultivate canal lands, such judgment shall operate as a forfeiture of all rights granted by the permit; and thereupon such person may be proceeded against as though no permit had been given.

An Act for the Relief of Purchasers of Canal Lots and Lands, and for other Purposes.

[Approved March 2, 1839. Laws, 1839, p. 276.]

(205.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all persons who made purchases of lots and land of the commissioners of the Illinois and Michigan canal, in the year one thousand eight hundred and thirty-six, shall be permitted to pay for said lots and land under and according to the provisions of the act passed at the present session of the General Assembly, entitled "An act to amend the several laws in relation to the Illinois and Michigan canal." All such purchasers shall be permitted to surrender their certificates of purchase, and obtain new certificates; and have their notes or bonds canceled, and execute new notes for the balance due, without paying ten per cent. in advance at the time of the surrender and cancelment. By the new notes they shall be bound to pay six per cent. per annum interest on the amount due, for twenty years, and then to pay the principal; and all the provisions of the act above recited shall be applicable to said purchasers, and their rights and liabilities shall be regulated and defined by the act aforesaid. The provisions of this act shall not in any manner affect the lien of the State upon the lots and lands and all improvements thereon for the payment of the purchase money;

and purchasers who avail themselves of the provisions of this act, shall hold the lots and lands subject to all the conditions in the act aforesaid.

(206.) SEC. II. The provisions of this act shall extend to heirs, devisees and assignees of purchasers.

(207.) SEC. III. In making the valuation of improvements upon canal lands under the law authorizing their valuation, the standard or rule of estimation shall not be what the improvements cost, nor what the making of such improvements would cost, at the date of valuation, but the estimate shall be the addition which the improvements make to the value of the land.

(208.) SEC. IV. In making the selections of lands to be sold whereon improvements are situated, the selections shall be confined to lands occupied or cultivated by persons having permits to occupy or cultivate the same.

(209.) SEC. V. The canal commissioners shall be permitted to purchase the lots in Lockport, at their valuation, on which they have erected dwellings, and make payment therefor under and according to the provisions of the act recited in the first section of this act. The purchase shall extend to the improvements; and the cost of the improvements shall be paid without reference to their valuation. The lots shall be valued with reference to their actual value at the date of making improvements thereon, by the commissioners, having regard to the terms of sale.

(210.) SEC. VI. The valuation of said lots shall be made by three or more of the assessors appointed by the circuit court of Will county, or the judge thereof, and they shall make duplicate certificates of their valuation; one shall be filed with the secretary of the board of canal commissioners, and the other with the clerk of the circuit court of Will county.

(211.) SEC. VII. The first section of this act shall continue in force one year; the fifth and sixth sections six months, and no longer.

(212.) SEC. VIII. The board of canal commissioners shall pay to William B. Archer, Gurdon S. Hubbard and William F. Thornton, five dollars per day each, for the time they were detained in Vandalia on business connected with the canal during the session of the General Assembly which commenced on the first Monday in December, one thousand eight hundred and thirty-six, after the expiration of the term of their service as canal commissioners.

(213.) SEC. IX. Forfeited lots in Chicago and Ottawa on which houses have been erected, or which are occupied by purchasers, their heirs or assigns, shall be reserved from sale until further provision shall be made by law.

An Act to provide for a Loan for Canal Purposes.

[Approved Feb. 23, 1839. Laws, 1839, p. 168.]

(214.) SEC. I. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That in addition to the loans heretofore authorized to be made for the purpose of aiding in the construction of the Illinois and Michigan canal, there shall be borrowed for the purpose aforesaid, a sum not exceeding four millions of dollars, for a term not exceeding fifty years, and at a rate of interest not exceeding six per cent. per annum, payable yearly, the payment of interest and reimbursement of principal to be made at such place within or without the United States, and in such currency as may be agreed upon.

(215.) SEC. II. The governor of the State is authorized and required 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 act, in the English or any foreign language, stipulating for the payment of the interest and principal, within or without the United States, in such currency as may be agreed on by the contracting parties; which bonds shall be signed by the governor, countersigned by the auditor of public accounts, and the impress of the great seal of State shall be affixed thereon by the secretary of State.

(216.) SEC. III. The State doth hereby agree and irrevocably pledge its faith to provide sufficient resources and means with which to pay the interest accruing upon said bonds as it becomes due and payable, and to reimburse the principal when the same becomes due; and doth hereby irrevocably pledge, as security for this purpose, all the lands heretofore granted or which may hereafter be granted to the State of Illinois by the United States to aid the State in the construction of said canal, and the said canal with all its appurtenances, and the revenue arising from the use of said canal, and every branch or part thereof, subject to the liens heretofore created upon the lands, canal and revenue aforesaid, as well as all premiums which may be obtained from the sale of bonds and certificates of stock created by this act, and the rents, issues and profits which may in anywise accrue to the State from the lands and premises herein pledged, as well as from water privileges upon the line of the canal.

(217.) SEC. IV. It shall be deemed a good execution of the power to borrow, to sell the bonds herein authorized to be made; and the said bonds shall be so framed as that they shall be in form and substance certificates of stock, and shall be called the "Illinois and Michigan canal stock."

(218.) SEC. V. When bonds shall have been executed as required by this act, the governor is authorized to constitute and appoint a suitable agent or agents to sell and transfer the same, and vest the said agent or agents with full power to take all proper means and measures for the sale and transfer of said bonds.

(219.) SEC. VI. All money obtained under the provisions of this act shall be kept and used according to the provisions of the law now in force in relation to the canal fund.

(220.) SEC. VII. The right is reserved to the State to sell any of the lands pledged by this act, and the proceeds of sales to be applied exclusively to the payment of interest upon canal loans, or to expenses of constructing the canal.

(221.) SEC. VIII. No bonds shall be sold under the provisions of this act for less than their par value.

(222.) SEC. IX. In contracting for loans under the provisions of this act, provision shall be made for the reception of the money by the State, in sums of one hundred thousand dollars, as the same may be wanting for expenditure upon the canal.

An Act to provide for the Dedication of Lots, in Towns situated on Canal Lands, to Public Purposes.

[Approved Feb. 28, 1839. Laws, 1839, p. 196.]

(223.) SEC. I. *Be it enacted by the People of the State of Illinois represented in the General Assembly*, That for the purpose of adding to the value

of town lots owned by the State in towns laid out and established by the board of commissioners of the Illinois and Michigan canal, by encouraging public improvements, the said board shall designate lots in each of said towns, to be donated to religious societies or congregations, whereon to erect houses of worship; and one lot shall be granted to every society or congregation desiring the same, upon condition that such society will erect or build a church or chapel thereon, and use and occupy the same for that and no other purpose. The lots so donated shall be unalienable by the society or congregation; and whenever abandoned, or used for any other purpose than is expressed in this act, shall revert to the State, together with all improvements made thereon. The title to lots shall be vested in societies or congregations, by an entry to be made by the board of canal commissioners upon the recorded plat of the town, of the name of the society or congregation for which the donation is intended; but the title shall be subject to the provisions of this act.

(224.) SEC. II. The board shall also set apart and designate, in the manner aforesaid, not exceeding four lots in each town, on which the inhabitants of such towns may erect school-houses, for the use of common schools; said lots to be unalienable, and to be occupied and used as aforesaid, under the direction of the proper authorities of the town. The provisions of this act shall extend to towns hereafter as well as towns already laid out.

An Act to amend an Act entitled "An Act to provide for the Dedication of Lots, in Towns situated on Canal Lands, to public Purposes," approved Feb. 28, 1839.  
[Approved Jan. 31, 1840. Laws, 1840, (Special Sess.) p. 30.]

WHEREAS some of the congregations and religious societies in towns laid off by the board of commissioners of the Illinois and Michigan canal, have erected churches on lots in such towns, parts of which are held by individuals, and the act entitled "An act to provide for the dedication of lots, in towns situated on canal lands, to public purposes," approved February 28, 1839, does not authorize said canal commissioners to divide such lots, and donate to such religious societies and congregations a part of such lots; therefore,

(225.) SEC. I. *Be it enacted by the People of the State of Illinois represented in the General Assembly*, That the board of commissioners of the Illinois and Michigan canal be, and they are hereby, authorized, under the act to which this is an amendment, to donate and give to religious societies and congregations, when they may request it, a part of any lot, in lieu of the whole, which by said act they are authorized so to donate, to hold, use and occupy the same for the purposes and on the conditions in said act mentioned.

(226.) SEC. II. That when any person shall have been the purchaser from the State, or the assignee of any such purchaser, of any portion of any such lot, another part of which is claimed by any religious society or congregation under the act to which this is an amendment, the said commissioners shall give to such purchasers, his or her assigns, a certificate of purchase for such portion of such lot, held by him or them, upon his or their compliance with the terms of an act entitled "An act for the relief of purchasers of canal lots and lands," approved March 2, 1839, at a price which such part of said lot shall bear in value to the amount due the State on the whole of such lot.

An Act supplemental to the Act entitled "An Act to provide for a Loan for Canal Purposes."  
 [Approved March 1, 1839. Laws, 1839, p. 238.]

(227.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in contracting for loans and for the reception of money, under the provisions of the act entitled "An act to provide for a loan for canal purposes," passed during the present session of the General Assembly, it shall be lawful to provide for receiving the money in sums over one hundred thousand dollars, if, by doing so, money can be obtained upon better terms; and the money borrowed under the provisions of the act aforesaid, shall be deposited in some safe bank or banks in the United States, at the best rate of interest that can be obtained for the same, subject to be withdrawn, as it may be required, for use on the canal.

(228.) SEC. II. The canal commissioners shall pay all interest hereafter accruing upon money borrowed for canal purposes, under the direction of the governor, out of the canal fund.

(229.) SEC. III. In executing the power conferred upon the governor by the act recited in the first section of this act, it shall be lawful to procure a temporary loan for immediate use, by the hypothecation of bonds or certificates of stock, upon such terms and for such period of time as may be best calculated to subserve the public interest, such loan not to exceed in amount the sum of one million of dollars: *Provided,* That no higher or greater rate of interest shall be paid than six per cent. per annum upon the money borrowed.

An Act to amend the several Laws in relation to the Illinois and Michigan Canal.  
 [Approved Feb. 1, 1840. Laws, 1840, p. 79.]

(230.) SEC. I. *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 Illinois and Michigan canal, to sell so much of the canal lands and lots, the present year, as may be required to pay the interest on loans made for canal purposes; sales made under this act shall be conducted, and under the same restrictions, as required by the act to which this is an amendment: *Provided, however,* If the commissioners shall be of opinion the interest of the State requires more than ten per cent. to be paid at the time of sale, they shall state in their advertisements the amount that will be required to be paid at the time of purchase.

(231.) SEC. II. Where timber land is selected for sale, it shall be the duty of the commissioners to divide it into small lots, not to exceed forty acres in one lot, and to require one-fourth of the purchase money to be paid at the time of purchase, and the balance to be paid in three annual instalments, with six per cent. interest, paid in advance for the first year. Sales made under the provisions of this act, shall be subject to the same forfeitures and restrictions as required in the several acts authorizing the sales of canal lands.

(232.) SEC. III. There shall be one principal engineer, who shall have a salary of two thousand dollars per annum; there shall be one resident engineer, who shall have fifteen hundred dollars per annum; there shall be seven assistant engineers, who shall each have a salary of one thousand dollars per annum. And the engineers aforesaid shall not receive any other compensation for their services, under any pretense whatever: *Provided,*

That the work on the canal progresses. But it shall be the duty of the board of canal commissioners to discharge such assistant engineers whenever said work is suspended.

(233.) SEC. IV. It shall be the duty of the commissioners, when any person or persons claim damages that they may have sustained, by the construction of the Illinois and Michigan canal, to settle with any such person or persons for the damages they may have received, and pay the same: *Provided,* If the commissioners are of opinion the claim is too high, and the claimant will not take a fair compensation, they shall call the appraisers, as required in the act to which this is an amendment, and they shall proceed as required in said act. Said appraisers shall receive a reasonable compensation, not to exceed five dollars per day, for their services, for the time necessary to perform the duties required of them as such appraisers, and shall be paid out of the canal fund.

(234.) SEC. V. That the board of public works of this State, whose appointment is provided for in a bill entitled "An act to provide for the settlement of debts and liabilities incurred on account of internal improvements in the State of Illinois," shall be and they are hereby authorized to employ not exceeding four assistant engineers, at a salary not exceeding one thousand dollars per annum.

(235.) SEC. VI. That the compensation of the chief engineer, whose appointment is provided for in the bill referred to in the preceding section, shall be two thousand dollars per annum, any bill or law to the contrary notwithstanding.

(236.) SEC. VII. The act passed February 27, 1839, entitled "An act to provide for a loan for canal purposes," is hereby so changed as to authorize the interest upon bonds hereafter sold under the provisions of said act to be paid semi-annually.

(237.) SEC. VIII. The governor, auditor and treasurer of this State, shall settle the accounts of the several agents employed by the governor, within the last year, to negotiate canal loans, or to convey funds from eastern cities to this State, and allow them respectively a compensation of five dollars a day for the time occupied by them in the performance of those services, except in case where a different agreement has been made with them by the governor; and if any such agent has retained a greater compensation than herein allowed, he shall be required to refund the overplus, and the same shall be added to the canal fund: *Provided,* That no person shall be entitled to receive from the State a *per diem* compensation for services performed in two or more different capacities at the same period of time.

(238.) SEC. IX. Should there be no funds on hand to meet the liabilities of the State to the contractors for labor done on the Illinois and Michigan canal, at the estimate to be made on the first of March next, it shall be the duty of the commissioners of said canal to issue their checks to contractors for such amount as may be found then due, as now provided by law, and payable whenever funds have been deposited for that purpose, bearing an interest at the rate of six per cent.: *Provided,* That this provision shall not extend to estimates made after said first day of March next: *Provided, also,* That in no case shall such checks be issued for a smaller amount than one hundred dollars.

An Act for the Relief of Purchasers of Canal Lots in Chicago and Ottawa in 1836.  
[Approved Feb. 27, 1841. *Laws*, 1841, p. 49.]

(239.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all persons who have heretofore purchased any of the property belonging to the canal, any of the canal lands, or any of the lots in any town, sold by authority of the State, and who have made advances to the State by way of payment for the same, and who have by any means forfeited the same by not complying with the other stipulations of the contract, shall be entitled to the relief hereinafter granted, upon the conditions hereinafter mentioned, that is to say: Every person who has paid any money upon such purchases, shall first ascertain the amount from the proper authority, and next, he shall have or procure to be described the particular lot or land upon which payment shall have been made, and shall be allowed the right to select so much of his original purchase, at his option, as the said payments will cover, deducting from the original price stipulated for, thirty-three and one-third per centum.

(240.) SEC. II. Said purchaser shall relinquish all claim to the lots or lands which he does not choose to purchase, and in writing make his selection known to the board of canal commissioners, who are hereby authorized and required to procure and deliver to such purchaser a deed or patent for the same, agreeable to the laws now in force for patenting lands and lots sold by canal commissioners.

(241.) SEC. III. If any balance shall be due to the canal fund, the same shall be promptly paid at the rate aforesaid; but it shall in no case be allowed that the said board shall issue scrip of forfeited payments that may in any event become currency for the payment of any other lands or lots belonging to the canal at any other than the amount of purchase, but that the same balance, if any, shall be liquidated by the conveyance of lands or lots originally sold, and at the original amount or price given at the time of purchase, with the deduction before mentioned.

(242.) SEC. IV. That it may be lawful for any purchaser to relinquish a part of a lot by fourths, or halves, in proportion to the depreciated value heretofore fixed by this act, but not by any other mode than leaving to the State as much front as rear; and in all cases of the relinquishment of lands, other than town lots, the same shall be done in pursuance of the legal subdivisions of the United States' surveys, and not less than forty acres, nor shall the commissioners transfer any lands, nor town lots, by any other description than by such legal subdivisions.

(243.) SEC. V. It may be lawful for any purchaser as aforesaid, to place his payment which has been so forfeited, on one piece of land, not a town lot, or one or more town lots, or such particular lot or piece of land as he may deem proper at the original purchase price, with the deduction as aforesaid, but in no case shall it be allowed to any such purchaser to place this payment on any other lands or lots, at any other price or valuation than as before mentioned.

(244.) SEC. VI. The canal commissioners shall keep a just and full record of all proceedings under this act, and report the same to the next meeting of the general or special session of this legislature.

(245.) SEC. VII. The rights of the purchasers under the provisions of this act may be the subject of transfer in writing, signed by the purchaser or

his legal representative, which shall be filed and recorded by the board: *Provided, however*, That the benefits and relief extended by the provisions of this act shall not embrace any land or town lots whatever, except the town lots sold by the commissioners of the Illinois and Michigan canal in the towns of Chicago and Ottawa in the year one thousand eight hundred and thirty-six, being for the relief and benefit of those purchasers, and none others.

The Third Section of an Act for the Benefit of the Persons therein named.  
[Approved Feb. 27, 1841. *Laws*, 1841, p. 212.]

(246.) SEC. III. The commissioners of the Illinois and Michigan canal are hereby authorized to cause any obstruction to be removed from any of the canal lands, whether said obstructions be by dam or otherwise, if, in their opinion, the interests of the State require the same to be done.

An Act to Provide for the Completion of the Illinois and Michigan Canal, and for the Payment of the Canal Debt.  
[Approved Feb. 21, 1843. *Laws*, 1843, p. 54.]

WHEREAS, it has been represented that certain holders of the bonds of this State are willing to advance the necessary funds for the completion of the Illinois and Michigan canal, upon being secured the payment of their said advances and of their said bonds, by a vested lien upon the said canal, lands and revenues; for the purpose, therefore, of accomplishing an object so desirable and beneficial to the said bond holders and the State:

(247.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That for the purpose of raising a fund for the completion of the Illinois and Michigan canal, the governor of this State be and hereby is fully authorized and empowered to negotiate a loan solely on the credit and pledge of the said canal, its tolls, revenues and lands, to be granted to trustees, as hereinafter provided, of one million six hundred thousand dollars, for a term not exceeding six years, and at a rate of interest not exceeding six per cent. per annum, payable out of the first monies to be realized from the said canal, its lands, tolls and revenues, the payment of interest and reimbursement of principal to be at such place, within or without the United States, and payable in such currency as may be agreed on.

(248.) SEC. II. The holders of canal bonds and other evidences of indebtedness of this State, issued for the purpose of aiding in the construction of the Illinois and Michigan canal, or hereafter to be issued for work done, per centage, scaleage or damages, shall be first entitled to subscribe, in proportion to the amount of bonds or other indebtedness held by them, and take the whole of the said loan; but if, within a reasonable time, to be determined by the governor, any of the said holders of canal bonds or indebtedness shall neglect or refuse to subscribe as aforesaid, the whole of the said loan may be subscribed for and taken by other holders of canal bonds or indebtedness; but if, within a reasonable time, to be determined upon by the governor, the holders of the said canal bonds or other evidences of indebtedness aforesaid, shall not subscribe for and take the whole of the said loan, then, and in that case, any other person or persons, body politic or corporate, shall be entitled to subscribe for and take so much of the

said loan as may remain unsubscribed for by the said holders of bonds or other evidences of debt aforesaid.

(249.) SEC. III. After the said loan shall be subscribed for as aforesaid, there shall be appointed three discreet persons to constitute a board, to be known by the style and description of the "Board of Trustees of the Illinois and Michigan Canal;" one of the said trustees shall be appointed by the governor of this State, and the other two shall be elected or appointed by the subscribers to the said loan, or the holders of the certificates authorized by this act, in manner and form as hereinafter mentioned. Whenever any vacancy shall occur in the said board of trustees, either by death or resignation, or from any other cause, said vacancy shall be filled by the governor, or holders of said certificates, to whom belonged the appointment of the trustees whose seat shall have become vacant, as the case may be.

(250.) SEC. IV. The first election of trustees by the subscribers to said loan under this act, shall be held at the canal office, at Lockport, at such time as the governor of this State shall appoint, under the direction of one of the judges of the supreme court of this State, who is hereby appointed inspector of the first election; and the two persons then elected as trustees by the said subscribers, and the person appointed trustee by the governor, shall hold their offices for two years from the time of their said election or appointment, and until others are elected.

(251.) SEC. V. Subsequent elections shall be held every two years, at such time and place, and under the direction of such persons, as a majority of the trustees for the time being shall, by resolution to be entered on their minutes, appoint, and they shall hold their offices for two years, and until others are elected in their stead.

(252.) SEC. VI. At the election of trustees under this act, each stockholder shall be entitled to one vote for each and every one thousand dollars of stock held by him, and in all elections, votes may be given in person or by proxy.

(253.) SEC. VII. All elections shall be by ballot, and the two who shall have the greatest number of votes, shall be the two trustees duly elected by the said subscribers or holders of said certificates. At all such elections, the said subscribers or holders of said certificates shall designate, upon their ballots, one of the persons voted for as president; and the person having the greatest number of votes as trustee and president, shall be one of the said trustees and president of said board.

(254.) SEC. VIII. The said board of trustees of the Illinois and Michigan canal, when duly appointed and elected as aforesaid, shall apportion their respective duties among themselves, and so far as is not incompatible with this act, shall possess all the powers and perform all the duties conferred upon the board of commissioners of the Illinois and Michigan canal by the act entitled "An act for the construction of the Illinois and Michigan canal," approved January ninth, eighteen hundred and thirty-six, and the acts supplementary and amendatory thereto, and shall take an oath or affirmation, and give bonds with security for the faithful discharge of the duties imposed upon them by this act.

(255.) SEC. IX. If the holders of any of the said canal bonds or other evidences of indebtedness issued for the purpose of aiding in the construc-

tion of the Illinois and Michigan canal, shall become subscribers for the said loan or any part thereof, they shall, at the time of subscribing, file or cause to be filed with the governor, a brief description of said bonds or other evidences of indebtedness aforesaid owned by them, which description shall be deposited by the governor in the office of the auditor of public accounts, in order that the evidences may be preserved to discriminate the holders who subscribed for the said loan, and to identify the said bonds or other evidences of indebtedness aforesaid, that may in consequence be entitled to a priority of payment out of property and assets granted to the board of trustees as hereinafter provided.

(256.) SEC. X. For the purpose of placing in the hands of trustees full and ample security for the payment of said loan authorized by this act, and the interest thereon, as well as for securing a preference in the payment of such of the canal bonds and other evidences of indebtedness issued by this State for the purpose of aiding in the construction of the Illinois and Michigan canal as may be owned by the subscribers to the said loan, the State does hereby irrevocably grant to the said board of trustees of the Illinois and Michigan canal, the bed of the said Illinois and Michigan canal, and the land over which the same passes, including its banks, margins, tow-paths, feeders, basins, right of way, locks, dams, water power, structures, stone excavated and stone and materials quarried, purchased, procured or collected for its construction; and all the property, right, title and interest of the State, of, in and to the said canal, with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and also all the remaining lands and lots belonging to the said canal fund, or which hereafter may be given, granted, or donated by the general government to the State, to aid in the construction of the said canal, and the buildings and erections belonging to the State thereon situated; the said board of trustees to have, hold, possess and enjoy the same as fully and as absolutely in all respects, as the State now can or hereafter could do, for the uses, purposes and trusts hereinafter mentioned; but it is to be understood that all canal lands and lots heretofore sold by the board of commissioners, upon which moneys are now due, or may hereafter become due, whether the said lands and lots be now forfeited or relinquished, or hereafter become forfeited or relinquished, shall be exempt from the aforesaid provisions of this act, and the trustee herein provided to be appointed by the governor, or any other officer or officers, having the management of the affairs of the canal, until said trustee be appointed on the part of the State, is hereby authorized and required to settle all accounts due to contractors and others (except for such damages as are hereinafter provided for) by issuing certificates of indebtedness which, together with the certificates of indebtedness, scrip, and acceptances heretofore issued by the said canal commissioners, shall be received by said trustee, or other officer or officers aforesaid in payment for said lots and lands whenever they may be presented for that purpose. The said lands and lots hereby reserved shall, within three months after the passage of this act, be appropriated as is provided in the thirteenth section of this act, and sold in accordance with the laws of this State regulating the sale of canal lands.

(257.) SEC. XI. The subscribers to the said loan shall execute an agreement to and with the governor of this State to pay the amount respectively subscribed to the said board of trustees, at such times and in such



proportions as said trustees shall direct, and said agreement shall specify the manner in which said trustees shall give notice to the said subscriber of every call for a payment: *Provided*, That in case any subscriber under the provisions of this act shall fail, neglect or refuse to pay any instalment at the time called for by said trustees, he shall forfeit all payments previously made, and all benefits and advantages arising under the provisions of this act: *Provided, however*, That the said trustees shall be bound to make a call for at least one hundred thousand dollars per quarter for the first year after their appointment.

(258.) SEC. XII. Whenever and as often as the said subscribers to the said loan shall make a payment of any portion of their subscriptions, in pursuance of a call of the said trustees, the said board of trustees, by their president and secretary, under the seal of said board, shall execute a certificate to each of the said subscribers for the amount paid by them on their respective subscriptions, with one year's interest at the rate of six per cent. added to the principal, stipulating for the payment of the same within six years, with interest at the rate of six per cent. per annum, to be computed after one year from the date of said certificate, and to be paid semi-annually thereafter; the said principal and interest to be paid by the said trustees out of the first moneys to be realized by them from the Illinois and Michigan canal, its assets, revenues, tolls, and lands granted to the said trustees by this act, which said certificate shall also be countersigned by the governor, and the impress of the great seal of the State shall be affixed thereon by the secretary of State.

(259.) SEC. XIII. The said board of trustees, when appointed, are hereby authorized to take possession of the said canal, lands, property, and assets, granted to them by this act, and proceed to complete the same. They are hereby authorized to make such changes and alterations of the original plan of said canal as they may deem advisable, without reducing its present capacity, or materially changing its present location, having due regard to economy, permanency of the work, and an adequate supply of water at all seasons. None of the lots, lands or water powers so granted to the said trustees, shall be sold until three months after the completion of said canal; the said lots, lands and water powers shall then be offered for sale by the said trustees at public auction, in lots and legal sub-divisions, once or oftener in each year for the four succeeding years; said sales to be made for cash or on credit in the manner prescribed in the act of the ninth of January, eighteen hundred and thirty-six. The said lands, lots and water power, before they are offered for sale as aforesaid, shall be appraised by three disinterested persons, to be appointed by the judge of the circuit court in which said lands, lots and water power are situated, who shall take an oath faithfully and impartially to discharge the duty of appraisers. Said lands, lots and water power, when so appraised, shall not be sold for less than the appraised amount. After the expiration of the four years, the said trustees shall expose the residue of said lands which may remain on hand, to sale at such times and in such manner as they may deem proper. The said board of trustees are authorized to convey lands and water powers sold by them as aforesaid, after the purchase money for the same be fully paid, but not before; and the said lands and lots shall be exempt from taxation of every description by and under the authority of any law of this State, until after the same shall have

been sold and conveyed by the said trustees as aforesaid: *Provided, also*, That in the construction of the said canal, no change shall be made in its location so as to direct the water power from canal lands: *Provided*, That in all cases where improvements were made upon the said canal lands or lots previous to the first day of February, eighteen hundred and forty-three, the owner of such improvements shall be entitled to purchase the said lands or lots on which said improvements are situated, at an appraisement to be made as aforesaid without reference to said improvements.

(260.) SEC. XIV. The said trustees shall proceed to the completion of the said canal in a good, substantial and workman-like manner, so that the same shall, if practicable, be ready for use and navigation within two years and six months from the time this act goes into operation. The said trustees shall keep a just, full and accurate account of all the costs and expenditures of completing and superintending the said canal, and of the rents, issues, revenues and profits received by them from the said canal, and from the property granted to them by this act, and of the amounts received by them under the said loan, and shall annually make a report to the governor, in manner and form specified in the forty-third section of the said act of January ninth, eighteen hundred and thirty-six: *Provided*, That in case the subscribers, under the provisions of this act, shall fail or neglect to complete the said canal within three years after this act goes into operation, then and in such case the lands and property hereby granted to said trustees shall revert to the State.

(261.) SEC. XV. The said board of trustees shall annually establish a tariff of tolls to be paid for transportation upon said canal, (but the legislature hereby reserves the right to increase the tolls with a view to an increase of revenue, but shall not reduce the same without the consent of the trustees) and are hereby fully authorized and empowered to collect the same, and from time to time to make, ordain and establish such reasonable rules, by-laws and regulations in relation to the collection of tolls, the transportation upon the canal, the conduct of boats and rafts, and the general police of the said canal, as are usual or may be found necessary, and to enforce the observance of the same; and that said canal, when completed, shall in all future time be free for the transportation of the troops of the United States and their munitions of war, without the payment of any toll whatever.

(262.) SEC. XVI. After the completion of the said canal as aforesaid, the said board of trustees shall make annual dividends of the moneys which shall come to their hands from the said canal, its assets, tolls, revenues, and lands granted to the said trustees by this act, after payment of incidental expenses, among the holders of the bonds of this State, in the following order: First, the said board of trustees shall annually make a *pro rata* dividend, on payment of said moneys on the certificates given to the subscribers to the loan authorized by this act, until said certificates and interest thereon are fully paid. Second, the said trustees shall then make annual dividends and payments of said money, upon the interest due upon the bonds and other evidences of indebtedness held by the subscribers to the said loan, a description whereof shall have been filed with the governor, as provided in the ninth section of this act, until the interest thereon is fully paid. Third, the said trustees shall then make annual dividends and payments of said money upon the interest due to the non-subscribing holders of bonds or other evidences



of canal indebtedness. Fourth, after paying all interest due such non-subscribing bond holders, the said trustees shall make annual dividends *pro rata* upon the principal of the bonds and other evidences of canal indebtedness, held by the subscribers to said loan, as provided for by the ninth section of this act, until the same shall be liquidated, at which time the trust hereby created shall cease, and the canal shall revert to the State, with all the appurtenances thereunto belonging: *Provided*, That the certificates of canal indebtedness, not stipulating on their face for the payment of interest, shall, when registered by subscribers to said loan as hereinbefore provided, bear an interest of six per cent. per annum, from and after the time when they shall be so registered: *Provided, further*, That no appraisal shall be made for any damages arising under the provisions of any contract entered into in pursuance of an act for the construction of the Illinois and Michigan canal, unless the contractor or contractors interested therein, shall first signify his or their consent in writing, (which writing shall be deposited with the appraisers, to be filed in the auditor's office,) that such appraisal of damages shall be made without allowing any prospective damages, or any profits which said contractor or contractors might have made, had they finished their jobs; but such contractor or contractors shall be allowed the value of their machinery upon the canal at the time the work stopped, and back per centage and scaleage, which entire amount of damages so allowed to all contractors, shall not exceed the sum of two hundred and thirty thousand dollars.

(263.) SEC. XVII. The governor is hereby authorized and empowered to appoint three discreet and skillful persons to go on to the jobs and lettings upon the canal, and appraise the actual damage which the respective contractors upon the said canal will sustain in being deprived of the same. Said appraisal shall be final and conclusive, unless appealed from. That if any person shall consider himself aggrieved by the decision of said appraisers, he may appeal from the same at any time within thirty days, to the circuit court of the county in which the job so appraised is situated. If the governor shall be satisfied that the appraisal is fair and honest, he shall issue certificates of canal indebtedness, bearing interest at six per cent., to the persons in whose favor the appraisal shall be made, for the amount; the holders of which certificates shall be entitled to all the privileges conferred by this act upon the other holders of canal indebtedness; and the present contractors of the Illinois and Michigan canal shall have the right to take the contract for the jobs which they now hold, at the estimate of the engineer to be appointed by said trustees, under such regulations and provisions as the said trustees shall direct.

(264.) SEC. XVIII. This act shall go into effect, and the said canal property and assets shall vest in the said trustees, as hereinbefore granted, whenever and as soon as the full amount of the said loan shall be subscribed for, and the trustees elected as hereinbefore provided; and when this act goes into effect, so much of the acts heretofore passed by the legislature of this State in relation to the Illinois and Michigan canal, and the canal lands and property, as conflicts with the provisions of this act, are hereby repealed.

(265.) SEC. XIX. Whenever the trust created by this act shall have been fully executed and performed by the said trustees, the said canal and the

canal property that may then remain, shall revert to the State, and the State hereby reserves the right of paying off the bonds and certificates to be paid to the said trustees, and the incidental expenses paid by them, and the interest thereon; and the said trustees shall then resign the said canal, and the remaining canal property and assets to the State.

(266.) SEC. XX. This act shall be a public act, and shall be liberally construed in all courts of justice; and the State hereby solemnly pledges its faith to supply, by future legislation, all such defects as may be found necessary to enable the said trustees to carry into full effect the fair and obvious intent of this act.

(267.) SEC. XXI. If, in consequence of any defect, omission or objection to the foregoing act, the said bond holders or other persons shall neglect or refuse to subscribe for the said loan, in that case, the governor is hereby authorized to negotiate and enter into a contract with the said bond holders or other persons, in pursuance of the general principles of this act: *Provided*, That he shall make no further pledge of the faith or credit of the State, for any advance of money, but shall be limited to pledging the canal and canal property therefor: *And provided, further*, That in any negotiations to be made under the provisions of this act, for the purpose of carrying them into effect, nothing shall be done which shall in any wise interfere with the rights now secured to the holders of canal bonds. The governor is hereby vested with all such power as may be necessary to carry this act into operation, or to make or cause to be made such negotiation.

(268.) SEC. XXII. The said trustees shall employ a chief engineer, of known and established character for experience and integrity, who shall be subject to the direction of the trustees, but shall be required to execute a bond to the governor in the sum of ten thousand dollars, to be approved by him, for the faithful performance of all the duties of an engineer, and shall be subject to be removed by the governor for any good reasons, which he shall make known to the next General Assembly. The said engineer shall, in addition, be required to take an oath "that he will faithfully and impartially perform all the duties of his office without respect to persons, and that he is neither interested nor will be interested in any job, work or contracts, let or to be let on the canal, or connected therewith," which oath shall be entered and subscribed on the bond of said engineer.

An Act to reduce the Number of Officers upon the Illinois and Michigan Canal.

[Approved March 2, 1843. *Lancs*, 1843, p. 62.]

(269.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all laws of this State so far as they provide for the election or appointment of commissioners, engineers, or other officers of the Illinois and Michigan canal, be and they are hereby repealed.

(270.) SEC. II. The present acting commissioner of the said canal shall continue to hold his office until some other officer or officers are appointed to take charge of the affairs of the canal, and shall perform all the duties heretofore required to be performed by the board of commissioners and treasurer. The office of secretary is also hereby continued as aforesaid; and one engineer, to be selected by the said commissioners, shall be retained until settlements have been made with contractors. The said commissioner is

also authorized to employ an agent for the prevention of trespasses upon canal lands, in case the services of such agent shall be deemed necessary.

(271.) SEC. III. The said commissioner shall at all times receive such evidence of canal indebtedness as have been issued or may be issued, as aforesaid, in payment for balances due for lands or lots, whenever the said evidence of indebtedness may be presented for that purpose; and upon full payment being made, he shall issue final certificates to the purchaser or purchasers of said land or lots.

(272.) SEC. IV. This act shall take effect from and after its passage; and thenceforth the salaries or pay of those officers not hereby expressly authorized to be continued or retained in office, shall cease.

An Act to provide for the Allowance and Payment of Interest and Money due the Contractors on the Illinois and Michigan Canal.

[Approved March 3, 1843. Laws, 1843, p. 62.]

WHEREAS, the contractors on the Illinois and Michigan canal have suffered great inconvenience in consequence of the non-performance on the part of the State, and as there is estimates and money due them, and placed to their credit in the office at Lockport, which has not been paid over to the said contractors; therefore,

(273.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the commissioner, trustee or agent of the Illinois and Michigan canal, to examine into and investigate the claim or claims of the contractors on the Illinois and Michigan canal, and on such examination if it shall be ascertained that there is money due the said contractor or contractors, for labor performed on said canal, which has been placed to his or their credit in the canal office at Lockport, then in that case it shall be the duty of such commissioner, trustee or agent, that may be appointed to superintend the canal, to give him or them a certificate to that effect, for both principal and interest, from the time the money was due to the said contractors on said canal: *Provided,* That any interest so paid shall be considered as a portion of the sum limited to be paid to contractors in the act entitled "An act to provide for the completion of the Illinois and Michigan canal, and for the payment of the public debt," passed at the present session of the General Assembly. This act to be in force from and after its passage.

An Act for the Relief of Persons who have made Improvements on Lands near the Line of the Illinois and Michigan Canal.

[Approved Feb. 25, 1843. Laws, 1843, p. 220.]

(274.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That persons who have made improvements on private property situated on or near the line of the Illinois and Michigan canal, for the purpose of aiding in the construction of said work, are hereby authorized to remove the same at any time within six months, after notice to that effect, in writing, is given by the owner of said land: *Provided,* That nothing in this act contained shall be so construed as to authorize the use of private property, without paying a reasonable compensation therefor.

An Act for leasing Water Power on the Illinois and Michigan Canal.

[Approved March 4, 1843. Laws, 1843, p. 63.]

WHEREAS, but a small amount of the money will be required to complete the FOX river feeder, and furnish water to propel machinery at Ottawa, La Salle county, from the canal, as has been heretofore planned, it would be for the interest of the State, as well as for the benefit and convenience of the citizens of La Salle county, that the agent of the State in charge of the canal, or the trustees who may be appointed under a late act to provide for the completion of the Illinois and Michigan canal, dispose of the same, as provided for by an act to provide for selling water lots on the Illinois and Michigan canal, approved February twenty-second, one thousand eight hundred and thirty-nine, before the canal is finished, that the State may receive the income which would accrue, and the citizens of La Salle county the convenience from the use of the same; therefore,

(275.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the agents of the State having charge of the Illinois and Michigan canal, or the trustees that may be appointed under the provisions of an act to provide for the completion of the Illinois and Michigan canal, may and are hereby authorized to dispose of the surplus water from the canal at Ottawa, La Salle county, together with lots on which the same may be used, on the terms provided by an act to provide for the disposing of water lots on the Illinois and Michigan canal, approved February twenty-second, one thousand eight hundred and thirty-nine, except so much of said act as is contained in the third section of said act, which said third section of the said act is hereby repealed, whenever and at such times as the said agents or trustees may deem it for the best interest of the State: *Provided,* That the water lots so sold shall be subject to an appraisal on the completion of said canal, as is now provided by an act entitled "An act to provide for the completion of the Illinois and Michigan canal," approved February [twenty-first,] one thousand eight hundred and forty-three; and the purchasers of any such water lots as may be sold under the provisions of this act, shall pay for the use of such lot such appraisal as shall be then made for the remaining term for which they have leased said lot.

(276.) SEC. II. Any settler on canal lands who has not made his improvements previous to the first day of December, eighteen hundred and forty-two, shall not be entitled to the pre-emption rights granted by the provisions of "An act for the completion of the Illinois and Michigan canal," approved February [twenty-first,] one thousand eight hundred and forty-three.

An Act to amend the several Laws allowing Illinois and Michigan Canal Lands to be taxed and sold for Taxes.

[Approved Jan. 29, 1845. Laws, 1845, p. 42.]

(277.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the assessment either for State, county, city or town purposes upon all lands and town lots belonging to the Illinois and Michigan canal fund, but which have been sold upon a credit, shall be made upon the basis of the valuation of the property, as in other cases, but the lien for said tax shall extend only to the actual interest which

has been paid for by the purchaser or purchasers, together with the improvements thereon, and shall not extend to the interest of the State in said lots and lands.

(278.) SEC. II. That if the taxes upon the said property assessed as aforesaid shall not be paid according to law, and it shall be necessary to sell the same for taxes, such sales shall extend to the interest paid for as aforesaid, and all improvements thereon, the fee-simple title to said property still remaining in the State. Such sale shall be deemed to transfer only such interest as the purchaser or person against whom the taxes are assessed, had in the premises and improvements aforesaid, subject, however, to the right of redemption as in other cases.

(279.) SEC. III. That all sales heretofore made for taxes due and unpaid upon said property, shall be considered within the purview of this act, and all deeds hereafter to be made by virtue of any such sale, shall convey only the interest of the original purchaser or purchasers, or his assignee or assignees, and shall vest all the right, title and interest of said purchaser or purchasers, or his or their assignee or assignees, in the said property as aforesaid, and to all improvements thereon.

(280.) SEC. IV. It shall be the duty of all assessors to describe particularly in their assessment rolls all such canal lands as may be taxed which have been sold by the State but not paid for, particularly describing the interest upon which the assessment is made; and the officer selling the same for taxes, shall, within twenty days after any such sale, file with the proper officers of the canal board a particular description of the canal lands so sold, together with the date of said sale.

(281.) SEC. V. The purchaser at any such tax sale, shall have the right to continue the payments agreed by the original purchaser or claimant to be paid to the State, until the expiration of the time limited for the redemption of the same, and until which time the original purchaser or claimant shall have a right to redeem the same by paying, in addition to the sums now required by law, the further sums, with legal interest thereon, which the purchaser at such tax sales may have paid to the State in fulfillment of the original purchase; and after the expiration of such time of redemption, the said lands and lots not having been redeemed, the purchaser at such tax sale shall have the right to make full payment according to the terms of the original purchase, and shall be entitled to a patent for such lands or lots, the same as if he had been the original purchaser.

(282.) SEC. VI. In making payments for the purpose of redeeming such lands or lots as aforesaid, all sums of money or scrip, advanced by the purchaser at tax sales, in continuation of the payments required of the original purchaser or claimant, shall be made at the canal office, in gold or silver.

An Act to amend an Act entitled "An Act to protect the Canal Lands against Trespassers," approved March 4, 1837; and an Act to amend an Act entitled "An Act to protect the Canal Lands against Trespassers," approved February 26, 1839.

[Approved Feb. 27, 1845. Laws, 1845, p. 308.]

(283.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That for the purpose of more effectually protecting the canal lands against trespassers, the acting commissioner of the Illinois and Michigan canal, shall, immediately upon the passage of this act,

appoint such agent or agents as may be necessary to protect the canal lands and property, who shall possess all the powers, and perform all the duties specified in the acts to which this is an amendment, except as hereinafter otherwise provided.

(284.) SEC. II. Each of said agents shall receive as a compensation for his services, the sum of two dollars per day, for every day he may be actually employed in performing the duties of such agent, to be paid out of the proceeds of the sales of down or fallen timber and wood, and judgments recovered under the provisions of this act, and the act to which this is an amendment: *Provided*, The aggregate amount paid to such agents shall not exceed the amount heretofore paid to the single agent employed for that purpose.

(285.) SEC. III. Each of the said agents, before entering upon the duties of his office, shall execute a bond to the State of Illinois, in the penalty of five hundred dollars, with one or more securities, to be approved by the acting commissioner of the Illinois and Michigan canal, conditioned that he will well and faithfully execute all the duties required of him by law, and make full and true account and payment to the said acting commissioner, or such person or persons as may have charge of the affairs of said canal, of all moneys received by him as such agent, which said bond shall be filed and kept in the canal office.

(286.) SEC. IV. If any person shall cut, fell, box, bore, injure or destroy any tree or sapling of any description, standing or growing upon canal land, he or she so offending shall pay five times the value of every 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 circuit court or justice of the peace having jurisdiction of the amount claimed; and shall also be liable to be indicted and punished according to the provisions of an act entitled "An act to prevent trespassing on the canal lands of this State," approved February 9, 1835.

(287.) SEC. V. If any person shall willfully and knowingly receive or use any tree, timber or wood of any description, except trees down, or fallen timber or wood, as authorized to be sold under the provisions of the law of this State for the protection of canal lands, he or she shall be liable to pay for every tree, timber or wood so purchased, received or used, five times the value thereof, to be recovered by action of debt in the name of the State of Illinois, before any circuit court or justice of the peace having jurisdiction of the amount claimed.

(288.) SEC. VI. If any person shall, without permission from the acting commissioner or agent of the said canal lands, take or remove from the canal lands, any rock, stone or coal, he or she so offending shall pay five times the value of such rock, stone or coal, so taken or removed as aforesaid, to be recovered as provided in the foregoing sections, and shall moreover be liable to be indicted and punished in accordance with the provisions of the act entitled "An act to prevent trespassing on the canal lands of this State," approved February 9, 1835.

(289.) SEC. VII. If any person or persons shall willfully remove, injure or destroy any materials furnished for the construction of the canal, or any machinery surrendered to the State by contractors, or shall in any manner injure the canal or the embankments, walls or structures thereof, he, she or

they shall be liable to pay five times the amount of the damage occasioned thereby, and shall moreover be subject to indictment, and on conviction shall be fined in any sum not more than two hundred dollars, or imprisoned not exceeding ninety days, or both, at the discretion of the court.

(290.) SEC. VIII. It shall be the duty of the judges holding courts in the counties of Cook, Will, Grundy and La Salle, to give the provisions of this act in especial charge to the grand juries of said counties respectively; and all justices of the peace and constables of said counties are hereby required to cause this act to be enforced as far as the same lies in their power.

(291.) SEC. IX. The actions commenced in the circuit court under the provisions of this act, and the act to which this is an amendment, shall not be dismissed on account of any error, defect or omission in the pleadings or process, but the act entitled "An act concerning amendments and jeofails," approved January 11, 1827, shall be deemed applicable to such actions, and no suits commenced as aforesaid shall be dismissed because prosecuted by persons other than State's attorneys or the attorney general.

(292.) SEC. X. That for the purpose of carrying this act into effect, the acting commissioner of the said canal shall have all the powers conferred upon the board of commissioners by the acts of which this is amendatory, and he shall require the said agents to make report of their proceedings to him at such times as he shall appoint therefor, under oath, stating the amount of money he has received for the use of the State, under the provisions of this act, for what and of whom he has received the same, the amount of judgments that have been received and from whom, and the number of days he has been actually engaged in such business.

(293.) SEC. XI. That so much of the act entitled "An act to protect the canal lands against trespassers," approved March fourth, one thousand eight hundred and thirty-seven, and the act entitled "An act to amend an act to protect the canal lands against trespassers," approved February twenty-sixth, one thousand eight hundred and thirty-nine, as comes in conflict with the provisions of this act, be and the same is hereby repealed; but all suits commenced under the provisions of the above recited acts, and now pending, shall be prosecuted to judgment in accordance with the provisions of said acts; and trespassers on canal lands prior to the passage of this act, against whom no suits have been commenced, may be prosecuted as heretofore provided by law.

(294.) SEC. XII. The acting commissioner is hereby authorized and directed to sell and dispose of all refuse stone, timber and all other materials and machinery belonging to the State, which are not to be used or which are, in his opinion, unsuitable to be used in the construction of the canal, which sale shall be made for the highest prices which he can obtain therefor, either at public or private sale, and to be sold for gold and silver, or canal indebtedness.

(295.) SEC. XIII. It shall be the duty of the canal commissioner, or other authorized agent of the State having charge of the canal and canal property, on the first Wednesday of April next, and annually thereafter, to offer for sale at public auction, at the canal office in Lockport, all lands and town lots, except the town lots in the city of Chicago, which shall be sold in said city as soon as may be after the sale of lands and other town lots

at Lockport, which have been heretofore sold and forfeited, and which may be hereafter forfeited to the State by the non-payment of instalments or interest. Said commissioner or agent shall give at least thirty days' notice of such sale, by publishing a description of the lands and lots to be offered for sale, in a newspaper printed in Ottawa, and at least one of the papers printed in Chicago. Said lands and lots shall be sold in conformity with the general provisions of "An act to amend the several laws in relation to the Illinois and Michigan canal," approved February twenty-third, eighteen hundred and thirty-nine: *Provided*, Said lands and lots shall not be sold for less than their value as heretofore appraised: *And provided, further*, That it shall be lawful for any person to redeem such lands or lots by making payment of the instalment or interest due, at any time previous to the day of sale.

(296.) SEC. XIV. This act to take effect from and after its passage.

An Act supplemental to "An Act to provide for the Completion of the Illinois and Michigan Canal, and for the Payment of the Canal Debt," approved February twenty-first, one thousand eight hundred and forty-three.

[Approved March 1. 1845. Laws, 1845, p. 31.]

(297.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That after the contract for the loan of one million six hundred thousand dollars, as contemplated in the act entitled "An act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," approved February twenty-first, one thousand eight hundred and forty-three, shall be duly executed in all respects as is provided by the terms of the above recited act, as modified by the provisions of this act, and the trustees are appointed as is contemplated in said act, the governor of this State shall execute and deliver, under the seal of State, a deed of trust to the said trustees, of all the property and effects mentioned in the tenth section of said act, which said conveyance shall include the lands and lots remaining unsold, donated by the United States to the State of Illinois, to aid in the completion of the said canal, to be held in trust as in the said act stipulated. And it is expressly provided that the subscribers to said loan may and shall register their bonds or other evidences of indebtedness, upon which they may have made or may hereafter make their subscriptions, within one year after the appointment of trustees. And the said subscribers shall be entitled to priority in the payment of the respective advances to be made by them and the interest thereon, also a priority in the payment of the principal and interest of the bonds or other evidences of indebtedness to be registered by them out of the proceeds of the said trust property, anything in the said act above mentioned to the contrary notwithstanding.

(298.) SEC. II. The majority of the said board of trustees shall have power and authority to act and decide in all cases, and their acts shall bind all parties; and in appointing the said trustees, each subscriber to the said loan shall be entitled to one vote for each sum of three hundred and twenty dollars subscribed, and such election may be held in the city of New York, under the direction of the district judge of the United States for that district, or such person as he for that purpose may appoint.

(299.) SEC. III. In case a sufficient sum shall not be subscribed or paid

to complete said canal, the said subscribers shall share *pari passu* with other persons, who may subscribe and pay the residue of the amount necessary to complete the canal: *Provided*, That the subscribers to said loan shall have the right to subscribe and fill up the amount necessary to finish said canal in the first instance, and if they neglect so to do, then any other persons may subscribe such amount: *And provided, further*, That such subscribers may register bonds upon such subscriptions as hereinbefore provided, within one year after such subscriptions.

(300.) SEC. IV. When the amount due for arrears and difference of interest on the registered bonds and other canal indebtedness shall be extinguished, then the principal of said registered bonds and canal indebtedness shall be paid, and when the said principal shall have been paid, the said trustees shall proceed to pay the interest on the unregistered canal bonds and canal indebtedness.

(301.) SEC. V. The preliminary expenses of the negotiation of said contract, with the expenses of the examinations of the canal property by the agents appointed by the authority of the bond holders, shall be first paid by the said trustees, unless some other provision for their payment be made by the General Assembly. But no further expense shall be incurred by the State by sending agents to Europe or elsewhere in relation to the matter.

(302.) SEC. VI. If the said canal shall not be completed within three years, as is contemplated in the fourth section of the above recited act, the subscribers to said loan who shall have advanced money in pursuance of their subscription, shall not forfeit the priority of payment secured to them by this act, but shall share in the trust property *pari passu* with such other persons as will advance further sums, if such should be necessary to complete the canal.

An Act to provide for paying a Portion of the Interest on the State Debt.

[Approved] March 1, 1845. *Laws, 1845, p. 44.*

(303.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That there shall be levied for the year one thousand eight hundred and forty-five, one mill upon each dollar's valuation of property, transferred from the county to the State tax, so that there shall be assessed and collected for the year one thousand eight hundred and forty-five, three mills on each dollar's valuation of property, and for the year one thousand eight hundred and forty-six, there shall be assessed and collected, three and one-half mills on each dollar's valuation of property; and that shall be the permanent rate of taxation, until otherwise provided by law; and the county commissioners' courts shall not hereafter assess for county purposes, any higher tax than four mills on the dollar, except in cases where they are or may be specially authorized to do so by law.

(304.) SEC. II. The proceeds of one mill of the tax for the year one thousand eight hundred and forty-five, and one and one-half mills for one thousand eight hundred and forty-six, and forever thereafter, until otherwise provided by law, (together with all surplus money in the treasury, after paying the expenses of the government,) shall be set apart and sacredly held for the payment of the interest on the State debt, and shall be called the "*Interest Fund*."

(305.) SEC. III. The governor is hereby directed, out of the proceeds of

one mill, and one and a half mills, and surplus money if any there should be, to make semi-annual payments of interest, commencing on the first day of July, one thousand eight hundred and forty-six, and semi-annually thereafter on the first days of July and January of each year, *pro rata*, on all the canal bonds, and the internal improvement bonds except the bonds heretofore hypothecated by McAllister and Stebbins; and the additional tax of one mill for the year one thousand eight hundred and forty-five, and one and one-half mills thereafter shall be collected by the several collectors and paid into the treasury in gold and silver, and a separate account thereof shall be kept in the office of the auditor and treasurer, and auditor's warrants shall not be received therefor; and if the treasurer or any other public officer shall appropriate the same, or knowingly suffer the same to be appropriated or drawn from the treasury for any other purpose than that provided by this act, he or they shall be deemed guilty of embezzlement, and shall be indicted and punished accordingly, and on conviction shall be removed from office.

Sections Six and Seven of an Act to drain a Marsh in Gross Point Precinct, Cook County, and for other Purposes.

[Approved March 3, 1845. *Laws, 1845, p. 313.*]

(306.) SEC. VI. The seventh section of an act to provide for the sale of certain canal lands, and for other purposes, approved July twenty-first, one thousand eight hundred and thirty-seven, is hereby so amended as to authorize the trustees who may be appointed in pursuance of an act to provide for the completion of the Illinois and Michigan canal, and the payment of the canal debt, approved February twenty-first one thousand eight hundred and forty-three, to cause block number fifteen, in the original town of Chicago, to be appropriated, if they shall think proper, for the same purpose as is block fourteen of said city, by virtue of said first mentioned section. And the said commissioners or trustees shall proceed forthwith to perfect the exchange of block fourteen aforesaid for block seven as contemplated by the said act, to which this section is an amendment; and also in like manner under the provisions of said act, to obtain the title to said block fifteen.

(307.) SEC. VII. And the said commissioners or trustees are hereby further empowered to make any arrangement with the city of Chicago or any individual, for the excavation, in whole or in part, of the canal basin referred to in the seventh section of the act first named, as they may judge best and expedient; provided such excavation can be done without any expense to the State.

An Act to amend an Act, approved February 28, 1839, entitled "An Act to provide for the Dedication of Town Lots, in Towns situated on Canal Lands, to public Purposes."

[Approved Feb. 18, 1847. *Laws, 1847, p. 21.*]

(308.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the board of trustees of the Illinois and Michigan canal is hereby authorized to donate a lot in the town of Ottawa, in La Salle county, to the trustees of the Methodist Episcopal church, in said town, for the purpose of erecting thereon a house of worship.

(309.) SEC. II. The said board of trustees of the Illinois and Michigan

canal, is hereby invested with all the powers conferred on the board of commissioners of the Illinois and Michigan canal by said act, and all donations which may be made under this act, to be on the same terms and conditions as required by the act to which this is an amendment.

(310.) SEC. III. This act to be in force from and after its passage.

An Act to allow American Subscribers to the Canal Loan of \$1,600,000, the same Privilege or Right conferred upon Foreign Subscribers.

[Approved Feb. 27, 1847. Laws, 1847, p. 22.]

(311.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the American subscribers to the canal loan of one million six hundred thousand dollars, authorized by an act entitled "An act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," approved February twenty-first, eighteen hundred and forty-three, and an act entitled "An act supplemental to an act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," approved February twenty-first, eighteen hundred and forty-three, approved March first, eighteen hundred and forty-five, who have heretofore registered canal bonds and evidences of canal indebtedness, at the rate of one thousand dollars in bonds and indebtedness for every sum of four hundred dollars subscribed by them to said loan, shall have further time until the first day of May, in the year of our Lord one thousand eight hundred and forty-eight, to complete the registration of the canal bonds and other evidences of canal indebtedness held by them, so that each of the said American subscribers who have registered as aforesaid, shall be entitled to register, under the provisions of the above recited acts, one thousand dollars in bonds and other evidences of canal indebtedness, in the whole, for every sum of three hundred and twenty dollars subscribed by them to said loan, so as to put the said American subscribers upon an equal footing with the European subscribers, who have been allowed to register canal bonds and other evidences of canal indebtedness, at that rate and in that proportion.

An Act to authorize the bringing of Suits against the State Trustee of the Illinois and Michigan Canal.

[Approved Feb. 28, 1847. Laws, 1847, p. 22.]

(312.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases where individuals or corporations had a right under the former laws of this State, or any of them, relating to the Illinois and Michigan canal, to prosecute suits against the board of commissioners of said canal, whilst said board was in existence, such individuals or corporations shall hereafter have the right to prosecute suits in all competent courts of this State against the "State trustee of the Illinois and Michigan canal," by that name and style, the appointment of said trustee being authorized by an act entitled "An act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," approved February twenty-first, one thousand eight hundred and forty-three; such suits to be brought against said trustee shall be prosecuted and defended in the same manner as suits heretofore authorized against said board of commissioners were prosecuted

and defended, and judgment obtained against said trustee shall be of the same nature and have the same effect as judgments heretofore recovered against said board of commissioners.

(313.) SEC. II. The said State trustee, by the name and style aforesaid, may also prosecute and defend suits in all cases, when said board of commissioners might or could have prosecuted and defended suits, so far as is not inconsistent with the act approved February twenty-first, one thousand eight hundred and forty-three, hereinbefore referred to.

An Act to amend an Act entitled "An Act for the Completion of the Illinois and Michigan Canal, and for the Payment of the Canal Debt," approved Feb. 21, 1843.

[Approved Feb. 25, 1847. Laws, 1847, p. 23.]

(314.) SEC. I. *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 prohibits the board of trustees of the Illinois and Michigan canal from selling any of the lots, lands or water power granted to them by said act until three months after the completion of said canal, is so modified as to permit said board of trustees, and they are hereby authorized, to proceed to sell any of said lots, lands or water power, except as herein-after provided, before the entire completion of said canal, should they think it advisable or for the interest of the State to do so.

(315.) SEC. II. The said trustees, together with the appraisers of canal lots, land and water power, to be appointed in the several circuits where such lands, lots or water power are situated, as provided for in said act, or a majority of them, are hereby constituted a board to determine the number of lots, and the quantity of land which the claimants of said lots and lands are entitled to purchase at the appraised value thereof, under the provisions of said act; but the action of said board shall in no way impair or prejudice the legal rights of said claimants, as now provided by law.

(316.) SEC. III. Any sales which may be made, shall be in the same manner and upon the same terms as prescribed in the act to which this is an amendment, but may be held at such times, (not oftener than once in three months,) and at such places, as said trustees may direct: *Provided,* That said trustees shall not sell more than one-tenth of the canal property in any one city, town or township, until after the completion of said canal, and that no sale shall be made before the first of October next.

(317.) SEC. IV. After the completion of said canal, the said board of trustees may withhold such portions of timbered land or lands, containing stone quarries and coal beds, from sale, as will in their opinion best promote the interests of the State, the State creditors and the canal fund: *Provided,* That when any *bona fide* settler, residing on, or contiguous to, canal lands, shall desire to purchase any of the lands for the use of his farm, reserved as aforesaid, and shall make application to said board of trustees, they shall offer the land applied for, for the purposes aforesaid, at the next sale.

(318.) SEC. V. Any lots or lands which may hereafter be sold upon a credit by said board of trustees, shall be taxed to the extent of the interest of the purchaser, and the value of improvements on said lots and lands, in the same manner as prescribed in an act entitled "An act to amend the several laws allowing Illinois and Michigan canal lands to be taxed and sold for taxes," approved January twenty-ninth, one thousand eight hundred and



forty-five: *Provided*, Said board of trustees shall first signify their acceptance of the provisions of this act by notifying the governor of the same in writing.

An Act to pay the Balance due Canal Contractors.

[Approved Feb. 16, 1847. Laws, 1847, p. 24.]

(319.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the governor of this State is hereby directed and required to issue canal indebtedness, bearing interest from the date of the several awards, to the several contractors whose damages remain unpaid, the several amounts due them under the award of the board of appraisers, appointed pursuant to an act entitled "An act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," approved February twenty-first, one thousand eight hundred and forty-three; which said amount now to be issued, shall not exceed the sum of seventy thousand seven hundred and thirty dollars and ninety-one cents.

(320.) SEC. II. This act to take effect from and after its passage.

An Act to amend an Act entitled "An Act to amend an Act entitled 'An Act to protect the Canal Lands against Trespassers,'" approved March 4, 1837; and an Act to amend an Act entitled "An Act to protect the Canal Lands against Trespassers," approved February 26, 1839, approved February 27, 1845.

[Approved March 1, 1847. Laws, 1847, p. 24.]

(321.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the act to which this is an amendment, has been from the time of its enactment and is now in force, and shall continue in force, subject to the amendment hereinafter made, until expressly repealed by law.

(322.) SEC. II. Wherever the terms "acting canal commissioner," "canal commissioner," and "commissioner," occur in the act to which this is an amendment, there shall be substituted in the place and instead of said terms, and there is hereby so substituted, the term "State trustee," which last term shall be construed to mean and refer to the trustee heretofore appointed or hereafter to be appointed, on the part of this State, under the existing laws of this State, as one of the board of trustees of the Illinois and Michigan canal.

(323.) SEC. III. The said State trustee named in the second section of this act, shall have all the power given by the law to which this is an amendment, to the acting commissioner of said canal; and the said State trustee shall have full power to carry into execution all the provisions of the act to which this is an amendment, in the manner therein directed, anything in any other law to the contrary notwithstanding. But the said State trustee shall not have power under this act, nor the act to which this is an amendment, to diminish in any manner the value of any part of the canal lands, by authorizing the taking therefrom of any standing timber, rock, stone or coal, except as the board of trustees of said canal may now have power by law to employ all necessary materials in and about the construction of said work.

(324.) SEC. IV. All suits, except prosecutions by indictment, commenced under this act and the act to which this is an amendment, shall be brought in the name of the "board of trustees of the Illinois and Michigan canal,"

subject to all the provisions in every other respect contained in the act to which this is an amendment.

An Act to amend an Act entitled "An Act to provide for the Dedication of Lots, in Towns situated on Canal Land, to Public Purposes."

[Approved Feb. 26, 1847. Laws, 1847, p. 25.]

(325.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any religious society or congregation, to whom any lot shall have been donated or granted, under and by virtue of the act to which this is an amendment, are hereby authorized and empowered to sell any portion or the whole of said lot so donated or granted: *Provided*, The proceeds of the sale of any such lot, or part of a lot, shall be applied to the purchase of another lot or lots, to be used for the same purpose as that for which such lot was donated, or to the payment of debts already incurred for the purchase of a lot or lots for such purpose, or shall be applied to the erection of a house of worship on any lot or lots belonging to such society or congregation in the same town, or to the payment of any debts already incurred by such society in the erection of a house of worship in said town.

(326.) SEC. II. The trustees of any society or congregation, who shall sell any lot, or part of a lot, under and by virtue of the provisions of the foregoing section, are hereby authorized to convey the lot, or part of a lot, sold, to the purchaser or purchasers, by good and sufficient deeds of conveyance, and the said purchaser or purchasers shall be thereby vested with a good and indefeasible title to the lot, or part of a lot, so purchased by them: *Provided, however*, That any sale or sales that may hereafter be made of the whole or any part of lot nine (9), in block one (1), in fractional section fifteen (15), in the city of Chicago, by the trustees of the society or congregation to whom the same may have been donated, granted or set apart, their successors or assigns, shall be upon the express condition that the purchaser or purchasers of said lot or any portion thereof, his, her or their assigns, shall not subdivide the same, except by east and west lines, so as in no event to make or suffer a south front or north rear.

(327.) SEC. III. The governor is hereby authorized and directed to issue, upon application, to the society or congregation to whom any lot has been granted, donated or set apart, a patent for the same, upon receiving satisfactory proof that the same has been granted, donated or set apart for the use of said society, under and by virtue of the law to which this is an amendment; the patent, when issued, shall contain a brief statement of the purposes for which the said lot is donated. This act to take effect from and after its passage.

An Act to authorize the Governor to refund Certain Moneys.

[Approved March 1, 1847. Laws, 1847, p. 50.]

(328.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the governor is hereby authorized and required to issue certificates of canal indebtedness to such contractors as received portions of one hundred and forty-two State bonds from the board of commissioners of the Illinois and Michigan canal, from which one of the coupons for six months' interest was detached, for the sum

of thirty dollars on each bond received as aforesaid, and upon which no allowance has been received.

An Act to limit the Time for Persons to bring Claims against the State of Illinois.

[Approved March 1, 1847. Laws, 1847, p. 32.]

(329.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all persons having unliquidated claims against the State of Illinois, from any cause whatever, shall make out all the vouchers, and present the claims, together with their own affidavits of the correctness of the same, previous to the first day of January, eighteen hundred and forty-nine, and have the same filed in the office of the secretary of State, so that future legislatures may know what unliquidated claims do exist against the State, and the grounds upon which they are founded.

(330.) SEC. II. The unliquidated claims arising from the canal, shall all be proved up by witnesses, before the State trustee on said canal, which shall embrace all the testimony relating to said unliquidated claims, and no further testimony shall be allowed to be brought in, to substantiate said unliquidated claims, after they are once filed as above.

(331.) SEC. III. All unliquidated claims, arising from the internal improvement system, shall be proved up the same as before mentioned, before the auditor of public accounts, and filed the same as above; and any persons having unliquidated claims, shall prove the same before the auditor, and file the claim and proof in like manner.

(332.) SEC. IV. Any person having unliquidated claims against the State, who do not prove the same up, and file them as above, shall not be entitled to have them considered after that date; and hereafter all unliquidated claims against the State, shall be proved up and filed as above, within two years from the time such claim may have arisen; and any claim not presented and proved up as above, and filed, shall be forever barred from payment by the State.

(333.) SEC. V. The person hereby empowered to hear testimony, shall certify all proceedings had before him, under his hand, shall administer oaths to witnesses, who shall testify the truth in all cases; and for a violation, or for false swearing, in reference to any claim, the person so swearing shall be punished according to the law in such cases.

(334.) SEC. VI. This act to be in force from and after its passage.

An Act to fund State Scrip.

[Approved Feb. 22, 1847. Laws, 1847, p. 165.]

(335.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all such contractors as may have received scrip, certificates of canal indebtedness, or other evidences of canal indebtedness, from the board of commissioners of the Illinois and Michigan canal, and from the governor, shall have the right to surrender the amount which they may have received as aforesaid, and upon the presentation and surrender of said scrip and indebtedness, the governor is hereby authorized and required to issue to said contractors, Illinois and Michigan canal bonds, bearing six per cent. interest for the principal thereof, and shall make a computation of interest on all such scrip and indebtedness,

from the date of the same, and issue certificates of canal indebtedness (without interest,) for the amount of back interest thus found to be due, which certificates shall be received in payment for all canal lots and lands heretofore sold, and for all dues to the canal fund. The bonds to be issued under the provisions of this act, shall be of the same denomination, the principal and interest of which shall be payable at the same time, and in the same manner, and stand upon the same footing, with those heretofore issued. Those who furnished powder to contractors, under a contract made with the board of commissioners, and received canal indebtedness from said board in payment therefor, shall be entitled to the privileges conferred upon other contractors, for such scrip as they may have received under such contract.

(336.) SEC. II. When any scrip or canal indebtedness, not bearing interest on its face, and which shall have been registered under the provisions of an act entitled "An act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," approved February twenty-first, eighteen hundred and forty-three, and all acts supplemental thereto, shall be presented to the governor by said contractors as aforesaid, it shall be the duty of the governor to compute interest thereon, from its date until the time when the same shall have been registered as aforesaid, and shall issue to said contractors certificates of canal indebtedness for such interest, which shall be receivable for all debts and dues owing to the canal fund for lots and lands heretofore sold; and the governor shall also compute the interest on the said scrip and canal indebtedness from the date of the registry aforesaid, until the same shall be presented for exchange as aforesaid, and shall issue certificates therefor as aforesaid, which latter certificates shall be entitled to all the benefits, advantages and preferences given under the acts aforesaid, to the interest on registered canal bonds, and shall be paid in the same manner; and the bonds to be issued by the governor, in exchange for registered scrip and indebtedness, shall have the same force and effect, and be entitled to all the advantages and preferences, and shall, in all respects, stand in the place of and be substituted for the scrip and indebtedness surrendered and exchanged therefor; and it shall be the duty of the governor to provide for the registering the new bonds and scrip so issued and entitled to such preference, in place of the scrip and indebtedness surrendered. The interest on registered canal scrip and indebtedness, bearing interest on its face, shall be computed up to the time when the same shall be presented to the governor for exchange, and certificates shall be issued therefor, which shall be registered as aforesaid, and shall be entitled to all the advantages and preferences given by the canal laws to interest on registered canal bonds.

(337.) SEC. III. It shall be the duty of the governor to keep a complete record of all the scrip and indebtedness which may be redeemed as aforesaid, showing the amount redeemed and the amount of interest allowed, and cause the same to be canceled and deposited in the office of the auditor of public accounts; and he shall also keep a complete record of all the bonds issued, with a description of date, amount, and to whom paid.

An Act fixing the Character of Certain Bonds.  
 [Approved Feb. 10, 1849. Laws, 1849, (1st Sess.) p. 45.]

WHEREAS, there was a loan of money made by the internal improvement fund to the canal fund, which loan was paid to the internal improvement fund in canal bonds; AND WHEREAS, the said canal bonds were afterwards issued by authority of law to provide for the completion of that part of the Northern Cross railroad running from Springfield to Jacksonville, with an indorsement on each of said bonds that all the profits arising from said road were, and should be, set apart and appropriated to pay the interest upon the said one hundred bonds so issued as aforesaid, thereby identifying the said canal bonds with the internal improvement fund, inasmuch that doubt has arisen as to whether the said bonds should be chargeable to the canal fund or to the internal improvement fund; AND WHEREAS, the agents of the canal fund will not recognize the said bonds as chargeable against that fund; therefore,

(338.) SEC. I. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That the holders of the said above described bonds shall be entitled to have the same chargeable and charged upon the canal fund, and that said fund shall be applied to the payment of the principal and interest of said bonds, as if the same had never been paid over to said internal improvement fund.

An Act authorizing Collectors of Tolls and Canal Inspectors to administer Oaths.  
 [Approved Feb. 8, 1849. Laws, 1849, (1st Sess.) p. 46.]

(339.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That collectors of tolls, deputy collectors or collectors' clerks, and canal inspectors, appointed by the trustees of the Illinois and Michigan canal, under the laws of this State, be, and they and each of them are hereby, authorized and empowered to administer oaths and affirmations to owners and masters of canal boats.

(340.) SEC. II. The oaths so administered by the canal collectors, deputy collectors or collectors' clerks and inspectors, shall have the same force and effect as though administered by any officer now empowered by law to administer oaths.

(341.) SEC. III. Any owner or master of any canal boat as aforesaid, swearing falsely, shall be punished, as now required by law, for perjury.

(342.) SEC. IV. The official certificate of the secretary of the board of trustees of the Illinois and Michigan canal, under the seal of said board, to any matter or fact on record in his office, shall be received as *prima facie* evidence of such matter or fact in any court in this State.

(343.) SEC. V. Any copy of any rules and regulations of the board of trustees of the Illinois and Michigan canal, certified as aforesaid, shall be received in any court of this State as *prima facie* evidence that said rules and regulations have been adopted by said board.

(344.) SEC. VI. This act to be in force from and after its passage.

An Act to authorize the Use of Certain Ground bordering on the Illinois and Michigan Canal, in Joliet, in the County of Will.

[Approved Feb. 12, 1849. Laws, 1849, (1st Sess.) p. 46.]

(345.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That so much of Joliet street, in the

town of Joliet (original town), as lies between lots two (2) and three (3), in block two (2), in said town of Joliet, and the east bank of the Illinois and Michigan canal, be and the same is hereby vacated.

(346.) SEC. II. Ethan Wetherbee and George Woodruff, of said county, owners of said lot number three (3), their heirs and assigns, are hereby authorized and empowered to construct a slip or canal at or opposite said lot three, from the Illinois and Michigan canal to or into the said lot: *Provided,* That they shall erect sufficient banks and other structures, fully to protect said Illinois and Michigan canal in all respects, and shall not in any manner affect the navigation of said canal, or the use of its banks or appurtenances. This act to be in full force from and after its passage.

An Act in relation to the Illinois and Michigan Canal, and the Canal Lands.  
 [Approved Feb. 14, 1851. Laws, 1851, p. 90.]

(347.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* All penalties provided by law in relation to the canal, and all penalties provided and mentioned in the "rules, by-laws and regulations" adopted and established, and which hereafter may be adopted and established by the board of trustees of the Illinois and Michigan canal, in pursuance and by virtue of section fifteen of the "Act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," approved February 21st, 1843, in all cases when the amount does not exceed one hundred dollars, may be sued for and recovered, by action of debt, before any justice of the peace of the county in which the cause of action accrued.

(348.) SEC. II. Any person or persons who shall willfully and maliciously or wantonly injure any bank of the canal, towpath, bridge, culvert, lock, aqueduct, or any part of any portion of the canal, or any thing connected with or appertaining to the same, shall be deemed guilty of malicious mischief, and shall, on conviction, be fined in a sum not exceeding three hundred dollars, and be imprisoned not exceeding three months.

(349.) SEC. III. The said board of trustees of the Illinois and Michigan canal are hereby authorized to call together the board of appraisers, heretofore appointed for the appraisal of canal lands, and such board, or a majority of them, shall be and they are hereby authorized to re-appraise and value any such lots, lands or water power, as the said board of trustees shall designate and require to be re-appraised, and which have been heretofore exposed to sale at public auction and remaining unsold for want of bidders; and they are also authorized to re-appraise block seven, in the original town of Chicago, (known as the "basin block"); and also to appraise all such canal property as has not been heretofore appraised; and the appraisal and re-appraisal and valuation so made by such appraisers, shall have the same force and effect as the original appraisal heretofore made by them.

(350.) SEC. IV. In case of the death, resignation, or refusal of any of said board of appraisers to serve, the judge of the circuit court in which such vacancy occurs, shall have power to fill such vacancy, and shall do so on the application of said board of trustees.

(351.) SEC. V. This act to be in force from and after its passage.

An Act authorizing the Trustees of the Illinois and Michigan Canal to lease Water Power in the Town of Ottawa, and to settle for Damages.

[Approved Feb. 14, 1851. Laws, 1851, p. 91.]

For the better enabling the trustees of the Illinois and Michigan canal to create a surplus of water in the town of Ottawa, and lease the same as contemplated prior to the passage of the act of the twenty-first of February, one thousand eight hundred and forty-three, providing for the completion of said canal, and required thereby:

(352.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, as follows: The State of Illinois hereby declares its assent to the following alterations and additions to the act entitled "An act to provide for the completion of the Illinois and Michigan canal, and for the payment of the canal debt," approved twenty-first of February, one thousand eight hundred and forty-three:

1st. The board of trustees of the said canal may create surplus water in the town of Ottawa, and lease the same, with the ground upon which to use it, upon such terms and conditions as they may deem advisable.

2nd. The said trustees are hereby authorized to settle with any of the owners of land or water power on Fox river, for the damages they may sustain by reason of the diversion of the water of said river into said canal, for the purpose of creating surplus water to be leased for hydraulic purposes in said town, and pay for the same; or may give in exchange, water in said town, to be drawn from said canal, or its branch, and the ground upon which to use it, either in perpetuity or for a term of years, and to execute such conveyances, covenants and leases as may be necessary or proper to accomplish that object.

(353.) SEC. II. The said trustees are further authorized to acquire the free and sole use and control of the water which may be drawn from Fox river through the Fox river feeder, by giving to the owner or owners, or claimants, or any or either of them, the water power in Dayton, or said feeder water in Ottawa, and the ground upon which to use it, either in perpetuity, or for a term of years, upon such terms and conditions as they may deem best for the interest of the State and of the canal fund; and for this purpose may execute all such conveyances, covenants and leases as may be deemed necessary or proper.

(354.) SEC. III. The acts and doings of the said trustees, done in pursuance of this act, shall be binding upon the State.

An Act to constitute a Commission to take Evidence in Relation to Certain Claims.

[Approved June 22, 1852. Laws, 1852, p. 152.]

(355.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*. That Hugh T. Dickey, of the county of Cook, A. Lincoln, of Sangamon, and Noah Johnston, of Jefferson county, are hereby named and constituted a board of commissioners, any two of whom are hereby authorized to act, whose duty it shall be to collect proofs and testimony, hear and investigate all such claims as shall be presented against the State arising out of transactions by and between the agents of the State authorized to negotiate loans, and by and between the State and all persons who have heretofore presented claims for damages for right of way, and injury done to property, in the construction of the Illinois and

Michigan canal and its feeders, and by and between the State and the contractors on the said canal and feeders, and to report all such testimony or proofs so taken to the governor, to be by him filed in the office of the secretary of State, and caused to be laid before the General Assembly at the next session thereof.

(356.) SEC. II. It shall be the duty of the said commissioners to hear, preserve and report all such additional or further testimony on the part and in behalf of said claimants as they or any of them may desire to present, which may show the equity or justice of their claims, or in aid or support thereof; and said testimony shall be reported, preserved and represented to the General Assembly at the same time and in the same manner as is provided in the first section of this act concerning the proofs and testimony taken in behalf of the State, but in no case shall any new claims be presented or considered on the part of said contractors, nor any increase be allowed upon claims heretofore made.

(357.) SEC. III. Said commissioners are hereby authorized to appoint a clerk, to act under their direction, in performing the duties required by this act. Said commissioners shall be allowed four dollars per day whilst engaged in taking evidence, and mileage at the rate of ten cents per mile in going to and returning from the place of meeting, to be allowed once only; and said clerk three dollars per day [for the time] he shall be actually employed under this act; and no other compensation whatever shall be allowed.

(358.) SEC. IV. The said commissioners shall have power to send for witnesses and to compel their attendance, and to administer oaths, and to examine all records, books and papers pertaining to their duties, in the offices of the fund commissioner, secretary of State, and in any of the offices connected with the Illinois and Michigan canal, and in the offices of the clerks of the courts in any of the counties through which said canal or its feeders have been constructed, and to exercise all such powers as shall be requisite to ascertain the merits of any of said claims: *Provided*, That the testimony on the part of claimants shall be procured at the expense of said claimants, and shall in no case be a charge upon the State.

(359.) SEC. V. It shall be the duty of said commissioners to notify the claimants of the time and place, upon the line of the canal, when and where they will meet for the purpose of such examination; such notice to be published in one newspaper published in Chicago, Ottawa and Joliet, at least thirty days before said meeting and examination shall take place, and in no case shall a witness be heard until after he shall have been sworn to testify, as in other cases.

(360.) SEC. VI. The said commissioners shall, before entering upon the discharge of their duties, take an oath that they will perform all the duties required of them impartially, faithfully, and without favor or suppression of truth.

(361.) SEC. VII. It shall be the duty of the governor, if he shall deem it expedient, to appoint some competent person to appear before said commissioners, and contest all such claims as shall be presented as aforesaid, and to offer proofs on behalf of the State, who shall be paid by the governor out of contingent fund.

(362.) SEC. VIII. The passage of this act shall not be understood as

any admission on the part of the State that any of the claims referred to are valid, or that the State is in anywise liable or bound to pay the same, or any part thereof, the object being simply to provide for obtaining and preserving testimony of the facts in relation to the same.

An Act to give validity to Grants and Conveyances by the Board of Trustees of the Illinois and Michigan Canal.

[Approved June 23, 1852. Laws, 1852, p. 200.]

(363.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all deeds, title papers and agreements and contracts affecting the title to real estate in this State, heretofore executed, or which may hereafter be executed, by the board of trustees of the Illinois and Michigan canal, under the seal of said board, shall be admitted to record without proof or acknowledgment of the execution thereof; and the same having the seal of said board thereto attached, shall be admitted in evidence in all courts without further proof; and the transcript of the record thereof, duly certified, shall be admitted in evidence without further proof, in the same manner as deeds duly acknowledged and recorded are.

An Act to authorize the Trustees of the Illinois and Michigan Canal to make an Appropriation for the building of a Bridge over the Canal at Seneca, in La Salle County.

[Approved Feb. 15, 1855. Laws, 1855, p. 104.]

(364.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the board of trustees of the Illinois and Michigan canal be, and they are hereby, authorized to appropriate, out of the canal fund, any sum not exceeding fifteen hundred dollars, for the construction of a carriage bridge over said canal, on section number twenty-three (23), in township number thirty-three, in range number five east of the third principal meridian, at Seneca, in La Salle county.

(365.) SEC. II. This act to take effect and be in force from and after its passage.

An Act for the settlement of Claims of Contractors on the Illinois and Michigan Canal.

[Approved Feb. 14, 1855. Laws, 1855, p. 161.]

WHEREAS, it is alleged by and on behalf of the contractors who were employed in the construction of the Illinois and Michigan canal, whose contracts date prior to A. D. 1840, that they were subjected to great loss and damage by reason of the failure of the State to pay them, the said contractors, their several estimates for work done on said canal, according to the contract and agreement of the said State; AND WHEREAS, the said contractors allege that they were compelled to take from the State, in payment for work so done by them for the State, canal scrip, bonds, and other evidences of State indebtedness, at the par value of the same, while the same could not be disposed of in market, except at ruinous rates of discount; AND WHEREAS, the said contractors also allege that a large sum of money has been withheld from them by the State, growing out of and accruing to them, as they allege, from what is commonly called the "Thornton Loan;" now, therefore, for the purpose of making a just and equitable settlement of all the said claims of the said contractors

with the State, growing out of their said contracts, and of the failure of the State to comply with and fulfill her part of said contracts as aforesaid,

(366.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the whole subject of the claims specified in the foregoing preamble, together with the testimony relating thereto, taken before Charles Oakley, and now in the office of the secretary of State, and the testimony taken before Noah Johnston and A. Lincoln, which was reported to the governor of the State of Illinois, on the 7th day of January, A. D. 1853, and all other testimony relative to such claims, now on file in the office of the secretary of State, be and the same are hereby referred to a commission, consisting of Judges Samuel H. Treat, John D. Caton and Walter B. Scates.

(367.) SEC. II. The said commissioners are hereby authorized and required to meet at some convenient place, by them to be determined, and at as early a day as is practicable, and examine said claims, the testimony concerning the same, taken before Charles Oakley, the testimony taken before Noah Johnston and A. Lincoln, and all other testimony relating thereto, now on file in the office of the secretary of State, together with such other and further testimony as shall be presented before them, either on the part of the State or the said claimants: *Provided,* That all additional testimony received by said commissioners shall be in writing and kept on file with the other testimony.

(368.) SEC. III. After full examination and hearing of said claims, and the testimony accompanying them, and presented in relation thereto, they shall decide and determine upon the same as, in their opinion, sound morality, equity and good conscience demand. They shall keep a record of their proceedings, setting forth their decision in each case examined and determined; and in each case in which, in their opinion as aforesaid, any sum shall be allowed the claimant or claimants, they shall state the name of the claimant or claimants, the amount of the claims thus approved, and on what account or accounts the same was approved, whether on the "Thornton loan," (so called,) interest scrip, State bonds, canal indebtedness, or otherwise. And they shall report the same, together with all other material matters pertaining thereto, with such comments, suggestions and recommendations as to them shall seem fitting, to the legislature of the State, at the first meeting of the General Assembly, in general or special session: *Provided,* That the said commissioners shall not approve, adjudicate, consider or examine any claim now owned, in whole or in part, by any assignee of said contractors, excepting only such claims as said assignee or assignees may be the *bona fide* owner of, and which were received by him or them in consideration of work done or materials furnished as a sub-contractor on said canal.

(369.) SEC. IV. For the purpose of avoiding the examination by said commissioners of any claim in fraud of the provisions of section three of this act, the said commissioners shall, before they enter upon examination of any claim, as provided for in this act, require the said claimant or claimants to prove, by his or their oath or affirmation, or otherwise, to the satisfaction of the said commissioners, that the said claimant or claimants hold and present such claim in his or their own right as an original contractor on

said canal, as specified in the preamble of this act, or as a sub-contractor, as provided for in the third section of this act, and that such claimant or claimants have not, at any time previous to the presentation of such claim, in any manner parted with, sold or assigned the same, or any part thereof, to any person or persons whatever: *Provided*, That nothing herein shall be so construed as to prevent the presentation of and award upon the claim of the heirs, executors or administrators of said contractors or sub-contractors.

(370.) SEC. V. A majority of said commissioners shall have authority to transact any business under this act, and the opinion or decision of said majority shall be considered and acted upon as the opinion and judgment of said board of commissioners. They shall have power to appoint an attorney to act on behalf of the State, to issue process to compel the attendance of witnesses, to administer oaths and affirmations, to appoint a clerk, and to command the services of any sheriff or constable to serve process or keep order during their sittings, and to fix the compensation of such officers.

(371.) SEC. VI. The said commissioners shall give twenty days' notice of the time and place of their first meeting, by causing the same to be published in one or more newspapers in Springfield, Ottawa and Chicago; and after having met for the first time, they shall have power to adjourn from time to time, and from place to place, until the duties imposed by this act shall be performed.

(372.) SEC. VII. The said commissioners shall each receive the sum of eight dollars for each [day] he may be necessarily engaged in the discharge of the duties imposed by this act; one-half of the same to be paid from the State treasury, and one-half by those presenting claims for adjudication: *Provided*, That if said claims are reported adversely, the said claimants shall pay the amount due the commissioners. And the said commissioners, previous to entering upon the duties imposed upon them by this act, shall take an oath faithfully to discharge the same.

(373.) SEC. VIII. This act shall be deemed a public act, and shall take effect from and after its passage.

DECISIONS.—In the sales of canal lots or lands, under the act of Jan. 9, 1836, the canal commissioners had no authority to annex any other terms or conditions of sale than those provided in said act, and in the act of Congress relating to the duties of registers and receivers on sales of the public lands of the United States. *Ill. & Mich. Canal v. Calhoun*, 1 S. 521.

The plaintiff declared in covenant, that he and the board of commissioners of the Illinois and Michigan canal, entered into an agreement, sealed by the plaintiff, and by the defendant, by W. B. Archer, acting commissioner of the said board, and alleged a performance on the part of the plaintiff, setting forth the agreement verbatim; the defendants pleaded *non est factum*, without verifying the plea by affidavit: *Held*, that the power of the defendants to make the contract could not be questioned under the pleadings, and that the plaintiff might prove the execution of the contract by parol. *Holcomb v. Ill. & Mich. Canal*, 2 S. 228.

The canal commissioners had legal authority to draw drafts and checks, and the counterfeiting them and passing them knowingly is forgery, under the 73rd and 77th sections of the criminal code. *Crofts v. The People*, 2 S. 442.

An assignee of a certificate of purchase of a canal lot in Chicago or Ottawa, in 1836, has all the rights of the original purchaser, and may, under the "act for the relief of purchasers of canal lots in Chicago and Ottawa, in 1836," apply the payments made on such lot, in part payment of any lot purchased by himself, and forfeited for non-compliance with the conditions of purchase, and in case of the refusal of the board of canal commissioners to allow such application, a writ of mandamus will be allowed against them. *The People v. The Canal Commissioners*, 3 S. 153.

The board of canal commissioners are liable to pay costs out of the canal fund, in suits commenced by the board for the benefit of the fund. *The People v. Canal Commissioners*, 3 S. 545.

The laws in relation to the canal and canal lands, authorize the agent to bring suits for trespasses committed thereon; and he may employ any attorney at law to aid him in such suits. *The People v. Pierce*, 1 G. 553.

The State continues to be the beneficial owner of the canal lands, notwithstanding the conveyance by the governor to the trustees; and may maintain an action to recover penalties given by the legislature against trespassers on such lands. *The People v. Nichols*, 4 G. 307.

The act of Congress of March 30, 1822, vesting certain public land in this State for the use of the Illinois and Michigan canal, does not include sections numbered 16 on the public surveys. Those sections were not public land at the time of the passage of the act of Congress, but had been before granted to the State for the use of schools. *Canal Trustees v. Havens*, 5 G. 558. See *Canal Trustees v. Havens*, 11 Ill. 554.

In 1837, the legislature authorized the canal commissioners to appropriate block 14, in Chicago, for a canal basin, and to permit the owners of block 14 to receive block 7, the property of the canal, in payment, at its appraised value. An act passed in 1843, granting the canal and canal property to trustees, who were required to complete the canal and sell the canal lands and lots. In March, 1845, an act passed, directing the trustees to perfect the appropriation of block 14, and the exchange and appraisal of block 7, according to the act of 1837. In June, 1845, the canal and the property belonging to it, passed into the hands of the trustees, who refused to appropriate block 14, and offered block 7 for sale: *Held*, that the owners of block 14 could not, by bill in equity, compel the trustees to take that block for the purposes of the canal, and have block 7 appraised and exchanged therefor. *Canal Trustees v. Deves et al.*, 11 Ill. 592.

A feeder of the Illinois and Michigan canal was constructed in 1838, passing across the land of B. The act of 1843, by which the canal was transferred to the board of trustees, authorized the State trustee to settle existing claims for damages, arising from the construction of the canal, by issuing certificates of State indebtedness to the claimants. A law of 1847, required all unliquidated claims against the State, for damages arising from the construction of the canal, to be proved before the State trustee, and filed with the secretary of State, before the first of January, 1849. In 1848, B. made application for damages to the State trustee, who heard the proofs, and made a certificate, stating that B. produced satisfactory proof that he was the owner of the land, and that the same had been injured by the construction of the feeder to a certain amount. The proof and certificate were filed in the office of the secretary of State before the first of January, 1849: *Held*, that the State trustee, in hearing the proof and making the certificate, acted under the law of 1847, and not under the law of 1843; and that B. could not, by mandamus, compel him to issue a certificate of State indebtedness: *Held, also*, that if a settlement was designed, it was not so far perfected as to be binding on the State. *The People v. Wells*, 12 Ill. 102.

The real estate belonging to the trustees of the Illinois and Michigan canal, is liable to assessments for opening streets and similar improvements. Such assessments are distinguishable from taxes, are not for a general or public object, and are not a charge on an estate which reduces its value. The canal lands are not the legal property of the State; the trustees hold the legal title, but the State has such a beneficial interest therein as entitles it to insist that the trustees faithfully execute their trust. *Canal Trustees v. City of Chicago*, 12 Ill. 403.

The canal trustees have all the powers in relation to laying out towns upon canal lands that were conferred upon the board of commissioners. Purchasers of canal lands, either by pre-emption or at public sale, can only purchase in lots and legal subdivisions. The trustees are authorized to sell lands in such legal subdivisions as they may think best, and the right of pre-emption is limited to the lands on which the improvements are made. The pre-emptor cannot purchase till the trustees are authorized to sell, and if it is made their duty to subdivide the lands into town lots, and cause them to be appraised, the pre-emptor can only purchase such lots as embrace his improvements. A pre-emptor is entitled to the benefit of the law, whether he entered as a trespasser or under license. The right of pre-emption is not restricted to the person who was the owner at the time the improvement was made, but to him who was the owner at the time the land came into market. *Canal Trustees v. Brainard*, 12 Ill. 487.

A party who leased improved canal lots from the canal commissioners in 1841, and made repairs and improvements thereon prior to the 1st of December, 1842, has not a right to purchase the lots at their appraised value, under the 13th section of the act of Feb. 21, 1842, and the 2nd section of the act of March 4, 1843. *Granger v. Canal Trustees*, 13 Ill. 740.

The original plan of making the south branch of the Chicago river a part of the Illinois and Michigan canal having been abandoned, it is not the duty of the trustees to condemn and appropriate blocks 14 and 15, in the city of Chicago, for the purpose of forming a basin at the confluence of the north and south branches of the river. *People ex rel. Chicago v. Ill. & Mich. Canal*, 14 Ill. 292.

There is no distinction between the obligations resting upon the State at the time of the assignment of her interest in the canal to the trustees, and those of the trustees since. Because the State built certain bridges across the canal, at the crossing of certain highways, for the use of the public, it is not obligatory on her to do so at the crossing of every highway over the canal. The State has the power to build bridges out of the public treasury, but her power to build them over the canal, without the consent of the trustees, is doubted. *People ex rel. Hoes v. Canal Trustees*, 14 Ill. 402.

The grant of a charter by the legislature, authorizing a condemnation of the right of way over the lands held by the canal trustees, does not violate the grant by the State to those trustees. All grants made by the State, whether to the canal trustees or others, although irrevocable, are subject to the right of eminent domain, unless that right is expressly relinquished. The charter to the Rock Island R. R. Co. does not prohibit the construction of that road within ninety feet of either



side of the canal. The effect likely to be produced by the rail road, in diminishing the revenues of the canal, does not violate the contract between the State and the trustees of the canal. *Ill. & Mich. Canal v. Chicago & Rock Island R. R. Co.*, 14 Ill. 314.

## CHAPTER XXXII.

### DETINUE.

#### SECTION

1. Actions of detinue, how brought.
2. Defendant may give bond.
3. Sheriff made defendant in certain cases.
4. When bond forfeited, remedy of parties interested.

#### SECTION

5. Court or judge may reduce bail, accept surrender of defendant, and cancel bond.
6. Actions, how proceeded in.

[Approved March 3, 1845. Rev. Stat. 1845, p. 195.]

SECTION I. 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 indorse the amount so sworn to, and direct the sheriff to take bail in double that sum.

SEC. II. 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. III. 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.

SEC. IV. 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.

SEC. V. 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 accept 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.

SEC. VI. All actions commenced in the 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 inquiry to ascertain the same.

Same law, approved Jan. 6, 1827. Rev. Laws, 1827, p. 179.

DECISIONS. The action of detinue is unusual, and the books contain but few rules of evidence respecting it; but greater certainty and accuracy in the description of the property demanded, are required, than in actions of trespass or trover. *Felt v. Williams*, 1 S. 206.

## CHAPTER XXXIII.

### DIVORCES.

#### SECTION

1. Divorces, for what causes may be decreed.
2. Jurisdiction of court in such cases; proceedings, nature of and when had.
3. Who entitled to divorce.
4. When court may refuse to grant divorce.
5. Suits for divorce, how tried; when confession of party may be used; how marriage proved.

#### SECTION

6. Alimony and support of children, when court may provide for.
7. Poor woman may prosecute for divorce without paying costs.
8. Power of courts of this State to try suits brought for causes not provided for by law; to decree alimony, and provide for children.

[Approved March 3, 1845. Rev. Stat. 1845, p. 196.]

SECTION I. In every case in which 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 has willfully deserted and absented himself or herself from the husband or wife, without any reasonable cause, for the space of two years, or has been guilty of extreme and repeated cruelty or habitual drunkenness for the space of two years; or has been convicted of felony or other infamous crime, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract; but no such divorce shall in anywise 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.

SEC. II. The circuit court, sitting as a court of chancery, shall have jurisdiction in all cases of divorce and alimony by this chapter 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.

SEC. III. No person shall be entitled to a divorce in pursuance of the provisions of this chapter, who has not resided in the State one whole year previous to filing his or her bill or petition, unless the offense or injury complained of was committed within this State, or whilst one or both of the parties resided in this State.

SEC. IV. 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 complainant 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. V. 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 cohabitation, and other circumstantial testimony.

SEC. VI. 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.

SEC. VII. Any woman suing for a divorce, who shall make it appear satisfactorily 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.

SEC. VIII. In addition to the causes hereinbefore provided 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, it shall have power to do so, and to make such order with regard to the costs as it may deem right, and also to make such order with regard to the children (if any) and the right of alimony, as it may think proper.

PRIOR LAWS. An act respecting divorces; approved Feb. 22, 1819. Laws, 1819, p. 35. Repealed June 1, 1827.

An act to amend "An act respecting divorces," approved Feb. 22, 1819; approved Jan. 17, 1825. Laws, 1825, p. 169. Repealed June 1, 1827.

An act concerning divorces; in force June 1, 1827. Rev. Laws, 1827, p. 181; Rev. Laws, 1833, p. 232.

DECISIONS. Upon a bill, filed by the wife, alleging desertion, the husband confessed the desertion in answer, and justified it by reason of alleged cruelty. The court decreed the divorce, and allowed alimony to the wife, continuing the cause to the next term, to inquire into the proper amount of alimony. At the next term, the same evidence was admitted upon the question of amount of alimony that had been heard on the question of divorce, though objected to by the respondent, and a decree was given for one cent alimony, and that each pay his or her own costs: *Held*, that such testimony was irrelevant on the question of amount of alimony, and that it was error to admit it; and the allowance of nominal alimony only, was a virtual rescission of the former judgment. The order on the wife to pay costs, was erroneous, and alimony should have been allowed, in proportion to the husband's ability and the wife's condition in life. *Reavis v. Reavis*, 1 S. 242.

The only divorce authorized by our statute is a *vinculo matrimonii*, and that for causes arising both before and after marriage. Legitimacy of issue is not affected, except the marriage is declared void on account of a prior marriage. Divorce for the fault of the wife involves loss of jointure, dower and rights secured by marriage settlements. The decree of divorce is conclusive evidence of the causes for which it was granted, in all collateral suits and proceedings. *Clark et al. v. Lott et al.*, 11 Ill. 105.

Our courts have no authority to decree a divorce on a bill taken *pro confesso*; there must be proof to sustain the allegations of the bill. *Shillinger v. Shillinger*, 14 Ill. 147.

The 8th section of the statute of divorces does not confer an unlimited discretion upon the courts, to grant divorces wherever they deem it expedient. *Birkley v. Solomons et al.*, 15 Ill. 120.

The marriage contract will not be dissolved for light and trivial causes; such a case must be shown as the law requires. Unkind treatment, threats of personal violence, and abusive language, without personal violence, do not constitute the "extreme and repeated cruelty," which the statute requires to authorize a divorce for that cause. *Vignos v. Vignos*, 15 Ill. 186.

Upon decreeing alimony, the court may direct that lands held by the wife, be divided between the parties, and that they execute to each other conveyances to perfect such decree. Unless manifest injustice be done, the supreme court will not disturb the decree of the court below on a question of alimony. *Stewartson v. Stewartson*, 15 Ill. 145.

Where a husband's interest in the real estate of his wife was during coverture, it is terminated by a divorce granted for his misconduct. *Howey et al. v. Goings*, 13 Ill. 95.

The husband obtained a decree of divorce from his wife, and the question of alimony was continued to the next term of the court. Before the next term the husband died, and at the next term the suit was abated so far as alimony was concerned, on the motion of the defendant. On motion, the supreme court granted a writ of *scire facias* to the executor of the deceased husband, and a writ of error to revise the decree. *Wren v. Moss et al.*, 1 G. 560. See also, *Wren v. Moss et al.*, 2 G. 72.

## CHAPTER XXXIV.

### DOWER.

#### SECTION

1. Right of dower, how acquired.
2. Widow of alien entitled to dower.
3. Right of dower in mortgaged premises.
4. When lands mortgaged for purchase money, widow not entitled to dower as against mortgagee.
5. Widow entitled to one-third of surplus when lands of deceased husband sold under mortgage.
6. Exception to right of dower.
7. Jointure, how acquired, and its effect.
8. Assent of wife to jointure, how evinced.
9. Wife may elect whether she will take jointure or dower. But shall not be entitled to both.

#### SECTION

10. Dower in lands and share in personal estate barred by demise, unless otherwise expressed in will; but wife may elect which she will take.
11. Jointure, how may be relinquished, and dower substituted.
12. Divorce, its effects on right to jointure and dower.
13. Adultery of wife, dower forfeited thereby.
14. Wife's right to jointure or dower cannot be divested, except by her own act.
15. Widow entitled to half the estate in certain cases.
16. When husband exchanges lands for other lands, choice of dower, how made.

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17. Dower, by whom and when to be set off.	26. When widow has claim to dower in lands in different counties, how to proceed.
18. Remedy of widow when dower not assigned as required by law.	27. Widow's right till assignment of dower.
19. Widow claiming dower, how to proceed, and duty of clerk.	28. When estate not susceptible of division, how to proceed.
20. Unknown persons interested, how proceeded against, and their remedy in certain cases.	29. Reports of commissioners, and order of court thereon.
21. When claim to dower contested, what proceedings to be had.	30. Waste, penalty therefor.
22. Guardians, when may be appointed.	31. Who may petition for assignment of dower.
23. Petitions for dower, how determined.	32. Compensation of commissioners.
24. Commissioners, how appointed, and their duties.	33. On death of widow, how dower disposed of.
25. Extent of right of widow to dower when legally set off.	34. Dower not relinquished by widow as executrix or administratrix of husband's estate, unless specified in deed of conveyance.

[Approved March 3, 1845. Rev. Stat. 1845, p. 198.]

SECTION I. A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless the same shall have been relinquished in legal form. Equitable estates shall be subject to the widow's dower, and all real estate of every description contracted for by the husband in his life time, the title to which may be completed after his decease.

SEC. II. The widow of an alien shall be entitled to dower of the estate of her husband, in the same manner as if such alien had been a native born citizen of the United States.

SEC. III. Where a person seized of an estate of inheritance in land, shall have executed a mortgage of such estate before marriage, his widow shall, nevertheless, be entitled to dower out of the lands mortgaged, as against every person, except the mortgagee, and those claiming under him.

SEC. IV. Where a husband shall purchase lands during coverture, and shall mortgage such lands to secure the payment of the purchase money thereof, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower as against all other persons.

SEC. V. When, in the cases specified in the two preceding sections, the mortgagee or those claiming under him, shall, after the death of such husband, cause the land mortgaged to be sold, either under a power contained in the mortgage, or by virtue of the judgment or decree of a court, and any surplus shall remain, after the payment of the moneys due on such mortgage, and the costs and charges of sale, such widow shall be entitled to the interest or income of one-third part of such surplus, for life, as her dower.

SEC. VI. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he have acquired an absolute estate during the marriage.

SEC. VII. When an estate in land shall be conveyed to a person and his intended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such intended wife alone, for the purpose of creating a jointure for such intended wife, and with her assent, to be taken in lieu of dower, such jointure shall be a bar to any right or claim for dower of such wife, in any land of her husband.

SEC. VIII. The assent of the wife to such jointure, shall be evinced, if she be of full age, by her becoming a party to the conveyance by which it shall be settled; if she be an infant, by her joining with her father or guardian in such conveyance.

SEC. IX. If, before her marriage, but without her assent, or if, after her marriage, land shall be given or assured for the jointure of a wife, in lieu of dower, she shall make her election, whether she will take such jointure, or whether she will be endowed of the lands of her husband, but she shall not be entitled to both.

SEC. X. Every devise of land, or any estate therein, by will, shall bar her dower in lands, or of her share in personal estate, unless otherwise expressed in the will; but she may elect whether she will take such devise or bequest, or whether she will renounce the benefit of such devise or bequest, and take her dower in the lands, and her share in the personal estate of her husband.

SEC. XI. When a woman shall be entitled to an election under either of the two last preceding sections, she shall be deemed to have elected to take such jointure or devise unless within one year 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 the benefit of any jointure, 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, (or otherwise, as the case may be,) 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 probate justice of the peace, 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 such jointure, or in the will of any such testator, in lieu of dower; and by thus renouncing all claims, as aforesaid, such widow shall thereupon be entitled to dower in the lands, or share in the personal estate of her husband.

SEC. XII. 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, nor the benefit of any such jointure; but if such divorce be for her fault or misconduct, she shall forfeit the same; and when a divorce is obtained for the fault and misconduct of the husband, he shall lose his right to be *tenant by curtesy* in the wife's lands, and also an estate granted therein by the laws of this State.

SEC. XIII. If a wife voluntarily leave her husband and commit adultery, she shall be for ever barred her dower, and the benefit of any such jointure, unless her husband be voluntarily reconciled to her, and suffer her to dwell with him.

SEC. XIV. No act, deed or conveyance, performed or executed by the husband, without the assent of his wife, evinced by the acknowledgment thereof, in the manner required by law, shall pass the estate of a married woman; and no judgment or decree confessed or recovered against him, and no laches, default, covin, forfeiture or crime of the husband, shall prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

SEC. XV. If a husband die, leaving a widow, but no children, nor descendants of children, such widow may, if she elect, have in lieu of her dower in the estate of which her husband died seized, whether the same

shall have been assigned or not, absolutely and in her own right, as if she were *sole*, one-half of all real estate which shall remain after the payment of all just debts and claims against the deceased husband: *Provided*, That in case dower in such estate shall have been already assigned, she shall make such new election, within two months after being notified of the payment of such debts and claims.

SEC. XVI. If a husband, seized of an estate of inheritance in lands, exchange it for other lands, his widow shall not have dower of both, but shall make her election as hereinbefore provided, to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced, by the commencement of proceedings for the recovery and assignment of her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

SEC. XVII. It shall be the duty of the heir at law, or other person, having the next estate of freehold or inheritance in any lands or estates of which the widow is entitled to dower, to lay off and assign such dower as soon as practicable after the death of the husband of such widow.

SEC. XVIII. If such heir or other person shall not, within one month next after the decease of said husband, 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 intendment of the law, then such widow may sue for and recover the same, in the manner hereinafter 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.

SEC. XIX. Every widow claiming dower, may file her petition in chancery, 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 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 do not reside in the county, said clerk shall cause an advertisement to be published, as provided in sections eight, forty-one and forty-two of chapter twenty-one of the Revised Statutes, 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 show cause why such dower should not be assigned; 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.

SEC. XX. 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 the preceding section, shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names; and all decrees, orders, judgments and proceedings had or made under the provisions of this chapter, respecting such unknown persons as aforesaid, shall be as binding and conclusive upon the persons and parties interested as though they had been sued by their proper names: *Provided*, That 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 the 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. XXI. Answers to such petitions shall be sworn to; and 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.

SEC. XXII. Where any of the parties, defendants, are minors, and under age, and without guardians, the court shall appoint guardians *ad litem* for such minors.

SEC. XXIII. Petition for the recovery and assignment of dower, shall be heard and determined by the court, upon the petition, answer, exhibits and other testimony, without the necessity of formal pleading.

SEC. XXIV. 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. B., 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."

SEC. XXV. The 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; or if such estate shall have been set off and allotted to said widow by virtue of section fifteen of this chapter, such estate shall be vested in her absolutely, in fee simple, and of inheritance forever, subject to her absolute use, control and disposition, as though her interest therein had been acquired by her when *sole*.

SEC. XXVI. When 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; or if such lands lie in different counties, then in the county in which the major part of such lands lie; but if the major part thereof do not lie in any one county, then in any county in which any of the lands lie; and make recovery in the manner as is herein directed: and in all cases when the report assigning dower 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 impaneled for that purpose, and execution may issue therefor.

SEC. XXVII. 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.

SEC. XXVIII. 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 impaneled to inquire 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.

SEC. XXIX. Commissioners appointed to assign dower, 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.

SEC. XXX. 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.

SEC. XXXI. 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.

SEC. XXXII. Commissioners appointed to assign dower shall be allowed each one dollar per day, to be taxed as other costs.

SEC. XXXIII. At the death of any widow who hath dower in lands or estate of her deceased husband, such lands or estate shall descend in accordance with the will of such husband; or if the husband shall have died intestate, then to descend in accordance with the law providing for the distribution of intestate's estates.

SEC. XXXIV. No widow who shall, as executrix or administratrix, sell and convey by order of court, for the payment of debts, real estate of her husband, in which she shall be by law entitled to dower, shall be deemed to relinquish her right of dower therein, by reason of such conveyance, unless her relinquishment shall be specified in such deed or conveyance.

Sec. under title "WILLS," "An act to amend an act concerning wills;" approved Feb. 11, 1847. Laws, 1847, p. 168.

PRIOR LAWS. An act for the speedy assignment of dower; approved Feb. 12, 1819. Laws, 1819, p. 12.

An act to enable aliens to hold real estate; approved Feb. 7, 1827. Rev. Laws, 1827, p. 49.

An act for the speedy assignment of dower and partition of real estate; in force June 1, 1827. Rev. Laws, 1827, p. 183; Rev. Laws, 1833, p. 236.

An act to amend "An act for the speedy assignment of dower and partition of real estate," approved Feb. 6, 1827, and in force June 1, 1827; approved Jan. 21, 1845. Laws, 1845, p. 33.

An act to amend an act relative to wills and testaments, executors and administrators, and the settlement of estates; approved Feb. 21, 1845. Laws, 1845, p. 38.

DECISIONS. A widow can only be endowed of estates of inheritance, and a pre-emption right is not such an estate. The statute making equitable estates subject to dower, refers to equitable estates of inheritance only. In a petition for dower, the words "owner and proprietor" are insufficient, as they do not technically, nor by common usage, describe an estate in fee simple or fee tail. *Davenport et al. v. Farrar*, 1 S. 315.

A mortgage was executed by G. and his wife, and foreclosed by *scire facias*: *Held*, that the wife should be made a defendant in order to bar her dower. *Gilbert et al. v. Maggard*, 1 S. 471; *Ayres v. McConnell et al.*, 2 S. 307.

The legislature has no power to inquire or determine whether a widow is entitled to dower in a tract of land. All action on such subject is judicial action, not legislative. *Edwards v. Pope et al.*, 3 S. 465.

At the common law, dower is the third part of all the lands, for life, whereof the husband, during coverture, has been seized of such estate as the children by the wife might possibly have inherited. Marriage, seizure, and the death of the husband, are all necessary to the consummation of dower. Until the death of the husband, dower is only an interest attaching to the land by virtue of marriage and seizure. Dower is defeated only by the assent or misconduct of the wife, or where the marriage was void *ab initio*, and not by sale on judgment and execution against the husband. The wife may accept other provisions by the will of her husband, in lieu of dower. *Sisk v. Smith et al.*, 1 G. 503.

A widow is not a proper party to a proceeding for a mechanic's lien, when her only interest is dower in the premises, nor can her dower be affected by such lien. She can only be divested of dower, when she has released it in form prescribed by law, and except when a lien is created for the purchase money of the estate at the time the husband became seized. *Shaeffer et al. v. Weed et al.*, 3 G. 511.

Dower is a right resting in action only, and not assignable. A widow may release her dower to the owner in fee, but cannot invest another with it, nor can she release her dower to the owner in fee till after it has been assigned to her. Dower cannot be sold under execution before it is assigned. A wife joining with her husband in a deed, is a party only for the purpose of releasing her dower, and is not estopped thereby from setting up a subsequent title. Dower cannot be disposed of by a wife so as to separate it from the principal estate. A deed, inoperative as to the husband, will not bar a right of dower. A widow, asking for equitable relief as to her right of dower, cannot resist an equitable defense against a purchaser for a valuable consideration, ignorant of her claim. *Blain v. Harrison*, 11 Ill. 384.

Though a wife join her husband in conveying lands, if such conveyance be set aside at the instance of his creditors, as fraudulent, and the land conveyed under a decree for the benefit of such creditors, the wife will be entitled to dower in the lands. Dower becomes liable to be sold or transferred only after it is assigned. A widow takes her dower according to the value of the land at the time of alienation; she is not dowable of improvements put upon the land, but is entitled to its increased value arising from other causes than the labor and expenditure of the alienor. *Summers v. Babb*, 13 Ill. 483.

It is error to debar a woman of dower in premises included in a mortgage which she did not sign. *Gold v. Ryan*, 14 Ill. 53.

When a widow dies, pending her suit for dower, without having established her right to dower in lands of which her husband was seized during coverture, but which were aliened before his death, her representative cannot have damages assessed. *Turney v. Smith et al.*, 14 Ill. 242.

The power of a court of chancery to sanction a compromise on behalf of infant suitors, so as to satisfy a widow's claim of dower, for cash, should be exercised with great care, and only when it is manifestly for the interests of the infants to do so. *King v. King*, 15 Ill. 187.

## CHAPTER XXXV.

### DROVERS.

#### SECTION

1. Drovers driving away stock, how punished.
2. Suits may be commenced by *capias*, on affidavit filed; effect of affidavit.
3. After judgment, *feri facias* may issue without affidavit.

#### SECTION

4. Before-named stock remaining with drove longer than two days and nights, penalty; *proviso*.
5. When act to take effect.

[Approved March 3, 1845. *Rev. Stat. 1845, p. 102.*]

(1.) SECTION I. Whenever any drover or other person or persons engaged in driving horses, cattle, mules, hogs or sheep through any part of the State of Illinois, shall drive off, or shall knowingly and willingly suffer or permit to be driven off from the premises of any citizen of said State, or from the range in which the stock of any such citizen usually run, to any distance exceeding five miles from such premises or range, any horses, mules, neat cattle, hogs or sheep, belonging to such citizen, it shall be lawful for the owner of any such stock so driven off, to follow and reclaim the same wherever it may be found; and for the taking and driving away, or suffering or permitting to be driven away, of such stock, the said owner shall be entitled to recover of and from said drover or other person or persons guilty thereof, for each head of horses, mules, neat cattle, hogs or sheep, so driven away, twice the value thereof, to be recovered in an action of debt before any justice of the peace of the proper county, or any court having competent jurisdiction thereof: *Provided, however*, That if the drover shall not pass any habitation within said five miles, and shall separate said cattle or other stock from the drove at the next habitation, in such case, said action shall not accrue to the owner of the said property.

(2.) SEC. II. In any action commenced under the preceding section, a *capias* may issue against the defendant or defendants, upon the plaintiff stating on oath that he believes some one or more of his cattle or other stock has been driven off by a drover, and that he believes the same to be of a certain value, to be indorsed on the writ, and the proceedings thereon shall be the same as in other actions commenced by *capias*: *Provided, however*, That no exception shall be taken to the form of the oath aforesaid.

(3.) SEC. III. Whenever judgment shall be rendered against any person or persons, under the provisions of this chapter, by any justice of the peace,

a *feri facias* may issue thereon against the goods and chattels of any such defendant or defendants, without affidavit as required in other cases.

An Act to amend an Act entitled "An Act to prevent the unlawful driving away of Cattle and other Stock, by Drovers and other Persons," approved February 3, 1841.

[Approved Feb. 27, 1845. *Laws, 1845, p. 37.*]

(4.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That whenever any drovers, or other person or persons, engaged in herding or driving any horses, cattle, sheep, mules or hogs, in any part of this State, shall permit any of the before-named stock to remain with his or their drove for a longer period than two days and nights, at any one time, they shall be subject to the same penalties which are imposed in the first section of the act to which this is an amendment: *Provided*, That the penalties in relation to herding shall not apply, except in cases where the same are confined within inclosures.

(5.) SEC. II. This act to take effect from and after its passage.

PRIOR LAWS. An act to prevent the unlawful driving away of cattle and other stock, by drovers and others; approved Feb. 3, 1841; in force June 1, 1841. *Laws, 1841, p. 51.*

## CHAPTER XXXVI.

### EJECTMENT.

#### SECTION

1. Actions of ejectment, how brought.
2. Writ of right may be brought by widow to recover dower.
3. Valid interest necessary to authorize suit.
4. Occupant made defendant, and if no occupant, then supposed owner.
5. Action, how commenced.
6. Use of fictitious names, &c., abolished.
7. Averment, what to contain.
8. Declaration, what it shall state.
9. When action not brought to recover dower, declaration may contain several averments.
10. Notice in writing, what to contain.
11. Copy of declaration to be left with occupant.
12. When premises not occupied, declaration to be left with defendant named therein.
13. Rule may be entered, requiring defendant to appear in twenty days.
14. Authority to bring suit, when to be exhibited.
15. Authority and evidence thereof.
16. When application may be dismissed at defendant's costs.
17. Defendant may demur, or plead general issue, and effect thereof.
18. Consent rule abolished.
19. Right to premises, how may be proved.
20. Lease, &c., need not be proved, but rules of evidence not impaired.
21. When action brought by co-tenants, what shall be proved.
22. When joint possession proved, verdict shall be against all defendants in action.
23. When defendants occupy distinct parcels, plaintiff may elect which to proceed against.

#### SECTION

24. Verdict, how rendered in certain cases.
25. Verdict, how made when plaintiff's right expires after commencement of suit.
26. Death, action shall not abate by reason of.
27. Judgment, effect of, in certain cases.
28. Writ of possession, form of.
29. Judgment conclusive as to title, subject to exceptions.
30. Judgment may be vacated, and new trial granted.
31. Judgment by default conclusive after two years.
32. Exceptions, wherein actions may be brought after two years.
33. Heirs may commence action in certain cases after time above limited.
34. Right of plaintiff to possession, not affected by vacations of judgment; but if defendant recover in new trial, shall be entitled to writ of possession.
35. Right of defendant when new trial granted.
36. Plaintiff recovering judgment, entitled to damages for rents and profits.
37. *Mesne* profits, when claimed, how to be recovered.
38. Suggestion for claim of *mesne* profits, form of, and how served.
39. Defendant may plead general issue of non-assumpsit, &c.
40. Issue of fact, how tried, and effect of.
41. Right of parties to recover *mesne* profits; improvements.
42. Writ of inquiry shall be issued in certain cases.
43. Upon execution of writs of inquiry, how parties to proceed.
44. Plaintiff in ejectment dying, personal representatives may proceed.



## SECTION

45. Dower, in action to recover, how plaintiff to proceed; dower how assigned.  
 46. Compensation of commissioners.  
 47. When person is evicted from land, having title deduced from record, shall be exempt from prosecution for profits, &c.  
 48. Judgment of eviction, when given, court shall appoint seven persons, who shall assess value of improvements, damages, &c.  
 49. Assessors as aforesaid, their further duties.  
 50. Commissioners shall estimate value of land in dispute.  
 51. Commissioners shall take oath, and have power to call witnesses for profits, &c.

[Approved March 3, 1845. Rev. Stat. 1845, p. 204.]

## SECTION

52. Estimate of value to be made separately; compensation of commissioners, how allowed; improvements, *proviso* concerning.  
 53. Power of court further defined.  
 54. Notice of adverse claim, how may be given.  
 55. Effect of notice.  
 56. Waste, court may issue precepts to stay.  
 57. Lessee of United States may maintain action of ejectment.  
 58. Not necessary in trials of ejectment, in certain cases, for plaintiff to prove that defendant was in possession at time of suit.  
 59. Portion of this chapter repealed.  
 60. When act to take effect.

(1.) SECTION I. The action of ejectment shall be retained, and may be brought in the cases and the manner heretofore accustomed, subject to the provision hereinafter contained.

(2.) SEC. II. It may also be brought—

1st. In the same cases in which a writ of right may now be brought by law to recover lands, tenements or hereditaments, and by any person claiming an estate therein in fee or for life, either as heir, devisee or purchaser.

2nd. By any widow entitled to dower, or by a woman so entitled and her husband, after the expiration of six months from the time her right accrued, to recover her dower of any lands, tenements or hereditaments.

(3.) SEC. III. No person shall recover in ejectment, unless he has, at the time of commencing the action, a valid subsisting interest in the premises claimed, and a right to recover the same, or to recover the possession thereof, or of some share, interest or portion thereof, to be proved and established at the trial.

(4.) SEC. IV. If the premises for which the action is brought, are actually occupied by any person, such actual occupant shall be named defendant in the declaration; if they are not so occupied, the action shall be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto, or some interest therein, at the commencement of the suit.

(5.) SEC. V. The action shall be commenced by the service of a declaration, in which the names of the real claimants shall be inserted as plaintiffs; and all the provisions of law concerning lessors of a plaintiff, shall apply to such plaintiffs.

(6.) SEC. VI. The use of fictitious names of plaintiffs or defendants, and of the names of any other than the real claimants and the real defendants, and the statements of any lease or demise to the plaintiff, and of an ejectment by a casual or nominal ejector, are hereby abolished.

(7.) SEC. VII. It shall be sufficient for the plaintiff to aver in his declaration that (*on some day therein to be specified, and which shall be after his title accrued,*) he was possessed of the premises in question, (*describing them as hereinafter provided,*) and being so possessed thereof, that the defendant afterwards, (*on some day to be stated,*) entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, to his damage any nominal sum the plaintiff shall think proper to state; and the premises so claimed shall be described in such declaration with convenient certainty, so that, from such description, possession of the premises claimed, may be delivered. If such plaintiff claims any undivided share

or interest in any premises, he shall state the same particularly in such declaration.

(8.) SEC. VIII. If the action be brought for the recovery of dower, the declaration shall state that the plaintiff was possessed of the one undivided third part of the premises, as her reasonable dower, as widow of her husband, naming him. In every other case the plaintiff shall state whether he claims in fee, or whether he claims for his own life, or for the life of another, or for a term of years, specifying such life or the duration of such term.

(9.) SEC. IX. In any case other than where the action shall be brought for the recovery of a dower, the declaration may contain several counts, and several parties may be named as plaintiffs jointly in one count, and separately in others.

(10.) SEC. X. To such declaration there shall be subjoined a notice, in writing, by the plaintiff or his attorney, addressed to the defendant, and notifying him—

1st. That the said declaration will be filed on some day in the then next term of the court in which the action is brought, specifying such day; or, if the same be served during the term of any court, that it will be filed on some day in such term, specifying the same;

2nd. That, upon filing the same, a rule will be entered, requiring such defendant to appear and plead to such declaration, within twenty days after the entry of such rule; and,

3rd. That if he neglect so to appear and plead, a judgment by default will be entered against him, and the plaintiff will recover possession of the premises.

(11.) SEC. XI. If the premises are actually occupied, the declaration shall be served by delivering a copy thereof, with the notice above prescribed, to the defendant named therein, who shall be in the occupancy thereof, or by leaving the same with some white person of the family, of the age of ten years or upwards, at the dwelling-house of such defendant, if he be absent.

(12.) SEC. XII. If the premises claimed are not actually occupied, the declaration and notice shall be served on the defendant named therein, or, if he cannot be found, by leaving the same with some white person, of the age of ten years or upwards, at the residence of the defendant; but where the declaration shall have been served in any other manner than upon the defendant personally, no rule to plead shall be entered without the special order of the court.

(13.) SEC. XIII. Instead of the rule to appear and enter into the consent rule as heretofore accustomed, the plaintiff, on the day specified for that purpose in the notice aforesaid, or on some day thereafter, upon filing the declaration with an affidavit of the service of a copy thereof, and of the notice hereinbefore required, shall be entitled to enter a rule requiring the defendant to appear and plead, within twenty days after the entering of such rule; and in case the defendant shall neglect so to appear and plead within such time, his default shall be entered.

(14.) SEC. XIV. A defendant in ejectment may, at any time before pleading, apply to the court, or to any judge thereof in vacation, to compel the attorney for the plaintiff to produce to such court or officer, his

authority for commencing the action in the name of any plaintiff therein. Such application shall be accompanied by an affidavit of the defendant, that he has not been served with proof, in any way, of the authority of the attorney to use the name of the plaintiff stated in the declaration.

(15.) SEC. XV. Upon such application, the court or officer shall grant an order requiring the production of such authority, and shall stay all proceedings in the action until the same shall be produced. Any written request of such plaintiff or his agent to commence such action, or any written recognition of the authority of the attorney to commence the same, duly proved by the affidavit of such attorney, or other competent witness, shall be sufficient presumptive evidence of such authority.

(16.) SEC. XVI. If it shall appear that, previous to such application by any defendant, he was served with a copy of the affidavit of the plaintiff's attorney, showing his authority to bring such action, such application shall be dismissed; and such defendant shall be liable for the costs of such application, the payment of which may be compelled by attachment as in other cases, which may be issued upon proof of disobedience to the order of the court or officer directing the payment of such costs.

(17.) SEC. XVII. The defendant may demur to the declaration as in personal actions, or he shall plead the general issue only, which shall be that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff, as alleged in the declaration, and the filing of such plea or demurrer shall be deemed an appearance in the cause; and upon such plea, the defendant may give the same matter in evidence, and the same proceedings shall be had, as upon the plea of not guilty in the present action of ejectment, except as herein otherwise provided. The defendant may likewise give in evidence any matter, which, if pleaded in the present writ of right or action of dower, would bar the action of the plaintiff.

(18.) SEC. XVIII. The consent rule heretofore used, is hereby abolished.

(19.) SEC. XIX. It shall not be necessary for the plaintiff to prove an actual entry under title, nor the actual receipt of any of the profits of the premises demanded; but it shall be sufficient for him to show a right to the possession of such premises at the time of the commencement of the suit, as heir, devisee, purchaser or otherwise.

(20.) SEC. XX. It shall not be necessary on the trial for the defendant to confess, nor for the plaintiff to prove, lease, entry and ouster, or either of them, except as provided in the next section; but this section shall not be construed to impair, nor in any way to affect, any of the rules of evidence now in force in regard to the maintenance and defense of the action.

(21.) SEC. XXI. If the action be brought by one or more tenants in common, or joint tenants against their co-tenants, the plaintiff, in addition to all other evidence which he may be bound to give, shall be required to prove, on the trial of the cause, that the defendant actually ousted such plaintiff, or did some other act amounting to a total denial of his right as such co-tenant.

(22.) SEC. XXII. If the action be brought against several defendants, and a joint possession of all be proved, the plaintiff shall be entitled to a verdict against all, whether they shall have pleaded separately or jointly.

(23.) SEC. XXIII. When the action is against several defendants, if it appear on the trial that any of them occupy distinct parcels in severalty or

jointly, the plaintiff shall elect, at the trial, against which he will proceed; which election shall be made before the testimony in the cause shall be deemed to be closed; and a verdict shall thereupon be rendered for the defendants not so proceeded against.

(24.) SEC. XXIV. In the following cases the verdict shall be rendered as follows:

1st. If it be shown on the trial, that all the plaintiffs have a right to recover the possession of the premises, the verdict in that respect shall be for the plaintiffs generally.

2nd. If it appear that one or more of the plaintiffs have a right to the possession of the premises, and that one or more have not such right, the verdict shall specify for which plaintiff the jury find, and as to which plaintiff they find for the defendant.

3rd. If the verdict be for any plaintiff, and there be several defendants, the verdict shall be rendered against such of them as were in possession of the premises, or as claimed title thereto at the commencement of the action.

4th. If the verdict be for all the premises claimed, as specified in the declaration, it shall, in that respect, be for such premises generally.

5th. If the verdict be for a part of the premises described in such declaration, the verdict shall particularly specify such part, as the same shall have been proved, with the same certainty hereinbefore required, in the description of the premises claimed.

6th. If the verdict be for an undivided share or interest in the premises claimed, it shall specify such share or interest; and if for an undivided share in a part of the premises claimed, it shall specify such share, and shall describe such part of the premises as hereinbefore required.

7th. The verdict shall also specify the estate which shall have been established on the trial, by the plaintiff in whose favor it shall be rendered, whether such estate be in fee, for his own life, or for the life of another, stating such lives; or whether it be for a term of years, and specifying the duration of such term.

(25.) SEC. XXV. If the right or title of a plaintiff in ejectment expire after the commencement of the suit, but before trial, the verdict shall be returned according to the fact, and judgment shall be entered that he recover his damages by reason of the withholding of the premises by the defendant, to be assessed; and that as to the premises claimed, the defendant go thereof without day.

(26.) SEC. XXVI. The action of ejectment shall not be abated by the death of any plaintiff, or of one of several defendants, after issue and before verdict and judgment, but the same proceedings may be had as in other actions, to substitute the names of those who may succeed to the title of the plaintiff so dying; in which case the issue shall be tried as between the original parties; and in case of the death of a defendant, the cause shall proceed against the other defendants.

(27.) SEC. XXVII. In cases where no other provision is made, the judgment in the action, if the plaintiff prevail, shall be, that the plaintiff recover the possession of the premises according to the verdict of the jury, if there was such verdict; or, if the judgment be by default, according to the description thereof in the declaration, with costs to be taxed.

(28.) SEC. XXVIII. The plaintiff recovering judgment shall be

entitled to a writ of possession, which shall be substantially in the following form:

“THE PEOPLE, &c., TO THE SHERIFF, &c.:

Whereas, A. B. has lately, in the circuit court held in and for the county of ———, by the judgment of the said court, recovered against C. D., one messuage, &c., (*describing the premises recovered with the like certainty as above provided*), which said premises have been and are still unjustly withheld from the said A. B. by the said C. D., whereof he is convicted, as appears to us of record; and forasmuch as it is adjudged in the said court that the said A. B. have execution upon his said judgment against the said C. D., according to the force, form and effect of his said recovery: Therefore, we command you, that, without delay, you deliver to the said A. B. possession of the premises so recovered, with the appurtenances; and that you certify to, &c., at, &c., on, &c., in what manner you shall have executed this writ. (*If there be costs to be collected, the proper clause may be here inserted, or a separate execution may be issued therefor.*)

Witness, &c.”

(29.) SEC. XXIX. Every judgment in the action of ejectment, rendered upon a verdict, shall be conclusive as to the title established, in such action, upon the party against whom the same is rendered, and against all persons claiming from, through or under such party, by title accruing after the commencement of such action, subject to the exceptions hereinafter named.

(30.) SEC. XXX. The court in which such judgment shall be rendered, at any time within one year thereafter, upon the application of the party against whom the same was rendered, his heirs or assigns, and, upon the payment of all costs and damages recovered thereby, shall vacate such judgment, and grant a new trial in such cause; and the court, upon subsequent application made within one year after the rendering of the second judgment in said cause, if satisfied that justice will thereby be promoted, and the rights of the parties more satisfactorily ascertained and established, may vacate the judgment, and grant another new trial; but no more than two new trials shall be granted under this section.

(31.) SEC. XXXI. Every judgment in ejectment, rendered by default, shall, from and after two years from the time of entering the same, be conclusive upon the defendant, and upon all persons claiming from or through him by title accruing after the commencement of the action; but within two years after the entering of such judgment, on the application of the defendant, his heirs or assigns, and upon the payment of all costs and damages recovered thereby, the court may vacate such judgment and grant a new trial, if such court shall be satisfied that justice will be promoted, and the rights of the parties more satisfactorily ascertained and established.

(32.) SEC. XXXII. But if the defendant in such declaration, at the time of the entering of the judgment by default, be either, 1st, within the age of twenty-one years; or, 2nd, insane; or, 3rd, imprisoned on any criminal charge, or in execution upon some conviction of a criminal offense for any term less than for life; or, 4th, a married woman, the time during which disability shall continue, shall not be deemed any portion of the said two years; but any such person may bring an action for the recovery of such premises after that time, and within two years after such disability shall be removed, but not after that period.

(33.) SEC. XXXIII. If the person entitled to commence such action shall die during the continuance of any disability specified in the preceding section, and no determination or judgment be had of or upon the title, right or action so to him accrued, his heirs may commence such action after the time above limited for that purpose, and within two years after his death.

(34.) SEC. XXXIV. If the plaintiff shall have taken possession of the premises by virtue of any recovery in ejectment, such possession shall not in any way be affected by the vacating of any judgment as herein provided; and if the defendant recover in any new trial hereby authorized, he shall be entitled to a writ of possession, in the same manner as if he were plaintiff.

(35.) SEC. XXXV. Upon any new trial granted as herein provided, the defendant may show any matters, in bar of a recovery, which he might show to entitle him to the possession of the premises if he were plaintiff in the action.

(36.) SEC. XXXVI. The plaintiff recovering judgment in ejectment in any of the cases in which such action may be maintained, shall also be entitled to recover damages against the defendant for the rents and profits of the premises recovered.

(37.) SEC. XXXVII. Instead of the action of trespass for *mesne* profits heretofore used, the plaintiff seeking to recover such damages, shall, within one year after the entering of the judgment, make and file a suggestion of such claim, which shall be entered, with the proceedings thereon, upon the record of such judgment, or be attached thereto, as a continuation of the same.

(38.) SEC. XXXVIII. Such suggestion shall be substantially in the same form as is now in use for a declaration in an action of assumpsit for the use and occupation, as near as may be; and it shall be served on the defendant in the same manner hereinbefore prescribed respecting the service of a declaration in ejectment; and the same rules of pleading thereto shall be observed as upon declarations in personal actions.

(39.) SEC. XXXIX. The defendant may plead the general issue of non-assumpsit, and, under such plea, may give notice of, or may plead specially, any matter in bar of such claim, except such as were or might have been controverted in such action of ejectment; but he may plead or give notice of a recovery by such defendant, or any other person, of the same premises, or of part thereof, subsequent to the verdict in such action of ejectment, in bar or in mitigation of the damages claimed by the plaintiff.

(40.) SEC. XL. If any issue of fact be joined on such suggestion, it shall be tried as in other cases; and if such issue be found for the plaintiff, the same jury shall assess his damages to the amount of the *mesne* profits received by the defendant since he entered into possession of the premises, subject to the restrictions hereinafter contained.

(41.) SEC. XLI. On the trial of such issue, the plaintiff shall be required to establish, and the defendant may controvert, the time when such defendant entered into the possession of the premises, the time during which he enjoyed the *mesne* profits thereof, and the value of such profits, and the record of the recovery in the action of ejectment shall not be evidence of such time. On such trial, the defendant shall have the same right to set off any improvements made on the premises, to the amount of plaintiff's claim, as is now or shall hereafter be allowed by law; and in estimating the plaintiff's damages, the value of the use by the defendant of any improvements made by him shall not be allowed to the plaintiff.

(42.) SEC. XLII. If no issue of fact be joined on such suggestion, or if judgment thereon be rendered against the defendant by default, on demurrer or otherwise, a writ of inquiry to assess the value of such *mesne*

profits shall be issued, of the execution of which, the same notice shall be given to the defendant or his attorney as in other cases.

(43.) SEC. XLIII. Upon the execution of such writ, the plaintiff shall be required to establish the same matters hereinbefore required in the case of an issue being joined, and the defendant may, in like manner, controvert the same, and make any set-off to which he shall be entitled; and the jury shall assess the damages in the same manner. The same proceedings shall be had on such writ, and it shall be returned as in other cases, with the inquisition taken thereon. Upon such inquisition, or upon the verdict of the jury in the case of the issue being joined, the court shall render judgment, as in actions of assumpsit for use and occupation, which shall have the like effect in all respects.

(44.) SEC. XLIV. If the plaintiff in ejectment shall have died after issue joined or judgment therein, his personal representatives may enter a suggestion of such death, of the granting letters testamentary or of administration to them, and may suggest their claim to the *mesne* profits of the premises recovered, in the same manner and with like effect as the deceased, and the same proceedings, in all respects, shall be had thereon.

(45.) SEC. XLV. If the action be brought to recover the dower of any widow, which shall not have been admeasured to her before the commencement of such action, instead of a writ of possession being issued, such plaintiff shall proceed to have her dower assigned to her in manner following:

1st. Upon the rendition of judgment, the court, upon the motion of the plaintiff, shall appoint three respectable and disinterested freeholders, commissioners for the purpose of setting off and allotting to the plaintiff her dower out of the lands described in the record; and the commissioners so appointed shall proceed in like manner, possess the like powers, and be subject to the like obligations and control, as commissioners appointed pursuant to law to make assignment of dower and partition of real estate.

2nd. Upon the approval of the report of the commissioners by the court, a writ of possession shall be issued to the sheriff of the proper county, describing the premises assigned for the dower, and commanding the sheriff to put the plaintiff in possession thereof.

(46.) SEC. XLVI. The commissioners to be appointed under this chapter shall be allowed, as compensation for their services, the sum of two dollars per day each, to be taxed as other costs.

(47.) SEC. XLVII. 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.

(48.) SEC. XLVIII. 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 favor 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 favor of such occupying claimant, according to the directions and provisions of this chapter; 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 favor of the successful claimant, judgment in like manner shall be entered up in his favor, 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.

(49.) SEC. XLIX. 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.

(50.) SEC. L. 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 the occupying claimant, and thereupon judgment shall be entered up in his favor, 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 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 chapter: *Provided*, That the proprietor of the better title shall, in every such case, at the time of entering up judgment in his favor, give bond and security, to be approved 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.

(51.) SEC. LI. The persons nominated by the court, by virtue of this chapter, 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 inquiry and assessment by this chapter directed.

(52.) SEC. LII. The said commissioners, in making every estimate of value by virtue of this chapter, 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 chapter 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.

(53.) SEC. LIII. 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.

(54.) SEC. LIV. Notice of any adverse claim or title to the land within the meaning of this chapter, 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.

(55.) SEC. LV. Notice to any occupying claimant shall bind all those claiming from, by or through such occupying claimant, to the extent of such claim.

(56.) SEC. LVI. Nothing herein contained 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.

(57.) SEC. LVII. In all cases in which 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.

An Act to amend Chapter XXXVI, of the Revised Statutes of 1845, entitled "Ejectment."  
[Approved Feb. 15, 1855. Laws, 1855, p. 138.]

(58.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That it shall not be necessary in trials of actions of ejectment, when it shall appear by the return that the defendant or defendants were in possession of the premises at the time when suit was brought, for the plaintiff to prove that said defendant or defendants were in possession at the time of bringing such suit, unless the defendant or defendants shall, by special plea, deny that he, she or they were in possession; and that the plea of not guilty shall not put in issue the possession of said premises.

(59.) SEC. II. *Be it further enacted*, That so much of chapter thirty-six of the Revised Statutes of 1845, entitled "EJECTMENT," as is repugnant to the provisions of this act, be and the same is hereby repealed.

(60.) SEC. III. This act to take effect and be in force from and after its passage.

PRIOR LAWS. An act to simplify the proceedings in the action of ejectment. Laws, 1836, p. 238.

An act to define the extent of possession in cases of settlement on the public lands; in force Feb. 27, 1837. Laws, 1837, p. 154. See "LANDS," Chapter LXI, Rev. Stat. p. 336.

DECISIONS. Under a notice that a declaration will be filed on a certain day in term time, the plaintiff in ejectment may file his declaration, and obtain a rule to plead at any time during the term; and, after the expiration of twenty days from the entry of the rule, the plaintiff is entitled to his judgment, unless a plea is filed. *Kelly v. Luman*, 3 S. 28.

The defendant in such case is not, as a matter of right, entitled to plead at a subsequent term, though no default has been entered. *Idem*.

Under the ejectment laws of Illinois, the party against whom a judgment is rendered is entitled to one new trial as a matter of right. Whether a second new trial shall be allowed, is in the discretion of the court. *Vance v. Schuyler*, 1 G. 160; *Riggs v. Savage*, 4 G. 129.

In actions of ejectment the landlord may appear and defend the suit in the name of his tenant or in his own name. *Williams v. Brunton*, 3 G. 600.

If a defendant who is a tenant suffers a default, it will be set aside on application of the landlord, upon cause shown by affidavit. *Idem*.

Upon questions of practice, in ejectment cases, where the statute is silent, the common law prevails. *Idem*.

If a plaintiff declines to join issue upon a plea to an action of ejectment, it amounts to a discontinuance, and the court should dismiss the case. *Idem*.

A plaintiff in ejectment under the statutes of this State cannot recover, unless he proves that he had title at the time stated in his declaration. *Wood v. Morton*, 11 Ill. 547.

A landlord may, with the consent of the parties, be made a defendant in an action of ejectment. *Thompson v. Schuyler*, 2 G. 271.

The plaintiff in ejectment can only recover according to his declaration. If he declares for an estate in fee, he cannot recover a less estate; and *vice versa*. If he declares for a whole tract, he may recover an entirety of any portion of the tract, but not an undivided part or interest. *Balance v. Rankin*, 12 Ill. 420; *Rowlings v. Bailey et al.*, 15 Ill. 178; *Rupert v. Mark*, 15 Ill. 540.

The verdict also must specify the estate recovered. *Rowlings v. Bailey et al.*, 15 Ill. 178.

A landlord cannot be substituted in the place of his tenant in an action of ejectment, without the plaintiff's consent. *Merritt et al. v. Thompson*, 13 Ill. 716.

Where a party to an action of ejectment takes his case to the supreme court, and does not within the year take his new trial under the statute in the circuit court, if the judgment of the circuit court is affirmed, he has no further remedy. *Gibson v. Manly et al.*, 15 Ill. 140.

The circuit court has power to vacate the judgment within the year, although the suit may be pending in the supreme court by appeal or writ of error. *Idem.*

The general issue only can be pleaded in ejectment. *Warren v. President and Trustees of Jacksonville*, 15 Ill. 236.

## CHAPTER XXXVII.

### ELECTIONS.

#### SECTION

1. Electors of president and vice president, when to be voted for, and number of; and election, how conducted, and returns made.
2. Abstract of votes for electors to be transmitted to governor, &c., who, with secretary of State, auditor and treasurer, shall open and canvass returns and declare who are elected; and in case of tie, proceedings thereon.
3. Result to be published, and certificates transmitted to persons elected.
4. Electors, when and where shall meet, and their compensation.
5. Vacancy in electoral college, how filled.
6. General elections, when held.
7. Precincts, how formed; and judges, how appointed.
8. Judges, when shall be appointed, and number for each precinct.
9. Clerks of elections, how chosen, and tenure of judges and clerks.
10. Clerks of county commissioners' courts to issue notices of election, and form thereof.
11. Vacancy in office of judge, how filled.
12. Oath of judges and clerks.
13. Judges may administer oaths in certain cases.
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15. Manner of voting.
16. Where electors may vote.
17. Penalty for voting more than once at the same election.
18. Voters, qualifications of.
19. Oath of voter shall entitle him to vote, unless proved false.
20. Penalty for illegal voting.
21. Order at the polls, how preserved, and penalty for violation.
22. County commissioners may appoint constable to preserve order.
23. Poll books, how made out, and form thereof.
24. Disposition of poll books, and penalty for neglect of duty.
25. Abstract of votes, how made, and clerk to give certificate of election.
26. When two or more counties are in one district, votes to be compared in senior county; clerks to give certificate of election; and expenses of election, how paid.
27. Compensation of judges and clerks, how made out and paid.
28. Tie, in case of, how decided.
29. Abstract of votes, copy of, to be sent to secretary of State.
30. Representatives to Congress, votes for, by whom canvassed, and governor to give certificate of election; in case of tie, to be decided by lot.
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35. Sheriff or coroner, office of, when vacant, governor to issue writ of election.
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38. Voter swearing falsely, judges may refuse vote, and penalty for receiving vote without oath, when challenged.
39. Penalty for judge refusing to receive vote of legal voter, when offered under provisions of eighteenth section.
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[Approved March 3, 1845. Rev. Stat. 1845, p. 213.]

(1.) SECTION I. There shall be elected by general ticket, on the first Monday of November preceding the expiration of the term of each president of the United States, 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 as hereinafter provided: *Provided*, That should Congress have fixed a different day, or shall hereafter fix a different day, for such election, then the election for electors shall be held on such day fixed, or to be fixed, by act of Congress.

(2.) SEC. II. The clerks of the several county commissioners' courts shall, within eight days next after holding an election for electors, as is provided for in this chapter, make three copies of the abstract of votes for electors, and transmit by mail one of said copies to the governor or person administering the government, another to the office of the secretary of State, and retain the third in his office, to be sent for by the governor, in case both the others should be mislaid. Within twenty days after the holding of such election, and sooner, if all the returns are received by either the governor or person administering the government, or by the secretary of State, 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 persons 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 of State shall cause a notice of the same to be published in the paper printed by the public printer, which notice shall name some day and place, not less than five days from the time of the publication of such notice, upon which the said secretary, auditor and treasurer will decide by lot which of said persons so equal and highest are elected; and upon the day and at the place so appointed in said notice, 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.

(3.) SEC. III. 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 shall transmit by mail to the persons elected, certificates of their election.

(4.) SEC. IV. 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 herein 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.



(5.) SEC. V. 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 twelve 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.

(6.) SEC. VI. All general elections for the election of governor, lieutenant governor, representatives to Congress, senators and representatives of the General Assembly, and county officers, shall be held on the first Monday of August, in each year in which the said officers are hereinafter directed to be chosen, which elections shall be conducted as hereinafter prescribed.

(7.) SEC. VII. 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; and shall designate the house or place in each precinct, and in the precinct including the county seat, the house or houses, place or 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.

(8.) SEC. VIII. 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.

(9.) SEC. IX. 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 hereinbefore 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.

(10.) SEC. X. 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 coroner, 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 commissioners' 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 days before the time of holding any general election, and at least eight days before the time of holding any special election.

(11.) SEC. XI. 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.

(12.) SEC. XII. 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."

(13.) SEC. XIII. 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.

(14.) SEC. XIV. At all elections to be held under this chapter, 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 polls 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 hereinbefore prescribed, the election may, in that case, commence at any hour before the time for closing

the polls 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 polls, one of the clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before the closing of the polls, proclamation shall be made in like manner that the polls will be closed in half an hour.

(15.) SEC. XV. Electors shall vote, by first announcing their own names to the judges and clerks of the election, and then the names of the persons for whom they wish to vote, and the clerk shall enter their names and votes accordingly: 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.

(16.) SEC. XVI. 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 representative 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 precinct in which he resides.

(17.) SEC. XVII. If any elector shall vote more than once at any election held under the authority of this chapter, 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 offense may have been committed.

(18.) SEC. XVIII. At any and all elections held in this State, all white male inhabitants above the age of twenty-one years, and having resided in the State six months next preceding such election, shall enjoy the right of an elector, whether such elector has been naturalized or not: Provided, That when any such person shall present himself to give his vote, and either of the judges shall suspect that such person does not possess the aforesaid qualifications of age and residence, or either, or if his vote shall be challenged by any elector who has previously voted at such election, the judges of the election shall tender to such person the 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."

(19.) SEC. XIX. If any person so offering his vote at such election, shall take such oath or affirmation, or shall offer to take such oath or affirmation, as prescribed in the preceding section, his vote shall be received, unless it shall be proved by evidence satisfactory to a majority of the judges, that such oath or affirmation is false; and if such person shall refuse to take such oath or affirmation, his vote shall be rejected; and if any person shall take the oath or affirmation as is before named, knowing such oath or

affirmation to be false, he shall be deemed guilty of willful and corrupt perjury, and punished accordingly.

(20.) SEC. XX. 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 chapter.

(21.) SEC. XXI. 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.

(22.) SEC. XXII. The county commissioners' court in each county, may, if necessary, appoint some constable to attend such precinct, and preserve order during said election; 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.

(23.) SEC. XXIII. 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:

- 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 in 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.  
E. F., }

Attest: G. H., }  
I. J., } Clerks of the election."

(24.) SEC. XXIV. The judges of the election shall then inclose and seal one of the poll books, under cover, directed to the clerk of the county commissioners' 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 offense, 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.

(25.) SEC. XXV. 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 abstracts 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; or if the election shall have been holden for presidential electors, the abstract of votes shall be on one 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.

(26.) SEC. XXVI. But 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 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; 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 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.

(27.) SEC. XXVII. 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.

(28.) SEC. XXVIII. 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 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 provided.

(29.) SEC. XXIX. 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.

(30.) SEC. XXX. 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 twenty-eighth section of this chapter.

(31.) SEC. XXXI. 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 commissioners' 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.

(32.) SEC. XXXII. 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 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: *Provided*, 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.

(33.) SEC. XXXIII. Elections to fill vacancies in either branch of the General Assembly, occurring during the sessions of the legislature, may be held on such notice, not less than five nor more than twenty days, as the governor may direct in the writ of election issued to fill such vacancy.

(34.) SEC. XXXIV. 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: *Provided, 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.

(35.) SEC. XXXV. 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.

(36.) SEC. XXXVI. 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.

(37.) SEC. XXXVII. If any judge of the election, or clerk, or any other officer or person in any manner concerned in conducting the election, shall willfully neglect, improperly delay or refuse to perform any of the duties required by this chapter, 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 anywise 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.

(38.) SEC. XXXVIII. Nothing in this chapter 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.

(39.) SEC. XXXIX. If any judge or judges of election shall refuse to receive the vote of any such person so residing in this State six months before election, and being, at the time of offering his vote, twenty-one years of age, as stated in the eighteenth section of this chapter, and he shall comply, or offer to comply, with the eighteen section of this chapter, then every judge, or the judges so refusing or neglecting to receive the vote of the person aforesaid, and to record it as a legal vote, shall be liable to be indicted, and on conviction shall be fined five hundred dollars, and imprisoned, not exceeding thirty days, in the county jail; and such judge or judges may also be sued in an action on the case by the person aforesaid, and upon proof of such refusal or neglect in said judge or judges to receive and record the vote of such person so offering to vote, damages may be recovered of such judge or judges, not exceeding five hundred dollars.

(40.) SEC. XL. If the clerk of the county commissioners' court shall neglect or refuse to perform the duties as pointed out in this chapter, he shall be liable to be indicted, and on conviction shall be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding thirty days,

and may be sued in an action of trespass on the case for damages, not exceeding five hundred dollars, by the person injured by reason of the neglect or refusal of such clerk.

(41.) SEC. XLI. If any person shall mutilate or erase any name or figure or word, in a poll book taken or kept at any election, or if any person shall take away such poll book from the place where it has been deposited for safe keeping, with an intention of destroying the same, or to procure or prevent the election of any person, or if any person shall destroy any poll book so taken and kept at any election, he or she shall be liable to be indicted, and on conviction, shall be fined five hundred dollars, and imprisoned not exceeding sixty days in the county jail.

(42.) SEC. XLII. When any candidate shall desire to contest the validity of any election, or the right of any person declared duly elected, to hold the office to which such candidate claims the right, 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 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.

(43.) SEC. XLIII. The party whose election is contested, may select another justice of the peace to attend at the trial. 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, shall make such selection for him. 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.

(44.) SEC. XLIV. The said justices, or any one of them, shall, in all such cases, have power to issue subpoenas for witnesses to any county in this State, directed to the sheriff of such county, who shall make service and return as in other cases. And any witness, duly subpoenaed, refusing or neglecting to appear and testify, shall, in addition to the penalties otherwise imposed by law, 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 one-half to the person suing for the same.

(45.) SEC. XLV. The said justices, or any one of them, may issue attachments for witnesses so neglecting or refusing to attend, who may be brought before them; and at any time before the day for the decision of the question between the contesting parties, the said justices shall, at the request of either, after giving notice to the other party of five days, if resident in their county, or ten days, if residing out of their county, proceed to take the testimony of such witnesses, to be used in the case.

(46.) SEC. XLVI. 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.

(47.) SEC. XLVII. The said justices shall hear and examine all the evidence offered on either side. If the contest be respecting any county office, 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. If such contest be respecting a seat in the senate or house of representatives of this State, the said justices shall hear and reduce to writing all the testimony taken in the case, and certify and transmit the same under seal, together with all other papers and documents pertaining to the case, to the speaker of the senate or house of representatives, as the case may be.

(48.) SEC. XLVIII. 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. Such justices shall have power to appoint a clerk, and may adjourn from day to day, until their duties shall be completed. They shall have the same power to preserve order, and to punish disorders and contempts, as justices of the peace may exercise when holding courts.

(49.) SEC. XLIX. In all contests for county offices, in which the justices hearing the case are authorized to decide, they shall enter judgment on the docket of the justice last chosen, for all the costs of such contest, against the unsuccessful party, upon which execution may issue as in other cases. Either party may appeal from the decision of such justices to the circuit court, as in other cases of appeal from the judgment of a justice of the peace, the decision of which court shall be final.

(50.) SEC. L. In all contests other than for county offices, the proceedings for taking testimony hereinbefore provided, may be had in each county in which it is necessary to take testimony, and the like returns shall in each case be made. In those cases in which the justices examining, do not decide the contest, they shall not be compelled to certify or transmit the testimony and documents pertaining to the case, until the reasonable costs of the examination and of certifying the same, are tendered or paid; and the party who is finally unsuccessful shall be liable for such costs, to the person who shall have paid the same. But if neither party shall require or cause such testimony and documents to be transmitted, then judgment may be entered and execution had, as before provided, against the party at whose instance such examination was instituted.

(51.) SEC. LI. 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.

(52.) SEC. LII. If any person shall, at any time hereafter, bet or wager any money, property or other valuable thing, upon the result of any election which may be held under the constitution or laws of this State, or shall bet or wager money, property or other valuable thing, upon the number of votes which may be given to any one or more persons, at any election held as aforesaid, or upon who will receive the greatest number of votes at any such election; or if any person shall agree to pay to any other person, any money, property or other valuable thing, in the event that any election as aforesaid shall result in one way, or in the event that any one or more persons shall or shall not be elected, or shall receive a greater number of votes than others, such person shall be liable to indictment, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars.

(53.) SEC. LIII. It shall not be necessary to the commission of the offense specified in the foregoing section, that the money, property or valuable thing, bet or wagered, shall be exhibited or staked at the time of making such bet or wager, or at any other time.

An Act to amend the Seventh Section of the Thirty-Seventh Chapter of the Revised Statutes of one thousand eight hundred and forty-five, in relation to Elections.

[Approved Feb. 23, 1847. Laws, 1847, p. 49.]

(54.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the seventh section of the thirty-seventh chapter of the Revised Statutes of A. D. one thousand eight hundred and forty-five, be and the same is hereby so amended, as to give the county commissioners of the several counties in this State, power and authority to establish more than one set of judges of election in such precincts in their respective counties, when, in their opinion, the same may be necessary for the purpose of receiving votes at all general or special elections; and the said county commissioners may appoint as many sets of judges of election, in any precinct in their counties, as, in their judgment, may be necessary for the convenience of the voters: *Provided,* They shall not establish more than one set of judges of election in any precinct where less than three hundred votes are usually polled at a general election. This act to be in force from and after its passage.

An Act to provide for the Mode of Voting by Ballot, and for the Manner of Returning, Canvassing and Certifying Votes.

[Approved Feb. 12, 1849. Laws, 1849, (1st. Sess.) p. 71.]

(55.) SEC. I. *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 Tuesday next after the first Monday in November, preceding the expiration of the term of office of each president of the United States, 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 as hereinafter provided: *Provided,* That if Congress

should hereafter fix a different day for such election, then the election for electors shall be held on such day as shall be named by act of Congress.

(56.) SEC. II. All general elections for the election of governor, lieutenant governor, secretary of State, auditor of public accounts, State treasurer, representatives to Congress, senators and representatives to the General Assembly, and county officers, shall be held on the Tuesday next after the first Monday of November biennially, except for such offices as are directed to be chosen at other times than biennially; which elections shall be conducted as is directed by this act, and the act to which this is an amendment.

(57.) SEC. III. That an election shall be held in this State on the first Monday of June, eighteen hundred and fifty-two, and every ninth year thereafter, for one judge of the supreme court from the first grand division; on the first Monday of June, eighteen hundred and fifty-five, and every ninth year thereafter, for one judge of the supreme court from the third grand division; and on the first Monday of June, eighteen hundred and fifty-eight, and every ninth year thereafter, for one judge of the supreme court from the second grand division; and the present judges of the supreme court shall respectively hold their offices till the time fixed by this section for an election of a judge from the division for which such judge may have been elected.

(58.) SEC. IV. That on the first Monday of June, one thousand eight hundred and fifty-five, and every sixth year thereafter, an election shall be held in each judicial circuit for the election of a judge for such circuit: *Provided,* That whenever an additional judicial circuit shall be created, the first election of a judge for such circuit shall be held at such time as the law creating such circuit shall direct, but whose term of office shall expire at the time fixed for the next regular election of judges for the judicial circuits of this State.

(59.) SEC. V. That in case of any vacancy in the office of judge of the supreme or circuit courts of this State, within one year of the time fixed by this act for an election of such judges, it shall be the duty of the governor to appoint a judge to fill such vacancy, who shall hold his office till the time fixed by this act for the election of judges for such court; but if any vacancy shall occur more than one year previous to the time fixed by this act for the election of such judge, it shall be the duty of the governor to issue writs of election to the several counties that may be entitled by law to vote for such judge, fixing the time for the holding of said election, and requiring said sheriffs to give twenty days' notice of the time and place of holding said elections; which elections shall be conducted in the same manner as if the election of such judge had taken place at the regular time fixed by law.

(60.) SEC. VI. In case the right of any person claiming to be elected a judge of the supreme or circuit court shall be contested, the contest shall be conducted and the evidence taken in the same manner now provided by law for contesting the election of members of the General Assembly; and the evidence, when taken, if it relate to the election of a judge of the supreme court, shall be transmitted to the speaker of the senate; and if it relate to a judge of the circuit court, it shall be transmitted to the clerk of the supreme court of the grand division, in which a sitting of the supreme court is first directed to be held after such contest shall have commenced.

(61.) SEC. VII. In case of a vacancy in the office of clerk of the circuit court, it shall be the duty of the judge of said court to appoint a clerk, who



shall hold his office until the next regular election for county officers, or members of the General Assembly, whichever may first happen, at which election such vacancy shall be filled; and in case of a vacancy in the office of clerk in the supreme court in either of the grand divisions, the judges of the supreme court shall appoint a clerk, who shall hold his office until the time fixed by the constitution for the election of such clerk; and in case of a vacancy in the office of State's attorney, the governor shall appoint a State's attorney to fill such vacancy, who shall hold his office until the time fixed by the constitution for the election of State's attorneys; and in case of a vacancy in either of the offices of auditor, treasurer, or secretary of State, the governor shall fill any such vacancy until the time fixed by the constitution for an election to fill such vacancy.

(62.) SEC. VIII. The election of State's attorneys and clerks of the supreme court may be contested in the same manner as is provided for contesting the rights of judges of the circuit courts; and the election of clerks of the circuit courts may be contested in the manner provided for contesting the election of county officers: *Provided*, Any person whose election is proposed to be contested, shall be released from cost of such contested election, by refusing to receive a certificate of the clerk of the county court of his election.

(63.) SEC. IX. Returns of the elections of judges of the supreme court and circuit courts, secretary of State, auditor, treasurer, State's attorneys, and clerks of the supreme court, shall be made and canvassed as is now provided by law for representatives in Congress. Returns for clerks of the circuit court shall be made and canvassed as is now provided for other county officers.

(64.) SEC. X. At any and all elections held in this State, every white male citizen above the age of twenty-one years, having resided in this State one year next preceding any election, and every white male inhabitant of the age aforesaid, who was a resident of this State on the first day of April, in the year of our Lord one thousand eight hundred and forty-eight, shall be entitled to vote at any election; but no person shall be entitled to vote except in the precinct, place or township where a poll shall be held, in which he shall actually reside at the time of such election: *Provided*, That when any such person shall offer his vote, and either of the judges of the election shall suspect that such person is not a qualified voter, or if his vote shall be challenged by any elector, the judge of the election shall tender to such person the following oath or affirmation:

"You do solemnly swear (or affirm, as the case may be,) that you are a resident of this precinct, place or township; that you are a citizen of this State, and have resided herein one year preceding this election, or that you was an inhabitant of this State on the first day of April, in the year of our Lord one thousand eight hundred and forty-eight; that you are above the age of twenty-one years; and that you have not voted at this election: so help you God."

Every vote offered by any person who shall refuse to take the foregoing oath, shall be rejected.

(65.) SEC. XI. That the county court, or the board doing county business in each of the several counties in this State, at their first meeting in each and every year, shall cause a suitable number of blank forms of poll books and election returns to be made out (headed and certified as the case may be,) for each board of elections, in each precinct, township or

place; which they shall cause to be delivered into the hands of the sheriffs respectively of said counties, whose duty it shall be to deliver them to the judges, or boards of election, at least ten days previous to the next election then to be held.

(66.) SEC. XII. Each qualified voter may vote once, and no more; and if any person shall attempt to vote more than once, or to hand in two or more tickets folded together, every person so offending shall be liable to indictment, and on conviction, shall be fined in any sum not exceeding fifty dollars.

(67.) SEC. XIII. Every ticket handed in shall contain the name of every candidate such voter intends voting for, either in writing or print, designating the office to which he wishes each to be elected: and if more persons are designated for any office than there are candidates to be elected, such part of the ticket shall not be counted for either of them, but no vote shall be rejected for the want of form, if the judges or board of election can determine therefrom, to their satisfaction, the person voted for, and the office which the voter intended such person should fill.

(68.) SEC. XIV. That the county court, or board doing business, shall provide a sufficient number of ballot-boxes at the expense of the county, for the several boards or judges of election, to be kept by one of the judges or board, and to be delivered over to the successors of such judges or board, each of which said ballot-boxes shall be furnished with a sufficient lock and key; and before any ballot shall have been deposited therein, the same shall be publicly opened and exhibited, to the end that the judges and clerks assisting at every election may see that no ballot is in said box; after which, the same shall be locked and the key delivered over to one of the judges or board of election, and shall not be opened during the said election, except in the manner and for the purposes herein provided. An opening shall be made in the top or lid of each of such ballot-boxes, not larger than shall be sufficient to admit a single closed ballot to be inserted therein at one time, through which each ballot received shall be inserted.

(69.) SEC. XV. The method of voting shall be by ballot, which ballot shall be folded by the voter and delivered to one of the judges or board of election, who shall, without unfolding or opening the same in any manner, deposit the said ballot in the said ballot-box: *Provided*, That no ballot shall be received or counted unless the same is written or printed upon white paper, without any marks or figures thereon, intended to distinguish one ballot from another.

(70.) SEC. XVI. Each clerk of the election shall keep a poll list, which shall contain one column, headed "names of voters." The name of each elector voting shall be entered by each clerk in regular succession under the said heading in his poll list. At each adjournment of the polls, and upon the final closing of the same, the clerks shall, in the presence of the judges or board of election, compare their respective poll lists, and correct all mistakes that may be discovered according to the decisions of the judges or board of election, until such poll lists shall be made to correspond in all respects; the ballot-box shall then be opened and the said poll lists placed therein; the box shall then again be locked, and the seal of one or more of the judges shall be so placed thereon as entirely to cover the opening in the lid or top of said box: the key of said box shall then be delivered to one

of the judges or board of election, and the box to another; the judge having the key shall keep the same in his own possession, and deliver it again to the board at the next opening of the poll; the judge having the box shall carefully keep it, without opening it or permitting it to be opened, or the seal thereof to be broken or removed, and shall publicly deliver it in that condition to the board at the next opening of the polls.

(71.) SEC. XVII. As soon as the polls at any election shall have finally closed, the judges or board and clerks, may adjourn the counting and canvassing of the votes to some convenient hour of the next ensuing day, at which time they shall proceed to canvass the votes polled, by first counting the whole number of ballots in the box; if the ballots shall be found to exceed the number of names entered on each of the poll lists, they shall be replaced in the box, and one of the judges shall publicly draw out and destroy so many ballots unopened as shall be equal to such excess, and the ballots or poll lists agreeing, or being made to agree, the board shall proceed to count and estimate and publish the votes.

(72.) SEC. XVIII. As the judges or board of election shall open and read the tickets, each clerk shall carefully mark down the votes each candidate shall receive, in separate columns prepared for that purpose, with the name of such candidate at the head of such column, and the office or place it is designed by the voters such candidate shall fill; but if, on such canvassing, two tickets shall be found deceitfully folded together, they shall both be rejected as if the same had never been deposited in the ballot-box.

(73.) SEC. XIX. As soon as all the votes shall have been read off and counted, the judges or board of election shall make out a certificate under their hands, stating the number of votes each candidate received, designating the office for which such person received such vote or votes, as is prescribed and directed by the twenty-third section of the thirty-seventh chapter of the Revised Statutes, entitled "ELECTIONS;" and the said certificate, together with one of the lists of voters, and one of the tally papers, shall be put into the hands of one of the judges or board of election, who shall, within four days thereafter, deliver the same to the clerk of the county court, or his deputy, at the county seat or place of holding county courts; and when received, such clerk or deputy shall proceed to open, canvass and publish the return from each precinct, township or place, as is now provided by law.

(74.) SEC. XX. If any judge or the judges of any election shall refuse to receive the vote of any qualified elector, who shall take or offer to take the oath prescribed by this act, in such case every judge so refusing or neglecting to receive the vote or ballot, or opening or unfolding such ballot when the same shall be presented, shall be liable to be indicted, and on conviction, shall be fined five hundred dollars, and imprisoned not exceeding thirty days; and for every refusal or neglect to receive such vote, the party aggrieved may have an action on the case against the said judge or judges; the damages in such case shall not exceed the sum of five hundred dollars.

(75.) SEC. XXI. Sections one, six, fifteen, sixteen, eighteen, twenty-four and thirty-nine, of chapter thirty-seven, of the Revised Statutes, entitled "ELECTIONS," approved March 3rd, 1845, shall be and the same are hereby repealed; and such sections of said act as are not herein repealed, shall remain in full force and effect.

(76.) SEC. XXII. This act shall take effect and be in force from and after its passage.

An Act to provide for the Filling of Vacancies in Certain County Offices.

[Approved Nov. 6, 1849. Laws, 1849, (2nd Sess.) p. 8.]

(77.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever a vacancy shall happen in the office of sheriff, county surveyor or coroner of any county of this State, by death, resignation or removal of any incumbent, it shall be the duty of the clerk of the county court of such county immediately to notify the governor of that fact, and it shall be the duty of the governor to issue a writ of election to fill such vacancy, and direct the time of holding the same; which election shall be proceeded in as in other cases of election.

(78.) SEC. II. This act to be in force from and after its passage.

An Act to confirm Elections of County Officers.

[Approved Nov. 6, 1849. Laws, 1849, (2nd Sess.) p. 8.]

(79.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all elections heretofore ordered by the governor, to provide for filling vacancies in the office of sheriff and county officers, are hereby confirmed, and the elections of all such officers shall be valid.

(80.) SEC. II. This act to take effect from and after its passage.

See, under title "COUNTY TREASURERS AND COUNTY FUNDS," "An act to amend the several acts relating to the election of county treasurers;" approved Feb. 17, 1851.

PRIOR LAWS. An act regulating elections; approved March 1, 1819. Laws, 1819, p. 90. Repealed June 1, 1823.

An act providing for the election of electors of president and vice-president of the United States; approved March 2, 1819. Laws, 1819, p. 101. Repealed Jan. 11, 1827.

An act regulating elections; approved Feb. 3, 1821. Laws, 1821, p. 74. Repealed June 1, 1823.

An act providing for the election of certain officers; approved Feb. 6, 1821. Laws, 1821, p. 99.

An act regulating elections; approved Jan. 3, 1823; in force June 1, 1823. Laws, 1823, p. 53.

An act to amend an act entitled "An act providing for the election of electors of president and vice-president of the United States," approved March 2, 1819; approved Nov. 29, 1824. Laws, 1824, p. 3. Repealed Jan. 11, 1827.

An act to amend the act regulating elections; approved Feb. 9, 1827. Rev. Laws, 1827, p. 187.

An act directing the mode of electing electors of president and vice-president of the United States; approved Jan. 11, 1827. Rev. Laws, 1827, p. 188.

An act to provide for the election of justices of the peace and constables; approved Dec. 30, 1826. Rev. Laws, 1827, p. 255.

An act in addition to the act entitled "An act for the organization and government of the militia of this State," approved Jan. 25, 1826; approved Feb. 9, 1827. Rev. Laws, 1827, p. 290.

An act to apportion the representation of the several counties in this State; approved Feb. 7, 1831. Laws, 1831, p. 5.

An act to amend an act entitled "An act regulating elections;" approved Jan. 7, 1831. Laws, 1831, p. 74.

An act to provide for the election of a representative to the Congress of the United States; approved Feb. 9, 1831. Laws, 1831, p. 75.

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. Laws, 1831, p. 75.

An act regulating elections; in force June 1, 1829. Rev. Laws, 1833, p. 243.

An act to amend an act entitled "An act to regulate elections;" approved Feb. 28, 1833. Rev. Laws, 1833, p. 257.

An act to amend "An act regulating elections;" approved Jan. 29, 1835. Laws, 1835, p. 141.

An act to amend an act entitled "An act to provide for the election of justices of the peace and constables;" approved Jan. 7, 1835. Laws, 1835, p. 29.

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 Jan. 7, 1835; approved Feb. 6, 1835. Laws, 1835, p. 29.

An act to provide for the election of county recorders and surveyors; in force Feb. 11, 1835. Laws, 1835, p. 165.

An act to amend an act entitled "An act regulating elections," in force June 1, 1829; approved Feb. 15, 1839. Laws, 1839, p. 109.

An act to prohibit betting on elections; approved Feb. 15, 1839. Laws, 1839, p. 109.

An act to amend and explain the election law, approved Jan. 10, 1829; approved Feb. 20, 1841. Laws, 1841, p. 111.

An act to amend an act directing the mode of electing electors of president and vice-president of the United States, approved Jan. 11, 1827; approved Jan. 21, 1845. Laws, 1845, p. 41.

DECISIONS. The proclamation of the governor declaring who is elected to Congress, is *prima facie* evidence of the facts therein stated. *Lorton v. Gilliam et al.*, 1 S. 577.

Under the statute of this State, every white male inhabitant of the age of twenty-one years, who has resided in the State six months immediately preceding any general election, is entitled to vote at such election, and the judges of election are compelled to receive his vote. Under the existing laws, the judges of election have no right to investigate the question, whether the person offering his vote is an unnaturalized foreigner or a citizen. If such person takes the oath prescribed by law, the judges must receive his vote, unless the oath be proved false. The judges of election cannot inquire whether the person offering to vote is an *inhabitant*, and entitled to vote, within the meaning of that word in the constitution. Every man is a *resident* who has taken up his permanent abode in the State. When the judge of election allows a person to vote, whose right he suspects, or whose right is challenged, without tendering the oath prescribed by law, he violates his duty. He does not subject himself to the penalty for receiving an illegal vote, by permitting an alien to vote, who is a free white male inhabitant of the age of twenty-one years, who has resided in the State six months immediately preceding an election, and is a resident of the county where he votes. See the opinion of Justice Smith in this case. *Spraggins v. Houghton*, 2 S. 377.

The "Act to prohibit betting on elections," applies only to elections held in this State, and not to those held in other States. A bet or wager between two citizens of this State upon the majority which would be obtained at a presidential election in the State of Kentucky, is not illegal, and an action can be maintained by the winner to recover the amount of the bet. *Morgan v. Pettit*, 3 S. 529. See also, *Adams v. Woldridge*, 3 S. 255, and *Williams v. Smith*, 3 S. 524.

The proper mode of recovering a penalty from a person for voting illegally, is by action of debt. *Cable v. The People*, 12 Ill. 285.

## CHAPTER XXXVIII.

### ESCHEATS.

#### SECTION

1. Real estate, when may vest in the State.
2. When lands escheat to State, duty of circuit attorney and circuit court.
3. Claimants may appear and plead; other proceedings defined.
4. Disposition of lands, when judgment rendered in favor of State.

#### SECTION

5. Appeal, right of parties to.
6. Auditor to keep accounts of moneys and lands; how and in what time may recover money; how lands may be recovered by claimants; within what time application must be made: rights of infants, married women, &c., reserved.

[Approved March 3, 1845. Rev. Stat. 1845, p. 225.]

SECTION I. 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 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. II. When the attorney general or any circuit 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 alleging 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 alleged in such information to hold, possess or claim such estate, requiring them to appear and show 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 show 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 the 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. III. 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 traverse 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 is 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 costs of suit against the defendant.

SEC. IV. When any judgment shall be rendered, that the State be seized of any land, tenements and 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 heredita-

ments so vested in the State, into his hands; and upon the return of such writ of seizure, the attorney general or circuit 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. V. Any party who shall have appeared to any proceeding as aforesaid, and the attorney general or circuit 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. VI. 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 general, 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 it 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 a 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 circuit 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 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 women 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.

PRIOR LAWS. An act regulating escheats; in force March 1, 1833. R. E. Statutes, p. 443.

## CHAPTER XXXIX.

## ESTRAVS.

## SECTION

1. Estrays, persons taking up, how to proceed.
2. Appraisements, how made.
3. Taker up, and justice of the peace, their duties.
4. Duty of county commissioners' clerk.
5. Two or more estrays may be included in one entry.
6. Neat cattle, sheep, hog or goat, not to be taken up from first April to first November: fees for taking up.
7. Proof of taking up, how made.
8. When estray proved and taken away before appraisement, charges to be paid.
9. Estrays not to be used before advertising, except in certain cases.
10. Advertisement of estray horse, mare or colt, mule or ass, to be made in paper of public printer.
11. When no owner appears, property vested in taker up.
12. Penalty for trading, selling or taking away estray before one year; and how disposed of when not claimed within one year.
13. Estray horse, mare, colt, mule or ass, running at large out of the settlement, may be taken up, and how disposed of.
14. When owner does not claim within one year, prop-

## SECTION

- erty may be sold; nevertheless owner may appear within two years and claim balance due from such sale.
15. Justice of the peace, penalty for failing to pay over money for estray sold.
16. If estray dies before owner claims, taker up not liable; and penalty for illegal taking up, or failing to comply with the requisitions of this chapter.
17. Boat or water craft, taker up how to proceed, and duty of justices of the peace.
18. How taker up to proceed when value does not exceed twenty dollars; but when value exceeds twenty dollars, duty of clerk.
19. Fees, to whom and how paid, and amount of.
20. Penalty, when not otherwise herein specified; its amount: in whose name and before whom suits may be brought.
21. No horse, &c., to be taken up between first of April and first of November, unless, &c.
22. Person other than householder of the county, not permitted to take up estrays. When act to take effect.
23. Governor to designate paper in which estray notices shall be published.

[Approved March 3, 1845. Rev. Stat. 1845, p. 227.]

(1.) SECTION I. Every person who shall take up any estray horse, mare, colt, mule or ass, after having given not less than ten nor more than fifteen days' notice, by posting up notices in three of the most public places in the justice's district in which he resides, shall 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.

(2.) SEC. II. 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 appraisement, 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.

(3.) SEC. III. Any person who shall take up any head of neat cattle, sheep, hog or goat, after having given the notice required in section one of this chapter, shall go with some householder before a justice of the peace 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: *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 appraisement value of such sheep, hog or goat, and advertise the same in three of the most public places in his neighborhood.

(4.) SEC. IV. Every such clerk shall cause a copy of such description and valuation of every neat cattle, sheep, hog and goat returned to him, 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.

(5.) SEC. V. 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.

(6.) SEC. VI. 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.

(7.) SEC. VII. Proof of the giving of notice, as required in the first and third sections of this chapter, may be made by the oath of the person advertising, or a credible witness, previous to the appraisement.

(8.) SEC. VIII. If the owner of any such animals shall prove and take them away before the appraisement thereof, he shall pay to the person who has care of the same all reasonable charges for taking up and keeping the same.

(9.) SEC. IX. It shall not be lawful for persons taking up estrays, to use the same previous to advertising them, unless it be to milk cows, and the like, for the benefit and preservation of such animals.

(10.) SEC. X. 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 indorse 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' courts 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.

(11.) SEC. XI. And if no owner appear and prove 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.

(12.) SEC. XII. 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 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 appear 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 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.

(13.) SEC. XIII. Any person finding a stray horse, mare, colt, mule or ass, 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 chapter, 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 chapter.

(14.) SEC. XIV. If no owner appear 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.

(15.) SEC. XV. And when any justice of the peace shall fail to pay any money for any estray or estrays to be sold agreeably to this chapter, 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.

(16.) SEC. XVI. 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 chapter, he shall forfeit and pay the sum of ten dollars, with costs, recoverable before any justice of the peace of the county where the offense 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 offense 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 chapter, shall be liable to the same penalties; and if any person, taking up any estray or estrays of any species, fail to comply with the requisitions of this chapter, he shall, for every such offense, forfeit and pay to the informer, the sum of ten dollars with costs, recoverable before any justice of the county where such offense 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.

(17.) SEC. XVII. If any person or persons shall hereafter stop or take up any keel or flat boat, ferry flat, batteau, piroguo, 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 appraisal, 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, 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.

(18.) SEC. XVIII. In all cases where the appraisal 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 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, and allowing to the taker up a reasonable compensation for his trouble, and costs and charges.

(19.) SEC. XIX. In all cases, where services shall be performed by any officers or other person or persons under this chapter, 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.

(20.) SEC. XX. If any person shall act contrary to the duties enjoined by this chapter, for which no penalty is hereinbefore pointed out, the person so offending shall, on conviction thereof, forfeit and pay for every such offense, 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.

An Act to amend "An Act changing the Estray Law," approved March 3rd, 1845.  
(Approved Feb. 28, 1847. Laws, 1847, p. 47.)

(21.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That no horse, mare, colt, mule or ass, shall be taken up and posted between the first day of April and first day of November, unless the same be found out of the range of the proper owner, or within the lawful fence or inclosure of the taker up, having broken in the same, or manifestly running away from the owner.

(22.) SEC. II. That from and after the passage of this act, no person who is not a household of the county, shall be permitted, under the law to which this is an amendment, to take up and post any estray animal enumerated either in this act or the act to which this is an amendment. This act to take effect from and after its passage.



An Act to provide for the Publication of Estray Notices.

[Approved Feb. 12, 1849. Laws, 1849, p. 76.]

(23.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That section ten, chapter thirty-nine, of the Revised Statutes of this State, be and the same is hereby so amended as to require the publication of estray notices in some public newspaper to be designated by the governor; and the publisher of said newspaper, so designated, is hereby made subject to all the requirements provided in said chapter in regard to the public printer.

PRIOR LAWS. An act to regulate the disposition of water crafts of certain descriptions, found gone or going adrift, and of estray animals; in force March 23, 1819. Laws, 1819, p. 206.

An act concerning water crafts found adrift, lost goods and estray animals; in force June 1, 1827. Rev. Laws, 1833, p. 267.

An act to amend an act entitled "An act concerning water crafts found adrift, lost goods and estray animals," approved Jan. 31, 1827; in force Jan. 22, 1829. Rev. Laws, 1833, p. 277.

An act to amend an act entitled "An act concerning water crafts found adrift, lost goods and estray animals," approved Jan. 31, 1827; in force June 1, 1831. Rev. Laws, 1833, p. 278.

An act concerning estrays; in force Feb. 9, 1835. Laws, 1835, p. 229.

An act supplemental to "An act concerning estrays," in force Feb. 9, 1835; in force March 4, 1843. Laws, 1843, p. 139.

DECISIONS. One who takes up an estray, and does not advertise him according to law, acquires no title to the property, and cannot maintain any suit against any other person who takes up the same animal and advertises him, no matter how long he may have had such animal in possession. *Hyde v. Prior*, 13 Ill. 64.

## CHAPTER XL.

### EVIDENCE AND DEPOSITIONS.

#### SECTION

1. Statutes of the United States, State and Territories, shall be evidence, when printed by proper authority.
2. Authorized reports of decisions may be read in evidence.
3. Copies of proceedings and judgments before justices of the peace, when only certified, may be read in evidence.
4. Official certificate of register or receiver of land office of the United States, deemed evidence in certain cases.
5. Land patent, its effect as evidence of title in the patentee.
6. Laws of other States and Territories, exemplifications of, by secretaries of State, admissible as evidence.
7. In suits against partners, names of individuals not necessary to be proved in certain cases.
8. Proof of joint liability of defendants, or their christian or surnames, when not required.
9. Certified copies of proceedings of corporations, *prima facie* evidence.
10. Non-resident witnesses, depositions of, how to be obtained.
11. Resident witnesses, depositions of, how to be obtained.
12. Depositions, how taken.
13. Deemed good and competent evidence.
14. Witnesses, by whom and how may be called and examined.
15. Compensation of witnesses, and by whom paid.

#### SECTION

16. Party interested in event of suit, not permitted to dictate, write or draw up deposition; effect of so doing.
17. Seal not to be broken, unless by permission of court; penalty therefor.
18. When and by whom depositions may be read.
19. *Deimus potestatem*, when may be sued out, and proceedings thereon.
20. Previous notice to be given of taking out depositions, before suing out *deimus*, and further proceedings defined.
21. Before whom depositions may be taken, and who may attend; further proceedings relative thereto.
22. After death of deponent, depositions may be used as evidence.
23. Negro, mulatto or Indian shall not be witness; who deemed mulatto.
24. When adverse party and his attorney, reside without the State, in taking deposition of witness, notice, how given.
25. When act shall take effect.
26. On trial of suit in chancery, evidence may be given orally: *proviso*.
27. Copies of papers, &c., of banking association, &c., certified by clerk or other officer of company, evidence.
28. Certified copies of patents to be read in evidence.
29. Certified copies of entries to be read in evidence.
30. When act shall be in force.

[Approved March 2, 1845. Rev. Stat. 1845, p. 232.]

(1.) SECTION I. The printed statute books of the United States, of this State, and of the several States, of the territories and late territories of the United States, printed under the authority of said States and territories, shall be evidence in all courts and places in this State, of the acts therein contained.

(2.) SEC. II. The books of reports of decisions of the supreme court and other courts of the United States, of this State, and of the several States and the territories thereof, published by authority of such courts, may be read as evidence of the decisions of such courts.

(3.) SEC. III. Copies of the proceedings and judgments before justices of the peace, certified by the justice or justices, under his or their hands and seals, before whom such proceeding or judgment is had, shall be received as evidence of such proceeding or judgment. 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.

(4.) SEC. IV. 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.

(5.) SEC. V. A patent for land shall be deemed and considered a better legal and paramount title in the patentee, his heirs or assigns, than the official certificate of any register of a land office of the United States, of the entry or purchase of the same land.

(6.) SEC. VI. 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.

(7.) SEC. VII. In trials of actions upon contracts, express or implied, where the action is brought by partners, or by joint payees or obligees, it shall not be necessary for the plaintiff, in order to maintain any such action, to prove the co-partnership of the individuals named in such action, or to prove the christian or surnames of such partners, or joint payees or obligees; but the names of such co-partners, joint payees or obligees shall be presumed to be truly set forth in the declaration, petition or bill: *Provided*, That nothing herein contained shall prevent the defendant in any such action from pleading in abatement as heretofore, or of proving on the trial either that more persons ought to have been plaintiffs, or that more persons

have been made plaintiffs than have a legal right to sue, or that the christian or surname is other and different from the one stated in the declaration, petition or bill, in which event the defendant's rights shall be as at common law.

(8.) SEC. VIII. In actions upon contracts, express or implied, against two or more defendants, alleged to have been made or executed by such defendants, as partners or joint obligors or payors, proof of the joint liability or partnership of the defendants, or their christian or surnames, shall not, in the first instance, be required to entitle the plaintiff to judgment, unless such proof shall be rendered necessary by pleading in abatement, or the filing of pleas denying the execution of such writing, verified by affidavit, as required by law.

(9.) SEC. IX. Copies of all papers, books or proceedings, or parts thereof, appertaining to transactions in their corporate capacity; of any town or city heretofore incorporated, or now incorporated, or that may hereafter be incorporated, under a general or special law of this State, certified to be true copies by the clerk, or the keeper of the same, under the seal of said town or city, or under the private seal of said clerk or keeper, if there be no public seal; the said clerk or keeper also certifying that he is intrusted with the safe-keeping of the originals, of which he gives certified copies, shall be received as *prima facie* evidence of the facts so certified, in all the courts of this State, in any suit or proceeding pending before them.

(10.) SEC. X. 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 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.

(11.) SEC. XI. 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 file 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 wit-

nesses 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.

(12.) SEC. XII. 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 inclosed with or attached to any such commission as aforesaid, and which are directed to be put to such witness; or where no such 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 inclosed, sealed up and directed to the clerk of the court in which the action shall be pending, with the names of the parties litigant indorsed 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.

(13.) SEC. XIII. Every examination and deposition which shall be taken and returned according to the provisions of this chapter, 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.

(14.) SEC. XIV. 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.

(15.) SEC. XV. Every witness attending before any commissioner, judge, 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 traveling 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.

(16.) SEC. XVI. The party, his attorney, or any person who shall in anywise 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 chapter; 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.

(17.) SEC. XVII. 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 offense for the clerk to break open any such deposition as aforesaid, where it is doubtful, from the indorsements 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.

(18.) SEC. XVIII. All depositions taken in pursuance of this chapter, when returned into court, may be read by either party, on the trial of the causes to which they relate.

(19.) SEC. XIX. 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.

(20.) SEC. XX. It shall be the duty of the person or persons suing out such *dedimus* as aforesaid, before proceeding to take such deposition as afore-

said, 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.

(21.) SEC. XXI. 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.

(22.) SEC. XXII. 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, be used as evidence in any case to which the same may relate: *Provided*, 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.

(23.) SEC. XXIII. 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.

An Act to amend an Act entitled "An act regulating the Mode of Taking Depositions, and to provide for the Perpetuating of Testimony," approved Feb. 9, 1827.

[Approved March 1, 1845. *Appendix, Rev. Stat. 1845, p. 580. Laws, 1845, p. 27.*]

(24.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever the deposition of any witness or witnesses is desired to be read in evidence, in any civil cause depending in any court of this State, whether in law or equity, in accordance with the provisions of the act to which this is an amendment, when neither the adverse party in such cause nor his attorney resides within the limits of this State, after affidavit of such non-residence being filed in the clerk's office of the court of the county in which such cause is pending, the notices provided for in the several sections of said act may be given as follows: *Firstly,* by posting said notices at the door of the court-house of the county where said suit is pending, and filing interrogatories, when required by said act, in the office of the clerk of said court, at least four weeks prior to the time of suing out a commission or taking depositions, as the case may be; or, *Secondly,* by publishing said notices in the nearest newspaper, for four weeks successively, prior to suing out a commission or taking depositions, as the case may be, and filing interrogatories when required, as hereinbefore provided.

(25.) SEC. II. That this act shall take effect and be in force from and after its passage.

An Act to amend the Act entitled "Evidence and Depositions," Revised Statutes, Chapter XL.

[Approved Feb. 12, 1849. *Laws, 1849, p. 133.*]

(26.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter on the trial of any suit in chancery, the evidence on the part of either plaintiff or defendant may be given orally, under the same rules and regulations as evidence in cases at common law: *Provided, however,* That depositions taken in pursuance of law may still be read in evidence, as if this act had not been passed.

An Act in relation to the Evidence of the Proceedings of Corporations.

[Approved Feb. 12, 1853. *Laws, 1853, p. 184.*]

(27.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That copies of all papers, books or proceedings, or parts thereof, appertaining to the transactions of any rail road company, banking association or other corporation, certified to be true copies by the clerk, secretary, cashier or other keeper of the same, under the seal of such company, bank or corporation, or under the private seal of such clerk, secretary, cashier or other keeper of the same, if there be no seal in such company, bank or corporation; the said clerk, secretary, cashier or keeper also certifying that he is intrusted with the safe keeping of the original of which he gives certified copies, with an affidavit of the truth of such certificate, taken before some officer authorized to administer oaths, being annexed thereto, shall be received as *prima facie* evidence of the facts so certified in all the courts of this State, in any suit or proceeding pending before them.

An Act amending Chapter XL. of the Revised Statutes, in relation to Evidence.

[Approved Feb. 14, 1855. *Laws, 1855, p. 33.*]

(28.) SEC. I. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That in all cases where any lands or lots have been or may be sold by this State, or any of the officers thereof, under the authority of any law of this State, whereof the patent shall be signed by the governor, under the seal of this State, and in case said patent has been or shall purport to be recorded in the recorder's office of the county where the lands or lots are situated, and said patent shall be lost or out of the power of the party desiring to use the same, to produce in evidence, a copy of the record of said patent, certified by the recorder of said county, may be read in evidence, in place of said original patent; which copy, certified as aforesaid, shall be *prima facie* evidence of the issuing of said patent and of the contents thereof.

(29.) SEC. II. That copies of the books and entries of the sale of all lands or lots heretofore or that hereafter may be sold by this State, or any of the officers thereof, under any law of this State, certified to be true and correct copies of such books and entries by the proper person or officer in whose custody said books and entries may properly be, shall be *prima facie* evidence of the facts stated in said books and entries.

(30.) SEC. III. This act shall be in force from and after its passage.

PRIOR LAWS. An act regulating the manner of taking depositions; in force Feb. 19, 1819. *Laws, 1819, p. 17. Repealed Jan. 31, 1821.*

An act directing the mode of perpetuating testimony; in force Feb. 25, 1819. *Laws, 1819, p. 69.*

An act for rendering authentic as evidence, in courts of this State, the public acts, records and judicial proceedings of courts in the United States; in force Feb. 20, 1819. *Laws, 1819, p. 30. Repealed Feb. 9, 1827.*

An act regulating the mode of taking depositions; in force Jan. 31, 1821. *Laws, 1821, p. 54. Repealed Feb. 9, 1827.*

An act to amend an act regulating the mode of taking depositions, approved Jan. 31, 1821; in force Feb. 10, 1823. *Laws, 1823, p. 120. Repealed Feb. 9, 1827.*

An act declaring what shall be evidence in certain cases; in force Jan. 10, 1837. *Rev. Laws, 1827, p. 199; Rev. Laws, 1833, p. 280.*

An act regulating the mode of taking depositions, and to provide for the perpetuating of testimony; in force June 1, 1827. *Rev. Laws, 1827, p. 174; Rev. Laws, 1833, p. 225.*

An act to amend the act entitled "An act declaring what shall be evidence in certain cases," approved Jan. 10, 1827; in force, Feb. 27, 1839. *Laws, 1839, p. 196.*

An act regulating evidence in certain cases; in force March 2, 1839. *Laws, 1839, p. 266. Repealed Feb. 17, 1841.*

An act regulating evidence in certain cases; in force Feb. 1, 1842. *Laws, 1841, p. 112.*

An act concerning evidence in certain cases; in force Feb. 24, 1843. *Laws, 1843, p. 140.*

DECISIONS. After a change of venue is allowed, and before the record is removed, the affidavit to take the testimony of witnesses is properly made in the court where such record remains. *Phelps v. Torney, Breese, 255.*

A magistrate taking depositions, need not certify the time and place of caption. *Idem.* Under the law of 1819, a deed made by a sheriff on a sale of real estate on execution, is properly acknowledged in the court of the county where the land lies, and the sheriff resides. *Fall et al. v. Goodtitle et al., Breese, 156.*

A certificate of a land office register is not evidence without proof of its execution. *Idem.*

An execution is not evidence unless a judgment be first produced. *Curtiss v. Swearengen, Breese, 160.*

The obligors to an attachment forthcoming bond are estopped to deny the recitals in the bond. *Crisman et al. v. Mathews, 1 S. 148.*

Under the act of Jan. 10, 1827, the certificate of the register of the land office, in actions of ejectment, trespass, &c., of the entry and purchase of a tract of land, is equal in dignity to a patent. And where two patents have issued for the same land, the party holding the first certificate of pur-

chase, has the better title, no matter which has the oldest patent. *Bruner v. Manlove*, 1 S. 156; *McConnell v. Wilcox*, 1 S. 344; *Wilcox v. Kinzie*, 3 S. 223.

The record and judgment of the trial of a right of property is conclusive as against parties and privies. *Arnez v. Reible et al.*, 1 S. 340.

The law of Illinois, making a register's certificate of purchase evidence, is binding as well between a citizen of the United States and the United States, as between citizens. *McConnell v. Wilcox*, 1 S. 344.

N. B. This decision was reversed by the supreme court of the United States. 13 Pet. R. 498. A deposition written by an attorney of a party, cannot be read in evidence. *King v. Dale*, 1 S. 513.

Courts will judicially take notice of the boundaries of counties. *Ross et al. v. Reddick*, 1 S. 73. A register's certificate of any fact on record in his office is competent evidence. *Idem*. See also, *Delaney v. Burnett*, 4 G. 454.

When the county commissioners have employed a person to attend on a pauper, the county is liable for the services of such person, whether any record is made of such contract or not. *County of Vermillion v. Knight*, 1 S. 97.

The party rendering the service need not prove that the pauper was entitled to aid under the law. *Idem*.

A promise to pay for improvements made on lands, which are not at the time of the promise in the United States, but which have been entered and purchased by the person making the promise, is not binding. *Roberts v. Garen*, 1 S. 396.

When a party admits an affidavit for a continuance, he admits the facts stated therein, and cannot be permitted to disprove them. *Willis v. The People*, 1 S. 400.

The assignor of a promissory note is not a competent witness to prove the assignment. *Stacy v. Baker*, 1 S. 417.

A note is made payable to "Williams & Lander." The declaration states that it is payable to Shadrach Williams and Henry Lander. Under the act of March 2, 1839, it will be presumed that the plaintiffs are the payees of the note. *Hollenback v. Williams et al.*, 1 S. 544. See also, *Vance et al. v. Funk et al.*, 2 S. 264; *Salisbury et al. v. Gillett et al.*, 2 S. 290.

The governor's proclamation, in the State paper, declaring who is elected to Congress, is evidence of that fact *prima facie*. *Lorton v. Gilliam et al.*, 1 S. 577.

An indorsement of the firm name of parties on the back of the deposition, is a compliance with the requisitions of the statute. *Forsyth v. Baxter*, 2 S. 10.

When depositions are taken by a justice of the peace in his official character, such official character must be certified by and under the seal of some court, or under the great seal of the State where the same are taken. *Wheeler v. Shields*, 2 S. 348.

An indorser or assignor of a promissory note, who is a mere agent of the assignee, is a competent witness for the defendant to impeach the consideration of the note. *Welster v. Vickers et al.*, 2 S. 295.

A partial failure of consideration cannot be given in evidence under a plea of a total failure. *Sewain et al. v. Curwood*, 2 S. 505.

It need not necessarily appear in the certificate to a deposition when the oath was administered; it will be presumed to have been done at the proper period. *Bullance v. Underhill*, 3 S. 453.

The certificate of the receiver of a land office is not evidence of title. *Roper v. Clabaugh*, 3 S. 167.

An indorser of a note "without recourse," is a competent witness to prove that it had been paid or otherwise discharged. *Bradley et al. v. Morris*, 3 S. 183.

The payee of an assigned promissory note is a competent witness for the maker to prove the time of the assignment. *Pettis v. Westlake et al.*, 3 S. 539.

A deposition of a defendant in chancery will not be excluded on the hearing, merely because it was taken without leave of court. The court will judge whether the witness is competent on the hearing. *Sproule et al. v. Samuel*, 4 S. 136.

Courts will judicially take notice who are justices of the peace of the county where the court is sitting, and of their official acts. But when the official acts of a justice of a foreign county are offered in evidence, they should be accompanied by a certificate of the proper officer of his official character. *Chambers v. The People*, 4 S. 352; *Livingston v. Kettle*, 1 G. 116.

A notice to take depositions need not state the residence of the witnesses. *Hays v. Borders*, 1 G. 64.

Objections to depositions on account of their "generality," should be made before trial. *Kimball v. Cook*, 1 G. 424.

In a suit against two joint debtors, a notice of a commission to take depositions served on one, is insufficient: a deposition thus used cannot be used on the trial against both. *McConnell v. Stettinius*, 2 G. 707.

Where parties have made diligent search and inquiry for a recorded deed, and cannot find the same, a certified copy may be given in evidence. *Bestor v. Powell et al.*, 2 G. 119; *Marriner v. Saunders*, 5 G. 113; *Newson v. Luster*, 13 Ill. 176.

In an action under the statute for cutting timber, parol evidence of title is sufficient, unless objected to at the time. *Clay v. Boyer*, 5 G. 506.

Interrogatories accompanying a commission to take depositions, need not be copied into the deposition; it will be sufficient if it appear that the interrogatories were proposed and duly answered, so that the court can see that it was fairly taken. *Hawks v. Lands*, 3 G. 227.

The orders of county commissioners in making settlements with collectors, are *prima facie* evidence only of the correctness of the statements, and not the adjudication of a court. *Washington County v. Parlier*, 5 G. 232.

It is competent to prove the publication of town ordinances by the production of the record, and proving by the clerk that copies were posted, without producing the copies. *Taft v. Size*, 5 G. 432.

The statute authorizing oral evidence in chancery cases, was not intended to dispense with the necessity of incorporating the evidence into the record. *White v. Morrison*, 11 Ill. 361.

The court will not presume the existence of any evidence other than what appears in the record. *Idem*.

If a party appears and cross-examines a witness, he thereby waives all objections to notice for taking depositions. *County of Greene v. Bledsoe*, 12 Ill. 271.

If the officer taking depositions states in the caption that the witnesses were sworn, it need not necessarily be repeated at the close of the deposition. *Idem*.

If one of several defendants pleads in abatement, denying the joint liability of said defendants, the plea may be verified by the affidavit of one of the defendants, and if sustained, will amount to a defense for all. *Warren v. Chambers et al.*, 12 Ill. 127.

Where a subscribing witness is proved to be dead, or beyond the jurisdiction of the court, or on inquiry cannot be found; or where such witness' hand-writing cannot be proved, proof of the hand-writing of the grantor in a deed will be sufficient evidence of its execution. *Newson v. Luster et al.*, 13 Ill. 175.

Where a *dedimus* requires a commissioner to take the deposition of *Seymour Rank*, and the commissioner takes the deposition of *Seigmund Rank*, the deposition cannot be used. *Scholes et al. v. Ackerland et al.*, 13 Ill. 650.

Under the new constitution of this State, no bill can become a law unless it is passed by the vote of a majority of all the members of the General Assembly. *Sprangler v. Jacoby*, 14 Ill. 297.

The law published by the State printer is *prima facie* evidence that it was passed by a constitutional vote; but this evidence may be rebutted by the journals. *Idem*.

Deeds for lands lying without this State are not within the provisions of the recording acts. Their execution must be proved like the execution of any other written instrument. *Sisk v. Woodbury*, 15 Ill. 15.

A party having filed his bill in chancery may proceed to take depositions before answer is filed, and without any order of court; but at his own costs, in case their necessity should be obviated by the answer. *Wiley v. Doyles*, 15 Ill. 572.

Depositions taken after a bill filed, and which has been dismissed by the complainant, may be read upon the hearing of a bill subsequently filed between the same parties for the same cause of action. *Idem*.

## CHAPTER XLI.

## FEES AND SALARIES.

## SECTION

1. Salaries of governor, secretary of State, auditor, the treasurer, the chief justice and associate justices, attorney general, circuit attorneys and adjutant general, how paid.
2. Members and officers of the General Assembly, compensation of.
3. Incidental expenses of public officers, what shall constitute.
4. Incidental expenses, how paid.
5. Secretary of State, fees of.
6. Auditor and treasurer, fees of, in certain cases.
7. Clerk of the supreme court, fees of.
8. Clerk of circuit courts, fees of.
9. Probate justice, fees of.
10. Clerks of county commissioners' courts, fees of.
11. Attorney general and circuit attorneys, fees of.

## SECTION

12. Successful party at law, fees of.
13. Sheriff's fees.
14. Sheriff's fees further defined.
15. Coroner's fees.
16. Justice's fees in criminal cases.
17. Justice's fees in civil cases.
18. Constable's fees in criminal cases.
19. Constable's fees in civil cases.
20. Witness's fees.
21. Juror's fees.
22. Arbitrator's fees.
23. Recorder's fees.
24. Notaries public, fees of.
25. County surveyor's fees.
26. Guarding jail, fees for, and how established.
27. Illegal fees, penalty for taking, and how recovered.

## SECTION

28. Clerks of supreme and circuit courts to keep record of fees of their respective courts, and how collected.
29. Neglect to make returns of fee bill, penalty for.
30. Clerks of supreme and circuit courts, record of, what shall contain.
31. Persons who have heretofore been, or are now, sheriffs, may collect fees in certain cases.
32. Clerks of courts to provide books, &c.; allowances therefor, how made.
33. Office rooms for clerks, how provided.
34. Bills of costs, how made out and collected.
35. Duty of officers in issuing executions; penalty for neglect of.
36. Table of fees, clerks, probate justices, and justices of the peace, to set up, and penalty for neglect of.
37. County commissioners' clerks not to charge fees in certain cases, but court may allow *ex officio* fees.
38. Acknowledgment of deeds, fee for.
39. Clerk of circuit court, duty of, to collect and pay over fees to predecessor.
40. Clerks of supreme and circuit courts not to make complete record unless directed; *proviso*. Laws repealed.
41. Fees of sheriff for summoning jurors.
42. Portion of law repealed. When act to be in force.
43. Compensation of grand and petit jurors.

[Approved March 3, 1845. Rev. Stat. 1845, p. 237.]

(1.) SEC. 1. The salaries, fees and compensation of the several persons hereinafter named, shall be as follows:

To the governor, per annum, together with house rent, two thousand dollars.

To the secretary of State, exclusive of fees, per annum, and inclusive of clerk hire, eight hundred dollars.

The auditor of public accounts, inclusive of clerk hire, per annum, one thousand six hundred dollars.

State treasurer, inclusive of clerk hire, per annum, eight hundred dollars.

The chief justice and each associate justice of the supreme court, respectively, per annum, one thousand five hundred dollars; excepting justices elected or appointed subsequent to February twelfth, one thousand eight hundred and forty-five, who shall receive, each, one thousand dollars.

The attorney general, per annum, five hundred dollars.

Each circuit attorney, per annum, two hundred and fifty dollars.

The adjutant general, per annum, fifty dollars.

All of which salaries shall be paid to the persons entitled thereto, in quarter-yearly installments, on the warrant of the auditor, out of any moneys in the treasury not otherwise appropriated.

#### COMPENSATION OF MEMBERS OF ASSEMBLY, ETC.

(2.) SEC. II. There shall be allowed to the speaker of the senate and house of representatives, respectively, per day, four dollars.

To each member of the senate and house of representatives, per day, three dollars.

To each speaker and member, in addition, for every twenty miles' travel in going to and returning from the place of session, three dollars.

To the secretary of the senate, and principal clerk of the house of representatives, respectively, per day, five dollars.

To the enrolling and engrossing clerks of the senate and house of representatives, respectively, per day, three dollars.

## SECTION

44. Mileage allowed to jurors.
45. Certain section repealed.
46. When act shall take effect.
47. Salaries of State officers.
48. Pay of members of legislature; of officers. How certified.
49. Incidental expenses.
50. Vouchers, &c.
51. Fees of secretary of State.
52. Fees of clerk of supreme court.
53. Fees of clerk of circuit court.
54. Fees of clerk of county court; *proviso*.
55. Attorney's fees.
56. Fees of party at law; *proviso*.
57. Sheriff's fees; additional fees.
58. Witnesses' fees.
59. In criminal causes, on change of venue, fees of witnesses.
60. Affidavits required. Certificates; *proviso*.
61. Certain sections repealed; when act shall take effect.
62. Duty of secretary of State; *proviso*.
63. When act to take effect.
64. Witnesses' fees.
65. County not liable.
66. Act repealed.
67. When act to be in force.
68. Witnesses' fees; *proviso*. Fees of constables.
69. When act shall be in force.

To the door-keeper of the senate and house of representatives, respectively, per day, three dollars.

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, ETC.

(3.) SEC. III. 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.

(4.) SEC. IV. 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 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.

#### FEES OF SECRETARY OF STATE.

(5.) SEC. V. There shall be allowed to the secretary of State, in addition to his salary, the following fees, to wit:

For copies or exemplifications of records, for every seventy-two words, fifteen cents.

Affixing State seal, with certificate of authentication, one dollar.

Copy of any law, for every seventy-two words, fifteen cents.

Official certificate without seal, when not required for public use, twenty-five cents.

*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, nor for copying laws, memorials or resolutions.

(6.) SEC. VI. The auditor and treasurer, when required to give copies of, or to authenticate, records or papers in their respective offices, shall be entitled to the same fees allowed to the secretary of State.

#### FEES OF THE CLERK OF THE SUPREME COURT.

(7.) SEC. VII. For each writ of error and seal, with supersedeas, one dollar,

For each writ of error and seal, without supersedeas, seventy-five cents.



For each bond, when not furnished by the party, fifty cents.  
 Filing each paper, excepting records and papers on appeals and writs of error, six and a fourth cents.  
 Filing each record and accompanying papers, on appeals and writs of error as returned by the inferior courts, twenty cents.  
 Docketing cause, twelve and a half cents.  
 Entering each rule or order of court, each entry being considered as one order, twenty-five cents.  
 Execution and seal, fifty cents.  
 Entering sheriff's return on any writ or execution, twelve and a half cents.  
 For each subpoena and seal, fifty cents.  
 For each scire facias, mandamus and other special process, for every seventy-two words, eighteen cents.  
 Sealing the same, twenty-five cents.  
 Bringing any particular record into court of a suit, matter or thing not before the court, twenty-five cents.  
 Copy of a record or other proceedings, for every seventy-two words, fifteen cents.  
 Entering judgment or decree, for every seventy-two words, eighteen cents.  
 Entering each continuance, from one term to another, twelve and a half cents.  
 Making complete record, when directed by the party, for every seventy-two words, fifteen cents.  
 For each official certificate and seal, other than to the process of the court, fifty cents.  
 Each official certificate, as aforesaid, without seal, twenty-five cents.  
 Entering attorney on the roll, administering oath, and certifying the same, one dollar.  
 Making bill of costs for execution, and entering the same in the cost book, thirty-seven and a half cents.  
 Copy of the same, when requested by either party, twenty-five cents.  
 Administering each oath, twelve and a half cents.

## CLERK'S FEES IN THE CIRCUIT COURTS.

(8.) SEC. VIII. For each *capias*, summons, subpoena and other process not herein specified, and sealing the same, fifty cents.  
*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, six and a fourth cents.  
 Filing the papers on appeals from justices of the peace, taking appeal bond, and issuing injunction thereon, fifty cents.  
 Taking bond for costs, twenty-five cents.  
 Filing and opening each deposition, twelve and a half cents.  
 Entering each suit on the docket for trial, twelve and a half cents.  
 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, twenty-five cents.

For each discontinuance, retraxit, or non suit, twenty-five cents.  
 For each *dedimus* or commission to take depositions, fifty cents.  
 Bringing any particular record into court of a suit, matter or thing not properly before the court, twenty-five cents.  
 Calling and swearing each jury, eighteen and three-fourths cents.  
 Swearing each witness on the trial of a cause, six and a fourth cents.  
 Swearing any person to an affidavit, twelve and a half cents.  
 Receiving and entering the verdict of a jury, twelve and a half cents.  
 Entering each decree or final judgment in a cause, twenty-five cents.  
 Issuing each writ of *habeas corpus*, *certiorari* or *procedendo*, fifty cents.  
 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, twenty-five cents.  
 Entering special bail on record, in each case, twenty-five cents.  
 Making a list of jurors when requested, twelve and a half cents.  
 Swearing constable to take charge of a jury, six and a fourth cents.  
 Issuing execution, fifty cents.  
 Docketing the same, twelve and a half cents.  
 Entering sheriff's return on each execution, twelve and a half cents.  
 Entering satisfaction of judgment, twenty-five cents.  
 Entering the report of commissioners or referees, or the award of arbitrators, and all other special entries, for every seventy-two words, twelve and a half cents.  
 For each official certificate and seal, other than the process of the court, fifty cents.  
 Taking bond in cases of foreign or domestic attachment, fifty cents.  
 Taking injunction bond in chancery, fifty cents.  
 Taking bond in cases of appeal to the supreme court, fifty cents.  
 Entering appearance of attorney, but once in each suit, twelve and a half cents.  
 Entering plaintiff's or defendant's appearance, but once in each cause, twelve and a half cents.  
 For each attachment for a witness, or other person, fifty cents.  
 For each *revire facias*, or a jury warrant, when actually issued, thirty seven and a half cents.  
 Making bill of costs for each execution, and entering the same of record, being one charge, thirty-seven and a half cents.  
 Copy of the same, when requested by either party, twenty-five cents.  
 Making complete record of proceedings and judgment, when directed by the court, for every seventy-two words, twelve and a half cents.  
 Copy of bill, answer, declaration, pleadings, judgment or other proceeding, for every seventy-two words, twelve and a half cents.  
 Certifying and sealing the same, when requested in writing, fifty cents.  
 For each commission, *scire facias* or other special writ or process, and sealing the same, for every seventy-two words, fifteen cents.  
 Taking depositions when requested, for every seventy-two words, twelve and a half cents.  
 Taking acknowledgment of a sheriff's deed, twenty-five cents.  
 Entering the acknowledgment of the sheriff to a deed, when made in open court, twenty-five cents.

Making entry of naturalization of record, for every seventy-two words, fifteen cents.

Taking each recognizance, and entering the same, thirty-seven and a half cents.

Arraigning prisoner at the bar, fifty cents.

Entering the pleadings in a criminal cause, twenty-five cents.

For each copy of an indictment, when requested, for every seventy-two words, fifteen cents.

Entering judgment of conviction, twenty-five cents.

Entering discharge of recognizance, twelve and a half cents.

For a copy of the list of grand or petit jurors, when requested, in a criminal cause, twenty-five cents.

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.

For filing declaration of intention to become a citizen, six and a fourth cents.

Swearing the applicant to declaration, six and a fourth cents.

For certifying declaration under seal of court, twenty five cents.

For filing final application for oath of allegiance, together with accompanying affidavits, twelve and a half cents.

Administering each oath in such case, twelve and a half cents.

Making out final certificate of naturalization, or copy of record of naturalization, under seal, fifty cents.

#### FEES OF PROBATE JUSTICE.

(9.) SEC. IX. Taking proof of a last will or testament, fifty cents.

Indorsing certificates of probate thereon, twelve and a half cents.

Recording last will and testament, for every seventy-two words, fifteen cents.

Issuing letters testamentary or of administration, affixing seal thereto, and recording the same, one dollar and fifty cents.

Taking bond of the executor or administrator, seventy-five cents.

Administering oath to each executor or administrator, twelve and a half cents.

For each citation, twenty-five cents.

Taking and filing renunciation of the widow or next of kin, twenty-five cents.

Taking proof of a codicil, proved separately, fifty cents.

Indorsing certificate of probate on codicil, twelve and a half cents.

Recording the same, for every seventy-two words, fifteen cents.

Examining and approving each inventory, sale bill or account current, filed by executors or administrators, fifty cents.

Entering the settlement of executors or administrators on the order book, seventy-five cents.

Each copy of the settlement of executors or administrators, with certificate and seal, one dollar.

For each decree, limiting the time for exhibiting the claims of creditors, twenty-five cents.

For each order of distribution, fifty cents.

For each order on an executor or administrator to pay out of the estate to creditors, in proportion to their debts, twenty-five cents.

For copies of exemplifications of records, every seventy-two words, fifteen cents.

Official certificate and seal, fifty cents.

Making out order for publication, twenty-five cents.

For allowing an appeal to the circuit court, twenty-five cents.

For issuing each special writ or summons with seal, twenty-five cents.

For administering oath to each witness, six and a fourth cents.

Swearing any person to an affidavit, twelve and a half cents.

Issuing order for writ of certiorari, twenty-five cents.

Examining petition and application for writ of certiorari, twenty-five cents.

Issuing injunction, *ne exeat* or any special writ, fifty cents.

Issuing subpoena, attachment or other process, under seal, twenty-five cents.

Entering each decree, order or judgment, except orders allowing claims for or against an estate, twenty-five cents.

Recording appraisement, sale bill, and all other exhibits and writings required to be recorded, (wills and codicils excepted,) for every hundred words, figures inclusive, ten cents.

Filing each paper belonging to the settlement of any estate, six and a fourth cents.

Issuing letters of guardianship, and recording the same, one dollar.

Taking bond of guardian, fifty cents.

Taking any bonds not before specified, fifty cents.

Revoking letters testamentary, administration or guardianship, fifty cents.

Swearing each jury, twenty-five cents.

Writing indenture, to be paid by master, fifty cents.

#### CLERK'S FEES IN THE COUNTY COMMISSIONERS' COURT.

(10.) SEC. X. For each writ, summons, subpoena or other process, with seal, fifty cents.

Filing each paper, six and a fourth cents.

Entering each order of court, twelve and a half cents.

Administering each oath, six and a fourth cents.

Each certificate and seal to any paper, other than to process, fifty cents.

Official certificate without seal, twenty-five cents.

For each license, and taking bond for a ferry, toll bridge or turnpike road, one dollar.

For each tavern license and taking bond, one dollar.

For each marriage license, one dollar.

For each copy of rates for a ferry, toll bridge, turnpike road or tavern, twenty-five cents.

Filing and recording marriage certificate, twelve and a half cents.

Making each bill of costs and copy, twenty-five cents.

For each writ of *ad quod damnum*, fifty cents.

For copies of all records and proceedings, when made out on request, for every seventy-two words, twelve and a half cents.

Taking depositions when requested, for every seventy-two words, twelve and a half cents.

For taking proof in cases of estrays, and granting certificate of the same, twenty-five cents.

For registering each certificate transmitted to him by a justice of the peace, in cases of estrays, twelve and a half cents.

For advertisements in such cases, including the copy for newspaper publication, fifty cents.

For trying and sealing weights and measures by the county standard, twelve and a half cents.

For every certificate of magistracy, under seal, twenty-five cents.

#### FEES OF THE ATTORNEY GENERAL AND CIRCUIT ATTORNEYS.

(11.) SEC. XI. For each conviction in a criminal cause, where the crime is infamous, and the offender subject to corporeal punishment, ten dollars.

For each conviction where the crime is not infamous, and the defendant is subject to fine or imprisonment only, five dollars.

#### FEES OF THE SUCCESSFUL PARTY AT LAW.

(12.) SEC. XII. There shall be allowed to the successful party in each civil action in the circuit and supreme courts, the following docket fees, to wit:

In each suit to which the title to lands shall come in question, two dollars and fifty cents.

In each suit where the title to lands does not come in question, one dollar and twenty-five cents.

In each chancery suit, two dollars and fifty cents.

No docket fee shall be charged, where final judgment or decree shall be for costs only; nor when the case shall be decided without empanneling a jury; nor in suits which do not originate in the circuit court. The above 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.

(13.) SEC. XIII. For serving a writ or summons on each defendant, fifty cents.

Taking special bail, twenty-five cents.

For serving a subpoena on each witness, twenty-five cents.

For summoning jury, (grand jury excepted,) each case, fifty cents.

Advertising property for sale, twenty-five cents.

Returning each writ or other process, twelve and a half cents.

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, six and a fourth cents.

Calling the jury in each cause, twelve and a half cents.

For levying an execution, fifty cents.

Returning the same, twelve and a half cents.

Serving and returning a *scire facias* to revive a judgment, to foreclose a mortgage, or against bail, sixty-two and a half cents.

For committing each person to jail, thirty-seven and a half cents.

Discharging each person out of jail, thirty-seven and a half cents.

Dieting each prisoner, per day, thirty-seven and a half cents.

For attending before a judge with a prisoner, on a writ of *habeas corpus*, one dollar.

For each mile of necessary travel in taking such prisoner before the judge as aforesaid, six and a fourth cents.

Serving a writ of possession, with the aid of the *posse comitatus*, two dollars.

Serving the same without such aid, one dollar.

Mileage in either case, for each mile of necessary travel from the place of holding court to the place where such writ is served, for going only, six and a fourth cents.

Executing a writ of *ad quod damnum*, attending the inquest, and returning the writ with the verdict of the jury, two dollars.

For summoning a jury in a case of forcible entry and detainer, and attending the trial, two dollars.

For attending the circuit and county commissioners' courts, to be allowed and paid out of the county treasury, one dollar.

For summoning each appraiser to value property, twenty-five cents.

For swearing each appraiser when summoned, six and a fourth cents.

For executing and acknowledging a deed, on sale of real estate, one dollar and fifty cents.

For making certificate of sale previous to the execution of the deed, twenty-five cents.

For taking a replevin, replevy or forthcoming bond, fifty cents.

For taking each bail bond or recognizance in a criminal cause, when required by law, fifty cents.

For executing a *capias* on a defendant in a criminal cause, where the offense is infamous, one dollar.

For executing a *capias* where the offense is not infamous, fifty cents.

Mileage, for each mile of necessary travel from the place of holding court to the place of making the arrest, six and a fourth cents.

Serving a declaration in ejectment on each defendant, and making affidavit of service, sixty-two and a half cents.

Mileage, for each mile of travel from the place of holding court to the place of residence of such defendants, six and a fourth cents.

For conveying each prisoner from his own county to the jail of a foreign county, for each mile of travel, going only, ten cents.

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, thirty-seven and a half cents.

Dieting such prisoner, per day, thirty-seven and a half cents.

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, fifty cents.

For discharging such prisoner, thirty-seven and a half cents.

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 settled by the parties, replevied, stopped by injunction or paid, or where the property levied upon shall not be actually sold, the sheriff shall be allowed fifty cents for levying, and six and a fourth cents per mile for going to and returning from the place of execution and sale.

(14.) SEC. XIV. 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 chapter, 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 chapter, to indorse 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.

(15.) SEC. XV. For holding an inquest over a dead body, when required by law, five dollars.

For summoning the jury, seventy-five cents.

For burial expenses, &c., ten dollars.

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.

(16.) SEC. XVI. For taking each complaint in writing, under oath, twenty-five cents.

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, twelve and a half cents.

For each warrant, twenty-five cents.

Taking recognizance, and returning the same, fifty cents.

For each subpoena, twenty-five cents.

Administering each oath, six and a fourth cents.

For each jury warrant in a trial of assault and battery, twenty-five cents.

For entering the verdict of the jury, twelve and a half cents.

For each order or judgment thereon, twenty-five cents.

For each *mittimus*, twenty-five cents.

For each execution, twenty-five cents.

For entering each appeal, twenty-five cents.

For transcript of judgment and proceedings in cases of appeal, fifty cents.

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.

(17.) SEC. XVII. For every warrant, summons or subpoena, eighteen and three-fourths cents.

For each continuance, twelve and a half cents.

Administering an oath, six and a fourth cents.

Issuing *dedimus* to take depositions, twenty-five cents.

Taking each deposition when required, for every seventy-two words, twelve and a half cents.

Entering judgment, twenty-five cents.

Issuing execution, twenty-five cents.

Entering security on docket, twenty-five cents.

*Scire facias* to be served on security, twenty-five cents.

Notification to each referee, twenty-five cents.

Entering the award of referees, thirty-seven and a half cents.

Entering appeal from justice's judgment, twenty-five cents.

For each transcript of the judgment and proceedings before the justice on appeal, twenty-five cents.

Issuing process of attachment, and taking bond and security, seventy-five cents.

Entering judgment on the same, twenty-five cents.

Docketing each suit, twelve and a half cents.

Taking the acknowledgment or proof of a deed or other instrument of writing, twenty-five cents.

For each precept, in forcible entry and detainer, fifty cents.

On trial, per day, two dollars.

Making complete copy of proceedings thereon, two dollars.

For each jury warrant, twenty-five cents.

For each marriage ceremony performed, one dollar.

For each certificate thereof, twenty-five cents.

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, fifty cents.

## CONSTABLE'S FEES IN CRIMINAL CASES.

(18.) SEC. XVIII. For serving a warrant on each person named therein, twenty-five cents.

Mileage, to be computed from the office of the justice who may have issued the same, to the place of service, for each mile, six and a fourth cents.

Serving each subpoena, twelve and a half cents.

Mileage, from the justice's office to the residence of the witness, per mile, six and a fourth cents.

Taking each person to jail when committed, twenty-five cents.

Mileage, from the justice's office to the jail, per mile, six and a fourth cents.

For summoning jury in case of assault and battery, fifty cents.

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.

## CONSTABLE'S FEES IN CIVIL CASES.

(19.) SEC. XIX. Serving and returning each warrant or summons, twenty-five cents.

Serving and returning each subpoena, twelve and a half cents.

Serving and returning execution, fifty cents.

Advertising property for sale, twenty-five cents.

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 case, twenty-five cents.

Serving jury warrant in each case, fifty cents.

Each day's attendance on the circuit court, when required to be paid out of the county treasury, one dollar.

Mileage, when serving a warrant, summons or subpoena, from the justice's office to the residence of the defendant or witness, per mile, five cents.

For serving warrant on appraisers in cases of estrays, &c., twenty-five cents.

## WITNESS'S FEES.

(20.) SEC. XX. Every witness attending in his own county, on trial, per day, fifty cents.

Attending in a foreign county, going and returning, per day, accounting twenty miles for each day's travel, one dollar.

Every witness, when attending for the purpose of having his deposition taken, per day, fifty cents.

*Provided*, 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.

## JUROR'S FEES.

(21.) SEC. XXI. To every juror sworn in each civil action in the circuit court, twenty-five cents.

To each juror sworn in a civil case, before a justice of the peace, twenty-five cents.

For attending an inquest over a dead body, when summoned by the coroner, to be paid out of the county treasury, twenty-five cents.

## ARBITRATOR'S FEES.

(22.) SEC. XXII. 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, two dollars.

To every arbitrator or referee, for each day he shall be necessarily employed in making up his award in cases before justices of the peace, one dollar.

## RECORDER'S FEES.

(23.) SEC. XXIII. For recording all deeds, mortgages and other instruments of writing, for every one hundred words, fifteen cents.

For copies of the same, when requested, for every one hundred words, twelve and a half cents.

For every search of record, twelve and a half cents.

Official certificate with seal, when requested, thirty-seven and a half cents.

For each certificate without seal, twenty-five cents.

For entering each tract of land over five in each deed or conveyance, six and a fourth cents.

## FEES OF NOTARIES PUBLIC.

(24.) SEC. XXIV. For noting a bond, promissory note or bill of exchange for protest, twenty-five cents.

For protesting and recording the same, fifty cents.

For noting without protest, twenty-five cents.

For notice to indorsers, &c., each, twenty-five cents.

For affixing the seal notarial, twenty-five cents.

For each certificate, twenty-five cents.

## COUNTY SURVEYOR'S FEES.

(25.) SEC. XXV. For establishing each quarter-section of land, two dollars and fifty cents.

For establishing each half-quarter section of land, two dollars.

For each town lot, over ten and not exceeding forty in number, thirty-seven and a half cents.

For each town lot, over forty and not exceeding one hundred, twenty-five cents.

For each lot over and above one hundred, eighteen and three-fourths cents.

For laying off land under a writ of *ad quod damnum*, two dollars and fifty cents.

And each surveyor will be allowed the sum of two dollars per day in full compensation for traveling expenses, when necessarily engaged in the discharge of the duties of his office.

## FEES FOR GUARDING JAIL.

(26.) SEC. XXVI. To each man, for every twenty-four hours' guarding

jail when required, on producing the certificate of the jailer, sheriff, coroner or justice of the peace, of the same, to be paid out of the county treasury, one dollar.

And to the end that all persons chargeable with the fees aforesaid, due to the several above named officers, (except such as are to be paid by the respective counties,) may certainly know for what the same are charged, none of the fees hereinbefore 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.

(27.) SEC. XXVII. If any or either of the aforesaid officers shall charge, claim, demand, exact or take, any other or greater fees than are hereinbefore set down and allowed for any of the services specified in this chapter, 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 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.

(28.) SEC. XXVIII. The clerks of the supreme and circuit courts, and the judges of probate 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 or any constable of the county where the person or persons chargeable with the same, shall reside or have property; which fee bill, 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.

(29.) SEC. XXIX. 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.

(30.) SEC. XXX. Clerks of the supreme and circuit courts shall not be required to make up or certify a complete record, except in capital criminal cases, and cases in which the title to land is in question, or by special order of the court; but such record shall only contain the declaration, plea, demurrer, rejoinder or other pleadings in the suit, together with the judgment of the court below given thereupon; nor, unless directed by a party, to insert such pleadings or papers as he may deem necessary, in which case, such party shall pay the additional costs; 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.

(31.) SEC. XXXI. 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 no division of a county shall, in any instance, interfere with such collections.

(32.) SEC. XXXII. 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.

(33.) SEC. XXXIII. 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.

(34.) SEC. XXXIV. In all cases on judgments, on which execution may 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.

(35.) SEC. XXXV. 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.

(36.) SEC. XXXVI. The clerks of the several courts aforesaid, probate justices 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 chapter; and if any such officer shall fail to comply with the provisions of this section, or shall at any time hereafter, 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.

(37.) SEC. XXXVII. 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 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.

(38.) SEC. XXXVIII. 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.

(39.) SEC. XXXIX. It shall be the duty of the clerk of any circuit court in this State, in all cases where fees are remaining, belonging to and unpaid, in cases in the said court, whether disposed of or not, to the predecessor of said clerk, upon request of the said predecessor, his heirs or legal representatives, to issue his fee bill or execution therefor, as the case may be, under the seal of said court, and said fee bill shall have the force and effect of an execution; and the said clerk shall have no claim upon his said predecessor for the fees of issuing said fee bill or execution, but shall look to the party in the case liable therefor.

An Act to regulate Practice in the Supreme and Circuit Courts.

[Approved Feb. 21, 1845. Laws, 1845, p. 39.]

(40.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the clerks of the supreme and circuit courts shall, in no case, make a complete record, unless directed to

do so by the court or one of the parties: *Provided,* That the party desiring such record, shall pay for the same. All laws, or parts of laws, coming within the purview of this act, are hereby repealed.

An Act to amend Chapter XLI. of Revised Statutes, in relation to Fees, approved March 3, 1845.  
[Approved Feb. 27, 1847. Laws, 1847, p. 48.]

(41.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county commissioners' court of any county in this State, may, if they shall deem it expedient to do so, allow the sheriff of their county any sum, not exceeding ten dollars, for summoning the grand and petit jurors, for each term of the circuit court; which sum when so allowed, shall be paid out of the county treasury, upon the order of said court, and shall be in full for said service.

(42.) SEC. II. So much of the law now in force, entitled "FEES AND SALARIES," as relates to sheriffs' fees for summoning grand and petit jurors, be, and the same is, hereby repealed. This act shall be in force from and after its passage.

An Act to raise the Fees of Grand and Petit Jurors.

[Approved Feb. 4, 1847. Laws, 1847, p. 49.]

(43.) SEC. I. *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, instead of the compensation now allowed by law, there shall be paid to each and every juror, grand and petit, the sum of one dollar for each day's attendance at court, to be allowed and paid as already provided by law.

(44.) SEC. II. And there shall also be allowed and paid to grand and petit jurors, for every mile of necessary travel, to be computed from the place of holding courts, to the residence of the juror, five cents per mile, to be paid out of the county treasury, as now provided for by law, for the payment of grand and petit jurors.

(45.) SEC. III. Section sixteen of the act concerning jurors, approved March 3rd, 1845, be and the same is hereby repealed.

(46.) SEC. IV. This act shall take effect and be in force from and after its passage.

An Act to amend the Act entitled "Fees and Salaries," Chap. XLI, Revised Statutes.

[Approved Feb. 12, 1849. Laws, (1st Sess.) 1849, p. 76.]

(47.) SEC. I. *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 persons hereinafter named, shall be as follows:

To the governor, per annum, fifteen hundred dollars.

To the secretary of State, exclusive of fees, per annum, eight hundred dollars.

To the auditor of public accounts, exclusive of clerk hire, per annum, one thousand dollars.

To the treasurer, per annum, eight hundred dollars.

To each of the judges of the supreme court, per annum, twelve hundred dollars.

To each of the judges of the circuit court, one thousand dollars per annum.

To each of the State's attorneys, per annum, two hundred and fifty dollars.

All of which salaries shall be paid to the persons entitled thereto, in quarter-yearly installments, on the warrant of the auditor, out of any moneys in the treasury not otherwise appropriated.

MEMBERS OF THE GENERAL ASSEMBLY.

(48.) SEC. II. There shall be allowed to the speakers of the senate and house of representatives, respectively, per day, three dollars.

To each member of the senate and house of representatives, per day, two dollars, for the first forty-two days' attendance, and one dollar per day for each day's attendance thereafter.

To each speaker and member, for every mile necessary travel in going to and returning from the place of session, ten cents.

To the secretary of the senate and principal clerk of the house of representatives, respectively, three dollars per day.

To the assistant secretary of the senate and assistant clerk of the house of representatives, respectively, three dollars per day.

To the engrossing and enrolling clerks of the senate and house of representatives, respectively, three dollars per day; and to each of the assistant engrossing and enrolling clerks, three dollars per day; the number of days to be certified by the principal.

To the serjeant-at-arms of the senate and door-keeper of the house of representatives, respectively, three dollars per day.

To the assistant serjeant-at-arms of the senate and assistant door-keeper of the house of representatives, respectively, three dollars per day.

To the copyists of the journals of the senate and house of representatives, each, three dollars per day.

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 certificate, 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.

(49.) SEC. III. 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 by mail, to or from said officers, 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.

(50.) SEC. IV. 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 appear to be reasonable, to allow the same, and to certify the amount thereof to the audi-

tor, 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.

FEES OF SECRETARY OF STATE.

(51.) SEC. V. For copies or exemplification of records, for every one hundred words, fifteen cents.

For affixing seal, with certificate of authentication, one dollar.

For copy of any law, for every one hundred words, fifteen cents.

For official certificate without seal, when not required for public use, twenty-five cents.

*Provided*, That he shall in no case be entitled to any fees whatever where any services are performed for the State, in the discharge of the duties of his office, nor for copying laws, memorials or resolutions.

FEES OF CLERKS OF THE SUPREME COURT.

(52.) SEC. VI. For each writ of error and seal, with supersedeas, fifty cents.

For each writ of error, without supersedeas, fifty cents.

For each bond, when not furnished by the party, twenty-five cents.

For filing each paper, excepting records and papers on appeals and writs of error, five cents.

For filing each record and accompanying papers, on appeals and writs of error as returned by the inferior courts, fifteen cents.

For docketing each cause, ten cents.

For entering each rule or order of court, each entry being considered as one order, twenty-five cents.

For issuing execution, twenty-five cents; for docketing same, ten cents.

For entering sheriff's return on same, ten cents.

For each subpoena and seal, twenty-five cents.

For each *scire facias*, mandamus, or other special writ, and sealing same, for every one hundred words, ten cents.

For bringing any particular record into court of a suit, matter or thing not before the court, twenty cents.

For entering every judgment or decree, for every one hundred words, ten cents.

For making complete record, when directed by the party, for every one hundred words, ten cents.

For copy of record or other proceedings, and sealing same, if required, for every one hundred words, ten cents.

For entering each continuance from one term to another, ten cents.

For each official certificate and seal, other than process of the court, twenty-five cents.

For each official certificate without seal, twenty cents.

For entering attorney on the roll, administering oath and certifying to the same, one dollar.

For making bill of costs for execution, and recording the same in the costs or fee book, twenty-five cents.

For copy of the same, when required by either party, twenty-five cents.

For administering each oath, five cents.

## CLERK'S FEES IN THE CIRCUIT COURT.

(53.) SEC. VII. For each *capias*, summons, subpoena, or other process not herein expressly named, and sealing the same, thirty-five cents: *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 appeals from justices of the peace, five cents.

For filing papers on appeals from justices of the peace, taking appeal bond and issuing supersedeas thereon, fifty cents.

For taking bond for costs, ten cents.

For filing and opening each deposition, five cents.

For entering each suit on the docket for trial, ten cents.

For 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 entry for one, twenty cents.

For each discontinuance, retraxit or non-suit, twenty cents.

For each *dedimus* to take depositions, fifty cents.

For bringing any particular record into court, of a suit, matter or thing not properly before the court, ten cents.

For calling and swearing each jury, fifteen cents.

For swearing each witness in court, five cents.

For swearing any person to an affidavit, and filing the same, ten cents.

For receiving and entering the verdict of a jury, ten cents.

For entering each final judgment in a case, twenty-five cents; and for entering each decree in chancery, ten cents for every one hundred words.

For issuing each writ of *habeas corpus*, *certiorari* or *procedendo*, forty cents.

For assessing the damages on any bond, note or other instrument, for the payment of money, by order of court, and making a report thereof in writing, and filing said report, twenty cents.

For entering special bail of record in each case, twenty cents.

For making a list of jurors when requested, ten cents.

For swearing a constable to take charge of a jury, five cents.

For issuing an execution, forty cents; and for docketing the same, ten cents.

For entering the sheriff's return on each execution, ten cents.

For entering satisfaction of judgment, fifteen cents.

For entering the report of commissioners or referees, or the award of arbitrators, and all other special entries, for every one hundred words, ten cents.

For each certificate and seal, other than the process of the court, thirty-five cents.

For taking bond in case of attachment, forty cents.

For taking injunction bond in chancery, forty cents.

For taking bond in cases of appeal to the supreme court, fifty cents.

For entering appearance of attorney, but once in each cause, ten cents.

For entering plaintiff's or defendant's appearance, but once in each cause, five cents.

For each attachment for a witness or other person, twenty-five cents.

For each *venire facias*, or jury warrant, when actually made out, thirty cents.

For making bill of costs for each execution, and entering the same of record in the fee book, being one charge, thirty cents.

For a copy of the same, when requested by either party, twenty cents.

For making a complete record of proceedings and judgment, when directed by the court, for every one hundred words, ten cents.

For making copy of bill, answer, declaration, pleadings, judgment or other proceedings, for every one hundred words, ten cents.

For certifying and sealing the same, when required in writing, twenty-five cents.

For each commission, *scire facias*, or other special writ or process, and sealing the same, for every hundred words, ten cents.

For taking depositions when requested, and certifying to the same, for every hundred words, ten cents.

For taking acknowledgment of deed, power of attorney, or other writing, and certifying or sealing the same, twenty-five cents.

For making entry of record of naturalization, and for copy thereof, or for either, for every hundred words, ten cents.

For taking each recognizance in court, and entering the same of record, thirty cents.

For arraigning a prisoner at the bar, twenty-five cents.

For entering judgment of conviction, twenty-five cents.

For copy of indictment, when requested, for every hundred words, fifteen cents.

For entering the discharge of a recognizance, ten cents.

For a copy of the list of grand or petit jurors, when requested, in a criminal cause, twenty-five cents.

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 court shall order, not exceeding twenty-five dollars per annum.

For filing the declaration of intention of becoming a citizen, five cents.

For swearing the applicant to declaration, ten cents.

For certifying declaration under seal of court, twenty-five cents.

For filing papers in cases of application for naturalization, each, ten cents.

Administering any oath, five cents.

For recording all deeds, mortgages, or other instruments of writing, for every one hundred words, eight cents; and it shall not be necessary for a certificate to be made by the recorder, of the recording a deed or other writing, but an indorsement on the writing recorded, of the book and page in which the same is recorded, and the date of recording the same, signed by the clerk, shall be deemed sufficient evidence of the recording thereof, and for which no fees shall be chargeable.

For copies of records, the same fees as for recording.

For entering each tract of land named in the deed, above five, in the entry book, five cents; and the entry book in the respective offices of the recorder shall belong to the public.

## FEES OF THE CLERKS OF THE COUNTY COURTS.

(54.) SEC. VIII. For taking proof of any will or testament, and indorsing certificate of probate thereon, including all services relating thereto, thirty-five cents.

For recording last will and testament, for every one hundred words, ten cents.

For issuing letters of administration, or letters testamentary, and affixing seal thereto, and recording same, seventy-five cents.

For taking bond of an executor or administrator, and administering oath, fifty cents.

For each citation, twenty cents.

For taking and filing renunciation of widow, or next of kin, fifteen cents.

For taking proof of codicil, when proved separately, and indorsing certificate of probate thereon, including all service relating thereto, fifty cents.

For recording the same, for every one hundred words, ten cents.

For entering the settlement of executors or administrators on the order book, for every one hundred words, figures included, ten cents.

For copy of settlement, with certificate and seal, for every hundred words, ten cents.

For copies or exemplifications of records and papers, for every one hundred words, ten cents.

For official certificate and seal, other than to process, and for which no fee is allowed by law, twenty-five cents.

For each summons, subpoena, or other writ or process of court, and sealing the same, and for which no other fee is allowed, twenty-five cents.

For administering oath to each witness in court, five cents.

For swearing any person to an affidavit, and filing the same, ten cents.

For entering each judgment, order or decree, except orders allowing claims against estates, and counting the whole entry as one, twenty cents: *Provided*, That no charge shall be made for allowing claims against estates, except for swearing to and filing affidavit, unless the claim be litigated as other suits.

For issuing each execution, forty cents.

For docketing same, ten cents.

For entering sheriff's return on same, ten cents.

For making bill of costs for each execution, and recording the same, being one charge, twenty cents.

For filing each paper belonging to the settlement of estates, or suit pending, five cents.

For appraisement bills, sale bills, and all other exhibits and writings, (except wills and codicils,) when ordered to be recorded by the court, (and not otherwise,) for every thirty words, figures inclusive, two cents.

For issuing letters of guardianship, and recording the same, thirty cents.

For taking bond of guardian, or for taking any bond not hereinbefore specified, and filing the same, twenty-five cents.

For calling and swearing each jury, fifteen cents.

For writing indenture, to be paid by master, fifty cents.

For each license, and taking bond for ferry, toll-bridge, turnpike road, tavern, grocery or peddler, one dollar.

For each marriage license, fifty cents.

For recording marriage certificate, ten cents.

Each copy of rates for ferry, toll-bridge or turnpike road, twenty-five cents.

For each writ of *ad quod damnum*, fifty cents.

For taking depositions, and certifying to the same, for every one hundred words, ten cents.

For taking and certifying the acknowledgment of a deed, power of attorney or other writing, and sealing same, twenty-five cents.

For taking proof in case of estrays, and granting certificate of the same, twenty-five cents.

For registering each certificate transmitted to him by a justice of the peace, in cases of estrays, ten cents.

For advertisements in such cases, including the copy for newspaper publication, fifty cents.

Trying and sealing weights and measures, by county standard, fifteen cents.

For keeping a regular account current with each and every administrator, executor or guardian, to be kept in a well-bound book furnished for that purpose, one dollar.

## FEES OF STATE'S ATTORNEYS.

(55.) SEC. IX. For each conviction in a criminal cause, where the crime is infamous, and the offender subject to corporeal punishment, ten dollars.

For each conviction, where the crime is not infamous, and the defendant is subject to fine or imprisonment only, five dollars.

## FEES OF THE SUCCESSFUL PARTY AT LAW.

(56.) SEC. X. There shall be allowed to the successful party in each civil action in the circuit and supreme courts, the following docket fees, to wit: In each suit in which the title to lands shall come in question, two dollars and fifty cents; in each suit where the title to lands does not come in question, one dollar and twenty-five cents; in each chancery suit, two dollars and fifty cents. No docket fee shall be allowed or charged, where final judgment or decree shall be for costs only, nor where the case shall be decided without empanneling a jury, except in divorce cases.

The above 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 charged and taxed against the same person, in any one cause, in the same court.

## SHERIFF'S FEES.

(57.) SEC. XI. For serving a writ or summons on each defendant, fifty cents.

For taking special bail, twenty-five cents.

For serving a subpoena on each witness, twenty-five cents.

For summoning a jury, (grand jury excepted) each case, fifty cents.

For advertising property for sale, twenty-five cents.

For returning each writ, or other process, ten cents.

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, or place of service, for going only, five cents.

For calling the jury in each case, ten cents.

For levying an execution, fifty cents.

For serving and returning a *scire facias* to revive a judgment, to foreclose a mortgage, or against bail, sixty cents.

For committing each prisoner to jail, thirty-five cents.

For discharging each person from jail, thirty-five cents.

For dieting each prisoner, per day, thirty-five cents.

For attending before a judge with a prisoner, on a writ of *habeas corpus*, one dollar.

For each mile of necessary travel, in taking such prisoner before the judge as aforesaid, ten cents.

For serving a writ of possession, with the aid of the *posse comitatus*, two dollars.

For serving the same, without such aid, one dollar.

Mileage in either case, for each mile of necessary travel, from the place of holding court to the place where such writ is served, for going only, five cents.

For executing a writ of *ad quod damnum*, attending the inquest, and returning the writ with the verdict of the jury, two dollars.

For summoning a jury in the case of forcible entry and detainer, and attending the trial, two dollars.

For attending the circuit and county courts, to be allowed and paid out of the county treasurer, [treasury] per day, one dollar.

For executing and acknowledging a deed, on sale of real estate, one dollar.

For making certificate of sale previous to execution of deed, twenty-five cents.

For taking a replevin, or forthcoming bond, fifty cents.

For taking each bail bond, or recognizance, in a criminal cause, when required by law, fifty cents.

For executing *capias* on a defendant, in a criminal cause where the offense is infamous, one dollar.

For executing a *capias*, where the offense is not infamous, fifty cents.

Mileage, for each mile of necessary travel from the place of holding court to the place of making the arrest, five cents.

For serving a declaration in ejectment, on each defendant, and making affidavit of service, sixty cents.

Mileage, for each mile of necessary travel from the place of holding court to the place of residence of the defendant, five cents.

For conveying each prisoner from his own county to the jail of a foreign county, per mile, for going only, ten cents.

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, thirty-five cents.

For dieting such prisoner, per day, thirty-five cents.

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, fifty cents.

For discharging such prisoner, thirty-five cents.

In addition to the above fees, there shall be allowed to the several sheriffs in this State, a commission of three per centum on all sales of real and personal estate, which shall be made by virtue of any execution issued in pursuance of law, or any decree of a court of chancery, 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 one and a half per cent. on the excess only shall be allowed: *Provided*, That in all cases where the execution shall be settled by the parties, replevied, stopped by injunction, or paid, or where the property levied upon shall not actually be sold, the sheriff shall be allowed fifty cents for levying, and five cents per mile for going to and returning from the place of execution and sale, together with half the commission on all money collected by him which he would be entitled to if the same was made by sale on execution. 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 of 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 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 indorse 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 county shall annually allow the sheriff such compensation for *ex officio* services, not exceeding thirty dollars, as said court shall deem right.

#### WITNESS'S FEES.

(58.) SEC. XII. Every witness attending in his own county on trial, per day, fifty cents.

For attending in a foreign county, going and returning, per day, accounting twenty miles for each day's travel, fifty cents.

Every witness, when attending for the purpose of having his deposition taken, per day, fifty cents.

*Provided*, That no allowance or charge shall be made for the attendance of witnesses 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.

(59.) SEC. XIII. In all criminal causes, the venue of which shall be changed from the circuit court of the county in which indictment is found, the witnesses subpoenaed, or attending court, having been recognized at the instance of the people, who shall attend the circuit court to which the venue of said cause may be changed, shall be entitled to the same fees now allowed by law to witnesses attending from foreign counties in civil causes.

(60.) SEC. XIV. Every witness so attending, may make affidavit before the court to which said venue may have been changed, of the number of

days he or she may have attended such court as a witness on said trial, and the number of miles he or she may have and will have to travel in going to and returning from the place of holding said court; and the said clerk shall thereupon tax the fees of such witnesses, and grant him or her a certificate thereof. And upon the presentation of said certificate, by the said witness, to the clerk of the county court of the county from whence the venue of said cause may have been changed, the said clerk shall draw an order upon the treasurer of said county, in favor of the said witness, for such sum of money as he may be entitled to by virtue of said certificate; which said order shall be paid by the treasurer, out of any money in the county treasury not otherwise appropriated by law: *Provided*, That nothing herein contained shall be so construed as to repeal the law now in force, authorizing witnesses' fees, in criminal cases, to be collected out of the estate of the defendant, in case he or she be convicted; but when collected, the same shall be paid into the treasury of the county last named.

(61.) SEC. XV. Sections from one to fourteen, inclusive, and also sections twenty and twenty-three of the act to which this is an amendment, from and after the first Monday of December next, are hereby repealed; and from and after the said day, this act shall take effect and be in force; and every power conferred and duty imposed by the act to which this is an amendment, on the probate judges, probate justices, county commissioners, county commissioners' courts, or clerks of said courts, shall be applicable to the county courts, and the clerks of said courts, from and after said day.

An Act to amend an Act in relation to the Duties and Fees of the Secretary of State, and to diminish the Public Expenditures.

[Approved Feb. 2, 1849. *Laws, 1849, (1st Sess.) p. 133*]

(62.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That it shall be the duty of the secretary of State to pay for the printing of all blank commissions used in his office (military commissions excepted), without charge to the State; and he shall receive for each commission, (military commissions excepted, for which no charge shall be made,) and for each patent for canal lands issued from his office, and in each case where he shall be required to register his signature and to affix the great seal of State, the sum of twenty-five cents, to be paid by the person receiving the same: *Provided*, That no expenses shall accrue to the State of Illinois, for the performance of any services rendered by the secretary of State, in pursuance of the provisions of this act.

(63.) SEC. II. This act to take effect from and after its passage.

An Act to amend an Act entitled "An Act to amend the Act entitled 'Fees and Salaries,'" Chapter XLI, Revised Statutes.

[Approved Feb. 14, 1855. *Laws, 1855, p. 32.*]

(64.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That every witness attending at any term of any court of record in this State, shall be entitled to one dollar for each day's attendance; and when said witness resides more than eight miles from the place of holding court, five cents per mile for each mile's necessary travel, to be computed for going only.

(65.) SEC. II. That no county shall be liable in any case for the fees provided in the ninth section of the act to which this is an amendment.

(66.) SEC. III. Section ten of the act to which this is an amendment, is hereby repealed.

(67.) SEC. IV. This act to be in force and take effect from and after its passage.

An Act to amend an Act entitled "Fees and Salaries," approved March 3rd, 1845, and an Act amendatory thereto, approved Feb. 12, 1849.

[Approved Feb. 13, 1855. *Laws, 1855, p. 179.*]

(68.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That every witness attending in his own county upon trials in the circuit court, shall be entitled to receive the sum of one dollar for each day's attendance. For attending in a foreign county, going and returning, accounting twenty miles for each day's travel, per day, one dollar. Every witness, when attending for the purpose of having his deposition taken, one dollar per day: *Provided*, That no allowance or charge shall be made for the attendance of witnesses aforesaid, unless the witness shall make affidavit of the number of days he or she actually attended, and such attendance was at the instance of one or both of the parties, or his or her or their attorney. Every constable, who is not a deputy sheriff, when summoned by the sheriff to attend the circuit court, shall be allowed the sum of one dollar and fifty cents per day for each day's attendance on such court, and no more.

(69.) SEC. II. This act shall be in force and take effect from and after its passage.

PRIOR LAWS. An act regulating the fees of the several officers and persons therein named; approved March 29, 1819. *Laws, 1819, p. 321.*

An act fixing the salaries of the auditor and treasurer, and for other purposes; approved March 25, 1819. *Laws, 1819, p. 253.*

An act to regulate the fees of the attorney general and circuit attorneys; approved Jan. 3, 1821. *Laws, 1821, p. 7.*

An act to amend an act entitled "An act regulating the fees of the several officers and persons therein named;" approved Jan. 31, 1821. *Laws, 1821, p. 61.*

An act regulating the fees of the several officers therein mentioned; approved Jan. 17, 1825. *Laws, 1825, p. 137.*

An act regulating the salaries, fees and compensation of the several officers and persons therein mentioned; approved Feb. 19, 1827. *Rev. Laws, 1827, p. 203; Rev. Laws, 1833, p. 281.*

An act regulating the salaries of the judges of the supreme court; approved Feb. 12, 1839. *Laws, 1839, (1st Sess.) p. 102.*

An act fixing the salary of the governor, and requiring him to reside at the seat of government; approved March 1, 1839. *Laws, 1839, (1st Sess.) p. 211.*

An act to regulate the fees of the clerks of circuit courts in case of naturalization of foreigners; approved Feb. 24, 1843. *Laws, 1843, p. 67.*

An act relating to docket fees; approved March 4, 1843. *Laws, 1843, p. 142.*

DECISIONS. Fee bills have the force and effect of executions, and are to be returned in the same way, and are governed by the same rules; and, after ninety days from its date, a fee bill is *functus officio*. *Haygrave v. Penrod*, Appendix to Breese, 15.

When a sheriff, in his return, makes no charge for his commission, the clerk cannot supply the omission by inserting a charge therefor in a fee bill. *Bryan v. Buckmaster*, Appendix to Breese, 22.

The taking illegal fees by an officer is not a criminal act, nor the subject of inquiry or indictment by a grand jury; the penalty for such act is to be enforced by a civil proceeding. *Penkey v. The People*, 1 S. 80.

The statute remedy for collecting fees by fee bill is cumulative, the common law remedy is not taken away. *Morton v. Bailey et al.*, 1 S. 213.



The legislature may repeal a law creating an office, at any time, and after such repeal, the incumbent is entitled to no further compensation for his services. *The People v. The Auditor*, 1 S. 537.

The clerks of the circuit courts are not bound to perform services for the State, in civil causes, without compensation, but are entitled to the same fees that they may demand from private persons; they are not bound to deliver an exemplification of any of their records till their fees are paid. *The People v. Rockwell*, 2 S. 3.

Witnesses summoned in a cause, although not sworn, are entitled to their fees. *Leigh v. Hodges*, 3 S. 11.

An officer, serving a writ of attachment which issued out of the supreme court, is only entitled to mileage, and the regular fees for service of the writ. *The People v. Pearson*, 3 S. 270.

When the defendant in a prosecution on behalf of the people is not convicted, neither the State nor county is liable for the fees of officers; in case of the conviction of the defendant, the officers must rely upon his ability for their fees. *Kitchell et al. v. Madison County*, 4 S. 163.

The act of Feb. 19, 1827, regulating fees and salaries, authorizes the replevying of a fee bill, upon giving bond, &c. The party giving such bond cannot avoid it because its condition may not be literally in accordance with the statute. *Ballingall v. Carpenter*, 4 S. 306.

The holder of a certificate of purchase of several lots at a tax sale, may elect whether he will take separate deeds for each lot or one deed for all, and the sheriff can only claim fees for such deed or deeds as the holder of the certificate may desire upon its presentation. *Silliman v. Frye*, 1 G. 664.

A fee bill, like an execution, should run in the name of "The People of the State of Illinois," and should direct the sheriff to levy the amount thereof, of the estate of the person against whom it issues. If a levy be made in the life time of a fee bill, the officer may sell the property after the return day. The officers interested in a fee bill have a right to control it. *Reddick v. Cloud's Administrators*, 2 G. 670. See also, *Ferris v. Crow*, 5 G. 96.

When a record is filed in the supreme court, the clerk may issue a *scire facias*, and file the writ of error unless directed not to do so by the parties. Under the 20th rule of the supreme court, the defendant cannot charge the making of his abstract and brief to the plaintiff, unless the plaintiff's abstract and brief be insufficient, and his counsel fail to file a satisfactory one. *Longwith v. Butler*, 3 G. 74.

A county is not liable to a clerk of the circuit court for his fees on a *scire facias* on a recognizance. A suit on a recognizance is a civil proceeding, and the penalty recovered is not a fine, under the 171st section of the criminal code. *Edgar County v. Mayo*, 3 G. 82.

A jury fee is taxable only in cases which are actually tried by jury. *Hoard v. Bulkeley*, 3 G. 154.

A judgment against the surety in a recognizance was reversed by the supreme court, but not remanded; the clerk of the supreme court issued a fee bill for his fees, charging for a copy of the judgment and his seal and certificate: *Held*, that the surety was not bound to pay for those items unless he required them to be made. *Sans v. The People*, 3 G. 338.

The legal presumption is that a docket fee, when taxed, is legally due. If it be not so, it is matter of defense. *Governor of Illinois v. Ridgway et al.*, 12 Ill. 14.

The term *fees*, as used in the township organization law, refers to the costs allowed the collector for preparing the delinquent list, for selling the land, and for making conveyances of the land sold. These fees are paid either by the owners of the property or the purchasers at the tax sale. The collector is reimbursed for the printer's fees by the sale of the land. *The People v. Long*, 13 Ill. 629.

The party prevailing in a suit in the circuit court can recover the fees of only four witnesses, unless the court certify that a greater number was necessary. *Peoria & Bureau Valley R. R. Co. v. Bryant*, 15 Ill. 438.

## CHAPTER XLII.

## FERRIES AND TOLL-BRIDGES.

## SECTION

1. Ferry or toll-bridge, when application made for. duty of county commissioners; *Provided*, notice of intention be given.
2. When established, license to be granted; *Provided*, tax assessed be paid, and bond entered into.
3. Boats, ferrymen landing, &c.
4. Toll-bridge or turnpike to be kept in good repair.

## SECTION

5. Duty of keeper; public messengers to pass free; who considered such; penalty for neglect of keeper; damages, how collected; keeper excused in case of high water, &c.; jurymen, when entitled to pass free.
6. Rates of toll, how fixed, and penalty for overcharging.

## SECTION

7. List of rates to be posted up, and penalty for neglect or refusal.
8. Order of crossing: penalty for violation of; who shall be first, when all cannot go.
9. Rights of owners or keepers.
10. Ferries and toll-bridges heretofore established and continued, declared further established.
11. Penalty for running boat without license.

## SECTION

12. Keepers of ferries, toll-bridges and turnpike gates exempt from military duty, road labor and serving on jury.
13. Proprietor of ferry, toll-bridge or turnpike road, to show cause why same shall not be discontinued for neglect of duty.
14. Annual tax, amount of, and how assessed.
15. County may purchase.
16. Keeping without license, penalty for.

[Approved March 3, 1845. Rev. Stat. 1845, p. 251.]

SECTION I. 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 commissioners' 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. II. 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 proprietors thereof, a license under the seal of such court, to keep the same according to law: *Provided*, That 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 a 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.

SEC. IV. 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.

SEC. V. 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 chapter, unless he shall have been dispatched 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 dispatch carried by such messenger or express be indorsed "on public service," and signed by the officer sending the same. 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 offense to the party aggrieved, before any justice of the peace of the county wherein such offense 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 ferry-man 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 jurymen, 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.

SEC. VI. 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 offense, 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 offense shall be committed.

SEC. VII. 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.

SEC. VIII. 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 offense, to the party aggrieved, recoverable before any justice of the peace of the county wherein such offense 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.

SEC. IX. 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 chapter, 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.

SEC. X. 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 chapter.

SEC. XI. If any person or persons, except those whose ferries or toll-bridges are established and confirmed by this chapter, or shall hereafter be established and licensed by some county commissioners' court under the provisions of this chapter, 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 county, 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.

SEC. XII. 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 chapter, 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.

SEC. XIII. 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 ferry-men, as is provided in the third section of this chapter, 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 chapter; or if the same shall, at any time be abandoned, disused or unfrequented for the space of six weeks; 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 show 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.

SEC. XIV. 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 the other taxes are, and shall constitute a part of the county revenue.

SEC. XV. 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.

SEC. XVI. 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 chapter, under the penalty of five dollars for each offense, recoverable before any justice of the peace of the county wherein such offense 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 hereof, 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.

PRIOR LAWS. An act to establish and regulate ferries; approved Feb. 20, 1819. Laws, 1819, p. 28.

An act to authorize the county commissioners to grant licenses for the erection of toll bridges and turnpike roads; approved March 27, 1819. Laws, 1819, p. 300.

An act to amend an act entitled "An act to establish and regulate ferries," approved Feb. 20, 1819; approved Feb. 9, 1821. Laws, 1821, p. 117.

An act to provide for the establishment of ferries, toll bridges and turnpike roads; approved Feb. 12, 1827. Rev. Laws, 1827, p. 220; Rev. Laws, 1833, p. 302.

An act supplemental to an act entitled "An act to establish and regulate ferries," approved Feb. 20, 1819; approved Feb. 12, 1827. Rev. Laws, 1833, p. 309.

An act to amend the several acts therein named, relating to the several acts concerning the establishing and regulating ferries in this State; approved Jan. 19, 1833. Rev. Laws, 1833, p. 310.

An act establishing ferries on school lands for the use of inhabitants of townships; approved Feb. 16, 1839. Laws, 1839, p. 120.

An act to amend "An act to provide for the establishment of ferries, toll-bridges and turnpike roads," approved Feb. 12, 1827; approved Feb. 1, 1843. Laws, 1843, p. 143.

**DECISIONS.** Under the act of Feb. 12, 1827, the county commissioners' court could not grant a license to a corporation to keep a ferry. The trustees of an incorporated town, unless expressly authorized by their act of incorporation, are not such a body as are entitled to hold and exercise a ferry franchise under the act. *Betts v. Meard*, Appendix to Brees-e, 10.

The ferry law of Feb. 12, 1827, gives to owners of land adjoining or embracing a water course, over which a ferry is proposed to be established, a preference, unless the ferry privilege has been before granted to another. This act implies a power in the legislature to make such grants to others than the owners of the land; and that riparian possessors are not by such possession entitled to the franchise. *Mills et al. v. County Commissioners of St. Clair County*, 3 S. 53. See also, *Trustees of Schools v. Tutman*, 13 Ill. 27.

The grant of a ferry franchise by the legislature is exclusive to the extent of the privilege conferred, unless it be limited by the terms of the grant, or by some general law. And such privilege cannot be taken away till the public interests require it, nor then, without adequate compensation. *Mills et al. v. County of St. Clair*, 2 G. 197.

If a license to keep a ferry issue before payment of the whole amount therefor required by law, it is a nullity; neither can the payment by a former holder of a ferry franchise, enure to the benefit of the assignee of his unexpired term of license. The license alone does not confer the right to seize boats, &c., run near such ferry; that right accrues only after putting the ferry in operation, and doing every act in relation thereto according to law. *Lombard v. Cheever*, 3 G. 469.

Under the ferry law of Feb. 12, 1827, the county commissioners, after deciding that the public interests would be promoted by establishing a ferry, had only to determine to whom the license should issue, and what should be the amount of the annual assessment on it; they have no right to require a bonus, or put the ferry privilege up at auction, or make any restrictions or conditions not prescribed by the statute. *County of La Salle v. Simmons*, 5 G. 513.

Ferry-men are common carriers, as to all property which they transport in their boats. *Fisher v. Clisbee*, 12 Ill. 344.

A ferry franchise is not an incident to the ownership of land, nor can the owner exercise ferry privileges without the consent of the State. The sale of school lands to a person who had had a ferry franchise thereon, is not rescinded or affected by a forfeiture of the franchise. *Trustees of Schools v. Tutman*, 13 Ill. 27.

A license to keep a ferry between certain points, extending three miles up and down a stream, is not exclusive to that extent. The power to grant other ferries, within such limits, exists in the county commissioners' court, whenever the public good may require them, so that they do not interfere with the ferry ways or landings first established. *Gales et al. v. Anderson et al.*, 13 Ill. 413.

The township organization law does not authorize the board of supervisors to appropriate county funds in aid of the construction of toll or free bridges. *Colton et al. v. Hanchett et al.*, 13 Ill. 615.

## CHAPTER XLIII.

### FORCIBLE ENTRY AND DETAINER.

#### SECTION

1. What deemed forcible entry and detainer.
2. Actions to be brought before justices of the peace; proceedings in such cases; how jury summoned.
3. Duty of sheriff; if defendant do not appear, *ex parte* trial may be had.
4. No indictment requisite; complaint to be under oath; justices shall keep record of proceedings; effect of judgment.

#### SECTION

5. Appeal to circuit court allowed; how taken and tried.
6. Appeal bond to provide for payment of rents; effect of judgment in circuit court.
7. Constables may serve process in cases of forcible entry, &c.; their fees.
8. Duty of justice of the peace to direct all process to be issued to sheriff or constable.
9. When act to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 256.]

(1.) SECTION I. 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 willfully 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 a forcible detainer, as the case may be, within the intent and meaning of this chapter.

(2.) SEC. II. Any justice of the peace of any county in this State shall have jurisdiction of any case arising under this chapter, and on complaint upon oath of the party aggrieved, or his authorized agent, shall issue his summons directed to the sheriff, (or coroner, if the sheriff be interested,) of his county, commanding him to summon the person against whom the complaint is made, to appear before such justice 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 justice 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 him 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 justice may order the sheriff or coroner to complete the number, by summoning and returning others forthwith.

(3.) SEC. III. The sheriff or coroner shall return to the said justice 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 justice shall proceed to try the said cause, *ex parte*, or may, in his discretion, postpone the trial for a time not exceeding ten days; and the said justice shall also issue subpoenas for witnesses, and proceed in the trial of said cause, as in other cases of trial by jury.

(4.) SEC. IV. No indictment or inquisition shall be necessary in any case arising under this chapter; but the justice 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 him; and if the jury shall find the defendant guilty, he shall give judgment thereon, for the plaintiff to have restitution of the premises and his costs; and shall award his writ of restitution; and if a verdict be given for the defendant, judgment shall be given against the plaintiff for costs, and execution issued therefor.

(5.) SEC. V. If either party shall feel aggrieved by the verdict of the jury or the decision of the justice on any trial had under this chapter, 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.

(6.) SEC. VI. If the defendant or defendants appeal, he or they 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. If the appeal be taken within five days after the trial had before the justice, no writ of restitution or execution shall be

issued by him; 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 justice; and if judgment be for the defendant, he shall recover costs in like manner, and have execution for the same.

An Act to extend the Jurisdiction of Justices of the Peace and Constables in Actions of Forcible Entry and Detainer, or Forcible Detainer only.

[Approved Feb. 25, 1845. Laws, 1845, p. 35.]

(7.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That in all actions of forcible entry and detainer, or forcible detainer only, hereafter to be brought in this State, it shall be lawful for constables in the respective counties where such shall be brought, to serve all process therein, and who shall be entitled to the same fees and emoluments therefor, as sheriffs are now authorized by law to receive for similar services.*

(8.) SEC. II. *That when any such action shall be hereafter brought, the justice of the peace before whom such suit shall be commenced, shall direct all process to be issued therein to the sheriff or any constable of his county to execute; and when such process shall be issued and directed, it shall be at the option of the plaintiff and defendant to give their respective process to the sheriff of the county, or to any constable of the justice's district to execute and return the same, any law now in force in this State to the contrary notwithstanding.*

(9.) SEC. III. *This act to take effect from and after the first of April next.*

PRIOR LAWS. An act against forcible entry and detainer; in force Feb. 24, 1819. Laws, 1819, p. 61.

An act concerning forcible entry and detainer; in force June 1, 1827. Rev. Laws, 1827, p. 228.

An act to define the extent of possession in cases of settlement on the public lands; in force Feb. 27, 1837. Laws, 1837, p. 154.

An act supplemental to the act entitled "An act to define the extent of possession in cases of settlement on the public lands," approved Feb. 27, 1837; in force Feb. 16, 1839. Laws, 1839, p. 124.

DECISIONS. Under the act of 1819, actual force was necessary to constitute forcible entry and detainer. *Bloom v. Goodner*, Breese, 35.

A complaint which shows only that the party is entitled to the possession of property, without any averment that the relation of landlord and tenant exists, is insufficient. *Wells v. Hogan*, Breese, 264.

The law of this State in relation to forcible entry and detainer, provides for three classes of cases: 1st, a wrongful or illegal entry; 2nd, a forcible or violent one; 3rd, a wrongful holding over of a tenant. *Atkinson v. Lester et al.*, 1 S. 407.

The premises must be described with reasonable certainty. *Idem.*

A joint tenant or tenant in common, may maintain forcible entry and detainer against his co-tenant. *Mason v. Finch*, 1 S. 495.

In an action of forcible entry and detainer, the circuit court, on an appeal, dismissed the suit and awarded a writ of restitution, for want of a sufficient appeal bond. In this there was no error. It was in the discretion of the court whether the bond should be amended. *Harlan v. Scott*, 2 S. 65; *Ballance v. Curtenius et al.*, 3 G. 449.

A tenant cannot attorn to a third person and thereby defeat the title of his landlord; such attempted attornment puts an end to his lease, and authorizes the landlord to maintain a suit against him for a forcible detainer. *Ballance v. Fortier*, 3 G. 291; *Fortier v. Ballance*, 5 G. 41; *Fusselman v. Worthington*, 14 Ill. 135.

An action of forcible entry lies in this State in the four following cases: 1st, where there has been a wrongful or illegal entry upon the possession of another; 2nd, where there has been a forcible entry upon such possession; 3rd, where a person shall be settled upon the unsold lands of the United States; 4th, in case of a wrongful holding over by a tenant. In the three first cases, there

must be an illegal or forcible entry upon the actual, and in the last case, upon the constructive, possession of another, before the action can be maintained. In either case the complaint ought clearly to show the foundation of the right sought to be enforced. *Whitaker et al. v. Gautier*, 3 G. 443.

Justices of the peace have original jurisdiction in cases of forcible entry and detainer. County courts and circuit courts can only acquire jurisdiction by way of appeal, as provided in the statute. *Ginn v. Rodgers*, 4 G. 131.

To maintain the action of forcible entry under our statute, the possession must be illegally or forcibly taken, and withheld. *Robinson v. Crummer*, 5 G. 218.

There is no precise form for a complaint in an action of forcible entry and detainer. It will be sufficient if it shows that the relation of landlord and tenant existed, that the time for which the premises were let has expired, and that the tenant holds over after demand made in writing for possession. *Smith v. Killeck*, 5 G. 293.

In a suit for forcible entry and detainer, a general verdict of "guilty," is a sufficient finding. *Idem.* See also, *Buel v. Pierce*, 11 Ill. 92.

## CHAPTER XLIV.

### FRAUDS AND PERJURIES.

#### SECTION

1. When action brought, promise or agreement to be in writing and signed by the party charged, or other authorized person.
2. Conveyances of real and personal estate, in what cases shall be deemed fraudulent.
3. *Bona fide* conveyances, when good consideration, not deemed fraudulent.
4. Trusts in relation to real estate, not in writing, void; exceptions as to resulting trusts.
5. Fraudulent devices in real estate declared void.
6. Person making fraudulent devise, his heirs, &c., subject to same action, as he might be, if living.
7. Guardian *ad litem*, when may be appointed.

#### SECTION

8. When personal estate of ancestor insufficient to pay debts, real estate in hands of heirs or devisees may be taken in execution.
9. In action against heir or devisee, he may plead *riens per descensum*; reply of plaintiff thereto; how issue tried and damages assessed.
10. If, on judgment against executor, sufficient property of deceased be not found, suit may be brought against heir or devisee.
11. If estate be not administered upon within one year after death, separate suit may be maintained against heir or devisee.
12. Facts shall be distinctly set forth in declaration.

[Approved March 8, 1845. Rev. Stat. 1845, p. 253.]

SECTION I. 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.

SEC. II. 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 anywise disturbed, hindered, delayed or defrauded, to be clearly and utterly void; any pretense, 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, 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 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, 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.

SEC. III. This chapter 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.

SEC. IV. 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.

SEC. V. 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 siezed 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 anywise disturbed, hindered, delayed or

defrauded,) to be fraudulent, void and of none effect, any pretense, color, feigned or presumed consideration, or any other matter or thing, to the contrary notwithstanding.

SEC. VI. 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 leave 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, specialties, contracts, agreements and undertakings, against the executors or administrators, and the heir or heirs, or against the executors or administrators, and the devisee and 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 non-age of any of the parties.

SEC. VII. When any suit or action in law or equity, shall be brought against any heir or heirs, devisee or devisees, who shall be of non-age, 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.

SEC. VIII. 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 to 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.

SEC. IX. 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 deviser, before the commencement of the action or suit, and if upon issue joined thereupon, it be found for the plaintiff, the jury shall inquire 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 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.

SEC. X. 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 on 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.

SEC. XI. 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.

SEC. XII. 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.

PRIOR LAWS. An act to prevent frauds and perjuries; approved Feb. 19, 1819. Laws, 1819, p. 14.

An act for the prevention of frauds and perjuries; approved Feb. 16, 1827. Rev. Laws, 1827, p. 230; Rev. Laws, 1833, p. 213.

An act to prevent fraudulent devises, and for other purposes; approved Feb. 29, 1833. Rev. Laws, 1833, p. 315.

DECISIONS. A collateral undertaking by parol to pay the debt of another, is within the statute of frauds and perjuries, and not binding. *Everett v. Morrison*, Breese, 49. See also, *Scott v. Thomas*, 1 S. 58.

A parol contract for the purchase of land is not absolutely void, but only voidable under the statute of frauds. *Whitney v. Cochran et al.*, 1 S. 209.

A deed made upon valuable consideration does not come within the statute of frauds and perjuries. *Thornton v. Davenport et al.*, 1 S. 296.

The statute of frauds applies to deeds for personal property made upon good consideration only, as distinguished from *valuable*. Unless possession accompany and follow the deed, the conveyance is, in legal presumption, fraudulent and void as to creditors. *Kitchell v. Bratton*, 1 S. 300.

A parol promise to pay interest upon notes executed in fulfillment of a parol agreement to convey land, is not within the statute of frauds. *Prevo v. Lathrop*, 1 S. 305.

A parol promise, collateral to a written agreement, is binding. *Smith v. Finch*, 2 S. 321.

A parol contract for the purchase of land is not within the statute of frauds, where possession is given, and part of the contract, such as payment of the purchase money and improvements on the land, is fulfilled. To avail himself of the statute of frauds, a party must plead it or rely on it in some form. *Thornton v. Heirs of Henry*, 2 S. 218; *Shirley v. Spencer*, 4 G. 583. See also, *Kinzie*

*v. Penrose*, 2 S. 515; *Tarleton v. Vietes*, 1 G. 470; *Switzer v. Skiles*, 3 G. 529; *Dyer v. Martin*, 4 S. 147; *Trustees of Schools v. Wright*, 12 Ill. 432.

The statute of frauds applies to auction sales of land, as well as other sales, and a memorandum in writing is necessary to make the purchaser chargeable. *Burke v. Haley*, 2 G. 614.

A defendant cannot, by a demurrer to a bill, rely on the statute of frauds, unless it appear on the face of the bill that the agreement is within the statute. *Switzer et al. v. Skiles et al.*, 3 G. 529.

R. P. being indebted to V., placed notes in the hands of D. P. for the benefit of V., and D. P. promised V. to collect the notes and pay over to him, V.: *Held*, that the promise of D. P. was not such an undertaking to pay the debt of another as brought it within the statute of frauds. *Prather v. Vineyard*, 4 G. 40.

The statute of frauds does not apply to the dedication of land to public uses. *Godfrey v. City of Alton*, 12 Ill. 29.

A parol agreement to purchase lands for another, is void by the statute of frauds, and cannot be enforced against a *bona fide* purchaser, who has paid for the lands, and taken a conveyance. *Stephenson v. Thompson*, 13 Ill. 186.

A parol agreement for a sale of lands, or an interest in lands, for a longer term than one year, is within the statute of frauds, and not valid. *Perry v. McHenry*, 13 Ill. 227.

An auctioneer, in selling, acts as the agent both of the owner and purchaser of the property, and an entry in his sale book, made at the time of sale, by a person authorized by both owner and purchaser, containing a description of the property, the name of the parties to the sale, and the price and terms, is a memorandum in writing within the statute of frauds, and binds both parties. The memorandum should show, on its face, or in connection with some other writing, the whole contract between the parties. Such entry by the clerk of the auctioneer will be held the act of the auctioneer. Parol authority may empower another to make a contract concerning land, which will be binding. *Doty v. Wilder*, 14 Ill. 407.

## CHAPTER XLV.

### FUGITIVES FROM JUSTICE.

#### SECTION

1. Fugitive from justice, when demanded by executive of another State, governor shall issue warrant for his apprehension.
2. When executive of this State shall demand fugitive from executive of another State, he shall issue his warrant to messenger appointed to receive fugitive.
3. Expenses, how paid.
4. When judge or justice may issue warrant for apprehension of fugitives; if found guilty on examination, may be committed to jail, or may be bailed, if offense bailable; examination to be reduced to

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- writing, and returns thereof made to circuit court of the proper county; further proceedings defined.
5. When party admitted to bail, and no demand made, how court may proceed.
6. Forfeiture of recognizance, benefit of, to enure to State.
7. When complaint made against fugitive, security to be given for costs; further proceedings defined.
8. When prisoner escapes, governor may offer reward for apprehension.

[Approved March 3, 1845. Rev. Stat. 1845, p. 261.]

SECTION I. 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 anywhere within the limits of this State, and convey such fugitive to any place within this State which the executive in his warrant shall direct.

SEC. II. 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 offense was committed.

SEC. III. 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. IV. 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 offense 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 offense 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, anywhere within the State, and to surrender him agreeably to said warrant.

SEC. V. 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 offense is alleged to have been committed, the time that hath intervened since the arrest of the party, and 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.

SEC. VI. If the recognizance shall be forfeited, it shall enure to the benefit of the State.

SEC. VII. 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 persons named in the bond, or any 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 shown 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.

SEC. VIII. 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's or justice's 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.

See *note*, p. 289, under title of "COUNTIES, COUNTY COMMISSIONERS' COURTS AND COUNTY COURTS," "An act to provide for the apprehension of fugitives from justice."

PRIOR LAWS. An act concerning fugitives from justice; in force June 1, 1827. Rev. Laws, 1827, p. 232; Rev. Laws, 1833, p. 317.

## CHAPTER XLVI.

### GAMING.

#### SECTION

1. Gaming contracts and loans void.
2. Money lost by gaming may be recovered back, or sued for by another; what actions may be brought.
3. Judgments, conveyances, &c., given in violation hereof, void.

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4. Assignment of obligation, &c., not to defeat remedy.
5. Discovery may be enforced by bill; defendant discovering and restoring money, discharged.

[Approved March 3, 1845. Rev. Stat. 1845, p. 263.]

SECTION I. 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. II. Any person who shall, at any time or sitting, by playing 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 sufficient 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 supposed finding, and the detaining or converting the property of the plaintiff to the use of the defendant, whereby an action hath accrued to the plaintiff, according to the form of this chapter, 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 collusion, 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 aforesaid; one-half to the use of the county, and the other to the person suing.

SEC. III. All judgments, mortgages, assurances, bonds, notes, bills, specialties, promises, covenants, agreements and other acts, deeds, securities or conveyances, given, granted, drawn or executed, contrary to the provisions of this chapter, 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.

SEC. IV. No assignment of any bill, note, bond, covenant, agreement, judgment, mortgage, or other security or conveyance as aforesaid, shall, in any manner, affect the defense of the person giving, granting, drawing, entering into or executing the same, or the remedies of any person interested therein.

SEC. V. In all actions or other proceedings commenced or prosecuted

under the provisions of this chapter, 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.

PRIOR LAWS. An act for the prevention of vice and immorality; approved March 5, 1819. Laws, 1819, p. 123. Repealed June 16, 1821.

An act for the prevention of vice and immorality; approved Jan. 31, 1821. Laws, 1821, p. 48. An act supplementary to the act entitled "An act for the prevention of vice and immorality," approved Jan. 31, 1821; approved Jan. 10, 1825. Laws, 1825, p. 61.

An act to restrain gaming; approved Jan. 16, 1827. Rev. Laws, 1827, p. 235; Rev. Laws, 1833, p. 320.

DECISIONS. A and B. bought cloth of C. on credit. Whether A. or B. should pay for it, depended upon a bet between them as to the election of a member of Congress: *Held*, that the contract of sale was valid, and not tainted by the bet of A. and B. *Lurton v. Gilliam et al.*, 1 S. 577.

Under the gaming act of Jan. 16, 1827, a note given for money won at play, is void, in the hands of payee or assignee. *Abrams v. Camp*, 3 S. 290.

Notes given for money won at gaming, are, by the statute, absolutely void. *Williams v. Judy*, 3 G. 282.

## CHAPTER XLVII.

### GUARDIAN AND WARD.

#### SECTION

1. Orphan minors over fourteen years of age may choose guardians; for those under that age, probate court shall choose.
2. Minor over fourteen may be notified to appear and choose guardian; if he do not, court of probate may appoint for him.
3. When orphan has estate not derived from father, who may be guardian, and how appointed.
4. Guardians may prosecute and defend for their wards.
5. Probate court shall take bond from guardian; its condition; suit and recovery thereon.
6. Court may compel guardians to account, and to give new security; may remove them for neglect.
7. Further power to remove; to appoint; how removed; guardian or representatives of deceased person, may be compelled to deliver papers, &c., to successor.
8. Guardians may collect money of ward; may loan money and lease real estate of ward; minority of female to cease at the age of eighteen years.
9. Guardian to educate and support ward; may pay out ward's money therefor; what fund to be first used.
10. When personal estate fails, real estate may be sold; proceedings in such cases; where application to be made if ward be resident; where, if non-resident.

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11. Guardian to account for moneys on oath; moneys, how disposed of.
12. Appeals to circuit court allowed.
13. Minors may sue by next friend, who shall give bond for costs.
14. Education of ward, when guardian removed for neglecting.
15. Concerning the loaning of ward's money; bond may include several minors.
16. Compensation of guardian.
17. Father may, by will, dispose of custody of living or posthumous child; also, the mother, if sole.
18. Rights and duties of person receiving such custody.
19. Rights and duties of such person respecting estate of minor.
20. General supervision of probate court over guardians.
21. Guardians to exhibit account, under oath; oath to be filed; contents of account.
22. Application of this act.
23. When act shall take effect.
24. Guardian to sell real estate; *proviso*; further *proviso*.
25. Guardian to give notice.
26. Sales under provisions of this act, valid.
27. Guardian to prosecute suits; *proviso*.
28. To give bond for costs in suits.

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29. Appointment of guardians legalized; *proviso*.  
 30. When act shall take effect.  
 31. Non-resident guardian may remove property.  
 32. Resident guardian may be discharged; *proviso*; further *proviso*.  
 33. When act shall take effect.  
 34. County court to appoint guardians in certain cases; *proviso*.  
 35. When act shall take effect.  
 36. Guardian desirous of resigning, to give notice; state

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- and adjust his account with court; court to appoint administrator *de bonis non*; bond.  
 37. Guardian may resign, when, &c.  
 38. Securities on bond desiring to be released; notice; accounts; bond.  
 39. Court to appoint person to attend to settlement of accounts and giving bond.  
 40. Costs: judgment for.  
 41. Liability not released.  
 42. When act to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 265.]

(1.) SECTION I. Courts of probate in their respective counties, shall admit orphan 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.

(2.) SEC. II. 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.

(3.) SEC. III. When 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 show cause why a guardian for such minor should not be appointed; and if sufficient reason be not shown, 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.

(4.) SEC. IV. Guardians, by virtue of their office as such, shall be allowed in all cases, to prosecute and defend for their wards.

(5.) SEC. V. The court of probate shall take of each guardian appointed under this chapter, 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 bounden 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 guardian, 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; 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.

(6.) SEC. VI. 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 guardians to give supplementary security whenever it shall judge proper, and, in default thereof, to remove such guardians.

(7.) SEC. VII. 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 chapter; and when 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 of 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.

(8.) SEC. VIII. 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 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.

(9.) SEC. IX. 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 estate, and next the interest on the ward's money, shall always be first resorted to, for the education and nurture of the wards.

(10.) SEC. X. 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 guardian to sell and convey the real estate for the support and education of the ward, or to invest the proceeds in other real estate. 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.

(11.) SEC. XI. 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.

(12.) SEC. XII. 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 law relative to wills and testaments, executors and administrators, and the settlement of intestates' estates.

(13.) SEC. XIII. 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.

(14.) SEC. XIV. Guardians shall educate their wards; and it is hereby made the duty of all civil county officers, to give information to the court of probate, of the neglect or omission of any guardian to educate 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 him so educated, the court shall have power to 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.

(15.) SEC. XV. Guardians shall have power to loan out the moneys of their wards at interest, in sums not exceeding one hundred dollars, on personal security, to be approved 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.

(16.) SEC. XVI. Guardians, on final settlement, shall be allowed such fees and compensation 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.

(17.) SEC. XVII. 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.

(18.) SEC. XVIII. 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 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.

(19.) SEC. XIX. 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.

(20.) SEC. XX. Guardians appointed under the provisions of this chapter, 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 mal-conduct 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 chapter, 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.

An Act to protect the Interests of Orphans and Minors, and for other Purposes.

[Approved Feb. 16, 1847. Laws, 1847, p. 53.]

(21.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That each and every guardian, who may be appointed by any probate justice of the peace by authority of the laws of this State, or by authority of any last will and testament, are hereby required, on final settlement before the probate justice of the peace, or other tribunal, before whom guardians may be bound to settle by law, to exhibit their account against their ward, under oath, which oath may be in substance as follows, to wit:

"I, A. B., do solemnly swear, (or affirm, as the case may be,) that the account I have this day rendered, contains a just and true account of the moneys which I have expended for C. D., a minor, for whom I am guardian, and also all claims which I have against said minor."

Which said oath or affirmation shall be reduced to writing, and filed in the office of the probate justice of the peace. Said account shall also contain and set forth specifically, in separate items, on what account expenditures were made by such guardian; and no account shall be received by any probate justice of the peace, unless the provisions of this act have been substantially complied with.

(22.) SEC. II. This act, and all the provisions of the same, shall apply as well to guardians who may have been heretofore appointed, as to those who may hereafter be appointed by law.

(23.) SEC. III. This act shall take effect and be in force from and after its passage.

An Act entitled "An Act in relation to Foreign Guardians."

[Approved Feb. 10, 1853. Laws, 1853, p. 98.]

(24.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That where any person residing in any other State of the United States, or any territory thereof, shall have been or may hereafter be appointed guardian, in the State or territory in which such person resides, of any infant or other person owning real estate within this State, not having any guardian in this State, it shall and may be lawful for every such guardian to file his or her petition in the circuit court of the county in which said real estate, or the major part thereof, may lie, for a sale of said real estate, for the purpose of educating and supporting such infant or other persons under guardianship, or for the purpose of investing the proceeds of such real estate in such manner as the court which appointed such guardian may order and direct; and the said circuit court is hereby fully authorized and empowered to order a sale of such real estate conformably to the prayer of said petition: *Provided,* That every such guardian applying for such sale, shall file with his or her petition an authenticated copy of his or her letters of guardianship: *And provided, further,* That the said circuit court shall make no order for a sale under said petition until the said guardian shall have executed and filed in the court which appointed said guardian, a bond with sufficient security, approved by said last mentioned court, for the due and faithful application of the proceeds of every such sale, in such manner as the said last mentioned court may direct; an authenticated copy of which said bond, and the approval thereof, shall be deemed and taken by the circuit court as sufficient evidence of the execution and filing of the same.

(25.) SEC. II. Every guardian applying for an order of sale under the foregoing section, shall be required to give notice of his or her petition in the same manner as is now required by law in cases of application for sales of lands belonging to minors, by resident guardians; and in every order for the sale of real estate under this act, it shall be the duty of the court to prescribe the terms of said sale, and the notice which shall be given thereof, and the place where such sale shall be made.

(26.) SEC. III. All sales of real estate under the provisions of this act shall be and the same are hereby declared to be good and valid; and all

deeds executed by such guardian to the purchaser or purchasers under such sales, shall convey to and vest in such purchaser or purchasers all the estate, right, title and interest, in law or equity, of said infant or others in and to the land so sold.

(27.) SEC. IV. Every non-resident guardian as aforesaid shall be and hereby is authorized [and] empowered to prosecute suits in the courts in this State, for the recovery of any moneys, demands or other property due or belonging to their wards, and to receive and collect the same in the same manner as resident guardians: *Provided,* That such guardian shall, at the time of the commencement of any suits under this section, file in said court an authenticated copy of his or her letters of guardianship.

(28.) SEC. V. In all suits instituted under this act, said guardian shall give a bond for costs as in case of other non-residents.

An Act to legalize the Appointment of Guardians.

[Approved Feb. 12, 1853. Laws, 1853, p. 125.]

(29.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That each and every appointment of a guardian of an infant or infants, which has been made in any county of this State, in which an ancestor from whom said infant or infants derive title to property by will or descent, resided, at the time of his death, is hereby legalized and made as effectual, in every respect, as though said appointment had been made in the county in which said infant may have been resident when said appointment was made: *Provided, however,* That no appointment of a guardian is hereby legalized unless the same has been made upon the petition of an infant above the age of fourteen years.

(30.) SEC. II. This act shall take effect from and after its passage.

An Act in relation to Non-Resident Guardians.

[Approved Feb. 12, 1853. Laws, 1853, p. 126.]

(31.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases where any guardian and his ward may both be non-residents of this State, and such ward may be entitled to property of any description in this State, such guardian, on producing satisfactory proof to the county court of the proper county by certificates, according to the act of Congress in such cases, that he has given bond and security in the State in which he and his ward reside, in double the amount of the value of the property as guardian, and it is found that a removal of the property will not conflict with the terms of limitation attending the right by which the ward owns the same, then any guardian may demand or sue for, and remove any such property to the place of residence of himself and ward.

(32.) SEC. II. That when such non-resident guardian shall produce an exemplification from under the seal of the office (if there be a seal,) of the proper court in the State of his residence, containing all the entries on record in relation to his appointment, giving bond, &c., and authenticated as required by act of Congress as aforesaid, the county court of the proper county in this State may cause suitable orders to be made, discharging any resident guardian, executor or administrator, and authorizing the delivering and passing over of such property, and also requiring receipts to be passed



and filed, if deemed advisable: *Provided*, The benefits of this act shall not be extended to the citizens of any State in which a similar act does not exist, or may not hereafter be passed: *And provided, also*, That, in all cases, thirty days' notice shall be given to the resident guardian, executor or administrator, of the intended application for the order of removal, and the court may reject the application and refuse such order whenever it is satisfied it is for the interest of the ward that such removal shall not take place.

(33.) SEC. III. This act shall take effect from and after its passage.

An Act to amend Chapter XLVII of the Revised Statutes, entitled "Guardians and Wards."  
[Approved Feb. 8, 1853. Laws, 1853, p. 126.]

(34.) SEC. I. *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, county courts for the transaction of probate business in the several counties of this State shall have power, and it is hereby made their duty, to appoint some suitable person to act as guardian for any minor within their respective jurisdictions, whenever it shall be made to appear to the satisfaction of said county court: 1st, that the person chosen by such minor as his or her guardian, is not a suitable person to be intrusted with the control of the person of such minor, or his or her property; 2nd, in all cases where the person chosen by such minor, as his or her guardian, shall fail or refuse to give bond with good security, as required by law; 3rd, in all cases where any such guardian, after his or her appointment, shall fail to give additional or other security when required so to do, in accordance with an act entitled "An act to amend the law in relation to securities of guardians," approved February 19th, 1847; and shall be removed for such failure: *Provided*, That in case of such removal, such minor may be permitted to choose another guardian, if he or she shall so desire, subject to the approval of the county court as aforesaid.

(35.) SEC. II. This act shall take effect and be in force from and after its passage.

An Act respecting Executors, Administrators, Guardians, and their Securities.  
[Approved Feb. 12, 1853. Laws, 1853, p. 163.]

(36.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any sole executor, administrator or guardian, or all the joint executors, administrators or guardians of any estate, or minor heir or heirs, heretofore or hereafter to be appointed by any of the courts of this State, and who are desirous of resigning such office of executor, administrator or guardian, may, by giving notice in some newspaper published in the county in which said executor, administrator or guardian was appointed, for four weeks successively preceding the sitting of any term of said court, of his or their intention to present such application, and of the time and place of making such application; and in case there is not a paper published in said county, then by posting up notices as aforesaid in at least four of the most public places in said county, and also give notice in writing to his or their securities of such intention as aforesaid, at least ten days before the said term of the court. And upon stating and adjusting with such court an account of his or their actings and doings in relation to such office of executor, administrator or guardian, and paying over to his or

their successor or successors in office all moneys, effects and choses in action of every kind and nature whatsoever, found to be due and owing by him or them as such executor, administrator or guardian, to the successor or successors in office of such executor, administrator or guardian, then to be appointed, the court to which said application shall be made, shall order that such executor, administrator or guardian, be discharged and removed from such office of executor, administrator or guardian. And the court shall thereupon appoint some fit person or persons to hold such office as administrator with the will annexed, administrator *de bonis non*, or guardian, as the case may be, making such appointment in accordance with all the terms and provisions of the existing laws of this State as to the appointment of administrators and guardians; and the person so appointed shall then and there give bond and be subject to all such duties and liabilities of administrator or guardian as are or hereafter shall be imposed upon such officers by the laws of this State.

(37.) SEC. II. In all cases when there shall be more than one executor, administrator or guardian appointed by any of the courts of this State, and when any one or more of such executors, administrators or guardians shall desire to resign such trust, it shall be lawful for such co-executor, administrator or guardian, on producing and filing [with] the court by which such letters testamentary or of administration or guardianship were granted, the assent in writing, under the hand and seal of his or their co-executors, administrators or guardians and securities to such application, and comply with all the requisitions of the first section of this act, to be discharged and removed from such office of executor, administrator or guardian; and his or their said co-executors, administrators or guardians, shall proceed to administer their said trust in the same manner as if they were surviving executors, administrators or guardians.

(38.) SEC. III. That whenever any security or securities on the official bond of any executor, administrator or guardian, desire to be released from further liability upon any such official bond, it shall and may be lawful for such security on any such executor's, administrator's or guardian's bond, on giving ten days' notice to any such executor, administrator or guardian, for whom he or they may be security, after publication, as required by the first section of this act, to apply at any term of the court in which said official bond may be filed, for an order of said court to compel such executor, administrator or guardian, within some reasonable time, to be fixed by said court, to settle and adjust his or their accounts, or his or their actings and doings with reference to such office, and pay over whatever balance may be found in his or their hands, and to file, in such court, bond in such penalty as may be prescribed by the court, with good and sufficient security, to be approved by the court, conditioned as is or shall be hereinafter prescribed by law in case of executor's, administrator's or guardian's bonds; and in case such executor, administrator or guardian, within the time fixed by the order of said court, shall fail to comply therewith, then the court shall order that said executor, administrator or guardian be removed from his said office, and shall appoint some other fit person as administrator with the will annexed, administrator *de bonis non*, or guardian, who shall give bond as now or hereafter shall be required by law. And in case of the failure of the former executor, administrator or guardian to settle his or their accounts

with reference to their said office, and to pay over to the person so appointed all moneys, effects or choses in action found to be due by him or them, by reason of their said office, then such successor shall proceed to collect the amount so due, by suit against such executor, administrator or guardian, or by suit upon his or their official bonds; and upon the payment of the amount found to be due upon said trust, and the filing and approval of the bond, as required by order of the court, such security or securities shall be discharged.

(39.) SEC. IV. In all cases where applications shall be made to any court in this State, under the provisions of this law, the court to whom such application shall be made, shall appoint some discreet person, not interested in such application, or related to the applicants, to appear and attend to the proper settlement of accounts and the giving a proper bond in the premises.

(40.) SEC. V. The applicant or applicants, in all cases provided for by this law, shall pay all costs incurred thereby, including a reasonable allowance to the person appointed by said court to defend the interest of the estate or minors, which shall be fixed by the court. And the court shall render a judgment against the applicants, in all cases arising under this law, for all such costs; which may be collected by execution, as in case of other judgments.

(41.) SEC. VI. Nothing in this act contained shall be so construed as to release any executor, administrator or guardian, or their securities, from any previous liability, or from any breach of their bonds, or of their official duties accruing before the filing of the new bonds required by this law, and a full compliance with the orders of said courts in the premises.

(42.) SEC. VII. This act to take effect and be in force from and after its passage.

**PRIOR LAWS.** An act for the sale of the real estate of minors in certain cases; in force Feb. 2, 1821. Laws, 1821, p. 72.

An act concerning minors, orphans and guardians; in force June 1, 1827. Rev. Laws, 1827, p. 301; Rev. Laws, 1833, p. 453.

An act to amend "An act concerning minors, orphans and guardians," in force Feb. 4, 1827; approved Feb. 7, 1831. Laws, 1831, p. 100.

**DECISIONS.** A court of chancery has power to remove guardians in all cases. It is matter of discretion with the court to do so in all cases where the court believes that the interests of the ward require it, or that the guardian is abusing his trust. *Cowles v. Cowles*, 3 G. 435.

A proceeding by a guardian to sell the real estate of his ward, under the statute, is not a proceeding adverse to the interest of the ward. *Mason v. Wait et al.*, 4 S. 133.

The authority of a guardian to sell the land of the ward under a decree or order of court, is a naked power, and must be strictly pursued. *Idem.*

A guardian is authorized by the legislature to sell the land of the ward under the direction of the probate court; without such direction the sale is void. *Idem.*

A purchaser at a guardian's sale takes the property at his own risk, unless at the time of the sale, the guardian makes fraudulent representations.

When an administrator, who has married the widow of his intestate, receives money belonging to the heirs of such intestate, he will be held accountable in the same manner as a guardian. *Davis v. Harkness*, 1 G. 173.

An executor, administrator or guardian may dispose of the personal estate of his testator, intestate or ward, to a bona fide purchaser; such purchaser is not required to look to the application of the money; but they cannot make such sale in payment of their own debt. *McConnell v. Hodyson*, 2 G. 640.

An order of a probate court, directing a guardian to pay over money to his successor, for the benefit of the ward, is conclusive, unless it can be impeached for fraud or collusion. 11 Ill. 6.

Wards cannot file a bill in chancery in their own names; they must sue in the name of their guardians or next friends. *Hoare v. Harris*, 11 Ill. 24.

Under the 7th section, Chap. XLVII, of the Revised Statutes, courts of probate had power to remove guardians; and where a guardian resigned, and his resignation was accepted and his successor

appointed, the order and judgment of the probate court was considered conclusive in a collateral proceeding. *Young v. Lorain et al.*, 11 Ill. 624.

A minor may choose his own guardian at any time after arriving at the age of fourteen years. An appointment made by the probate court, before that time, to continue until the minor arrives at the age of eighteen years, is binding and valid until such minor, after arriving at the age of fourteen, chooses another guardian. *Idem.*

It is not necessary that the personal estate of a minor or ward should be exhausted, to give the court jurisdiction to order a sale of real estate for purposes of re-investment. *Idem.*

No title passes by a guardian's sale, unless the guardian makes report to the court and the court enters an order confirming the sale and proceedings. *Young v. Keogh*, 11 Ill. 642; *Rawlings v. Bailey et al.*, 15 Ill. 173; *Ayres v. Bumgarten*, 15 Ill. 444; *Young et al. v. Dowling*, 15 Ill. 481.

A testator appointed his wife guardian of his daughter, "so long as she remained his widow." She took out letters of guardianship. Subsequently she was married, retaining possession of a note belonging to her ward, which was paid to her husband in her presence: Held, that upon her marriage her guardianship ceased, and that the payment was no satisfaction of the note; that the appointment by the court gave the mother no additional authority, and that an appointment by the father, by will, is superior in point of authority to that of the courts of probate. *Holmes v. Fields*, 12 Ill. 424.

A guardian who collects his ward's money and converts it to his own use, is liable to pay compound interest on the same. *Rowan v. Kirkpatrick*, 14 Ill. 1.

It is the duty of a guardian to institute proceedings for the assignment of the widow's dower, so that his wards may obtain their share of the rents and profits of the estate. *Clark et al. v. Burnside*, 15 Ill. 62.

## CHAPTER XLVIII.

## HABEAS CORPUS.

## SECTION

1. In what cases writ of habeas corpus may be granted; by whom granted; mode of making application; writ, how to be directed, served, obeyed and returned.
2. When person not charged with crime is detained, what proceedings had.
3. On return of writ, allegations shall be heard; statement of grounds on which prisoner may be discharged.
4. When bail is taken, bond to be given for appearance; witnesses to be recognized to appear on trial; penalty if witness refuse to give bond; penalty if judge refuse to bind witness or prisoner.
5. Remanding of prisoner shall be by order of court; proceedings in case of second writ of habeas corpus.
6. Power of judge under second writ, to admit prisoner to bail, if offense is bailable, or, if not bailable, to commit to prison.
7. Person once discharged, not to be again committed, unless again indicted, &c.; when he may be again arrested.
8. Cases in which writ of habeas corpus may not be granted.
9. When prisoner may be discharged from custody for

## SECTION

- want of prosecution; continuance of cause when witnesses cannot be had.
10. Writ shall not be granted so as to delay trial in certain cases.
11. Provisions as to removal of prisoner from one place or one jail to another; penalty for improper removal.
12. Penalty if judge fail or delay to issue writ.
13. Officer refusing to execute and return writ, punished as for a contempt.
14. Officer having prisoner in custody, removing or concealing him to evade service of writ, how punished.
15. Officer having prisoner in custody, refusing to give him copy of warrant of commitment, how punished.
16. Penalty for re-arresting prisoner for same cause, after one discharge.
17. Pecuniary penalties herein imposed, to go to person for whose release writ issued.
18. General issue may be pleaded.
19. Recovery of penalties not to bar civil action for damages.
20. Who may issue writ; for what purposes; writ may run into any county; return of prisoner to proper custody; compensation of officers.

[Approved March 3, 1845. Rev. Stat. 1845, p. 269.]

SECTION I. If any person shall be 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 a 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 indorsed 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 tender of the charges of bringing the said prisoner, to be ascertained by the court or judge awarding the said writ, and indorsed 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.

SEC. II. 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 pretense 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.

SEC. III. 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 show, 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: 1st, where the court has exceeded the limits of its jurisdiction, either as to the matter, place, sum or person; 2nd, 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; 3rd, where the process is defective in some substantial form required by law; 4th, 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; 5th, 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; 6th, where the process appears to have been obtained by false pretense or bribery; 7th, 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 manner, 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.

SEC. IV. 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 offense, conditioned for his or her appearance at the next circuit court, to be holden in and for the county where the offense 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 anything material to prove the offense with which the prisoner is charged, by recognizance, to appear at the proper court having cognizance of the offense, on the first day of the next term thereof, to give evidence touching the said offense, 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 witness 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. V. When 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 prisoner 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 offense adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

SEC. VI. 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 offense; 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 offense is bailable by law, or remand him to prison where the offense is not bailable; or being bailable, where such prisoner shall fail to give the bail required.

SEC. VII. 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 offense, nor 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: 1st, 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 offense; 2nd, 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; 3rd, 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.

SEC. VIII. No person shall be discharged under the provisions of this chapter, who is in custody under a commitment, for any offense 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 chapter, but for that purpose shall be put to his suit for freedom.

SEC. IX. 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 offense, 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 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 offense, 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 shown wherein their testimony is material.

SEC. X. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on *habeas corpus* under this chapter, 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 offense with which he or she stands charged, is properly cognizable.

SEC. XI. 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 chapter 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.

SEC. XII. Any judge empowered by this chapter, 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 purpose of oppression, unreasonably delay the issuing of such writ, shall, for every such offense, forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars.

SEC. XIII. 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 chapter, all and every such officer, sheriff, jailer, keeper or other person, shall be deemed guilty of 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. XIV. 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 offense, 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.

SEC. XV. Any sheriff or his deputy, any jailer or coroner, having custody of any prisoner, committed on a 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 the demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

SEC. XVI. 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 chapter, 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 offense, and one thousand dollars for every subsequent offense.

SEC. XVII. All the pecuniary forfeitures incurred under this chapter, shall enure 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.

SEC. XVIII. In any action or suit for any offense against the provisions of this chapter, the defendant or defendants may plead the general issue, and give the special matter in evidence.

SEC. XIX. The recovery of the said penalties shall be no bar to a civil suit for damages.

SEC. XX. 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 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.

PRIOR LAWS. An act regulating the proceedings on writs of *habeas corpus*; in force June 1, 1827. Rev. Laws, 1827, p. 236; Rev. Laws, 1833, p. 322.

DECISIONS. The supreme court has no original jurisdiction to allow writs of *habeas corpus*. As an appellate court, it may do so, in reviewing legal proceedings. *The People v. Taylor*, 1 S. 202.

Either of the judges of the supreme court, or of the circuit courts, may allow the writ. *Idem*. Masters in chancery cannot issue a writ of *habeas corpus*, but, by indorsement on the petition for the writ, may direct the clerk of the circuit court of the proper county to issue it; and the clerk is thereupon bound to issue the writ, under the seal of the court. Such writ is not returnable before the master in chancery, but to the circuit or supreme court, if in session, or before some judge thereof, if in vacation. *The People v. Town*, 3 S. 19.

## CHAPTER XLIX.

### HORSES.

SECTION	SECTION
1. Horses under one year old found running at large, to be taken up: how disposed of.	4. Diseased horse, &c., running at large, how disposed of; owner, how punished.
2. Horses over that age found running at large, how disposed of.	5. Offenses against public decency, &c., how punishable.
3. If owner do not take away horse, how disposed of.	6. Penalties, how recovered.

[Approved March 3, 1845. Rev. Stat. 1845, p. 274.]

SECTION I. It shall 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. II. 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 be 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 willfully suffer the same to run at large, out of his inclosure, any person may take up such horse, 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. III. 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. IV. 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, distempers 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. V. 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. VI. All sums or penalties incurred under the provisions of this chapter, 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.

PRIOR LAWS. An act for improving the breed of horses; approved Feb. 20, 1819. Laws, 1819, p. 25.

An act for improving the breed of horses; in force June 1, 1829. Rev. Laws, 1833, p. 330.

## CHAPTER L.

### IDIOTS AND LUNATICS.

#### SECTION

1. If jury summoned to inquire, find person to be idiot, &c., court may appoint guardian.
2. Person appointed to give bond.
3. His powers and duties; may be removed for cause.
4. Shall collect and pay out money: may sell estate to pay debts, and support idiot and family.
5. Guardian may sue and be sued; property may be sold on execution as in ordinary cases.
6. Powers and duties of overseers of the poor and county commissioners, as to support of insane poor.
7. Disposition of property in case of recovery of reason, or death.

#### SECTION

8. Contracts, &c., of lunatics, void as to lunatics, but good as to other party.
9. Persons taking advantage of lunatics, &c., deemed swindlers, and punished.
10. When necessary to sell real estate of idiot, &c., duty of conservator.
11. What petition shall contain, &c.
12. On filing of petition, summons to issue to parties.
13. Guardians to be appointed by court.
14. Court to determine, on hearing.
15. Orders of sale.
16. Conservators appointed in other States, how to act.
17. When act shall take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 276.]

(1.) SECTION I. 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 lunatic, insane or distracted; and if the said jury return, in their verdict, that such person is 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.

(2.) SEC. II. 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.

(3.) SEC. III. 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.

(4.) SEC. IV. 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 family, and to educate the children of the same.

(5.) SEC. V. 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.

(6.) SEC. VI. 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.

(7.) SEC. VII. 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.

(8.) SEC. VIII. All contracts, agreements or credits with idiots, lunatics or distracted persons, either by note, bond, bill or otherwise, shall be void, as against said idiot, lunatic or distracted person; but persons making such contracts or agreements, with such idiot, lunatic or distracted person, shall be bound thereby.

(9.) SEC. IX. 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.

An Act to provide for the Sale of the Estates of Insane Persons.

[Approved Feb. 12, 1853. Laws, 1853, p. 215.]

(10.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever it shall become necessary to sell the real estate of idiots, lunatics or distracted persons, for the purpose of paying debts, supporting a family or educating children, or when it shall be deemed proper to make such sale for the purpose of investing the proceeds in real estate, the conservator shall petition the circuit court of the

county in which he was appointed, or in which the parties to the proceeding, or a part of them, reside, asking that an order or orders be made, authorizing such sale.

(11.) SEC. II. The petition aforesaid shall set forth and state the reasons why, and the purposes for which, a sale of real estate is deemed necessary or proper, and shall be accompanied by an inventory or descriptive list of all the real estate owned or possessed by such idiot, lunatic or distracted person, together with a statement of the accounts of the conservator, showing the disposition of the money, property or effects which may have come to his hands, setting forth also the names of all persons who would be interested in the estate, in case of the death and intestacy of the owner thereof, all of whom shall be made parties to the proceeding.

(12.) SEC. III. Upon the filing of the petition aforesaid, a summons shall be issued against the persons made parties as aforesaid, and which shall be served as in cases in chancery. And in case any of said parties cannot be found, or reside out of the State, they shall be notified of the proceeding by publication, as in proceedings in chancery against non-residents.

(13.) SEC. IV. The court shall appoint guardians *ad litem* for infant parties, when no guardians shall appear, and also make any and all orders necessary to bring parties before it, and to a proper and speedy disposition of the petition in a manner consistent with the facts and the rights of all parties interested, directly or indirectly, in the estate to be affected.

(14.) SEC. V. When all parties as aforesaid shall have been notified of the proceeding, the court, upon the hearing of the petition, the objections thereto, if any are interposed, and all facts with respect to the matter thereof, shall, in the exercise of a sound discretion, make such order or orders as may appear necessary and proper to execute the provisions of this act, and to supply conservators and families of idiots, lunatics and distracted persons with means to be used for the purposes herein expressed.

(15.) SEC. VI. Orders of sale made by court shall describe the property to be sold, and specify the terms of sale, and direct the application or use of the money; and power is hereby vested in said courts to make any and all orders necessary to the security and proper application of the moneys in the hands of conservators.

(16.) SEC. VII. Conservators appointed in foreign States may avail themselves of the provisions of this act, by filing a copy of their appointment with the clerk of the circuit court, and giving security for costs, and by furnishing satisfactory evidence that they have given adequate and sufficient security for the faithful and proper application of the funds arising from the sale.

(17.) SEC. VIII. This act shall take effect and be in force from its passage.

PRIOR LAWS. An act regulating the estates of idiots, lunatics and persons distracted, and for other purposes; approved Feb. 12, 1823. Laws, 1823, p. 133; Rev. Laws, 1833, p. 332.  
An act further to secure the property of idiots, lunatics and distracted persons; in force Jan. 19, 1831. Rev. Laws, 1833, p. 334.

DECISIONS. In a proceeding, under the statute, to procure the appointment of a conservator to a lunatic, the lunatic must have reasonable notice, or the inquisition will be set aside. *Eddy v. The People*, 15 Ill. 386.

## CHAPTER LI.

## INCLOSURES AND FENCES.

## SECTION

1. Common fields, owners of, may make rules and regulations.
2. May elect officers; their duties, &c.
3. Field committee may be chosen; their duties.
4. Proprietors may tax themselves.
5. Authority of field committee.
6. Fencing, how regulated and kept up.
7. Lands adjoining common field, owners of, how to proceed.
8. Accounts for services, how audited and paid.
9. Proprietors may fine either of themselves.
10. Common field shall be inclosed.
11. Fencing, regulations relative thereto, further defined.
12. Fence viewers, their duty when fence insufficient.
13. Costs and charges for making or repairing fence, how collected.

## SECTION

14. Inclosures, how may be made.
15. Damages for injury to inclosure, how recovered.
16. Condition of fence, when trespass committed, how ascertained.
17. Penalty for injuring cattle, &c.
18. Animals trespassing, owners shall be notified.
19. Fence, when made on land of another, may be removed.
20. When fence made by mistake, owner of land shall not throw down.
21. Division of land, how made.
22. Owner of land may plant live fence on line of public highway; *proviso*.
23. When act to be in force.

[Approved March 3, 1845. Rev. Stat. 1845, p. 277.]

(1.) SECTION I. 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 fields, 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.

(2.) SEC. II. The 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 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.

(3.) SEC. III. 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.

(4.) SEC. IV. 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 altering 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.

(5.) SEC. V. 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.

(6.) SEC. VI. 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, 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.

(7.) SEC. VII. If any person or persons, whose land 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.

(8.) SEC. VIII. All accounts for any services rendered any person

acting under the appointment 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 committee; and 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.

(9.) SEC. IX. 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.

(10.) SEC. X. 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.

(11.) SEC. XI. 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 is enclosed on both sides,) shall be equally borne and maintained by both parties; to which, and other ends in this chapter 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 persons feeling himself 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.

(12.) SEC. XII. 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.

(13.) SEC. XIII. 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.

(14.) SEC. XIV. But nothing herein contained shall be intended to prevent or debar any person or persons from inclosing his or their grounds, in any 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*, That such walls or fences of timber, other than those heretofore mentioned, and dikes, hedges and ditches, shall be subject to all provisions, inspections and restrictions to which, by this chapter, any other inclosure or fence is made liable, according to the true intent and meaning hereof.

(15.) SEC. XV. 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 person's inclosure, the fence being good and sufficient, the owner of such animal or animals, shall be liable in action of trespass, to make good all damages to the owner or occupier of the inclosure, for the first offense single damages only, and ever afterwards double the damages sustained.

(16.) SEC. XVI. The condition of the fence at the time the trespass was committed, may be proven on trial; and on 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, noways 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.

(17.) SEC. XVII. 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.

(18.) SEC. XVIII. 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.

(19.) SEC. XIX. When any person or persons may, by mistake, erect and make a fence or inclosure 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 inclosures 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 chapter 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.

(20.) SEC. XX. 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.

(21.) SEC. XXI. 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.

An Act to authorize the Setting and Protecting Live Fences on the Sides of Public Highways.

[Approved Feb. 12, 1849. Laws, 1849, (1st Sess.) p. 84.]

(22.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That whenever any owner or owners, occupant or occupants, of any land or lands bordering upon any public road or highway, except a street or alley in a town or village through which any public road or highway may pass, may wish to plant any live fence along the margin of his, her or their lands, it shall be lawful for any such person or persons to set or plant any such hedge or live fences precisely on the line of the public road or highway, and also to set or plant on the margin of said road a protection fence, not to occupy more than six feet of the margin of said road, and such protection fence, when planted opposite any fence or hedge actually set or planted, shall be permitted by supervisors and all other persons to remain for the term of five years: *Provided*, That the county court of any county may give permission to the owner or owners of any hedge or live fence to continue any such protection for any time they may deem necessary.

(23.) SEC. II. This act to be in force from and after its passage.

PRIOR LAWS. An act regulating inclosures; approved Feb. 20, 1819. Laws, 1819, p. 23; Rev. Laws, 1833, p. 261.

An act to regulate the inclosing and cultivating of common fields; approved Feb. 23, 1819. Laws, 1819, p. 37; Rev. Laws, 1833, p. 258.

An act to enable persons to remove fences made by mistake on the lands of other persons; approved Feb. 23, 1819. Laws, 1819, p. 44; Rev. Laws, 1833, p. 419.

An act to amend "An act regulating inclosures;" approved Jan. 27, 1835. Laws, 1835, p. 144.

DECISIONS. The act of Feb. 23, 1819, authorizing the removal of fences made by mistake on the land of other persons, refers only to natural persons, not the United States or this State. *Blair v. Worley*, 1 S. 178.

In proceedings under the act of Feb. 19, 1819, the justices before whom the proceedings are had, should notify the defendant. Under the same act, an appeal lies from the judgment of the justices. *Holliday v. Swales*, 1 S. 515.

There is no law in this State prohibiting cattle, &c., from running at large; and to maintain trespass for the intrusion of cattle into one's close, the occupant must surround it by a good and sufficient fence. *Seeley v. Peters*, 5 G. 130; *Misner v. Lighthall*, 13 Ill. 609.

Several persons raised crops in a common field, surrounded by a defective fence. One erected an inside fence, sufficient to protect the crops. The defendant removed a part of the inner fence, by means of which, stock entered and destroyed the crop: *Held*, that the defendant was liable in trespass for removing the inner fence, and that he could not justify on the ground that the plaintiff was bound to keep the outer fence in repair. *Buckmaster v. Cool*, 12 Ill. 74.

## CHAPTER LII.

### INSOLVENT DEBTORS.

SECTION	SECTION
1. Debtor refusing to surrender property may be proceeded against by <i>ca. sa.</i>	15. Question of refusal to surrender property, how tried.
2. Court of probate may hear applications for discharge.	16. Duty of assignee as to property.
3. Duty of officer to take prisoner before court of probate.	17. Power of assignee to sell lands; effect of such conveyances.
4. Duty of probate justice; property to be given up; form of oath to be taken.	18. When assignee shall settle estate; assets, how disposed of in payment of debts; when there is overplus.
5. Creditor may resist application; trial may be had.	19. Head of family may retain same amount of property as is exempt from execution.
6. Examination may be adjourned.	20. Compensation of assignee.
7. Assignees to be appointed; property of debtor to be assigned to him.	21. Fees of probate justice in such cases.
8. Debtor to be then discharged.	22. In case of insolvency of probate justice, county commissioner to act.
9. Creditor aggrieved, may appeal to circuit court, on giving bond.	23. Debtor swearing falsely, punished as for perjury.
10. If probate justice refuse to discharge the applicant, he may appeal, on giving bond.	24. Effect of discharge.
11. Property not to be sold by assignee, unless perishable.	25. Not lawful to imprison defendant in execution, who has made affidavit, unless, &c.; <i>proviso</i> .
12. Circuit court may try and dispose of case.	26. Plaintiff, &c., failing to advance jail fees, prisoner discharged.
13. Question of fraud to be tried in probate court by a jury of seven householders.	27. If plaintiff, &c., make advance as above, defendant may be imprisoned till judgment and costs satisfied.
14. Their verdict; effect of; appeal.	28. When act to be in force.

[Approved March 8, 1845. Rev. Stat. 1845, p. 282.]

(1.) SECTION I. 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.

(2.) SEC. II. The courts 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 chapter.

(3.) SEC. III. 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.

(4.) SEC. IV. It shall be the duty of the probate justice of the peace 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 anywise 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 whereby 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 other estate, real or personal, in possession, reversion or remainder, 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 therefrom, to defraud any creditor or creditors, to whom I am indebted in anywise 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 probate justice of the peace, as may all oaths or affirmations which it may be necessary for him to administer in the discharge of the duties assigned him by this chapter.

(5.) SEC. V. Any creditor of such debtor shall have the right to appear before the probate justice of the peace, and contest the truth of such schedule, and may, for that purpose, call such witnesses as he or she shall deem necessary; and the court shall issue subpoenas, and compel the attendance of witnesses, in the same manner as the judges of the circuit courts do in term time.

(6.) SEC. VI. The probate justice of the peace 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.

(7.) SEC. VII. If, after full investigation and fair examination of the debtor and the witnesses, if any, it shall appear to the probate justice of the peace that the proceedings on the part of said debtor are fair, just and honest, it shall be the duty of the court to name some fit person to act as

assignee of the said debtor; and such debtor shall immediately, by indorsement on the back of said schedule, assign all or so much of his property therein mentioned, as will, in the opinion of the court, 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.

(8.) SEC. VIII. Whenever the said debtor shall produce to the court a receipt of the assignee of such debtor, certifying that he has received all the estate, property, goods, chattels and effects so assigned to him, then it shall be the duty of the court 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 imprisonment; and such discharge from arrest or imprisonment, shall exempt the said debtor from arrest on account of any debt mentioned in said schedule, until the same shall be vacated by due course of law.

(9.) SEC. IX. 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 probate justice or his successor in office, as shall all other bonds which may be given by authority of this chapter; and the said bond shall be filed with the probate justice.

(10.) SEC. X. Upon application of any debtor for a discharge from imprisonment under this chapter, and refusal of the court to make an assignee, or to grant a discharge from imprisonment, the said applicant shall be allowed to appeal to the next circuit court to be held in said county, upon said applicant entering into bond with security, in such sum as the court 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 remove or lessen in value, any or all of the estate or property mentioned 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 probate justice 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 probate justice of the peace at the time of trial, or within ten days thereafter.

(11.) SEC. XI. 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.

(12.) SEC. XII. The circuit court, at the term to which the proceedings shall be returned, shall (unless for good cause) proceed to hear and determine the matter, and shall impanel a jury to find the facts, at the request of either party, admitting all necessary evidence; 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 probate justice, and doing all things that may be necessary to effect the objects of this chapter.

(13.) SEC. XIII. 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 probate justice of the peace 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 forthwith to summon seven reputable householders of the neighborhood, to assemble before the said court as a jury, who shall be sworn to try the fact of fraud with which such debtor shall stand charged.

(14.) SEC. XIV. 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 chapter; 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 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 chapter.

(15.) SEC. XV. Every debtor arrested on any civil suit or process, shall, upon going before the probate justice of the peace, 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 chapter; but if the jury find such debtor "not guilty" of refusing to surrender, then such debtor shall be forthwith discharged.

(16.) SEC. XVI. Every assignee appointed by authority of this chapter, 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 sunset 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.

(17.) SEC. XVII. It shall be the duty of every assignee, who shall sell any lands or tenements, by or under authority of this chapter, 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.

(18.) SEC. XVIII. 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 court of probate, giving thirty days' public notice of the time of making such settlement; and the probate justice 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.

(19.) SEC. XIX. Any person, being the head of a family and residing with the same, who shall apply to a court of probate for a discharge from his debts, under the provisions of this chapter, shall be allowed the same amount of property as is exempt from execution, which shall be assigned and set apart to him by the probate justice.

(20.) SEC. XX. The probate justice of the peace is hereby authorized to allow every assignee, who shall be appointed under the provisions of this chapter, 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.

(21.) SEC. XXI. The probate justice of the peace shall be allowed the same fees for services rendered by authority of this chapter, as 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 chapter, and one dollar for each discharge by him granted to such debtor as aforesaid.

(22.) SEC. XXII. In case of the insolvency of any probate justice of the peace 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 chapter.

(23.) SEC. XXIII. Any debtor who shall be convicted of taking a false oath, under any of the provisions of this chapter, shall be deemed guilty of willful perjury, and shall suffer the pains and penalties imposed by law therefor.

(24.) SEC. XXIV. Any debtor, who shall obtain a discharge under this chapter, 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 chapter; and the certificate of the probate justice, 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.

An Act for the further Restriction of Imprisonment for Debt.

[Approved Feb. 28, 1845. Laws, 1845, p. 77.]

(25.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That when any defendant in execution shall be held in custody on final process, in a case where the said defendant cannot be discharged under the provisions of an act entitled "An act for the relief of insolvent debtors," approved January the twelfth, in the year of our Lord one thousand eight hundred and twenty-nine, and when said defendant shall make an affidavit before some competent officer authorized to administer oaths, that he or she has no rights or credits, property, real and personal, in possession or action, except such property as is exempt from execution by the laws of this State, it shall not be lawful for the said defendant to be committed to the common jail of any county in this State, unless the plaintiff in execution, his or her agent or attorney, shall, on Monday of each and every week, pay to the jailer the fees to which he may be entitled on said imprisonment: *Provided*, That no defendant in execution shall be discharged as aforesaid, unless the plaintiff in execution, his or her agent or attorney, if a resident of the county where the proceedings are had, shall have had at least three days' notice of the time and place of the making of such affidavit.

(26.) SEC. II. If, at any time, the plaintiff, his agent or attorney, shall fail to advance the jail fees as herein provided, it shall be the duty of the officer or jailer, as the case may be, forthwith to discharge the prisoner; and it shall not be lawful to arrest or imprison the said defendant a second time, upon an execution issued upon the same judgment; but nothing herein contained shall operate to discharge the said defendant from the payment of such judgment and costs, if property can be found to satisfy the same.

(27.) SEC. III. If the plaintiff, his agent or attorney, shall make the advances of the jail fees as herein provided, the said defendant may be imprisoned, at one dollar and fifty cents per day, until the judgment and costs shall be satisfied; and the officer making the arrest, shall, in that event, indorse the execution, "satisfied in full by imprisonment."

(28.) SEC. IV. This act to be in force from and after its passage.

PRIOR LAWS. An act for the benefit of insolvent debtors; approved March 27, 1819. Laws, 1819, p. 301. Repealed Feb. 10, 1821.

An act establishing courts of probate; approved Feb. 10, 1821. Laws, 1821, p. 119. Repealed in part, June 1, 1829.

An act to abolish imprisonment for debt in certain cases; approved Feb. 17, 1823. Laws, 1823, p. 158.

An act for the relief of insolvent debtors; in force June 1, 1829. Rev. Laws, 1833, p. 351.

An act to exempt certain articles from execution; approved March 4, 1843. Laws, 1843, p. 141.

DECISIONS. The judge of the county court has no right to entertain an insolvent proceeding, except when acting as a court, and the plaintiff or his attorney is entitled to notice, that they may appear and contest the application. *People ex rel. v. Williamson*, 13 Ill. 660.

The 52nd chapter of the Revised Statutes, 1845, has relation only to arrests for debt, and not for torts; the act of Feb. 28, 1845, restricting imprisonment for debt, provides for arrests and imprisonment in cases of torts. *The People ex rel. v. Cotton*, 14 Ill. 414.

## CHAPTER LIII.

## INSPECTIONS.

## SECTION

1. Warehouses may be kept in each county
2. Standard weighing scales to be kept.
3. Inspectors: their duties, &c.
4. Further duties.
5. Rates of charges for inspection.
6. Hosesheads of tobacco, weight of.
7. Shall be recorded in books to be kept by inspectors.
8. Inspectors to be sworn.
9. Inspectors to give certificate to owners.
10. Tobacco warehouses; persons applying, may erect, on giving bond.
11. Inspector, how appointed; duty of; vacancies, how filled.
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13. Duty of inspector: penalty for neglect of.
14. Books to be kept: entries therein; inspection and weighing of tobacco; form of receipt.
15. Tobacco refused, how disposed of; transferring tobacco for re-inspection.

## SECTION

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[Approved March 3, 1845. Rev. Stat. 1845, p. 236.]

SECTION I. 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.

SEC. II. 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.

SEC. III. 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 of 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 summon 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 chapter, 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 chapter; which said sum shall be recovered by action of debt before the circuit court, for any willful 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.

SEC. IV. All inspectors to be appointed by virtue of this chapter, 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, Sundays 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 chapter, 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.

SEC. V. 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.

SEC. VI. Each hogshead of tobacco shall weigh not less than nine hundred and fifty pounds, 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.

SEC. VII. It shall be the duty of the several inspectors 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.

SEC. VIII. Each and every inspector appointed by virtue of this chapter, 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. IX. It shall be the duty of the several inspectors to furnish the owner or proprietor of any of the above mentioned articles, with a certificate of the mark, number and weight of the several articles by them inspected.

SEC. X. 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 hogsheads of tobacco, and as many more as the said county commissioners may think necessary, and also keep the same in repair as long as it shall continue a public warehouse.

SEC. XI. All tobacco which shall be brought into any of the warehouses, established as hereinbefore 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 chapter, 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.

SEC. XII. Every person who shall be appointed inspector by virtue of this chapter, 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 chapter; 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 chapter, 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, merchantable and 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 exercise 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.

SEC. XIII. 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. XIV. That all persons having tobacco at a public warehouse, may have equal justice, the inspectors 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 inspectors 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 they shall find the same to be good, well conditioned, merchantable and free from trash, they shall then determine whether such tobacco is of the first 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; they shall also issue a receipt for each hogshead of tobacco they shall pass, if requested by the owner, which receipt shall be in the following form, to wit:

"At \_\_\_\_\_ warehouse, county of \_\_\_\_\_, this \_\_\_\_\_ day 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:

NUMBER.	MARKS.	GROSS.	TARE.	NET.
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to be delivered to the said \_\_\_\_\_ or order for exportation, when demanded.  
Witness my hand: \_\_\_\_\_"

And no inspector shall presume to issue, under any pretense 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.

SEC. XV. 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 offense 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 hereinbefore 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.

SEC. XVI. For every hogshead of tobacco inspected at any of the warehouses established by virtue of this chapter, the planter or owner of the same shall pay to the inspector fifty cents, whether the same shall be passed or refused; and 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 cooperating 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.

SEC. XVII. 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.

SEC. XVIII. 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 nowise 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

aforsaid; 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 unmerchable, or of less quantity, or of different quality from that specified in the receipt given for the same, anything herein contained to the contrary notwithstanding.

SEC. XIX. 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.

SEC. XX. 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 brought, 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 him, 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 willful and corrupt perjury.

SEC. XXI. 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 him as hereinbefore 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. XXII. 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 gauge,) 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.

SEC. XXIII. 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.

SEC. XXIV. Any inspector who shall take, accept or receive, directly or indirectly, any gratuity, fee or reward, for anything so done, in pursuance of this chapter, other than the payments and allowances hereinbefore 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 offense shall have been committed, and shall, moreover, be removed from office; and if any person shall offer any bribe to any inspector, for anything by him to be done in pursuance of this chapter, other than the payments and allowances hereinbefore 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 offense shall have been committed.

SEC. XXV. Any person who shall alter or change the face of a note for passed or refused tobacco, or who shall alter or cause to be altered, 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.

SEC. XXVI. Any person who shall erect a warehouse in pursuance of this chapter, shall, in addition to the requisitions hereinbefore 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.

SEC. XXVII. The county commissioners' courts of counties wherein 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 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 dis-

charge 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 chapter, to be paid out of the county treasury: *Provided*, That such compensation shall not exceed thirty dollars in one year.

Sec. XXVIII. The inspectors of tobacco 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. XXIX. All penalties and forfeitures in this chapter 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. XXX. 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 chapter, 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. XXXI. 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 chapter, 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.

PRIOR LAWS. An act to establish inspections within this State; approved March 23, 1819. Laws, 1819, p. 199. Rev. Laws, 1833, p. 337.

An act establishing and regulating the inspection of tobacco in this State; approved Jan. 12, 1829. Rev. Laws, 1833, p. 339.

## CHAPTER LIV.

## INTEREST.

## SECTION

1. Interest fixed at six per cent.
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5. Further provisions and penalties.
6. Persons paying usury, may recover three-fold, if suit be brought within two years.

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7. Parties may be witnesses in certain cases.
8. Townships, at their annual election for trustees, may vote to take interest on school moneys loaned at a rate of interest from eight to twelve per cent.
9. Interest allowed.
10. On trial on promissory note, reserving illegal interest, what defendant may plead, &c.
11. Corporation not to interpose defense of usury.
12. Definition of the term "corporation."
13. When act to take effect.

(Approved March 3, 1845. Rev. Stat. 1845, p. 234. In force May 1, 1845. See Laws, 1845, p. 40, Sec. 3.)

(1.) SECTION I. 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.

(2.) SEC. II. Creditors 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.

(3.) SEC. III. 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.

(4.) SEC. IV. 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 chapter, the defendant shall recover his full costs, and the

plaintiff shall forfeit three-fold 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 three-fold 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.

(5.) SEC. V. 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 the loan, forbearance or discount of any money, goods or things in action, than is prescribed by this chapter, he, she or they shall forfeit and pay to the person suing for the same, three-fold 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.

(6.) SEC. VI. 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, three-fold 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.

(7.) SEC. VII. 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.

(8.) SEC. VIII. Any township in this State, having school, college or seminary funds to loan, may hereafter loan the same, at any rate of interest not less than eight per cent. nor more than twelve per cent. per annum; the rate to be fixed by a majority of the legal voters of said townships respectively, who shall, at every election for township trustees, vote the rate of interest at which said fund shall be loaned, until their next election for trustees, any law to the contrary notwithstanding.

An Act to amend the Interest Laws of this State.

[Approved Jan. 30, 1849. Laws, 1849, (1st Sess.) p. 98.]

(9.) SEC. I. *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, money may be loaned at such rate of interest, not exceeding ten per cent. per annum on each hundred dollars, as the parties may agree upon; anything in the laws of this State to the contrary notwithstanding.

(10.) SEC. II. In the trial of any action brought upon a promissory note or writing obligatory in any of the courts of this State, wherein is reserved a higher rate of interest than six per cent. per annum, it shall be lawful for the defendant to set up and plead, as a defense in any such suit, that the consideration of said note or writing obligatory, upon which such

suit is brought, was not "money loaned," upon which 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; and if, upon the trial of the said issue, it shall be found that the said note or writing obligatory, upon which such suit is brought, was not given for money loaned, then the said court shall render judgment for the principal sum in the said promissory note or writing obligatory, and six per cent. interest thereon.

An Act to prohibit Corporations from interposing the Defense of Usury in any Action.

[Approved Feb. 11, 1853. Laws, 1853, p. 34.]

(11.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That no corporation shall hereafter interpose the defense of usury in any action.

(12.) SEC. II. The term corporation, as used in this act, shall be construed to include all associations and joint stock companies, having any of the powers and privileges of corporations not possessed by individuals or partnerships.

(13.) SEC. III. This act shall take effect from and after its passage.

PRIOR LAWS. An act regulating the interest of money; approved March 2, 1819. Laws, 1819, p. 106.

An act to regulate the interest of money; in force April 2, 1833. Rev. Laws, 1833, p. 348.

DECISIONS. The interest, payable on a contract, is merged in the judgment upon such contract; and the rate of interest upon the judgment is controlled by the statute and not by the contract. *Mason et al. v. Eakle*, Breese, 52.

A party suing here, on a judgment rendered in another State, need not allege in his declaration, that by the laws of the foreign State, interest was recoverable on judgments, in order to recover interest here. *Prince v. Lamb*, Breese, 298.

Statute interest may be defined to be the legal damage or penalty for the unjust detention of money due. A county is not bound to pay interest on county orders, without an express contract to that effect. *Madison County et al. v. Bartlett*, 1 S. 67.

Upon an appeal to the circuit court, from the judgment of a justice, rendered on a note bearing interest, interest should be calculated on the note to the time of the judgment in the circuit court, and not on the judgment of the justice. Interest may be calculated at any rate the parties may agree on. *Tindall v. Meeker*, 1 S. 137.

The words "with three dollars per month interest after due till paid," mean, three dollars per month, and not thirty-six per cent. per annum. *Latham v. Darling*, 1 S. 203.

When no specific agreement is made as to the rate of interest, the legal rate is intended. *Prevo v. Lathrop*, 1 S. 305.

Interest is recoverable upon an account for goods sold, from the time the amount is ascertained and liquidated by the parties. On an appeal from a justice, the circuit court may give judgment for more than the amount claimed before the justice, if the excess is interest. *Lorton v. Gilliam et al.*, 1 S. 577.

A defendant cannot avail himself of the statute against usury, without pleading the same, and upon application to the court. *Murray v. Crocker*, 1 S. 213.

On a note made in another State, interest should be allowed according to our laws, where the laws of the foreign State are not averred, or where it is not alleged that interest is allowed in the foreign State. *Forsyth et al. v. Baxter et al.*, 2 S. 9.

Interest is legally incident to a debt on a note over due, and is given in a judgment, in the form of damages, without being claimed specifically by the pleadings. *McConnel v. Thomas*, 2 S. 213.

The bona fide purchase of a note, in the usual course of business, at whatever rate of discount, is not usurious, where the original consideration was not usurious. *Raplee v. Morgan*, 2 S. 561.

To constitute usury, there must be a corrupt agreement, in some way, to take or reserve a greater amount of interest than that allowed by law. If the contract be fair on its face, proof aliunde is admissible, to show the usury, and it is a question of fact for a jury. Under the statute of this State, interest may be reserved in advance without usury. Our statute does not make an usurious contract void. *McGill et al. v. Ware*, 4 S. 21.



Interest cannot be recovered against a drayman for failing to deliver goods which he undertook to deliver. *Douling v. Stewart*, 3 S. 193.

The defense of usury is in the nature of a penal action, and the plea should state specifically the amount forborne, the time of forbearance, and how much was paid or agreed to be paid, by way of interest, for the forbearance; and to constitute usury, there must be a borrowing and lending of money, or the forbearance of a pre-existing debt. It is not usury to take money in consideration of postponing a sale decreed in chancery, when the money is applied in part payment of the debt. *Hancock v. Hodyson*, 3 S. 329.

D., wanting money, conveyed to R. a lot of land, worth \$250 or \$300, and together with H., at the same time, gave R. a bond with the condition, that if in two years thereafter, R. should re-convey the land to D., then D. and H. should pay R. \$1000. Upon the execution of the deed by D. and the bond by D. and H., R. paid D. \$500. The whole was one transaction, and held to be usurious. The deed and bond together were merely a mortgage, to secure the money advanced, with illegal interest. *Delano et al. v. Rood*, 1 G. 690.

If an usurious transaction is attempted to be covered up by a pretended sale, it is indirectly within the statute; and where the purchaser, at the time of sale, reserves the right to return the thing purchased, and then to compel the vendor to repay the consideration, with more than lawful interest, the transaction is usurious. *Idem*.

The defense of usury cannot be made on the trial of an appeal from a justice, if not made before the justice. *Bates v. Bulkley*, 2 G. 389.

Upon an assessment of unliquidated damages arising *ex contractu*, interest is not allowed. Where, under a common agreement of several, to advance or expend money in equal proportions, one advances more than his share, he will be entitled to interest for the excess. *Buckmaster v. Grundy et al.*, 3 G. 626.

In equity, the form of the contract will not prevent the introduction of evidence to sustain the defense of usury, and such evidence may be by parol. *Ferguson v. Sutphen*, 3 G. 547.

One who has collected money for another, and neglected to pay it over in a reasonable time, is liable for interest. *Bedell v. Janney et al.*, 4 G. 193.

Where a contract, made in another State, and usurious by the laws of that State, is sought to be enforced here, the *lex fori* will govern, and not the *lex loci*. *Sherman et al. v. Gassett et al.*, 4 G. 521.

Money extracted by compulsion, or by taking unfair advantage, can be recovered back, with interest. *La Salle County v. Simmons*, 5 G. 513.

Countries are not liable to pay interest on their contracts, except upon express agreement. *Pike County v. Hosford*, 11 Ill. 170.

Interest in this State is recoverable only in actions *ex contractu*, in the cases specified in the statute, where there is an express promise to pay interest, or such promise can be inferred from the circumstances, the particular mode of dealing adopted by the parties, or the usage of their trade. *Stennis v. Clark*, 13 Ill. 545; *Hitt v. Allen*, 13 Ill. 592. See also, *Clement v. McConnell*, 14 Ill. 154.

Interest does not run upon money due on a parol contract, unless there be unreasonable and vexatious delay of payment. Interest is allowed upon money due by written contract, or due on settlement of accounts. *Hitt v. Allen*, 13 Ill. 592.

Where by the terms of a contract, a party can fulfill it by paying the real, legal amount due, the contract is not usurious. *Lawrence v. Coates*, 13 Ill. 577.

A note payable "in Baltimore bank notes, with twelve and one half per cent. interest," is not an usurious contract. The risk and hazard of loss in such a case takes the transaction out of the statute; but the risk of death or insolvency would not. A promissory note not originally tainted with usury, may be sold at any discount, without usury. *Stevenson v. Unkefer*, 14 Ill. 103.

A forwarding and commission merchant is not entitled to interest upon his commission charges for freight money advanced, unless there be an unreasonable and vexatious delay of payment. *Kennedy et al. v. Gibbs et al.*, 15 Ill. 406.

At a public land sale, one agreed with the occupier of the land to bid off his claims as occupant, take the title in his own name, and advance the money necessary, at twenty per cent. per annum: Held, to be a loan, and usurious. *Davis et al. v. Hopkins*, 15 Ill. 519.

## CHAPTER LV.

## JAILS AND JAILERS.

## SECTION

1. Jail to be kept in each county.
2. Sheriff to have custody of; may appoint jailer.
3. Duty of sheriff and jailer to receive and discharge prisoners.
4. Criminals and debtors not to be confined in same room.
5. Persons convicted, if able, to pay expense of commitment, and support in jail.
6. When prisoner is unable to support himself, county commissioners' court may make allowance.
7. Sheriff shall permit prisoner, not under conviction for felony, to have drink, food and clothing; grand jury to visit jail, and make report; duty of circuit court to inquire, &c.
8. Food; spirituous liquors, regulation as to.
9. Jailer to receive prisoners committed under the authority of the courts of the United States.
10. Duty of jailer in such cases; penalty for neglect of; his compensation for keeping prisoners.

## SECTION

11. When jail is insufficient, duty of sheriff to hire guards, &c.
12. When there is no jail, prisoners to be removed to another county.
13. When prisoner so committed, sheriff to notify judge; further proceedings; penalty, if sheriff or jailer fail to make proper return; how recovered; fees.
14. How expenses paid in criminal suits; how in civil.
15. Sheriff may be imprisoned in his own jail.
16. Sheriffs and jailers to furnish blankets, &c., for the use of jails.
17. Commissioners' court to make allowance for payment of above articles.
18. Penalty for violation of above provisions.
19. Repealing clause; compensation to jailer.
20. Prisoner being unable to pay board and jail fees, and the law making no provision, county to pay. When act shall be in force.

[Approved March 3, 1845. Rev. Stat. 1845, p. 296.]

(1.) SECTION I. 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.

(2.) SEC. II. 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.

(3.) SEC. III. 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 offenses against this State, or who shall be committed to such jail by any competent authority, until discharged by due course of law.

(4.) SEC. IV. 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.

(5.) SEC. V. 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.

(6.) SEC. VI. 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.

(7.) SEC. VII. 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 offense, except on conviction of any felonious offense, 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 inquire 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 inquire and see that all prisoners, civil and criminal, are humanely treated.

(8.) SEC. VIII. 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.

(9.) SEC. IX. 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.

(10.) SEC. X. 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 offenses.

(11.) SEC. XI. 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 offense 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.

(12.) SEC. XII. 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.

(13.) SEC. XIII. It shall be the duty of the sheriff so committing any person or persons as aforesaid, for any criminal offense, 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 offenses, 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 discretion 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 chapter, shall be entitled to the like fees as are provided by law for similar services.

(14.) Sec. XIV. In all cases where a person is committed from another county, for a criminal offense under this chapter, such county or the prisoner shall pay the expenses, in the same manner as if the commitment had been in the county where the offense 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.

(15.) Sec. XV. 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.

An Act to amend the Law in relation to Jails and Jailers.

[Approved Feb. 28, 1847. Laws, 1847, p. 55.]

(16.) Sec. I. *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 sheriffs and jailers in the several counties in this State, to furnish, for the use of the jails of their respective counties, a sufficiency of good blankets and bedding, for the comfortable lodging of all persons that may, from time to time, be confined therein; and it shall also be the duty of said sheriffs or jailers to keep their jails clean, and in such order and condition as will not endanger the health of persons that may be confined therein.

(17.) Sec. II. It shall be the duty of the county commissioners' courts of the several counties in this State, to make such an allowance, from time to time, out of the county treasury, as shall be just and right, for the articles required to be furnished, as is provided for in the first section of this act.

(18.) Sec. III. Any sheriff or jailer who shall fail or refuse to comply with the provisions of the first section of this act, shall be liable to indictment, and, upon conviction thereof, be fined in any sum not exceeding fifty dollars, before any court having jurisdiction of the same.

(19.) Sec. IV. So much of the existing laws as allow sheriffs or jailers thirty-seven and a half cents per day for dieting prisoners, be and the same is hereby repealed; and hereafter the county commissioners' courts, of the several counties in this State, shall make such an allowance therefor, not to exceed thirty-seven cents per day, as they shall deem just and proper.

An Act for the Relief of Certain Officers therein named.

[Approved Feb. 10, 1849. Laws, 1849, (1st Sess.) p. 119.]

(20.) Sec. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases hereafter, or which have heretofore happened, when persons are committed to any common jail, by virtue of any warrant of commitment of any justice of the peace, or other judicial authority within this State, and such person is unable to pay for board and jail fees, or shall be discharged from such imprisonment by order of any competent authority; and also, in all cases where the law makes no

provision for such payment, the county where the cause of such imprisonment accrued, shall pay the sheriff of such county his proper fees and charges, including board, accruing by virtue of such imprisonment. This act shall be in force from and after its passage.

See, *ante*, p. 112, under title "ATTORNEYS AND COUNSELORS AT LAW," "An act for the security of personal liberty."

PRIOR LAWS. An act for the safe-keeping of prisoners; approved March 22, 1819. Laws, 1819, p. 160.

An act authorizing and requiring the county commissioners to cause jails to be erected in each and every county within this State; approved March 24, 1819. Laws, 1819, p. 237.

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 22, 1819. Laws, 1819, p. 165.

An act for the safe-keeping of prisoners committed to any jail in this State, under the authority of the United States. Laws, 1821, p. 30.

An act concerning jails and jailers; in force July 1, 1827. Rev. Laws, 1827, p. 246; Rev. Laws, 1833, p. 366.

## CHAPTER LVI.

### JOINT RIGHTS AND OBLIGATIONS.

#### SECTION

1. Estate of joint tenants, how to pass: who to be tenants in common, in case of death of any party.

#### SECTION

2. Penalty for injuring property held in joint tenancy.

3. Joint obligations, how construed.

[Approved March 8, 1845. Rev. Stat. 1845, p. 299.]

SECTION I. 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. II. If any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy, tenancy in common or co-parcenary, the party aggrieved shall have his action of trespass or trover, for the injury, in the same manner as he would have if such joint tenancy, tenancy in common, or co-parcenary, did not exist.

SEC. III. All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

PRIOR LAWS. An act concerning partitions, and joint rights and obligations; in force Jan. 13 1821. Laws, 1821, p. 14; Rev. Laws, 1833, p. 473.

## CHAPTER LVII.

## JUDGMENTS, MORTGAGES AND EXECUTIONS.

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| <p>SECTION</p> <p>1. What property subject to execution: judgment, how long a lien on real estate; <i>proviso</i>, that execution be issued in one year, unless party restrained by injunction: term "real estate"; defined.</p> <p>2. Death of defendant before issue of execution, not to defeat right of plaintiff in certain cases.</p> <p>3. Holders of certificates of land subject to provisions hereof.</p> <p>4. Interest on judgments may be collected.</p> <p>5. Execution may issue to any county.</p> <p>6. When judgment is for <i>tort</i>, execution may issue against the body.</p> <p>7. Execution not to issue against heir, &amp;c., unless he be in some default.</p> <p>8. Execution, when returnable; when execution may bind personal property, duty of sheriff as to time.</p> <p>9. Plaintiff may elect what property to take; exception.</p> <p>10. Division of property to be made, in selling, if advantageous.</p> <p>11. Mode of selling lands prescribed; sheriff, how punished for neglect of duty: sale to be valid.</p> <p>12. On sale of lands, sheriff to give certificate of sale; to file duplicate; certificate to be evidence.</p> <p>13. Defendant, his heirs, &amp;c., may redeem in one year from time of sale.</p> <p>14. Judgment creditor may redeem in fifteen months, by paying ten per cent. interest, and have land sold again on his execution.</p> <p>15. Redeeming creditor, considered as bidder; others may bid: rights of respective creditors.</p> <p>16. The whole or a part of lands sold may be redeemed.</p> <p>17. Sheriff's commission; certificate where filed.</p> <p>18. Certificate assignable by indorsement; purchaser or holder of certificate entitled to deed if land be not redeemed.</p> <p>19. Form of deed.</p> <p>20. In case of assignment of certificate.</p> <p>21. Deed, what considered evidence of; rights under it.</p> <p>22. Duties of officer selling specifically enjoined.</p> <p>23. <i>Scire facias</i>, mortgage may be foreclosed by: proceedings in such cases: service, appearance, trial, judgment, cost, &amp;c., and their incidents; no other than mortgaged property liable to execution.</p> <p>24. Lands sold under mortgage may be redeemed in the same manner as lands sold on execution.</p> | <p>SECTION</p> <p>25. Secret liens provided against; officer attaching, to file certificate thereof, in recorder's office.</p> <p>26. Duty of officer; when lien to operate.</p> <p>27. Duty of recorder to record certificate; fee therefor.</p> <p>28. Form of sheriff's certificate.</p> <p>29. Notice of sale to be given.</p> <p>30. Defendant in execution may retain property levied on, by giving bond.</p> <p>31. If property not forthcoming, sheriff may levy on property of defendant and his security; no other delivery bond allowed.</p> <p>32. Necessary wearing apparel of every person exempt from execution.</p> <p>33. Property of head of family, what exempt from execution.</p> <p>34. If head of family die, or be absent, family to have same rights, &amp;c.</p> <p>35. Officer levying on property exempt, subject to penalty.</p> <p>36. Exception as to executions issued by magistrates.</p> <p>37. If defendant in execution die after judgment, how plaintiff to proceed.</p> <p>38. If no property be found, plaintiff may have garnishee process, &amp;c.</p> <p>39. Defect in proceedings, how cured.</p> <p>40. Death of plaintiff, proceedings in case of.</p> <p>41. Lien on property, not discharged by death of creditor.</p> <p>42. Executors and administrators of deceased plaintiff, may bid off property to secure claim.</p> <p>43. "Property law" of January 8, 1843, not disturbed.</p> <p>44. Home-stead not to be sold on execution.</p> <p>45. Exception.</p> <p>46. Proceedings when value exceeds \$1,000, and premises divisible.</p> <p>47. When premises are of greater value and indivisible, what proceedings.</p> <p>48. When premises to be sold; <i>proviso</i>.</p> <p>49. Costs, how charged.</p> <p>50. When act shall take effect.</p> <p>51. Certificates of purchase to be filed, &amp;c.</p> <p>52. Redemption from sale, instrument evidencing, to be recorded.</p> <p>53. When act shall take effect.</p> |
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[Approved March 3, 1845. Rev. Stat. 1845, p. 300.]

(1.) SECTION I. All and singular the 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 any 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: *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. The term "real estate" in this section shall be construed to include all interest of the defendant, or any person to his use, held or claimed by virtue of any deed, bond, covenant or otherwise, for a conveyance, or as mortgagee or mortgagor of lands in fee, for life or for years.

(2.) SEC. II. 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.

(3.) SEC. III. 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 chapter.

(4.) SEC. IV. 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.

(5.) SEC. V. It shall be lawful for the party in whose favor any judgment as aforesaid may be obtained, to have execution in the usual form, directed to any county in this State, against the goods, chattels, lands and tenements of such party defendant, or upon his body, when the same is authorized by law, provided that no execution shall issue against the body of such debtor, except as is provided in chapter fifty-two of the Revised Statutes.

(6.) SEC. VI. Nothing herein shall restrain or prevent any execution from being issued against the body of any defendant, where the judgment shall have been obtained for a *tort* or trespass committed by such defendant.

(7.) SEC. VII. No execution shall be issued against the body, or against the goods, 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.

(8.) SEC. VIII. 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, until 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, indorse upon the back thereof, the hour, day of the month and year, when he received the same.

(9.) SEC. IX. The plaintiff in 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, excepting and reserving, however, to the defendant in execution, such property as is or may be by law exempt from execution.

(10.) SEC. X. When any property, real or personal, shall be taken in execution, if such property is susceptible of division, it shall be sold in such quantities as may be necessary to satisfy such execution and costs.

(11.) SEC. XI. 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, the sheriff or other officer so offending, shall, for every such offense, forfeit and pay the sum of fifty dollars, to be recovered with costs of suit, in any court of record in this State, by the person whose lands may have been advertised for sale: *Provided, however,* That no such offense, nor any irregularity on the part of the sheriff or other officer having the execution, shall be deemed to affect the validity of any sale made under it, unless it shall be made to appear that the purchaser had notice of such irregularity.

(12.) SEC. XII. Whenever any lands or tenements shall be sold by virtue of any execution, 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 lands 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 this chapter; and such sheriff or other officer shall, within ten days from such sale, file in the office of the recorder of the county a duplicate of such certificate, signed by him; and such certificate, or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained.

(13.) SEC. XIII. It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold 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 paid as aforesaid, the said sale and the certificate thereupon granted shall be null and void.

(14.) SEC. XIV. After the expiration of twelve months, and at any time before the expiration of fifteen months, from the sale of any lands or tenements under the provisions of the preceding sections hereof, it shall be lawful for any judgment creditor to redeem the same in the manner following: Such judgment creditor shall sue out an execution upon his judgment, and place the same in the hands of the proper officer to execute the same, and thereupon said officer shall indorse upon the back of said execution a levy upon the land or tenements which said judgment creditor

may wish to redeem; and said judgment creditor shall pay to said officer in whose hands he shall have placed his execution as aforesaid, the amount of money for which said premises shall have been sold, with ten per centum per annum interest thereon, from the date of such sale, for the use of the purchaser thereof, his executors, administrators or assigns, upon payment of which, said officer shall file, in the recorder's office of the county in which said lands are situated, a certificate of the redemption thereof by said judgment creditor under said execution, and shall advertise and offer the same for sale under and by virtue of said execution, in the same manner that other lands are required to be advertised and exposed to sale on execution in other cases.

(15.) SEC. XV. Any judgment creditor, having so redeemed such lands, shall be considered as having bid at such sale the amount of said redemption money so paid by him, and interest thereon from the date of such redemption to the day of sale; and if no bid greater than said amount shall be offered, the lands shall be struck off and sold to such judgment creditor or creditors, and a deed thereof shall forthwith be executed by such officer to such creditor or creditors, and no other redemption shall be allowed; but if another and higher bid shall be made therefor, and the said lands sold for more than the amount of said redemption money and interest as last aforesaid, the excess over and above the amount of the same, shall be applied as a credit on the execution under which the redemption shall have been made, and a certificate of purchase shall be executed to the new purchaser in the manner hereinbefore prescribed, for a deed of said land so sold within sixty days from the date of such sale, unless the same shall be redeemed in the meantime in the manner herein prescribed by some other judgment creditor; and if said lands shall be redeemed from said second purchaser, the same shall be done in the same manner and upon the same terms, and the officer shall proceed in the same mode to offer the said lands for sale as is hereinbefore required in the case of the first redemption; and such lands may be successively redeemed within every period of sixty days, so long as there shall be a judgment creditor disposed to redeem the same, on the terms and in the manner aforesaid; and after the lapse of any period of sixty days without redemption, it shall be the duty of the officer who last sold such lands on the execution under which the same shall have been last redeemed, or his successor in office, to execute a deed for the lands so sold to the last purchaser, in like manner as other deeds for lands sold on execution are made.

(16.) SEC. XVI. Any judgment creditor or creditors may redeem the whole or any part or portion of the lands or tenements previously sold upon execution: *Provided,* Such redemption shall be made in the like distinct quantities or parcels in which the same were sold.

(17.) SEC. XVII. No commission upon the amount of the redemption money paid in any case shall be allowed to the officer receiving the same, but the usual commission shall be allowed the officer selling said premises on the excess made over and above the amount of said redemption money and interest. The duplicate copy of the certificate of purchase required in the twelfth section hereof, shall be filed in the office of the recorder of the county in which the lands so sold under execution shall be situated.

(18.) SEC. XVIII. Every certificate which shall be given by any officer

to any purchaser under the provisions of this chapter, shall be assignable by indorsement thereon, under the hand of such purchaser or purchasers, his, her or their heirs, executors, administrators or assigns; and every person to whom the same shall be so assigned, shall be entitled to the same benefits therefrom in every respect that the person therein named would have been, if the same had not been assigned, and, in case the lands mentioned in such certificate shall not be redeemed in pursuance of law, shall be entitled to a deed therefor.

(19.) SEC. XIX. The deed to be executed by the officer to the purchaser under the provisions of this chapter, shall contain a statement of the judgment upon which the lands therein described were sold, and of the date of the execution, and may be in the following form:

"Whereas, A. B. did, at the term of the circuit court for the county of \_\_\_\_\_, (as the case may be,) recover a judgment against C. D., for the sum of \_\_\_\_\_, and costs of suit, upon which judgment an execution was issued, dated on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, directed to \_\_\_\_\_ to execute, and by virtue of said execution the said \_\_\_\_\_ levied upon the lands hereinafter described, and the same were struck off and sold to \_\_\_\_\_, he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to law:

Now, therefore, know all by this deed, that I, \_\_\_\_\_, of said county of \_\_\_\_\_, in consideration of the premises, have granted, bargained and sold, and do hereby convey to the said \_\_\_\_\_, his (her or their) heirs and assigns, the following described tract or tracts of land: (here describe the lands,) to have and to hold the said described premises, with all the appurtenances thereto belonging, to the said \_\_\_\_\_, his heirs and assigns forever.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

[L. s.]"

(20.) SEC. XX. If the purchaser shall have assigned his certificate of purchase, then there may be inserted after the word "law" in the foregoing form, in substance as follows: "And the said \_\_\_\_\_, having duly assigned his certificate of purchase to," (as the case may be.)

(21.) SEC. XXI. Any deed so executed shall be evidence that the provisions of the law in relation to sales of lands upon execution were complied with until the contrary shall be shown, and such deed shall be considered as conveying to the grantee therein named, all the title, estate and interest of the defendant or defendants in the execution therein named, in and to the lands thereby conveyed, of whatsoever nature the same may be; but such deed shall not be construed to contain any covenant upon the part of the officer executing the same.

(22.) SEC. XXII. 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.

(23.) SEC. XXIII. 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 installments, 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 show 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 the defense, 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 *feri 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 sum of money or any part thereof, secured by the mortgage deed.

(24.) SEC. XXIV. In all cases hereafter, where lands shall be sold under and by virtue of any decree of a court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagor of such lands, his heirs, executors, administrators or grantors, to redeem the same in the manner prescribed in this chapter, for the redemption of lands sold by virtue of executions issued upon judgments at common law, and judgment creditors may redeem lands sold under any such decree in the same manner as is prescribed for the redemption of lands in like manner sold upon executions issued upon judgments at common law.

(25.) SEC. XXV. When a writ of attachment or a writ of execution is issued from the circuit court of one county, to any sheriff or other officer of another county, and levied upon any real estate in such county, it shall be the duty of the officer making such levy, to make a certificate thereof, and file the same in the recorder's office of the county where such real estate is situated; and until the filing of such certificate, such levy shall not take effect as to creditors or *bona fide* purchasers without notice.

(26.) SEC. XXVI. When a writ of attachment is levied upon any real estate, in any case, it shall be the duty of the officer making the levy, to file a certificate of such fact with the recorder of the county where such land is situated; and from and after the filing of the same, such levy shall take effect as to creditors and *bona fide* purchasers without notice, and not before.

(27.) SEC. XXVII. It shall be the duty of the recorder of the proper county, to file and record the certificates mentioned in the foregoing sections, in a book to be kept for that purpose; for which he shall be entitled to receive the same fees as for recording other papers, to be paid by the plaintiff in such execution or attachment, and be taxed and collected by the sheriff as other costs.



(28.) SEC. XXVIII. Such certificate may be in substance in the following form:

"STATE OF ILLINOIS, }  
County, } ss. I do hereby certify that by virtue of a certain writ of \_\_\_\_\_ to  
me directed, from the circuit court of \_\_\_\_\_ county, in favor of \_\_\_\_\_, against \_\_\_\_\_, dated \_\_\_\_\_  
day of \_\_\_\_\_, 18—, I did, on this \_\_\_\_\_ day of \_\_\_\_\_, 18—, levy upon the following real estate: (*here describe it.*)

A. B.,  
Sheriff (or coroner, *as the case may be,*) of \_\_\_\_\_ county."

(29.) SEC. XXIX. 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.

(30.) SEC. XXX. Whenever a sheriff or other officer shall have levied an execution, issued out of any court of record, upon the personal property of a 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.

(31.) SEC. XXXI. Where bonds 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 notice thereof, as prescribed in section twenty-nine of this chapter, and no future delivery bond shall be allowed.

(32.) SEC. XXXII. The necessary wearing apparel of every person shall be exempt from execution, writ of attachment and distress for rent.

(33.) SEC. XXXIII. The following property, when owned by any person being the head of a family and residing with the same, shall be exempt from levy and sale on any execution, writ of attachment, or distress for rent; and such articles of property shall continue so exempt while the family of such person, or any of them, are removing from one place of residence to another in this State, viz.: 1st, necessary beds, bedsteads and bedding; the necessary utensils for cooking; necessary household furniture, not exceeding in value fifteen dollars; one pair of cards, two spinning wheels, one weaving loom and appendage; one stove and the necessary pipe therefor, being in use, or put up for ready use, in any house occupied by such family; 2nd, one milch cow and calf, two sheep for each member of the family, and the fleeces taken from the same, or the fleeces of two sheep for each member of a family which may have been purchased by any debtor not owning sheep, and the yarn and cloth that may be manufactured from the same, and sixty dollars' worth of property, suited to his or her condition or occupation in life, to be selected by the debtor; 3rd, necessary provisions and fuel for the use

of the family for three months, and necessary food for the stock hereinbefore exempted from sale, or that may be held under the provisions of this chapter.

(34.) SEC. XXXIV. Whenever, in any case, the head of a family shall die, desert, or cease to reside with the same, the said family shall be entitled to, and receive all the benefits and privileges which are in this chapter conferred upon the head of a family residing with the same.

(35.) SEC. XXXV. If any officer, by virtue of any execution or other process, or any other person, by any right of distress, shall take or seize any of the articles of property hereinbefore exempted from levy and sale, such officer or person shall be liable to the party injured for three times the value of the property illegally taken or seized, to be recovered by action of trespass, with costs of suit.

(36.) SEC. XXXVI. Nothing contained in this chapter shall apply to judgments rendered and executions issued by justices of the peace, excepting such as relate to executions levied upon personal property.

(37.) SEC. XXXVII. Whenever a judgment has been or may hereafter be obtained in any court of record of this State, against any person or persons, who has or shall after the rendition of said judgment, die, it shall be lawful for execution to issue against the lands and tenements of said deceased person or persons, without first reviving the judgment against their heirs or legal representatives: *Provided, however,* The plaintiff or plaintiffs in execution, or his or their attorney, shall give to the executor or administrator, if there be any, of said deceased person or persons, at least three months' notice in writing, of the existence of said judgment before the issuing of execution: *And provided, further,* That no execution shall issue until after the expiration of twelve months from the death of such deceased person or persons.

(38.) SEC. XXXVIII. Whenever a judgment shall be rendered by any court of record, or any justice of the peace, in this State, and an execution against the defendant or defendants in said judgment shall be returned by the proper officer, "no property found," on the affidavit of the plaintiff, or other credible person, being made before the clerk of said court, or justice of the peace, that said defendant or defendants have no property within the knowledge of said affiant, in his or their possession, liable to execution; and that such affiant hath just reason to believe that another person or persons is or are indebted to such defendant or defendants, or hath or have any effects or estate of such defendant or defendants in his or their hands, it shall be lawful for said court or justice of the peace, to cause the person or persons supposed to be indebted to, or supposed to have any of the effects or estate of the said defendant or defendants, to be summoned forthwith to appear before said court or justice, as a garnishee or garnishees; and said court or justice of the peace shall examine and proceed against such garnishee or garnishees, in the same manner as is required by law against garnishees in original attachments.

(39.) SEC. XXXIX. No proceedings against a garnishee or garnishees shall be quashed or set aside, or said garnishee or garnishees discharged on account of any insufficiency of the original affidavit or summons, if the plaintiff or plaintiffs, or other credible person for him, shall cause a legal and sufficient affidavit to be filed, or the summons to be amended in such

time and manner as the courts or justices of the peace shall, respectively, in their discretion direct; and in that event, the cause shall proceed as if such proceedings had originally been sufficient.

(40.) SEC. XL. The collection of the judgments of courts of record shall not be delayed or hindered by the death of the plaintiff or person in whose name the judgment shall exist; but the executor or administrator, as the case may be, may cause the letters testamentary or of administration to be recorded in the court in which the judgment exists; after which, execution may issue and proceedings be had thereon in the name of the executor or administrator, as such, in the same manner that could or might be done or had, if the judgment exists and remains in the name and in favor of the executors or administrators, in his, her or their capacity as such executor or administrator.

(41.) SEC. XLI. The lien created by law on property shall not abate or cease by reason of the death of any plaintiff or plaintiffs; but the same shall survive in favor of the executor or administrator of the testator or intestate, whose duty it shall be to have the judgment enforced in manner aforesaid.

(42.) SEC. XLII. When it shall be necessary in order to secure the collection of any judgment in favor of any executor or administrator, it shall be the duty of such executor or administrator to bid for and become the purchaser of real estate at sheriff's sale; which real estate so purchased shall be assets in his hands, and may be again sold by him upon the order of the court of probate, and the moneys arising from such sale paid over and accounted for as other moneys in his hands.

(43.) SEC. XLIII. Nothing contained in this chapter shall be construed so as to repeal or affect in anywise the operation of an act entitled "An act regulating the sale of property on judgments and executions," approved January 6, 1843.

An Act to exempt Homesteads from Sale on Execution.

[Approved Feb. 11, 1851. Laws, 1851, p. 25.]

(44.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in addition to the property now exempt by law from sale under execution, there shall be exempt from levy and forced sale, under any process or order from any court of law or equity in this State, for debts contracted from and after the fourth day of July, A. D. 1851, the lot of ground and the buildings thereon occupied as a residence, and owned by the debtor, being a householder, and having a family, to the value of one thousand dollars. Such exemption shall continue after the death of such householder, for the benefit of the widow and family, some or one of them continuing to occupy such homestead until the youngest child shall become twenty-one years of age, and until the death of such widow; and no release or waiver of such exemption shall be valid unless the same shall be in writing, subscribed by such householder, and acknowledged in the same manner as conveyances of real estate are by law required to be acknowledged.

(45.) SEC. II. But no property shall, by virtue of this act, be exempt from sale for non-payment of taxes on assessments, or for a debt or liability incurred for the purchase or improvement thereof.

(46.) SEC. III. If, in the opinion of the creditors or officer holding an execution against such householder, the premises claimed by him or her as exempt are worth more than one thousand dollars, such officer shall summon six qualified jurors of his county, who shall, upon oath, to be administered to them by the officer, appraise said premises, and if, in their opinion, the property may be divided without injury to the interest of the parties, they shall set off so much of said premises, including the dwelling-house, as in their opinion shall be worth one thousand dollars, and the residue of said premises may be advertised and sold by such officer.

(47.) SEC. IV. In case the value of the premises shall, in the opinion of the jury, be more than one thousand dollars, and cannot be divided as is provided for in this act, they shall make and sign an appraisal of the value thereof, and deliver the same to the officer, who shall deliver a copy thereof to the execution debtor, or to some one of the family of suitable age to understand the nature thereof, with a notice thereto attached, that unless the execution debtor shall pay to said officer the surplus over and above the one thousand dollars, on the amount due on said execution, within sixty days thereafter, that such premises will be sold.

(48.) SEC. V. In case such surplus, or the amount due on said execution, shall not be paid within the said sixty days, it shall be lawful for the officer to advertise and sell the said premises, and out of the proceeds of such sale to pay to such execution debtor the said sum of one thousand dollars, which shall be exempt from execution for one year thereafter, and apply the balance on such execution: *Provided,* That no sale shall be made unless a greater sum than one thousand dollars shall be bid therefor; in which case the officer may return the execution for the want of property.

(49.) SEC. VI. The costs and expenses of setting off such homestead, as provided herein, shall be charged and included in the officer's bill of costs upon such execution.

(50.) SEC. VII. This act shall take effect on the fourth day of July, A. D. 1851.

An Act to amend Chapter LVII, of the Revised Statutes, entitled "Judgments and Executions."

[Approved Feb. 12, 1853. Laws, 1853, p. 229.]

(51.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all certificates of purchase executed by sheriffs upon sales under executions, orders or decrees, shall be filed, recorded and paid for in the same manner as is provided in the 27th section of the above entitled act concerning certificates of levy on attachments or executions from foreign counties.

(52.) SEC. II. In all cases of redemption of land from sale had under any attachment, judgment, order or decree, or proceeding thereunder, it shall be the duty of the purchaser, sheriff, master in chancery, or other officer or person from whom said redemption takes place, to make out an instrument in writing, under his hand and seal, evidencing said redemption, which shall be recorded in the recorder's office of the proper county, in manner as other writings affecting the title to real estate are filed and recorded, and which recording shall be paid for by the party redeeming.

(53.) SEC. III. This act shall take effect and be in force at the expiration of sixty days from the passage hereof.

PRIOR LAWS. A law subjecting real estate to execution for debt; in force August 15, 1795. Repealed Jan. 19, 1802, in part. R. E. S., (Real Estate Statutes,) p. 294.

An act regulating executions; in force Sept. 17, 1807. R. E. S., p. 297.

An act supplementary to an act entitled "An act subjecting real estate to sale for debt," passed Sept. 17, 1807; in force Jan. 2, 1818. R. E. S., p. 297.

An act subjecting real estate to execution for debt, and for other purposes; in force March 22, 1819. R. E. S., p. 313. Repealed Feb. 17, 1823.

An act amending the act entitled "An act subjecting real estate to execution for debt, and for other purposes," approved March 22, 1819; in force Feb. 17, 1823. R. E. S., p. 317. Repealed Jan. 19, 1825.

An act concerning judgments and executions; in force May 1, 1825. R. E. S., p. 328.

An act to amend an act entitled "An act concerning judgments and executions," approved Jan. 17, 1825; in force Feb. 6, 1839. R. E. S., p. 337.

An act to facilitate the collection of judgments by executors and administrators; in force Feb. 19, 1841. R. E. S., p. 333.

An act to amend "An act concerning judgments and executions," approved Jan. 17, 1825; in force June 1, 1841. R. E. S., p. 339.

An act regulating the sale of property; in force Feb. 27, 1841. R. E. S., p. 343. Repealed Jan. 6, 1843.

An act entitled "An act regulating the sale of property on judgments and executions;" in force Jan. 6, 1843. R. E. S., p. 344.

An act in relation to judgments and executions; in force Feb. 25, 1843. R. E. S., p. 349.

DECISIONS. A motion to quash an execution should not be entertained by the circuit court without notice to the opposite party. *Dazey v. Orr*, 1 S. 535.

A *scire facias* on a mortgage is a proceeding *in rem.*, and the judgment should be for the sale of the mortgaged premises. *Marshall v. Maury*, 1 S. 231.

A judgment is a lien upon real estate in the county in which it is rendered, from the time of its rendition for seven years; such judgment is no lien beyond the limits of the county in which it is rendered. *Robinson v. Harlan*, 1 S. 237.

A judgment by default is irregular unless it appears, by the return of the process, when and on whom it was served. *Garrett v. Phelps*, 1 S. 331.

On the trial of the right of property, where there is a judgment, the execution may be directed to any constable. *Harrison v. Singleton*, 2 S. 21.

A variance between a first writ of execution and an *alias* or *pluries* is not material, the additional costs on each writ being properly added to each subsequent one. *Bryon et al. v. Smith et al.*, 2 S. 49.

A motion to quash an execution issued from the Madison circuit court, on a judgment rendered in the municipal court of the city of Alton, at January term, 1839; *Overruled. Mason v. Finch*, 2 S. 223.

An execution may be issued at any time, after several years have elapsed, provided the first execution was issued within a year and a day from the rendition of the judgment. *Lampsett v. Whitney*, 2 S. 442.

Neither lands, nor other property of deceased persons, can be reached by execution. *Greenwood v. Spiller*, 2 S. 504.

No judgment can be rendered against a defendant, not served with process, and who does not appear. *Merriwether v. Smith*, 2 S. 31; *Ogden v. Bowen et al.*, 2 S. 34; *Hacey v. McCoupin County*, 2 S. 36; *Rider v. Alleyne*, 2 S. 475; *Rutton et al. v. Stone et al.*, 3 S. 541; *Smith v. Byrd*, 2 G. 412.

The judgments and proceedings of a court, held at a time unauthorized by law, are wholly void. *Galusha v. Butterfield et al.*, 2 S. 227.

Where more than a year and a day has elapsed since the rendition of a judgment in the circuit court, and no execution has been issued, the clerk of the court will be justified in refusing to issue an execution. *People v. Peck*, 3 S. 118.

A sale on an execution, after a judge's order staying proceedings, is not a nullity, nor can such sale be questioned in a collateral proceeding. *Sveigart et al. v. Harber et al.*, 4 S. 371.

A circuit court cannot, in a suit against an administrator, render judgment against the lands of the intestate. *Turney v. Yates*, 12 Ill. 141; *McDowell v. Wright*, 4 S. 403.

Where an execution is issued, directed to the sheriff of one county, and delivered to and served by the sheriff of another county, the proceedings by the sheriff of such latter county are void. *Bybee v. Ashby*, 2 G. 151.

A debtor desiring to reserve property exempt from execution, should select the same before a levy is made, if duly notified; if not, he may make the selection at any time before sale. The notice to the officer need not be in writing. *McClusky v. McNeely*, 3 G. 578.

The debtor is entitled to notice although he may reside in a different county from that where the levy is made. *Idem.*

Where such debtor has less property than the law allows him, he is entitled to all that he has. *Idem.*

When a party proceeds by *scire facias* to foreclose a mortgage, he cannot afterwards resort to chancery for the same purpose; the remedies are concurrent. *State Bank v. Wilson*, 4 G. 57.

Upon a *sci. fa.* to foreclose a mortgage, the judgment is *in rem.*, and binds the mortgaged premises only; a purchaser under such judgment acquires all the right that the mortgagor had at the time of the mortgage. *Idem. Woodbury v. Manlove et al.*, 14 Ill. 213.

A judgment in the circuit court is a lien on land owned by the defendant, claiming under a certificate of entry and purchase from the United States; and such lien will not be divested by an assignment of the certificate. *Rodgers v. Brent*, 5 G. 573.

If a plaintiff fails to sue out his execution within a year and a day, his lien will be lost where the defendant has died since the judgment. *Turney v. Gates*, 12 Ill. 141.

An execution becomes a lien on personal property from the time of its delivery to a constable; a subsequent sale will not affect the rights of the plaintiff. *Marshall v. Cunningham et al.*, 13 Ill. 20.

If a creditor who has two judgments, sells on one, and the same year sells again on the second judgment, a judgment creditor who redeems from the first sale, will hold the property. *Merry v. Bestwick*, 13 Ill. 398.

One who obtains a judgment at any time within fifteen months after the sale of real estate on execution, is entitled to redeem from such sale. *Phillips v. Demoss et al.*, 14 Ill. 410.

On a *scire facias* to foreclose a mortgage, the defendant cannot plead a failure, or want of consideration, or set-off. *Woodbury v. Manlove et al.*, 14 Ill. 213.

The only defenses that can be interposed, are such as show that the mortgage was invalid as a lien, or that it has been discharged or released. *Idem.*

The owner of an equity of redemption may redeem from a sale of mortgaged premises made under a decree in chancery, where such owner was not made a party to the suit. *Bradley v. Snyder et al.*, 14 Ill. 263.

To affect this redemption he must pay the whole principal and interest due on the mortgage, and not the sum for which the premises were sold. *Idem.*

An execution cannot be levied upon a *hope* or *probability* that money may, upon the happening of some future event, become due and payable to the defendant. *Baker v. Copenbarger et al.*, 15 Ill. 103.

Where it is practicable, a sheriff, before he levies an execution, should give notice to the defendant: if he claims that his land or personal estate is exempt from execution, he should give notice of this fact to the sheriff, and furnish the officer with a description of his property liable to sale; if he neglects to do this, he will have waived his rights. *Bingham v. Maxcy*, 15 Ill. 290.

If a plaintiff dies after judgment, his personal representatives, upon recording in court letters testamentary, or of administration, may sue out an execution in his name. *Brown v. Parker*, 15 Ill. 307.

If an execution is issued after the death of the plaintiff, without reviving the judgment, or recording the letters testamentary or of administration, all proceedings under it will be void. *Idem.*

## CHAPTER LVIII.

## JURORS.

## SECTION

1. Who competent to be jurors; who incompetent.
2. Grand jury, how selected and summoned.
3. Foreman; his duties in swearing witnesses, finding bills, &c.
4. Form of oath of foreman and other grand jurors.
5. On what evidence presentments may be made.
6. Petit jury, how selected and summoned.
7. When court sits two weeks, forty-eight petit jurors to be selected.
8. Duty of clerk in impanneling jury.
9. Sheriff to summon jury, and make proper returns; penalty for neglecting.
10. If sufficient jurors do not attend, *talesmen* may be taken.
11. Jurors, how punished for non-attendance

## SECTION

12. In case of sickness, &c., juror may be discharged.
13. Jurors, how summoned for special term of court.
14. County commissioners' court may select jurors for special term.
15. Rotation of service to be observed.
16. Compensation of grand and petit jurors.
17. Compensation of *talesmen*.
18. Clerk to certify service of jurors.
19. Jury fees, how collected, and appropriated.
20. Fees of jurors in cases tried in inferior courts.
21. Fees of jurors on coroner's inquest, and how paid.
22. Increased compensation of grand and petit jurors.
23. When act shall take effect; conflicting laws repealed.

[Approved March 3, 1845. Rev. Stat. 1845. p. 308.]

(1.) SECTION I. 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 offense,) to serve on all grand and petit juries, in and for the bodies of their counties respectively.

(2.) SEC. II. 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 appear before the said 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.

(3.) SEC. III. After the grand jury is impaneled, 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 indorse thereon "a true bill;" and when they do not find a bill to be supported by sufficient evidence, to indorse thereon "not a true bill;" and shall, in either case, sign his name as foreman, at the foot of said indorsement; 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.

(4.) SEC. IV. 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."

(5.) SEC. V. 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.

(6.) SEC. VI. It shall also be the duty of the county commissioners' court in each of the counties of 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 hereinbefore directed in the case of grand juries.

(7.) SEC. VII. The county commissioners' courts of the several counties in which the circuit courts are allowed to sit two weeks, are authorized to select forty-eight qualified jurymen, to serve as petit 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.

(8.) SEC. VIII. 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 impanel 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.

(9.) SEC. IX. In all cases where any sheriff or other officer shall be commanded to execute any summons as aforesaid, he shall be required to make return thereof on or before the return day to the clerk who may have issued the same, with an indorsement 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.

(10.) SEC. X. 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 panel, 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 panel 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.

(11.) SEC. XI. 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 shown 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 show 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 show 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.

(12.) SEC. XII. 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 aforesaid, 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.

(13.) SEC. XIII. Whenever a failure takes place to hold a regular term of any of the circuit courts of this State, and a special term of said court is called, it shall be the duty of the sheriff to summon, for said special term, the list of grand and petit jurors furnished for the regular term preceding.

(14.) SEC. XIV. The county commissioners' courts of this State are hereby authorized, at any special term of their courts, to select lists of grand and petit jurors in the manner herein provided, for any special term of the circuit courts in their respective counties.

(15.) SEC. XV. 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.

(16.) SEC. XVI. There shall be allowed and paid to grand and petit jurors for their services in attending circuit courts of the several counties in this State, the sum of seventy-five cents per day, for every day necessary in attending courts as aforesaid, as such jurors, and for every mile of necessary travel, to be computed from the place of holding courts, to the residence of the juror, five cents per mile, to be paid out of the county treasury, as now provided by law, for the payment of grand and petit jurors.

(17.) SEC. XVII. Whenever any person shall be summoned as *talesman*, to attend any circuit court as a petit juror and shall be detained, as such, longer than one day, such person so summoned shall be allowed mileage

from the place of holding courts to the residence of such juror, in the same manner as though such person had been originally selected and summoned. Mileage only to be computed one way.

(18.) SEC. XVIII. 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.

(19.) SEC. XIX. A jury fee of three dollars shall be taxed with the costs of each suit, which, with the docket fee provided by law, shall be collected by the clerk of the court, and paid into the county treasury, there to remain and be held as a special fund for the payment of juror's fees.

(20.) SEC. XX. There shall be allowed to each juror in a civil case before a judge of probate, justice of the peace, or other than in a circuit court, the sum of twenty-five cents.

(21.) SEC. XXI. The fee of each juror attending an inquest held over a dead body, shall be twenty-five cents, payable out of the county treasury.

An Act to increase the Compensation of Grand and Petit Jurors.

[Approved Feb. 12, 1853. *Laws*, 1853, p. 259.]

(22.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That there shall be allowed and paid to grand and petit jurors, for their services in attending circuit courts of the several counties in this State, the sum of one dollar and fifty cents per day for every day necessary in attending courts as aforesaid, as such jurors, and also the same mileage now allowed by law, and such additional compensation as the county courts and boards of supervisors of the several counties, by annual order entered upon their records, may think proper to allow.

(23.) SEC. II. This act shall take effect and be in force from and after its passage, and all laws in conflict with this act be and the same are hereby repealed.

PRIOR LAWS. An act prescribing the mode of summoning grand jurors; approved March 23, 1819. *Laws*, 1819, p. 201.

An act concerning petit jurors; approved March 25, 1819. *Laws*, 1819, p. 255.

An act prescribing the mode of summoning grand and petit jurors, and defining their qualifications and duties; in force June 1, 1827. *Rev. Laws*, 1827, p. 251; *Rev. Laws*, 1833, p. 373.

An act to amend "An act prescribing the mode of summoning grand and petit jurors, and defining their qualifications and duties;" approved Feb. 13, 1835. *Laws*, 1835, p. 37.

An act regulating the manner of selecting juries in certain cases; approved Feb. 1, 1843. *Laws*, 1843, p. 169.

An act to allow grand and petit jurors mileage; approved March 4, 1843. *Laws*, 1843, p. 169.

DECISIONS. An opinion *formed*, but not *expressed*, does not disqualify a juror. *Noble v. The People*, Breese, 29.

The statements of jurors should not be received to impeach their verdict. *Forrester et al. v. Guard et al.*, Breese, 44. *Contra*, *Sawyer v. Stephenson*, Breese, 6.

An alien is not qualified to act as juror in any case. The statute prescribing certain qualifications as necessary for a juror, all who do not possess them are necessarily disqualified. The affidavit of a juror in support of his verdict, on a point disconnected with his acts, or the motives for his conduct, is admissible on a motion for a new trial. *Guykowski v. The People*, 1 S. 476.

A juror who had formed and expressed an opinion from hearing the testimony against the wife, in her trial for adultery, not then knowing that a civil suit was pending by the husband against an individual for *crim. con.* with the wife, was held a competent juror in the civil suit. *King v. Dale*, 1 S. 513.

Weight of testimony is a question to be decided alone by a jury; consequently, such decision cannot be assigned for error. *Johanson v. Moulton*, 1 S. 532.

In a trial for larceny, the jury should find the value of the property stolen; without such finding, the court cannot pass sentence. *Highland v. The People*, 1 S. 392.

A grand jury cannot inquire whether an officer has taken illegal fees for the service of process. *Pankey v. The People*, 1 S. 80.

In an action by a school commissioner on a note made to him for the use of the inhabitants of a township, the inhabitants of that township cannot be jurors. *Russell et al. v. Hamilton*, 2 S. 57.

The court being about to adjourn for the day, directed the jury, if they should agree, to seal up and deliver the verdict to the clerk, and then disperse. After the adjournment, the jury sealed up a paper, upon which was written that they could not agree, and dispersed: *Held*, that such conduct was a gross violation of their duty. The next morning the same jury were directed by the court to retire, and they returned a verdict: *Held*, that such proceeding was irregular, and the judgment must be reversed. *White et al. v. Martin*, 2 S. 69.

In a trial for murder, after a part of the witnesses had been examined, the prosecuting attorney discovered that an alien was upon the jury, and his motion that such juror be withdrawn, and a new one sworn in his place, was allowed: *Held*, that the proceeding was regular, and that the overruling of the defendant's motion to discharge the other eleven jurors, was not erroneous. *Stone v. The People*, 2 S. 326.

A juror who has expressed a decided opinion, is disqualified. Not so, if his opinion be hypothetical, or of a light and transient character. *Gardner v. The People*, 3 S. 83; *Smith v. Eames*, 3 S. 76.

Affidavits of jurors to impeach their verdict, cannot be received, except where part of the jury swear that they never consented to the verdict; but their affidavits in support of their verdict may be received. *Smith v. Eames*, 3 S. 76.

Where a juror, before the trial of a prisoner for murder, expressed a strong opinion of his guilt, but told the prisoner himself that he ought not to be hung, and should not be, if he were on the jury; and, upon examination, swore that he had formed and expressed no opinion, and no objection being made, was sworn on the jury, and the prisoner was convicted; a new trial was properly granted, on account of the incompetency of the juror. If a juror prejudge a case, and the fact be unknown to the failing party in time to challenge, it is good cause for a new trial. *Sellers v. The People*, 3 S. 412.

When a juror has inadvertently been sworn, who cannot render a legal verdict, it is in the discretion of the court to discharge him. *Thomas v. Leonard*, 4 S. 556.

The 177th section of the Criminal Code, (Gale's Stat., p. 232,) which provides that the grand jury may find an indictment on the oath of one witness only, except in cases of treason and perjury, applies only to the finding of the indictment; the common law rules of evidence will govern on the trial, except so far as is provided by the 178th section of the Criminal Code. *Crandal v. Dawson*, 1 G. 556.

One of the jurors who tried a case was security for costs therein, and, on motion for a new trial, that objection was made: *Held*, that the law presumed the party had knowledge of that fact and could not allege it as surprise, but should have availed himself of it by way of challenge. *Bradshaw v. Hubbard et al.*, 1 G. 390.

A juror had formed and expressed a decided opinion in a case, adversely to the defendant, but the fact was not known to the defendant or his counsel, after using proper diligence to ascertain it: *Held*, that the defendant was entitled to a new trial. *Venum v. Harwood*, 1 G. 659.

Where a verdict depends on the credibility of witnesses, it is the peculiar province of a jury to judge of that credibility. *Lovry v. Orr et al.*, 1 G. 70.

The decision of the court in the case of *Guykowski v. The People*, 1 S. 476, in regard to the disqualification of aliens to sit as jurors, is limited to capital cases. *Greenup v. Stoker*, 3 G. 202.

If, to the question, "Is the prisoner guilty or innocent?" a juror can respond so as to satisfy his conscience, he is incompetent. In a trial for murder, while one of the counsel was addressing the jury, a juror, who had heard all the evidence, was ill, and a short time asleep, and this was known to the prisoner: *Held* to be no ground for setting aside the verdict. *Baxter v. The People*, 3 G. 368.

In capital cases the verdict must be received in open court, in presence of the prisoner; but the rule does not apply in cases of misdemeanor. On the receipt of a verdict and before the jury is discharged, each party has a right to have the jury polled. If the jury seal up their verdict and separate, they must still attend in court when the verdict is opened, and if any dissent, the verdict cannot be received. After the verdict is received and the jury discharged, they cannot be recalled to alter or amend it. *Rigg v. Cook*, 4 G. 336.

If a juror has formed a decided opinion respecting the merits of a case, either from a personal knowledge of the facts, from the statements of witnesses, from the relations of the parties, or from rumor, he is disqualified if challenged for cause. *Neely v. The People*, 13 Ill. 685.

A juror stated, on oath, that no degree of circumstantial evidence would induce him to render a verdict of guilty in a capital case: *Held*, that his challenge was properly allowed. The same was held of a juror, who swore that he should be very reluctant to render a verdict of guilty, even if he were convinced of the prisoner's guilt, but that he did not know but he might be starved to render it. *Gates v. The People*, 14 Ill. 433.

## CHAPTER LIX.

## JUSTICES OF THE PEACE AND CONSTABLES.

## SECTION

1. Justices and constables, when and how elected.
2. Number to be elected in each precinct.
3. Term of office.
4. Vacancies, how filled.
5. When additional justices and constables may be elected in certain precincts; their terms of office.
6. New counties, manner of holding elections in.
7. Jurisdiction of justices and constables.
8. Justices to be commissioned by governor; constables, their authority to act.
9. To be sworn.
10. Justices to give bond; its condition; how approved, filed, and to whose use held.
11. Constable to give bond; its condition; to whom payable, and to whose use held.
12. If justice or constable do not take oath and file bond in twenty days, office to be vacant.
13. On the filing of bond of justice, clerk of county commissioners' court shall transmit certificate of election to governor.
14. By whom oath of office to be administered, and certificate thereof made; record to be kept.
15. Resignations, how made; record thereof kept.
16. If there be no constable in a precinct, any justice may appoint.
17. Cases in which justices have jurisdiction, particularly recited.
18. Jurisdiction extends to cases in which demands have been reduced by credits.
19. Justices, when duly qualified, may collect money.
20. Record of suits to be kept by justice.
21. Suit to commence by summons: form of; day of trial; when summons to be served.
22. Warrant to arrest, may issue on oath of plaintiff: form of; defendant may give bail and be released; condition and form of bail bond; when bail may be exonerated.
23. When cause shall be heard in absence of the defendant.
24. If plaintiff fail to appear, suit to be dismissed.
25. When joint defendants are sued, and all served, how cause to proceed; form and effect of judgment; if debts appear to be different, how to proceed; separate claims, how disposed of.
26. When joint defendants are not all served, what judgment may be given.
27. Continuances, for what causes granted: for what time and on what conditions.
28. When parties appear, trial to proceed; how conducted; judgment; costs; interest.
29. Defendant sued may pay to constable the sum due, and be exonerated.
30. Evidence to be under oath; hand-writing: depositions.
31. Denial of signature to be on oath.
32. If witness be unable to attend, his deposition may be taken: for which, cause may be continued.
33. If witness reside out of county, his deposition may be taken.
34. Notes, &c., purchased after commencement of suit, not to be admitted.
35. All demands which may be consolidated, must be introduced, if not exceeding, in all, one hundred dollars.
36. Subpoena, form of; service of.
37. Four witnesses only; to be named in one subpoena.
38. Fees of witnesses: how paid.
39. Party not having witness to prove particular fact, may have testimony of adverse party, or give his own.
40. Party desiring such testimony, to file affidavit; form of summons to testify.
41. If defendant do not appear and testify, plaintiff may testify.
42. Amicable suit, without process.

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43. May arbitrate: judgment to be entered on award.
44. Either party may have jury; how called and sworn.
45. Form of writ summoning jurors.
46. Six jurors may try right of property, unless party desires twelve.
47. Jury must be demanded before evidence heard; fees of jury must be tendered.
48. If witness or juror fail to appear when summoned, how punished.
49. When juror interested or absent, officer may summon substitute.
50. Improper conduct in court, how punished.
51. When cause may be removed before another justice.
52. Continuance; depositions.
53. Execution to stay twenty days, unless oath be filed that debt will be lost.
54. Execution, how issued; on what levied; when returnable: form of.
55. When execution may issue to another county.
56. Duty of officer in such other county.
57. In what case, and how judgment may be made lien on real estate.
58. Appeal to circuit court, how taken; security to be given.
59. Form of appeal bond.
60. Bond to be filed with, and approved by justice; proceedings suspended, and transcript certified by justice to circuit court.
61. Or bond may be filed in circuit court, and *supersedeas* issued by clerk; appellee to be summoned.
62. On the issuing and service of *supersedeas*, justice shall suspend proceedings and return certified transcript.
63. One of several plaintiffs or defendants may appeal.
64. Proceedings when one of several, appeals.
65. If bond be defective, party appealing may file new bond.
66. Trial of appeals in circuit court, to proceed on merits, without written pleadings.
67. If it appear that justice had no jurisdiction of the case, it may be dismissed.
68. Parties and their rights same in trial of appeal, as before justice.
69. Rights secured on trial of appeal.
70. Liability of security on appeal bond.
71. Execution to issue as in original cases.
72. *Certiorari*, writs of, by whom may be issued.
73. *Certiorari* not to issue after six months.
74. Bond to be given before writ issues; the writ; duty of justice to certify transcript, &c.
75. Petition for writ of *certiorari*: what it shall set forth.
76. On service of writ, proceedings to be stayed.
77. Reversal of judgment not to vitiate sale on justice's execution, but court may assess damages, &c.
78. When judgment a lien on personal, and when on real estate.
79. Duty of constable on receiving execution; levy; notice of sale; sale.
80. Constable may remove property: defendant, giving bond, may retain it; if property be not delivered, other property of defendant, and of security, may be taken.
81. Defendant paying or tendering payment, to escape costs.
82. Constable, on return of execution, to pay money collected, to justice; justice to post up list of fees; penalty for neglect.
83. Who shall give bond for costs: form of bond.
84. Liability of security; if bond be not given when required, suit to be dismissed.
85. When defendant evades service, how it may be made.
86. Justice may appoint special constable in cases of emergency.



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87. Duty of county commissioners' clerk on election of constables; duty of sheriff at terms of court.
88. Duty of constable to apprehend offenders, suppress riots, and serve process.
89. Plaintiff in trespass or trover, on filing oath, may hold defendant to bail.
90. Execution may be against chattels or body of defendant.
91. When defendant secretes property, he may be held to bail.
92. If defendant be not surrendered by special bail, bail to be summoned; form of summons; service; return.
93. If party do not appear, proceedings and judgment.
94. If he appear, he may show cause for not surrendering principal; what sufficient excuse.
95. Justice may cause arrest for breach of the peace, &c.; try offender, and impose fine.
96. His duty on rendition of verdict of jury.
97. Execution; levy; sale of property; proviso.
98. If defendant have no property, body to be taken; final discharge by imprisonment.
99. Appeal in such cases; bond to be given; proceeding stayed.
100. Verdict in circuit court; its effect.
101. Other person or party, dissatisfied with verdict, may appeal; trial and judgment in circuit court; liability of party appealing; he shall not be a witness on the appeal.
102. On such appeal, justice to return to circuit court, the names of witnesses.
103. When other person appeals, defendant to be summoned; if not found, how to proceed.
104. If defendant plead guilty, fine, how assessed; judgment and execution thereon.
105. Prosecution barred after twelve months, unless defendant be absent.
106. Justices to return list of fines assessed to clerk of county commissioners' court; penalty for neglect.
107. Constable to pay over money collected; penalty for neglect; may collect fines before execution issued.
108. Money to be paid to county treasurer.
109. If prosecution be malicious, prosecutor to pay costs.
110. When docket of justice is transferred to another, his duty respecting business, papers, &c.
111. What property exempt from execution.

[Approved March 3, 1845. Rev. Stat. 1845, p. 312.]

(1.) SECTION I. Justices of the peace and constables shall be chosen on the first Monday of August in each year, in the manner prescribed in the seventh and subsequent sections of chapter thirty-seven, title "ELECTIONS."

(2.) SEC. II. Two justices of the peace and two constables shall be elected in each election precinct in each county, except that precinct in which the county seat is located, in which there shall be three justices of the peace and three constables elected.

(3.) SEC. III. Justices of the peace and constables shall hold their offices for the term of four years, and until their successors are elected and qualified, except in cases herein specified.

(4.) SEC. IV. When a vacancy shall happen in the office of justice of the peace or constable in any precinct, 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, and abstracts thereof made and transmitted to the secretary's office, as in other cases.

(5.) SEC. V. The county commissioners' court of any county may, when

## SECTION

112. If justice resign, remove or die, his docket, papers, &c., to be delivered to his successor.
113. Constable going out of office may complete business in his hands.
114. Term, effect and construction of official bonds of justices and constables.
115. Justice failing to deliver books, &c., to his successor, how punished; further liability on official bond.
116. Justice or constable refusing to pay over money, how proceeded against; penalty.
117. How delinquent may avoid paying full penalty.
118. Constable failing to return execution at proper time, liable on official bond; how proceeded against.
119. On trial, certificate of official bond to be read in evidence.
120. On judgment rendered, execution to be issued, but property of sureties not to be taken until that of principal be exhausted.
121. Judgment to be for full penalty of bond, but execution to issue for amount due only.
122. Execution to be issued on subsequent breaches of bond; defendant to be summoned by *scire facias*.
123. Securities, extent of their liability; liability of principal not limited.
124. Justices and constables may appeal, &c., as in other cases.
125. Justices may take recognizance of person charged with bailable offense.
126. Person not appearing at time appointed, duty of justice.
127. Justices' transcripts to be recorded.
128. Fees for recording.
129. What transcript shall contain.
130. Transcripts shall be certified by justice. When act to take effect.
131. In any trial before a justice, either party may demand a jury.
132. Manner of summoning jury.
133. When act shall be in force.
134. Mode of recovering fines and penalties.
135. When act to take effect.
136. Actions of trespass, when within jurisdiction of justices.

they deem it necessary, cause an election to be held in the precinct in which the county seat is located, for the election of one additional justice of the peace and two constables, who shall hold their offices until the next quadrennial election of justices of the peace and constables, and until others are elected and qualified. At such quadrennial election, the whole number of justices of the peace and constables to which each precinct is herein entitled, shall be elected.

(6.) SEC. VI. 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 precincts 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, at the places appointed for holding such elections, in each of said precincts; and elections shall be held therein, for justices of the peace, returns thereof made, examined and transmitted, in all respects as provided in this chapter; 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.

(7.) SEC. VII. Justices of the peace and constables, when elected and qualified under this chapter, shall have jurisdiction within their respective counties.

(8.) SEC. VIII. Justices of the peace shall be commissioned by the governor, before entering upon their official duties. Constables may act upon their certificates of election, to be granted by the clerk of the county commissioners' court.

(9.) SEC. IX. Justices of the peace and constables shall, before entering upon the duties of their respective offices, be sworn, faithfully to perform the duties of their respective offices according to law and to the best of their understanding.

(10.) SEC. X. Every justice of the peace, before entering upon the duties of his office, shall execute and deliver to the clerk of the county commissioners' court of his county, and 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.

(11.) SEC. XI. 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 one thousand 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.

(12.) SEC. XII. If any justice of the peace or constable shall not, within twenty days after his election or appointment, take the oath and give bond as aforesaid, the said justice or 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.

(13.) SEC. XIII. 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.

(14.) SEC. XIV. The oath of office required to be taken by justices of the peace and constables, shall be administered by the clerk of the county commissioners' court of the proper county, who shall certify the same upon the commissions of such justices, and the certificates of election of such constables respectively. The clerk shall keep a book, in which he shall enter the name of every justice of the peace and constable sworn into office, together with the date of his commission or certificate, and the time of his being sworn into office.

(15.) SEC. XV. Resignations of the office of justice of the peace and constable 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.

(16.) SEC. XVI. Whenever there shall be no constable in any precinct, any justice of the peace in such precinct may appoint one, who shall be qualified as in other cases, and hold his office until superseded by an election.

(17.) SEC. XVII. Justices of the peace shall have jurisdiction in their respective counties, to hear and determine all complaints, suits and prosecutions of the following description:

1st. In actions of debt on bonds, contracts, agreements, promissory notes, or other instruments in writing, in which the amount claimed to be due does not exceed one hundred dollars.

2nd. In actions of assumpsit upon any contract or promise, verbal or written, express or implied, for a valuable consideration, in which the amount claimed to be due does not exceed one hundred dollars.

3rd. In suits brought for goods, wares or merchandize, sold and delivered; for work and labor done, or services rendered; for money had and received; for money lent; for money received by the defendant, for the use

of the plaintiff; or for money paid by the plaintiff for the defendant, at his request; in which the amount claimed to be due does not exceed one hundred dollars.

4th. In suits for money claimed to be due upon unsettled accounts, in which the balance claimed to be due does not exceed one hundred dollars.

5th. In suits for money claimed to be due upon settled accounts between individuals, in which the balance ascertained to be unpaid, shall not exceed one hundred dollars.

6th. In all suits upon contracts or promises for rent, and in cases of distress for rent, upon landlords' warrants, in which the amount claimed to be due does not exceed one hundred dollars.

7th. In actions of debt for trespass, by cutting timber, in which the amount claimed does not exceed one hundred dollars.

8th. In actions for money claimed to be due for specific articles of property, whether claimed to be due by bond, note, or other instrument in writing, or upon a promise, express or implied, in which the value of the property claimed does not exceed one hundred dollars.

9th. For all debts or demands claimed to be due, not exceeding one hundred dollars, in which the action of debt or assumpsit will lie.

10th. In all actions in which an executor or administrator is plaintiff, or for property purchased at an executor's or administrator's sale, where the amount claimed does not exceed one hundred dollars.

11th. In all actions in which an executor or administrator is defendant, where the amount claimed does not exceed twenty dollars.

12th. In all actions of trespass on personal property, and of trover and conversion, in which the damages claimed do not exceed one hundred dollars.

13th. In all cases of assault, assault and battery, and affrays, in which the people are plaintiffs, in which they shall have exclusive original jurisdiction, unless in case of cities or incorporated towns, in which jurisdiction is otherwise conferred by law.

14th. In all actions against sheriffs, coroners and constables; for malfeasance, misfeasance or nonfeasance in office, wherein the amount claimed does not exceed one hundred dollars.

The provisions of this section shall apply as well to proceedings commenced by attachment, as to other cases.

(18.) SEC. XVIII. In all suits provided for in the preceding section, the jurisdiction of the justice shall be deemed to extend to cases in which the original claim, debt, demand or damages may have originally exceeded the sums of one hundred dollars and twenty dollars respectively, but which shall have been reduced by fair credits below those sums.

(19.) SEC. XIX. Justices of the peace, who shall have given bond and received commissions under the provisions of this chapter, 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.

(20.) SEC. XX. 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 delivered, 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.

(21.) SEC. XXI. Every suit before a justice, except such as are hereinafter 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 Constable of said County,*  
                   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 \_\_\_\_\_, 18—. 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.

(22.) SEC. XXII. 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 Constable of said County,*  
                   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 \_\_\_\_\_, 18—. JOHN DOE, J. P."

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 indorsed 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 for the within named C. D. Witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18—. G. F."

Which indorsement 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 payment 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.

(23.) SEC. XXIII. 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 twenty-first section of this chapter, 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 plaintiff, unless the said plaintiff shall fully prove his demand in the same manner as if the defendant had been present and denied the same.

(24.) SEC. XXIV. 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 appear, 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.

(25.) SEC. XXV. 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 bring in such separate claims; nor shall the plaintiff be barred by the determination of his suit against such joint defendants, from prosecuting his suit against the respective defendants, for the recovery of such separate demands.

(26.) SEC. XXVI. Where there are several joint debtors, and all cannot be served with process, the justice may render judgment against such as are served with process.

(27.) SEC. XXVII. 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 party 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 shown.

(28.) SEC. XXVIII. When the parties shall appear and be ready for trial, the justice shall proceed to hear and examine their respective allegations and proofs, and shall thereon give judgment against the party 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 a balance due upon a settled account, the justice shall allow 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.

(29.) SEC. XXIX. The justice shall indorse on the back of every summons or warrant the sum demanded by the plaintiff, with the costs due thereon, and the defendant may pay the same to the constable in whose hands such process may be, who shall give a receipt therefor, which shall exonerate the defendant from debt and costs.

(30.) SEC. XXX. All evidence before a justice of the peace shall be under oath, and by parol, except when 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.

(31.) SEC. XXXI. No party to any suit before a justice shall be permitted 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 signature purporting to be his or her own.

(32.) SEC. XXXII. 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 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.

(33.) SEC. XXXIII. 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.

(34.) SEC. XXXIV. No party shall be permitted to introduce at the

trial, any note, bond, debt or other claim against his adversary, which he shall have acquired after the commencement of the suit.

(35.) SEC. XXXV. 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, existing at the time of the commencement of the suit, which are of such a nature as to be consolidated, and which do not exceed one hundred dollars when consolidated into one action or defense; and on refusing or neglecting to do the same, shall forever be debarred from the privilege of suing for any such debt or demand.

(36.) SEC. XXXI. 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, }  
County. } *The People of the State of Illinois to A. B.:*

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 \_\_\_\_\_, 18—. JOHN DOE, J. P."

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.

(37.) SEC. XXXVII. 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.

(38.) SEC. XXXVIII. 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.

(39.) SEC. XXXIX. 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.

(40.) SEC. XL. When any plaintiff, at the time of commencing his suit, shall signify his desire to prove his debt or demand as provided in the preceding section, and shall file the necessary affidavit, the justice may issue his summons in the following form :

"STATE OF ILLINOIS, } *The People of the State of Illinois, to any Constable of said County,*  
County, } GREETING :

You are hereby commanded to summon C. D. to appear before me, at my office in \_\_\_\_\_, in said county, on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, at the hour of \_\_\_\_\_ o'clock, — M., to answer the complaint of A. B. for the 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 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. 18—.

E. F., J. P. [L. s.]"

(41.) SEC. XLII. 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, without giving any other or further notice to the defendant or defendants.

(42.) SEC. XLIII. 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.

(43.) SEC. XLIII. 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.

(44.) SEC. XLIV. 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 impaneled 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 impaneled, 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.

(45.) SEC. XLV. The following shall be the form of the writ for summoning the jurors, viz. :

"STATE OF ILLINOIS, } *The People of the State of Illinois, to any Constable of said County,*  
County, } GREETING :

We command you to summon \_\_\_\_\_ lawful men of your county to appear before me at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, 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 and there the names of the jury and this writ.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

JOHN DOE, J. P."

(46.) SEC. XLVI. In trials of the right of property taken on execution, attachment or other process, by constables, the number of jurors shall be six instead of twelve, unless all the parties to the trial shall agree upon a larger

number, not exceeding twelve, in which case the number agreed on shall constitute the jury: *Provided*, That either party shall have the right to require twelve jurors, upon advancing the additional costs and fees accruing in consequence of increasing the number over six, such additional costs and fees not being in any event chargeable against the other party.

(47.) SEC. XLVII. No justice of the peace shall order a trial by jury without the consent of all parties, unless such jury be demanded before the hearing of any evidence in the case, nor unless the party demanding such jury shall first pay the fees to which such jury are by law entitled.

(48.) SEC. XLVIII. 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.

(49.) SEC. XLIX. If any juror, summoned as aforesaid, shall be interested in the event of the suit, or of kin to either party, or shall 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 bystanders 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.

(50.) SEC. L. 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.

(51.) SEC. LI. 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 the peace, who shall proceed as if the said suit had been instituted before him.

(52.) SEC. LII. 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.

(53.) SEC. LIII. 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.

(54.) SEC. LIV. 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.:

"STATE OF ILLINOIS, } *The People of the State of Illinois, to any Constable of said County,*  
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 \_\_\_\_\_, 18—.

JOHN DOE, J. P."

(55.) SEC. LV. 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 county commissioners' 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.

(56.) SEC. LVI. When an execution shall be issued to another county, as provided in the preceding section, it shall be the duty of the constable receiving the same, to proceed to the collection of the same, and make return as in other cases.

(57.) SEC. LVII. 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.

(58.) SEC. LVIII. Appeals from judgments of justices of the peace to the circuit court, shall be granted in all cases except on judgment confessed: *Provided*, The party praying for an appeal shall, within twenty days from the rendering of the judgment from which he desires to take an appeal, enter into bond with security to be approved and conditioned as hereinafter provided.

(59.) SEC. LIX. The bond required to be given, shall be in substance as follows:

"KNOW ALL MEN BY THESE PRESENTS, That we, A. B. and C. D., are held and firmly bound unto E. F., in the penal sum of (*here insert double the amount of judgment and costs,*) dollars, lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs and administrators, 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, whereas, the said E. F. did, on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18—, before \_\_\_\_\_, a justice of the peace for the county of \_\_\_\_\_, recover a judgment against the above bounden A. B., for the sum of \_\_\_\_\_ dollars; from which judgment the said E. F. has taken an appeal to the circuit court of the county of \_\_\_\_\_ aforesaid, and State of Illinois: Now, if the said A. B. shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

[L. s.]  
[L. s.]  
[L. s.]

L. M., J. P."

Approved by me, at my office, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

(60.) SEC. LX. The party desiring such appeal, may file his bond in the office of the justice who shall have rendered the judgment, such bond to be approved by such justice, whose duty it shall be to suspend all proceedings in the case, and if execution shall have been issued, he shall recall the same; and who shall, within twenty days after receiving and approving of the appeal bond, file the same in the office of the clerk of the circuit court, together with all the papers and transcript of the judgment he had given, with a certificate under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him.

(61.) SEC. LXI. Or, the appealing party may file his bond in the office of the clerk of the circuit court of the proper county, within the time aforesaid, which bond shall be approved by the clerk; upon the filing and approval of which 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, which summons shall be served and returned as in other cases.

(62.) SEC. LXII. 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.

(63.) SEC. LXIII. One or more plaintiffs or defendants, in causes decided by justices of the peace, shall be allowed the right of appeal to the circuit court, without the consent of the others; and when one of several appeals, the *supersedeas* shall issue directing a suspension of all further proceedings upon the judgment, as though all had joined in the appeal.

(64.) SEC. LXIV. When an appeal bond shall be executed by one of several parties, from the judgment of a justice of the peace, the clerk of the circuit court shall issue a summons against the other parties, notifying



them of the appeal in the said circuit court, and requiring them to appear and abide by and perform the judgment of the court in the premises, which summons shall be served as other process issued in appeal cases; and in case such summons shall be returned that parties are not found, the cause shall, at the first term of the court, be continued, but at the second term shall be tried; and the court shall have power to give the same judgment in appeals taken under the provisions of this chapter, as though all the parties to the judgment had joined in the appeal.

(65.) SEC. LXV. If upon the trial of any appeal, the bond required to be given shall be adjudged informal or otherwise insufficient, the party who shall have executed such bond, shall in nowise 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 a good and sufficient bond.

(66.) SEC. LXVI. Upon the trial of all appeals before the circuit court, no exception shall be taken to the form or service of the summons issued by the justice of the peace, nor to any proceedings before him; but the court shall hear and determine the same in a summary way, according to the justice of the case, without pleading in writing.

(67.) SEC. LXVII. If it shall appear, however, that the justice had no jurisdiction of the subject matter of the suit, the same shall be dismissed at the cost of the plaintiff.

(68.) SEC. LXVIII. The plaintiff in the justice's court shall be plaintiff in the circuit court on the trial of the appeal, and the rights of the parties shall be the same as in original actions.

(69.) SEC. LXIX. Parties on the trials of appeals in the circuit court shall have the benefit of the provisions of the thirty-ninth, fortieth and forty-first sections of this chapter, as fully as in trials before justices of the peace.

(70.) SEC. LXX. The security in any appeal bond shall be liable thereon for the amount of the original judgment and all costs thereon, in case the said appeal be dismissed, and shall be liable also on said bond for whatever judgment may be rendered by the circuit court, in case the original judgment be affirmed by said circuit court, either in whole or in part.

(71.) SEC. LXXI. Execution may issue out of the circuit court on all judgments rendered in cases appealed, as in other cases originating in the circuit court.

(72.) SEC. LXXII. 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 indorse 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 chapter.

(73.) SEC. LXXIII. No writ of *certiorari* shall issue after the expiration of six months from the time of the rendition of judgment.

(74.) SEC. LXXIV. 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.

(75.) SEC. LXXV. The petition, on application for writs of *certiorari*, shall set forth and show, 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.

(76.) SEC. LXXVI. 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.

(77.) SEC. LXXVII. 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 case 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.

(78.) SEC. LXXVIII. 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 issued thereon, to the constable; 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 chapter.

(79.) SEC. LXXIX. Every constable to whom an execution shall be delivered, shall indorse 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; indorsing 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 such 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.

(80.) SEC. LXXX. 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.

(81.) SEC. LXXXI. When 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.

(82.) SEC. LXXXII. On the return of all executions, the constable shall pay over to the justice of the peace who issued the same, all money not previously paid over to the plaintiff; and also, all witness' fees which remain unpaid to any witness; and it shall be the duty of the justice of the peace to post up in his office, at least once in three months, a list of all witness' fees in his hands, and the names of the persons to whom they belong; and for a failure to comply with this provision, a justice of the peace shall be liable to a fine of fifty dollars, to be recovered by action of debt in the name and behalf of the county commissioners' court.

(83.) SEC. LXXXIII. No person who is not a resident of this State, shall 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. }  
 County of ——— } ES. } Demand, \$———  
 } C. D. }

I, E. F., do enter myself security for all costs that may accrue in the above case, this — day of —, 18—."

(84.) SEC. LXXXIV. Such 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.

(85.) SEC. LXXXV. When any defendant shall evade the service of process, 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.

(86.) SEC. LXXXVI. 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 offense 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 indorsement, under the seal of the justice deputing, on the back of the process, which the person receiving the same shall be deputed to execute.

(87.) SEC. LXXXVII. 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.

(88.) SEC. LXXXVIII. 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.

(89.) SEC. LXXXIX. When any person shall be about to commence an action of trespass or trover before a justice of the peace, and he shall make oath before such justice that he verily believes 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.

(90.) SEC. XC. Upon all judgments in actions 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.

(91.) SEC. XCI. 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.

(92.) SEC. XCII. In all cases in which a defendant shall give special bail under the provisions of this chapter, and shall not be surrendered on or before the return day of the *feri 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, )  
County. ) The People of the State of Illinois, to any Constable of said County.  
GREETING:

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. [L. s.]"

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 and return made as in other cases.

(93.) SEC. XCIII. If the defendant does not appear, the justice shall hear the case, enter judgment and award execution, as in other cases.

(94.) SEC. XCIV. 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.

(95.) SEC. XCV. In all cases of assault, assault and battery and frays, any justice of the peace may, upon his own knowledge, or upon the oath of any competent person, issue his warrant to any constable of his county for the arrest of every person charged with either of said offenses; and upon the arrest of such person, shall cause a jury to be summoned, (unless the party accused shall dispense with a jury,) who shall hear the cause, and if they find the accused guilty, shall assess such fine as they shall deem just; not, however, to be less than three nor more than one hundred dollars.

(96.) SEC. XCVI. 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.

(97.) SEC. XCVII. Upon the rendition of such judgment, the justice shall issue execution for the fine and costs, which may be levied upon any personal property of the defendant or defendants, which shall be sold for whatever it will bring in cash, after giving notice, as in other cases: *Provided, however,* That if the party so convicted 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.

(98.) SEC. XCVIII. 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.

(99.) SEC. XCIX. If any person so convicted 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 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, and return the papers to the next succeeding circuit court, when the same shall be tried: *Provided,* All such appeals shall be prayed for, and the bond executed within five days after judgment rendered.

(100.) SEC. C. If the defendant shall be found guilty in the circuit court, 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.

(101.) SEC. CI. If any person shall be dissatisfied with the verdict given in such cases, 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, 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 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 not be a witness against the defendant in the appeal in said court, upon the trial of such appeal.

(102.) SEC. CII. When any defendant convicted of either of the said offenses, or any person dissatisfied with the verdict as aforesaid, appeals to the circuit court, it shall be the duty of the justice to return to the clerk, when he returns the papers in the case, the names of all material witnesses who shall have testified on the trial, and the clerk shall issue subpoenas for them.

(103.) SEC. CIII. When the case is removed into the circuit court, as provided by the one hundred and first section, 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.

(104.) SEC. CIV. If any person accused of either of the above offenses

shall confess himself guilty, the jury, or the justice, if he shall not require a jury, shall hear the evidence and assess the fine; and the justice shall enter judgment and issue execution, subject to appeal as in other cases.

(105.) SEC. CV. No person shall be proceeded against for the commission of any of the offenses herein enumerated, after the expiration of twelve months from the time the offense 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.

(106.) SEC. CVI. 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 the provisions of this chapter, 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 succeeding section.

(107.) SEC. CVII. The constable charged with the collection of any such fine, shall account for and pay over to the county commissioners' court, at every regular term thereof, all moneys which he may have so collected; 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.

(108.) SEC. CVIII. The county commissioners' courts shall pay over to the county treasurers, respectively, all moneys by them received as aforesaid, and take their receipts therefor, which receipts shall be deposited with the clerks of said courts, and by them preserved; and the county treasurers shall account for said moneys in the same manner that they account for other public money by them received.

(109.) SEC. CIX. 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, 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.

(110.) SEC. CX. When the docket and papers of any justice of the peace shall be transferred to any other justice of the peace, as provided in section one hundred and twelve of this chapter, such justice receiving the same may proceed to the completion of all unfinished business, the issuing of execution upon judgments remaining unsatisfied upon such docket, and collect the same, and have the same power in respect of such docket and papers as if the same pertained to proceedings originally instituted before him.

(111.) SEC. CXI. The same articles of personal property shall be

exempt from executions issued under the provisions of this chapter, and subject to the same restrictions as is provided in chapter fifty-seven of the Revised Statutes; except as specified in the ninety-seventh section of this chapter.

(112.) SEC. CXII. 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.

(113.) SEC. CXIII. Any constable to whom an execution shall have been delivered, and whose term of office shall expire before the expiration of the time within which the return of such execution is required by law, shall be authorized to proceed in all matters relating to said execution, and in the same manner to collect the same, that he might have done, had the term of office of such constable not have expired; and the constable and sureties shall be liable for any neglect of duty, and for all moneys collected upon such executions in the same manner, and to the same extent they would have been if the term of office of such constable had not expired.

(114.) SEC. CXIV. All bonds given by justices of the peace and constables, shall remain in force five years after the expiration of their respective terms of office, and when such bonds are renewed, or new bonds are given, such renewal or giving of a new bond shall not satisfy or vacate any such previous bond, but each bond shall stand good in relation to all matters and things done or omitted to be done, within the term of office for which such bond shall have been given: *Provided, That* where by law, any justice or constable shall be authorized or required to complete any business, or perform any duties growing out of business commenced, and in their hands previous to going out of office, the bond shall apply to such cases until such business is concluded by such justice or constable.

(115.) SEC. CXV. Any justice of the peace, failing or refusing to deliver any statutes, books, dockets or papers as required by this chapter, for the space of ten days after the same are demanded, shall forfeit and pay the sum of ten dollars, to be recovered by an action of debt in the name of the county commissioners' court, for the benefit of the county; besides being, together with his securities in his official bond, liable to the county and to all persons interested, for all damages and losses which may be sustained by reason of such failure or refusal.

(116.) SEC. CXVI. Upon the failure of a justice of the peace or constable to pay over any money by him collected or received, as herein provided, to any person entitled to receive the same, his or her agent or attorney such person may proceed against such justice or constable in a summary way, either before a circuit court or some justice of the peace of the proper county, by motion, upon giving to such justice or constable 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.

(117.) SEC. CXVII. If any justice or constable against whom proceedings shall have been commenced, as provided in the preceding section, shall pay or satisfy the amount claimed by the party prosecuting, with the costs, the proceedings shall be dismissed, and without judgment for the damages specified in the preceding section.

(118.) SEC. CXVIII. If any constable shall neglect or fail to return an execution within ten days after its proper return day, or if the demand, debt or claim be wholly or in part lost, or if any special damage shall arise to any party by reason of the neglect or refusal to act, or the misfeasance or nonfeasance of any constable in the discharge of any official duty, the party aggrieved may have his action in the circuit court; or, when the amount claimed does not exceed one hundred dollars, before any justice of the peace of the proper county, against such constable and his sureties on the official bond of such constable, and shall recover thereon the amount of said execution, with interest from the date of the judgment upon which the original execution issued.

(119.) SEC. CXIX. In suits on the official bonds of justices of the peace and constables, a copy of such bond, authenticated under the official signature and seal of the county commissioners' clerk with whom it is filed, may be read in evidence.

(120.) SEC. CXX. When judgment shall have been rendered against any justice of the peace or constable and his securities on his official bond, execution may issue against all of them, but the officer executing the same shall not levy upon the property of the securities until he shall fail to find sufficient property of the justice of the peace or constable to satisfy such execution: *Provided, however,* The execution shall be a lien upon the property of the securities as in other cases.

(121.) SEC. CXXI. In all cases of suits on the official bonds of justices of the peace and constables, judgment shall be entered for the full penalty of the bond, in favor of the county commissioners' court, but execution shall only issue for the amount found to be due, with interest and costs.

(122.) SEC. CXXII. After such judgment is obtained, the court may from time to time award execution against the defendant or defendants, for any breach of the conditions of their bond, or for the violation of any of the provisions of this chapter. No such subsequent execution shall, however, be issued until the defendants shall be summoned by a writ of *scire facias*, in the usual form, to appear and show cause why such execution shall not be awarded.

(123.) SEC. CXXIII. Securities shall not be liable in execution beyond the amount of the penalty of their bond, but the liability of the principal shall continue after the penalty of the bond is exhausted, and the court may continue to award execution as occasion shall require.

(124.) SEC. CXXIV. Justices and constables, and their securities, may have the benefit of appeal, *certiorari*, and writ of error, from all decisions and judgments rendered in suits against them as is provided in other cases.

An Act to authorize Justices of the Peace to take Recognizances in certain Cases.

[Approved March 3, 1845. Laws, 1845, p. 273.]

(125.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any justice of the peace before

whom any person is brought, on a complaint for any crime, misdemeanor or other offense, bailable by the laws of this State, may take the recognizance of such persons with surety or sureties, in a reasonable sum, for his appearance before said justice, for further examination, at a future time, not exceeding ten days; at which time and place, all subpoenas in the case shall be made returnable.

(126.) SEC. II. That if the person thus recognized shall not appear before said justice, at the time appointed for further examination, as set forth in the recognizance, it shall be the duty of said justice to note his default upon the record, and certify the same recognizance with the record of the default in the performance of the condition thereof, to the circuit court of his county, that a *scire facias* may issue thereon, or an action of debt be brought for the recovery of the penalty.

An Act to provide for recording Transcripts of Judgments of Justices of the Peace.

[Approved Feb. 27, 1847. Laws, 1847, p. 56.]

(127.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the clerk of the circuit court of each county in the State, shall procure a well-bound book, in which to record the transcripts of judgments of justices of the peace, filed in his office for the purpose of obtaining executions to be levied on real estate; and all such transcripts shall be recorded at length in said book, before any execution is issued thereon.

(128.) SEC. II. Transcripts of judgments of justices of the peace, heretofore filed with clerks of the circuit court, for the purposes mentioned in the foregoing section, shall be recorded in said book, at the request and cost of any party or person intrusted [interested] either in the judgment or proceedings had under the same. The fee for recording transcripts hereafter filed, shall be changed [charged] against the plaintiff or person filing the same, and taxed in the bill of costs against the defendant.

(129.) SEC. III. Transcripts hereafter filed shall contain a copy of the original and each subsequent summons or process issued by the justice of the peace, the return of the officer or officers thereon, the judgment and the execution or executions issued thereon, with the return of the officer or officers upon the same; and no execution shall hereafter be issued upon a transcript, unless the same be made conformable to this act.

(130.) SEC. IV. Every transcript desired to be used for the purposes mentioned in this act, shall be certified by the justice of the peace making the same, to be truly copied from the files and books of his office. This act to take effect from the first day of June next.

See *ante*, p. 290, under title "COUNTIES, COUNTY COMMISSIONERS' COURTS, AND COUNTY COURTS," "An act establishing county courts, and providing for the election of justices of the peace and constables, and for other purposes."

An Act to amend Chapter LIX, of the Revised Statutes of 1845.

[Approved Feb. 8, 1849. Laws, 1849, (1st Sess.) p. 131.]

(131.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases of trial before justices of the peace, either party shall have a right to have the same tried by a

jury, without regard to the amount in controversy, on the same terms and in the same manner as is now provided in cases where the amount in controversy exceeds twenty dollars.

(132.) SEC. II. The manner of summoning jurors, referred to in the first section of this act, shall be the same as provided by law in trials now before justices of the peace; and said justices of the peace shall issue the same kind of precept to compel the attendance of jurors, and in all things the service of said process, and the proceedings before said justices, shall be the same as in cases now provided for by law, when the amount in controversy exceeds twenty dollars.

(133.) SEC. III. This act shall be in force from and after its passage.

See *post*, under title "TOWNSHIP ORGANIZATION."

An Act extending the Jurisdiction of Justices of the Peace.

[Approved June 22, 1852. Laws, 1852, p. 121.]

(134.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all fines, penalties and forfeitures incurred under section third of the act of the General Assembly of this State, approved February seventeenth, eighteen hundred and fifty-one, entitled "An act to amend an act entitled 'An act to provide for the construction of plank roads by a general law,'" may be sued for, prosecuted and recovered before any justice of the peace of the county where said fine, penalty or forfeiture is incurred, or before any justice of the peace of the county where the offender may be found.

(135.) SEC. II. This act to take effect and be in force from and after its passage.

An Act to extend the Jurisdiction of Justices of the Peace.

[Approved Feb. 15, 1855. Laws, 1855, p. 139.]

(136.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the jurisdiction of justices of the peace be and the same is hereby extended so as to include all actions for trespass upon real estate, where the sum claimed does not exceed one hundred dollars.

PRIOR LAWS. An act defining the powers and duties of justices of the peace; approved March 23, 1819. Laws, 1819, p. 185.

An act supplemental to an act entitled "An act regulating and defining the duties of justices of the peace;" approved March 30, 1819. Laws, 1819, p. 353.

An act regulating appeals from justices of the peace, and further defining their duties; approved Feb. 12, 1821. Laws, 1821, p. 130.

An act to amend the several acts relating to the duties of justices of the peace and constables; approved Jan. 17, 1825. Laws, 1825, p. 135.

An act providing for the appointment of constables; approved March 22, 1819. Laws, 1819, p. 162.

An act supplemental to the several acts defining the duties of the several officers therein named; approved Jan 27, 1821. Laws, 1821, p. 37.

An act to provide for the election of justices of the peace and constables; approved Dec. 30, 1826. Rev. Laws, 1827, p. 255.

An act concerning justices of the peace and constables; in force June 1, 1827. Rev. Laws, 1827, p. 259.

An act supplemental to an act entitled "An act concerning justices of the peace and constables," passed Feb. 3, 1827; approved Feb. 12, 1827. Rev. Laws, 1827, p. 274.

An act to extend the jurisdiction of justices of the peace; in force May 1, 1827. Rev. Laws, 1827, p. 274.

An act to amend the act regulating elections; approved Feb. 9, 1827. Rev. Laws, 1827, p. 187.

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. Rev. Laws, 1833, p. 405.

An act to amend "An act concerning justices of the peace and constables," approved Feb. 13, 1827; in force June 1, 1829. Rev. Laws, 1833, p. 407.

An act concerning justices of the peace and constables, and concerning Coles county; approved Jan. 7, 1831. Rev. Laws, 1833, p. 411.

An act to amend the acts concerning justices of the peace and constables; approved March 1, 1833. Rev. Laws, 1833, p. 412.

An act to extend the jurisdiction of justices of the peace in certain cases; approved March 2, 1833. Rev. Laws, 1833, p. 415.

An act to extend the jurisdiction of justices of the peace in certain cases therein named; approved Feb. 13, 1835. Laws, 1835, p. 33.

An act to amend an act entitled "An act to provide for the election of justices of the peace and constables;" approved Jan. 7, 1835. Laws, 1835, p. 29.

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 Jan. 7, 1835; approved Feb. 6, 1835. Laws, 1835, p. 29.

An act to amend an act entitled "An act to amend 'An act concerning justices of the peace and constables,'" approved Feb. 13, 1827, approved Jan 23, 1829; approved July 21, 1837. Laws, 1837, p. 46.

An act for amending the act entitled "An act to provide for the election of justices of the peace and constables," approved Dec. 30, 1826; approved Jan. 12, 1839. Laws, 1839, p. 41.

An act to amend "An act concerning justices of the peace and constables," approved Feb. 3, 1827; approved Feb. 12, 1839. Laws, 1839, p. 87.

An act concerning sheriffs, coroners, constables, justices of the peace and probate justices of the peace; approved Feb. 1, 1840. Laws, 1840, p. 78.

An act to amend "An act concerning justices of the peace and constables," approved Feb. 3, 1827; approved Feb. 1, 1840. Laws, 1840, p. 64.

An act to amend the several acts in relation to constables; approved Feb. 26, 1841. Laws, 1841, p. 176.

An act in relation to official bonds; approved Jan. 28, 1843. Laws, 1843, p. 40.

An act to amend the several laws in relation to the trial of the right of property before justices of the peace; approved Feb. 2, 1843. Laws, 1843, p. 189.

See *post*, title "OFFICERS," "An act in relation to the election of county officers." Laws, 1845, p. 28.

See *ante*, p. 584, title "FORCIBLE ENTRY AND DETAINER," "An act to extend the jurisdiction of justices of the peace and constables, in actions of forcible entry and detainer, or forcible detainer only."

DECISIONS. Under the act of March 23, 1819, a magistrate may appoint a constable in criminal cases, where there is a probability that the criminal will escape. *Flack et al. v. Ankemy*, Breese, 144.

Under the act of March 23, 1819, a justice has no power to investigate an account exceeding \$100, though reduced by credits to a less sum. *Clark v. Cornelius*, Breese, 21. See also, *Ellis v. Snyder*, Breese, 263; *Blue v. Weir et al.*, Breese, 293.

When a justice acts without jurisdiction, he is a trespasser; when he has jurisdiction and acts erroneously, he is not. *Flack et al. v. Ankemy*, Breese, 144.

Though the accounts of a plaintiff originally amounted to more than \$100, yet if the defendant admit a balance of less than \$100 to be due, and promise to pay it, the justice has jurisdiction. *Maurer v. Derrick*, Breese, 153.

The plaintiff's amount of claim before a justice, regulates as to jurisdiction. *Ellis v. Snyder*, Breese, 263.

If a justice, in punishing for a contempt, act maliciously or oppressively, he may be indicted or impeached, but no appeal lies from his judgment. *Clark v. The People*, Breese, 266.

In an action against a constable for an escape upon a *ca. sa.*, or for neglecting to execute it, the defendant will not be permitted to prove that the writ issued upon the oath of the agent of the plaintiff. If the magistrate had jurisdiction of the subject matter, and the process was regular on its face, the officer could not inquire into the accuracy of the proceedings, but must obey the mandate of the writ, and in so doing the officer could not be a trespasser. *Brother et al. v. Canon*, 1 S. 200.

A constable is liable who willfully neglects or refuses to execute lawful process. *Robinson v. Harlan*, 1 S. 237.

A justices' court is of limited jurisdiction, and whenever it assumes jurisdiction not conferred by the statute, its acts are null and void, and the officer executing its process, in such case, would be liable. *Idem*.

Under the 51st section of the "Act concerning justices of the peace and constables," (Rev. Laws, 1833,) the appointment of a constable *pro tem.* must be by indorsement on the back of the



process. There are only two cases in which a justice may appoint a constable *pro tem.*: one is to execute criminal process, when the accused may probably escape; the other, to execute civil process, where goods and chattels are about to be removed, before recourse can be had to a regular constable. It must be shown in the latter case, that the goods and chattels are about to be removed, before the justice can appoint. The appointment can be made only to serve an execution or attachment, not other process. *Gordon v. Knapp et al.*, 1 S. 488.

A constable who has collected an execution issued in a judgment on an attachment suit, and paid the money to the order of the plaintiff, is not, after the reversal of the judgment, on appeal, liable to the attachment debtor, for the money so collected and paid, nor to a garnishee of whom he collected money on the execution. A constable collected money on a judgment of W. against R. and paid it to G. on the order of E., the assignee of the judgment. The judgment was reversed, on appeal, and the constable paid the money back which he had collected of R.: *Held*, that E., the assignee of the judgment, was not liable to refund the money to the constable, and that W. alone was liable. *Elliot v. Sneed*, 1 S. 517.

The return of a constable should show the time when a service of process was made. A return on a summons, in these words, "Executed on the within defendant by his reading the within. Joseph Flinn, Const. M. C.," is insufficient and void. *Wilson v. Greathouse*, 1 S. 174.

The justice who issues, and the constable who executes process, in a case where the justice has no jurisdiction, are both liable as trespassers. *Hall v. Blaisdell et al.*, 1 S. 332.

A justice has no jurisdiction where the original demand exceeds \$100, though reduced below that sum by credits, under the law in force June 1, 1827. *Simpson v. Rawlings*, 1 S. 28.

Justices have no jurisdiction in penal actions, unless it be expressly conferred by statute. *Bowers v. Green*, 1 S. 42.

To bar an action before a justice, on the ground that a former suit between the parties had been decided by a justice, it must appear that the demands in both suits could have been consolidated in one action. *Carsen v. Clark*, 1 S. 113.

Under the statute in force June 1, 1827, a justice has no jurisdiction of a demand exceeding \$100, but reduced below that sum by false or unfair credits; nor, under the same statute, can he have jurisdiction of a case in which he must investigate an account exceeding \$100. *Sands v. Delap*, 1 S. 168. See *Huguin v. Nicholson*, 1 S. 575. See also, note to *Simpson v. Rawlings*, 1 S. 28.

A justice has no jurisdiction of a suit for a demand exceeding \$20, where an administrator is a party, except for debts due for property purchased at an administrator's sale. If a court has no jurisdiction of the subject matter, the consent of parties cannot give it. *Leigh v. Mason et al.*, 1 S. 249.

A justice has no jurisdiction of an attachment suit for a demand exceeding \$30. *Hull v. Blaisdell et al.*, 1 S. 332.

A justice has jurisdiction of a suit, brought to recover the value of work and labor, by one who, under a written contract, had performed part of the work, and was prevented from finishing by the other party to the contract. *Butts v. Huntley*, 1 S. 410.

The jurisdiction of courts, not of record, must appear affirmatively. *Truder et al. v. McKee*, 1 S. 558.

A justice has jurisdiction of a suit on a note for \$100, when interest is not claimed. *Simpson v. Updegraff et al.*, 1 S. 594.

A justice has jurisdiction in a case where the original debt exceeds \$100, but is reduced below that sum by fair credits. Such credits will be presumed fair, till the contrary appears. *Huguin v. Nicholson*, 1 S. 575. (This decision is under the statute of March 2, 1833.)

Acts of official misconduct, done with corrupt motives, by justices, are indictable offenses. *Wickersham v. The People*, 1 S. 128.

If, in a suit before a justice, where all the demands of the parties may be legally investigated, such suit terminate in a judgment binding on the parties, demands which might have been consolidated into one action or defense, and neglected to be exhibited by the parties, shall not be the foundation of a future action. The dismissal of a suit by a justice, is, in effect, a non-suit, and does not bar a subsequent suit for the same cause. *McKinney v. Finch*, 1 S. 152.

A non-resident cannot commence an action before a justice, though he sue for the use of a resident, till he give bond for costs. *Seward v. Chapman*, 1 S. 192.

Under the act of Feb. 13, 1827, an assignor of a note is not the "adverse party" by whom a demand may be proved before a justice. *Arnold v. Johnson*, 1 S. 196.

The obvious intention of all the legislation with respect to proceedings before justices, is to simplify and dispense with all needless form and technicality. *Dedman v. Barber*, 1 S. 254.

The notice, under the 5th section of the act of Feb. 13, 1827, (Rev. Laws, 1833, p. 409,) must be given to the adverse party personally. Notice to his attorney is insufficient. *Carver v. Crocker*, 1 S. 265.

A summons from a justice to a defendant, to answer "for a violation of an ordinance of said town, relative to a nuisance," is informal and insufficient. *Israel et al. v. The Town of Jacksonville*, 1 S. 290.

In proceedings under the "Act regulating inclosures," (Rev. Laws, 1833, p. 261,) the justices should notify the defendant. *Holliday v. Swailes*, 1 S. 515.

A justice has no authority to render judgment against any one of several defendants, who is not served with process. *Marcy v. Padfield*, 1 S. 590.

Proceedings before justices are without written pleadings, and a plaintiff who sues before a justice in his character of administrator, is not required to prove that he is such administrator, unless it is denied on the trial. *Bullance v. Frisby et al.*, 2 S. 63.

The statute, which requires parties, before a justice, to produce all their claims within his jurisdiction as to amount, precludes the parties from exhibiting claims, on the trial of the appeal, not produced before the justice. *Brookbank v. Smith*, 2 S. 78.

It is immaterial in what part of a justice's summons the words "State of Illinois" appear; it is sufficient if they are contained in it. Under the act of March 2, 1833, (Rev. Laws, 1833, p. 415,) a justice has jurisdiction of an unliquidated account exceeding \$100, but reduced below that sum by fair credits. *Harris v. Jenks*, 2 S. 475.

A justice entered a judgment of non-suit against a plaintiff, though the defendant asked a judgment in bar of the suit; afterwards, he erased the word "non-suit," at the request of the defendant, and then restored it, and testified that he intended to enter a non-suit: *Held*, that the proceedings were no bar to a subsequent suit for the same cause. *Eldridge et al. v. Huntington*, 2 S. 535.

A justice has jurisdiction of a suit, for a breach of an ordinance of an incorporated town, prohibiting the sale of ardent spirits without a license, in the name of the president and trustees of such town. *King et al. v. Jacksonville*, 2 S. 305.

A justice can render judgment against a defendant, only when process is legally served on him, or when he appears in person and waives process. One cannot authorize a justice to render judgment against him by a letter. Such judgment would be totally void. *Evans v. Pierce et al.*, 2 S. 463. See also, *Bines v. Procter et al.*, 4 S. 174.

Surplusage does not vitiate a magistrate's warrant. *Shirliff v. The People*, 2 S. 7.

The jurisdiction of an inferior court, like that of a justice's, is not to be extended by implication. The word "debt," in the first section of the "Act concerning justices of the peace and constables," (Rev. Laws, 1833, p. 386,) includes any demand for which the actions of debt or assumpsit will lie. A plaintiff can recover before a justice no more than his original claim, unless the excess accrue as interest. *Dowling v. Stewart*, 3 S. 193.

Unliquidated damages, arising out of a contract, may be set off before a justice. The words "claim or demand," in the 17th section of the practice act, include all cases arising out of contracts, either express or implied. A justice has jurisdiction of a set-off exceeding \$100, when the balance claimed by the defendant exceeds that sum. *Nichols v. Ruckells*, 3 S. 298.

Under the 2nd section of the practice act of March 2, 1839, (Laws, 1839, p. 271,) the assignee of a note, who sues before a justice, need not prove the assignment, unless it is denied by affidavit. *Archer v. Doque*, 3 S. 526. See also, *Hudson v. Dickinson*, 12 Ill. 407.

It is not the law that a constable can in no case require a bond of indemnity, before he is compelled to take property on execution. *Cummings et al. v. McKinney*, 4 S. 57.

Under the 5th section of the act in force June 1, 1829, (Rev. Laws, 1833, p. 409,) when either the "adverse party," or the other, is sworn, he does not become a witness, except in regard to the "demand, discount or set-off," as to which he is sworn. *Webb v. Lasater*, 4 S. 543.

The 3rd section of the "Act to amend the several laws in relation to appeals," (Laws, 1840, p. 103,) is only directory to the justice, and prescribes the performance of a ministerial duty, which, if neglected, may be enforced by the circuit court. The neglect of the justice to do his duty, does not defeat the appeal. The decision, in the case of *Campbell v. Quinlin*, 3 S. 288, is overruled. *Little v. Smith*, 4 S. 400.

Justices have exclusive jurisdiction in cases of assault, and assault and battery. *Carpenter v. The People*, 4 S. 197.

The letters "J. P.," appended to the certificate to a recognizance, mean "justice of the peace." *Shattuck v. The People*, 4 S. 477.

A constable or other officer, in the execution of process, is protected by law, so long as he keeps within the limit of his authority, but no longer. *Wentworth v. The People*, 4 S. 550.

Under the 20th section of the "Act concerning justices of the peace and constables," (Rev. Laws, 1833, p. 192,) a justice has power to enter up a judgment, upon an award of arbitrators. Under the 19th section of the same act, partners may submit their partnership accounts to a justice, and he may entertain jurisdiction thereof, and proceed as in other cases, if the amount be within his jurisdiction. *Hyatt v. Harmon*, 1 G. 379.

A constable is protected in the execution of the process of a justice, where it shows upon its face that the court had jurisdiction of the subject matter, and nothing appears to apprise him that the court had not jurisdiction of the person of the defendant. *Barnes v. Barber et al.*, 1 G. 401.

Under the "Act to exempt certain articles from execution," (Laws, 1843, p. 141,) it is the duty of a constable to notify the defendant, before levy of an execution; and if the defendant neglect to select the property allowed him by the statute, the officer may levy and sell. But if the defendant select property, and notify the officer, and the officer take it, unless authorized by the finding of appraisers, under the statute, he is a trespasser. *Cook v. Scott*, 1 G. 333.

A justice has jurisdiction in an action on a note for \$100, payable in 20 days, if the plaintiff do not claim interest. The defendant before a justice should state his defense before the trial. *Bates v. Bulkley*, 2 G. 389.

The authority of a justice to act as a justice cannot be examined collaterally. *Culbertson v. Galena*, 2 G. 129.

In an action of trespass to personal property, before a justice, the question of jurisdiction is to be determined by the evidence of the amount of damages. *Rodgers v. Blanchard*, 2 G. 335.

A justice may render judgment against all the defendants, who are served with process; if the joint liability of all the defendants sued, is established. *Kerr v. Boyer et al.*, 2 G. 417.

A justice duly elected, filed within the 20 days an imperfect bond, and after the 20 days, filed a bond correcting the imperfection: *Held*, that as the first bond was insufficient, and the last not filed in time, the office was vacant. *People v. Percels*, 3 G. 59.

To give a justice jurisdiction of an action of forcible entry and detainer, the complaint should contain allegations sufficient to bring it within the statute. *Ballance v. Curtin et al.*, 3 G. 449.

In an action before a justice, the plaintiff can recover no larger amount than the sum indorsed on the summons, as his claim. *Badgley v. Heald*, 3 G. 64.

Under the road law of 1841, a justice has jurisdiction of a suit to recover the penalty for obstruction of a road. *Ferris v. Ward*, 4 G. 499.

A summons, in the ordinary form, issued by a justice, may be construed as commencing either an action of debt or assumpsit, at the option of the plaintiff. *Brdell v. Janney et al.*, 4 G. 193.

The statute directing justices to take appeal bonds in a penalty double the amount of judgment and costs, is not imperative, and though the penalty be more than double, the bond is valid. *Smith v. Whitaker*, 11 Ill. 417.

A justice may render a judgment upon confession of a party before him, for a debt within his jurisdiction. *Lopkins v. Walter*, 11 Ill. 543.

When actions, in which process is returnable at the same time, are brought before a justice, on two notes, which, if consolidated, are more than \$100, a judgment on one is not a bar to the other.

If a controversy exists as to the amount of a set-off, the party is not bound to give credit before trial for the exact amount which the trial may show to be correct. *Buckner v. Thompson*, 11 Ill. 563.

The statute permitting parties, before justices, to avail themselves of the oath of adverse parties, embraces only cases within both the letter and spirit of the law. If the "adverse party" refuse to swear, or to testify when sworn, or does not testify explicitly, fairly and fully, the other party may be a witness. *Pickering v. Misner et al.*, 11 Ill. 597.

The statute which requires justices to indorse the amount of the plaintiff's claim on the summons, is directory, and if not done, does not defeat the action; but when done, will limit the recovery to that amount. *Eaton v. Graham*, 11 Ill. 619.

An affidavit by the agent of a creditor authorizes a justice to issue a warrant to hold a debtor to bail. *Wilson v. Nettleton*, 12 Ill. 61.

Justices have jurisdiction only to the amount of \$20, in actions by or against executors or administrators; and the consent of parties cannot confer jurisdiction. *Williams et al. v. Blankenship et al.*, 12 Ill. 122.

The statute requiring bond for costs in penal actions, applies to such actions before justices; if such bond be not given, the motion to dismiss should be made to the justice. *Adams v. Miller*, 12 Ill. 27.

A justice cannot issue an execution against the body of a defendant, before an execution against the property is returned unsatisfied, except in cases of trespass and trover. *McDonald v. Wilkey et al.*, 13 Ill. 22.

Justices have authority to take recognizances in allailable cases, and where taken by two justices, when one would be sufficient, they are not thereby made invalid. *McFarlan v. The People*, 13 Ill. 9.

The admission of a party, before a justice, that a claim against him is correct, is not a confession of judgment, and he may still appeal. *Campbell v. Randolph*, 13 Ill. 313. See also, *Wair v. Stephenson*, 13 Ill. 374.

The statute providing that "appeals from the judgments of justices shall be granted in all cases except on judgments confessed," has reference to judgments in civil proceedings. *Edwards v. Vandemack*, 13 Ill. 633.

An appeal does not lie from the decision of a justice for a penalty, under the "Act to prohibit the retailing of intoxicating drinks," approved April 18, 1851. The right to appeal, under the 58th section, chapter LIX, Revised Statutes, does not apply to judgments by justices in criminal prosecutions, for fines, penalties or offenses criminal in their character. *Ward v. The People*, 13 Ill. 635.

A justice has jurisdiction to the amount of \$100, in an action against a constable for non-feasance. *Briley v. Copeland*, 14 Ill. 38.

A justice has no jurisdiction in actions to recover the statute penalty for seizure of property exempt from sale on execution, when treble the value of the property taken is more than \$100. *Casey v. Harvey*, 14 Ill. 45.

A justice has jurisdiction in an action of trespass for injury to growing corn, if the damages claimed do not exceed \$100. *Reed v. Johnson*, 14 Ill. 257.

A justice has jurisdiction in a suit against a constable for taking property not subject to levy; and against a constable and his sureties, to recover single damages for such taking. *Vaughan v. Thompson*, 15 Ill. 39.

The jurisdiction of a justice does not depend upon the amount of the claim filed, but upon, the real amount due as ascertained by the evidence. *Clark v. Whitbeck*, 14 Ill. 393.

Mayors, elected for but one year, under the general law of 1849, (Laws, 1849, 1st Sess. p. 224,) cannot exercise the judicial powers of justices. *The People v. Maynard*, 14 Ill. 419.

A person elected a justice for a "precinct," if afterwards elected a justice for a "township," and accepting the latter, the first office becomes vacated. *Eddy v. County Commissioners*, 15 Ill. 375.

S., a justice, removed and transferred his docket, &c., to H., the nearest justice; H. removed and transferred his docket, &c., and that of S., to Swan. Swan issued an execution on a judgment rendered by S.: *Held* to be properly issued, and that the officer executing it was protected. *Martin v. Walker*, 15 Ill. 377.

Parol proof will not be admitted to show that a justice intended to enter a different judgment from the one recorded on his docket. Where parties appeared and went to trial before a justice, and after hearing the evidence, he rendered a judgment against the plaintiff for costs, it was held to be a judgment in bar of the plaintiff's claim. *Zimmerman v. Zimmerman*, 15 Ill. 85.

## CHAPTER LX.

## LANDLORD AND TENANT.

## SECTION

1. Reasonable rent for lands held without special agreement, may be collected.
2. Persons holding over by collusion with tenant, to pay double rent.
3. Tenant not quitting premises according to notice by him given, to pay double rent.
4. If a half year's rent be due, landlord may commence action of ejectment; effect of judgment in such action; if tenant pays arrearages and costs, suit to be discontinued.
5. Tenant sued in ejectment by other than landlord, to give landlord notice.
6. Distress for rent, how landlord shall proceed in case of; entry of amount due by clerk of court or justice; sale; return.

## SECTION

7. Property of tenant in county may be seized, but not the property of other persons.
8. Crops, lien of landlord upon, for rent.
9. Abandonment of premises, how landlord may proceed in case of, as to crops thereon.
10. When defendant shall not replevy property in five days, how property to be disposed of; notice of sale; sale; surplus to be restored.
11. Perishable property, how officer may dispose of.
12. What property is exempt from distress for rent.
13. Proceedings in case of distress for rent, where defendant has left the State.
14. When act to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 333.]

(1.) SECTION I. In all cases in which 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.

(2.) SEC. II. 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 willfully 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.

(3.) SEC. III. 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.

(4.) SEC. IV. 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 thereof 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 in arrear, and costs of suit, and the proceedings on such ejectment shall thereupon be discontinued.

(5.) SEC. V. 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 years' 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.

(6.) SEC. VI. In all cases of distress for rent, the person making the same, shall immediately file with some justice of the peace, in case the amount claimed does not exceed one hundred dollars, or with the clerk of the circuit court, in case it exceeds that sum, a copy of the distress warrant, together with an inventory of the property levied upon; and thereupon the party against whom the distress warrant shall have been issued, shall be duly summoned, and the amount due from him assessed and entered upon the records of the court finding the same. The said court shall certify to the person or officer making the same, the amount so found due, together with the costs of court; and said officer shall thereupon proceed to sell the property so distrained, and make the amount thus certified to him, and return the certificate so issued to him, with an indorsement thereon of his proceedings, which return and certificate shall be filed in the proper court.

(7.) SEC. VII. 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.

(8.) SEC. VIII. Every landlord shall have a lien upon the crops, growing or grown upon the demised premises in any year, for rent that shall accrue for such year.

(9.) SEC. IX. In case of the removal or abandonment of the premises or any part thereof, by such tenant, all grain or vegetables, 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 and 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.

(10.) SEC. X. 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, after having obtained such assessment, as specified in section six of this chapter, and 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.

(11.) SEC. XI. Any landlord distraining, or officer or other person, in whose hands perishable property may be, when there is danger that the same will perish or be lost if it shall remain undisposed of until the conclusion of the suit, such landlord, officer or other person may sell the same as provided in the preceding section, and after paying the costs attending such sale, shall pay over the balance to the person or persons to whom the same shall be due.

(12.) SEC. XII. The same articles of personal property which are by law exempt from execution, except the crops grown or growing upon the demised premises, shall also be exempt from distress for rent.

An Act to amend an Act entitled "An Act amendatory of the Practice Act," approved February 16, 1849.

[Approved Feb. 17, 1851. Laws, 1851, p. 135.]

(13.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in all actions which may have been or may be commenced to perfect a distress for rent, before any justice of the peace in this State, when the defendant or defendants shall have left

the State or cannot be found, and upon the filing by the landlord, his agent or attorney, of an affidavit setting forth that such defendant or defendants have left the State, or cannot be found, it shall be the duty of the justice of the peace to proceed in the cause in the same manner as is required by section seven or eight of chapter eight of the Revised Laws.

(14.) SEC. II. This act to take effect from and after its passage.

**PRIOR LAWS.** An act as to proceedings in ejectment, distress for rent and tenants at will, holding over; in force Feb. 23, 1819. Laws, 1819, p. 53. Repealed Feb. 13, 1827.

An act concerning landlords and tenants; in force June 1, 1827. Rev. Laws, 1827, p. 278; Rev. Laws, 1833, p. 775.

An act to amend an act entitled "An act concerning landlords and tenants;" in force Jan. 4, 1831. Rev. Laws, 1833, p. 420.

An act to exempt certain articles from execution; in force Feb. 26, 1841. Laws, 1841, p. 171.

**DECISIONS.** An execution in the hands of a sheriff, not levied, will hold property subsequently distrained for rent, due prior to the time such execution was received by the sheriff; and the sheriff may take the property from the officer who holds the same, under a distress warrant, levied after such execution came to his hands. *Rodgers v. Dickey*, 1 G. 636.

The goods of a sub-lessee cannot be distrained for rent reserved in the original lease, though found on the premises. *Gray v. Rawson*, 11 Ill. 527.

A landlord may distrain after the rent is due, and before the determination of a tenancy. *Keizer v. Kennedy*, 11 Ill. 572.

When a tenancy is for more than a year, no notice to quit before the termination of the tenancy is necessary. *Walker v. Ellis*, 12 Ill. 470.

A tenant having a right by his lease to remove certain fixtures put by him into a mill during the tenancy, who is enjoined from removing the same, may do so after the determination of the lease; or the same may be removed by the mortgagee of the tenant. *Mason v. Fenn*, 13 Ill. 525.

In proceedings under a distress warrant, the court will only inquire whether the relation of landlord and tenant exists, and whether there is any and what amount of rent due; a set-off will not be allowed; neither can the landlord recover for any other claim. *Sketoe v. Ellis*, 14 Ill. 75.

## CHAPTER LXI.

### LANDS—SWAMP AND STATE.

SECTION	SECTION
1. Contracts for sale of improvements on government lands, valid.	13. Notice of sale.
2. Possession of government lands, in certain suits, deemed to extend to three hundred and twenty acres of unsurveyed land, or one hundred and sixty acres of surveyed land, if such be the custom of the neighborhood.	14. Terms of sale.
3. When land claimed is in separate parcels, how held.	15. Order of sale.
4. Restriction as to unsurveyed land.	16. Payments.
5. Such claim not to be good against a <i>bona fide</i> purchaser, or pre-emption claimant.	17. Entries of sale; deeds.
6. Duty of county commissioners' clerks to transmit lists of unlisted lands to auditor.	18. County courts to drain lands.
7. Grant of lands by State to counties.	19. Reports of surveyors.
8. Counties to convey certain lands; by whom conveyance made, countersigned, &c.; <i>proviso</i> .	20. Lettings; duty of drainage commissioner.
9. Auditor to furnish abstract of lands.	21. Persons bidding, to give bond.
10. Who to have care of swamp lands; drainage commissioners.	22. When purchasers of lands are lowest bidders, their privilege.
11. Duty of surveyors to make plats of said lands, and make return to county court, who shall fix valuation; <i>proviso</i> .	23. Limit of sales; <i>proviso</i> .
12. Sale of lands by court.	24. Drainage commissioner or other person embezzling money, &c., penalty.
	25. Private sales; <i>proviso</i> .
	26. Compensation of surveyors.
	27. Chajumen, &c., compensation.
	28. Affidavit of surveyors.
	29. Assistant surveyor's affidavit.
	30. Pay of assistant surveyors.
	31. Auditor to issue warrants; <i>proviso</i> .
	32. Pre-emptions; <i>proviso</i> ; further <i>proviso</i> .
	33. Business relating to swamp lands to be transacted

SECTION	SECTION
at regular term of court, except, &c. Where counties have adopted township organization.	53. When act to take effect.
Fees. Duty of constables and other officers.	54. Who to have control of certain swamp lands in Cook county.
34. When act to take effect.	55. When act shall be in force.
35. Auditor to receive reports of agents.	56. Swamp lands in Jersey county.
36. When act to be in force.	57. When act to take effect.
37. Swamp lands, duty of county courts regarding; <i>proviso</i> .	58. Swamp lands in Adams county.
38. Purchase money to be refunded.	59. Act declared public; when to be in force.
39. Powers of board of supervisors.	60. Auditor to offer certain State lands at public sale.
40. Certified copy of orders to be published.	61. Within what period to be offered for sale; <i>proviso</i> .
41. Proceeds of sales of lands, how to be applied; <i>proviso</i> .	62. Sale to be at county seats of respective counties; notice.
42. Pre-emption.	63. Sales to continue: lands unsold subject to entry. Reduction in price after one year. Lists of lands to be sent to county clerks.
43. Private property to be taken.	64. Auditor to issue certificate.
44. Evidence of title to lands to be filed in auditor's office, who shall furnish abstracts to counties.	65. Moneys to be paid into treasury.
45. Patents received from United States to be recorded by auditor.	66. Governor to invest in bonds, &c.
46. Fees allowed to county clerk.	67. Pre-emptions; <i>proviso</i> .
47. Clerk to execute deeds.	68. Expenses incurred under this act.
48. Acts repealed.	69. Reservations.
49. <i>Proviso</i> . Drainage commissioners may be removed from office by courts, for cause.	70. Certain combinations, &c., unlawful.
50. When act to take effect.	71. When act to be in force; to be published; how expense defrayed.
51. Title vested in county of Kankakee; <i>proviso</i> .	72. Right of pre-emption on State lands extended; <i>proviso</i> .
52. Duty of auditor; <i>proviso</i> .	73. When act shall take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 336.]

(1.) SECTION I. 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.

(2.) SEC. II. The possession of any person settled on unsold lands of the United States, may, in actions of trespass, trespass *quare clausum fregit*, forcible entry and detainer and ejectment, (and in the absence of a paper title,) extend to three hundred and twenty acres of unsurveyed lands, or one hundred and sixty acres of surveyed lands, (if the custom of the neighborhood extend to so many acres.)

(3.) SEC. III. When such claim is made of surveyed lands, lying in separate parcels, the person claiming the same shall not have the benefit of the preceding section, unless he shall reside on or near the same, nor unless it be so plainly marked that it can be plainly designated and distinguished from adjacent lands.

(4.) SEC. IV. If such claim be made of unsurveyed lands, the person claiming the same shall not have the benefit of the second section, unless such lands be so plainly marked and designated as to be distinguished from adjacent lands.

(5.) SEC. V. But such claim shall not be pleaded 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.

(6.) SEC. VI. In all cases where the clerk of any 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

remain 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.

An Act to dispose of the Swamp and overflowed Lands, and to pay the Expenses of selecting and surveying the Same.

[Approved June 22, 1852. Laws, 1852, p. 173.]

(7.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all the swamp and overflowed lands granted to the State of Illinois, by the act of Congress entitled "An act to enable the State of Arkansas and other States, to reclaim the swamp lands within their limits," approved September twenty-eight, one thousand eight hundred and fifty, be and the same are hereby granted to the counties respectively, in which the same may lie or be situated, for the purpose of constructing the necessary levees and drains to reclaim the same, and the balance of said lands, if any there be, after the same are reclaimed as aforesaid, shall be distributed in each county, equally, among the townships thereof, for the purposes of education, or the same may be applied to the construction of roads and bridges, or to such other purposes as may be deemed expedient by the courts or county judge hereinafter mentioned desiring so to apply it.

(8.) SEC. II. Whenever it shall appear that any of the lands granted to the State by the aforesaid act of Congress, shall have been sold by the United States since the passage of this act, it shall be lawful for the said counties to convey such lands to the purchasers thereof. The said deed of conveyance shall be made by the judges of the county court, as such, and countersigned by the clerk of said court, with the official seal thereto affixed; and on delivering said deed to the purchaser, the county judge shall take from him an assignment of all his rights in the premises, and as such assignees they shall be authorized to receive from the United States the purchase money of said land; and whenever any lands embraced by the said act have been located by bounty land warrants since the passage thereof, it shall be lawful for such county in which the same are situated, to convey the same in manner aforesaid, to the person or persons who located said warrant, and to take an assignment of the same to them as county judges, who shall thereupon be considered as assignees of the State, and as such may locate said warrant on any of the public lands belonging to the United States within the limits of such county, or elsewhere. Whenever lands embraced by the said act have been located since the passage thereof, under the provisions of the act of Congress, approved fourth September, one thousand eight hundred and forty-one, it shall be lawful for the counties in which the same may lie, to locate a like quantity of public land within the limits of such counties, or elsewhere: *Provided,* The same shall be located in accordance with the provisions of the said act of the fourth September, eighteen hundred and forty-one. And whenever any swamp and overflowed lands within the limits of any county, lying outside of the six sections and within the fifteen miles of the central railroad and branches, have been selected by the central railroad company, under the provisions of the act of Congress, approved September twentieth, eighteen hundred and fifty, and which are of the character embraced by the said act of the twenty-eighth September, eighteen hundred

and fifty, it shall be lawful for any such county to select other lands in lieu thereof, within the fifteen miles authorized by the act of twentieth September, eighteen hundred and fifty; and it is hereby understood and so intended by this act, that all the rights of the State accruing thereto in the above enumerated cases, under the said act of twenty-eighth September, eighteen hundred and fifty, and the decision of the secretary of the interior of the twenty-third December, eighteen hundred and fifty-one, in regard to the grants made by the said last mentioned act, be and the same are hereby vested in the counties aforesaid, for the purposes aforesaid.

(9.) SEC. III. The auditor of public accounts shall, within a reasonable time after the passage of this act, furnish to each of said counties a full abstract of all the swamp and overflowed lands within the limits of the same, and of all the swamp and overflowed lands which have been purchased from the United States, or which have been located by bounty land warrants, or to which the right of pre-emption has attached, or which have been, under the act of September twentieth, eighteen hundred and fifty, selected by the central railroad company, in lieu of lands sold by the United States, in said six sections, since the passage of said act of twenty-eighth September, eighteen hundred and fifty, the same to be made out as far as practicable from the surveyor's returns filed in his office: which said abstract shall be recorded in a book to be provided by the clerk of the county court, and filed away among the records of his office.

(10.) SEC. IV. The said lands shall be under the care and superintendence of the county courts of the counties, respectively, in which the same are situated. And at the next regular term for holding said courts, after the passage of this act, it shall be the duty of the said county courts of their respective counties to appoint an officer, to be styled "Drainage Commissioner of the county of —," who shall, within twenty days after his said appointment, enter into bond, with good security, to be approved by the county court, payable to the people of the State of Illinois, for the use of the inhabitants of the county of —, in the penal sum of ten thousand dollars, conditioned for the faithful performance of all the duties required of him, or which may hereafter be required of him by law.

(11.) SEC. V. It shall be the duty of the surveyors in the several counties in this State, who have surveyed the said swamp and overflowed lands in their respective counties, to make out plats of all the swamp and overflowed lands in the several townships and fractional townships within their counties, noting distinctly upon the same every tract or parcel of swamp and overflowed land in each township, the quantity and quality thereof, as to whether the same is first, second or third rate; and it shall be his duty to return the same, as soon as practicable, and in reasonable time, to the clerk's office of the county court, and the said court, at the next regular term thereafter, or sooner, if deemed necessary, shall fix a valuation upon each tract according to its quality; but in no case shall any of said land be valued at a less price than ten cents per acre; and the said plat, with the description and valuation marked thereon, shall be recorded in said book, and filed away among the records of the office: *Provided,* That in case of the death or refusal to act of any such county surveyors, the said courts may employ any other suitable person or persons to perform the duties aforesaid.

(12.) SEC. VI. After the surveyors have returned the plats as aforesaid, and the valuations have been made and recorded as aforesaid, the said court shall fix upon the proper time for selling said lands, which shall, in all cases, be at the county seat, and at the court-house door of the several counties. The said courts may order the whole of said lands to be sold, and the sale to be continued from day to day, or they may order a part only of said lands to be sold from time to time, as they may deem most expedient, and all such orders so made by them shall be entered on record in said book.

(13.) SEC. VII. The said drainage commissioner shall be notified in writing, by the clerk, of all such orders, and within a reasonable time thereafter, not exceeding ten days, he shall give at least sixty days' notice of the time and place of the sale thereof, by publishing the same in some newspaper printed in the county; or if there be no such newspaper, then by posting up two notices thereof in each election precinct, and in the most public places therein in said county, for the like period of sixty days before the said day of sale. The said notices shall contain an accurate description of the lands to be sold, and shall specify the time, place and terms thereof, and that the sale will be at public auction, between the hours of ten o'clock A. M. and five o'clock P. M. of the day fixed therefor, and that the same will be continued from day to day, if deemed necessary.

(14.) SEC. VIII. The terms of selling said lands shall be to the highest bidder, for cash, the amount of which, however, may be discharged by the purchaser in labor, to be performed according to the terms and manner hereinafter specified.

(15.) SEC. IX. In conducting the sale, the said commissioner shall sell the same in such order as may be directed by the county court. No tract shall be sold for less than its valuation, and the same shall be cried separately and long enough to enable any one to bid who desires it.

(16.) SEC. X. Upon closing the sales each day, the purchasers shall each pay or secure the payment of the purchase money according to the terms of sale, or in case of his failure to do so by ten o'clock the succeeding day, the tract purchased shall be again offered at public sale, on the same terms as before, and if the valuation shall be bid, the same shall be stricken off, but if the valuation be not bid, the tract shall be set down as not sold. If sale is made, the former purchaser shall be required to pay the difference between his bid, and the valuation of the tract; and in case of his failure to make such payment, the drainage commissioner may forthwith institute an action of debt or *assumpsit* in his name, for the use of the inhabitants of the proper county, for the required sum, and upon making proof, shall be entitled to judgment, with costs of suit, which, when collected, shall be applied as other moneys arising from the sale of lands; and if the amount claimed does not exceed one hundred dollars, the suit may be before a justice of the peace, but if more than that sum, then in the circuit court of any county wherein the party may be found.

(17.) SEC. XI. Upon the completion of every sale by the purchaser, the commissioner shall enter the same in a sale book to be kept for that purpose, and shall deliver to the purchaser a certificate of purchase, stating therein the name and residence of the purchaser, describing the land sold, and the price paid therefor; which certificate shall be evidence of the facts

therein stated; and when presented to the county court, it shall be the duty of said court to execute and deliver to him a deed in fee simple for the land therein described, signed in their official capacity, and countersigned by the clerk of said court, with the official seal thereto affixed; which said deed shall vest in said purchaser an absolute title in fee simple of said lands therein described.

(18.) SEC. XII. The said county courts shall cause the said lands to be drained, by the construction of proper levees and drains necessary to reclaim the same, and whenever there are bodies of said land extending into two or more counties, and the reclaiming of the same can be more effectually accomplished by the co-operation of such counties, it shall be lawful for them to unite for that purpose; and if the said county courts thus uniting are of opinion that said lands can be more effectually reclaimed, and the value thereof enhanced, by cutting a canal through the same, they are hereby fully authorized so to do.

(19.) SEC. XIII. The surveyors or others employed to perform the duties specified in the fifth section of this act, shall also report to the county courts all the lands in their respective counties which are susceptible of being drained or reclaimed, in all cases where said information cannot be satisfactorily had from the said abstracts from the auditor's office, with an estimate of the probable cost thereof; and at the regular term after said reports are received, the said courts shall divide all such drainable lands in their counties into sections, numbered one, two, three, &c., and whenever there shall be a sufficiency of lands sold to complete one or more sections, the same shall be, as soon as practicable, put under contract, and operations commenced thereon; and in like manner shall the work progress until the avails of said lands are exhausted, or the drainage completed.

(20.) SEC. XIV. The said county court shall cause the work to be done on the said sections, to be let out at public sale to the lowest bidder, and it shall be the duty of the drainage commissioner, on being ordered by said court so to do, to give at least six weeks' notice of the time and place of such lettings, by putting up notices thereof in six of the most public places in the county, and in case there shall be a newspaper printed in the county, then by causing a similar notice thereof to be published in the same for the like period of six successive weeks before the day of such letting. The said lettings shall be at the court-house door of the county, and between the hours of ten o'clock A. M. and five o'clock P. M. of said day; and the said notice shall contain specifications of the work to be done, to be made out under the direction and control of the county court.

(21.) SEC. XV. The persons to whom such lettings shall be struck off, shall enter into bond, with good security, payable to the said commissioner, for the use of the inhabitants of the county, in the penal sum of double the value of his bid, conditioned for the faithful performance of the work so undertaken by him, according to the specifications thereof, and on a failure to comply with the conditions thereof, said bond shall be forfeited, and suit brought upon the same to recover damages for non-compliance.

(22.) SEC. XVI. The said county courts, in laying off said work into sections as aforesaid, shall make such division thereof as will enable purchasers of land to pay for the same in necessary work; and if said



purchasers shall be the lowest bidders at the lettings, the land so purchased shall be paid for in work; but if any other responsible person or persons shall be lower bidders, the same shall be struck off to him and them, and the purchasers aforesaid shall be forthwith required to pay for their lands purchased in cash, or on credit, by giving mortgage and good security for the purchase money, at the discretion of said drainage commissioner.

(23.) SEC. XVII. That said county courts shall not dispose of or sell more of said lands than shall be absolutely necessary to complete the reclaiming and draining the same; and in all cases where there are any lands remaining unsold after the completion of said draining in any county, the lands so remaining unsold as aforesaid, shall belong and the same are hereby granted to the several townships in such county, equally to be divided between them, and shall constitute a part of the school fund of each township, and shall be disposed of by the school commissioners of said counties, for educational purposes, in the same manner as the sixteenth in each township now is by law: *Provided*, That any county in this State may apply the remainder of said lands in such county to the construction of roads, bridges or other works of internal improvements within the limits thereof, in case it shall be deemed expedient by the court so to do.

(24.) SEC. XVIII. If any drainage commissioner, or other person, shall embezzle or appropriate to their own use any money, bonds, bills, notes or mortgages, belonging to the drainage fund of any county in this State, he, she or they shall be liable to indictment, and on conviction shall be imprisoned in the penitentiary of this State for a period not less than one nor more than five years, and such conviction shall work a forfeiture of office in all cases.

(25.) SEC. XIX. All lands not sold at public sale, as herein provided for, shall be subject to sale at any time thereafter at the valuation, and the county judges in term time, or the clerks of the county court in vacation, are authorized and required to sell all such lands at private sale upon the terms which they were offered at public sale, the money to be paid over to the drainage commissioner, and his receipt taken therefor: *Provided*, The purchaser shall pay a fee of fifty cents to the said clerk for each tract purchased; and all incidental and necessary expenses incurred in carrying into effect the provisions of this act, shall, on being satisfactorily proved before the county court, be paid by the drainage commissioner out of any funds in his hands not otherwise appropriated.

(26.) SEC. XX. The surveyors and assistant surveyors employed in selecting the swamp and overflowed lands donated to the State of Illinois by the general government, under an act of Congress, dated September twenty-eight, eighteen hundred and fifty, shall be allowed the sum of three dollars per day, which shall include and be in full for their services and all expenses of whatsoever kind.

(27.) SEC. XXI. The chainmen and others necessarily employed by the surveyors in surveying and locating the said lands, shall be allowed the sum of one dollar per day, which shall include and be in full for their services and expenses; and where it was necessary to employ a team, the sum of one dollar per day shall be allowed for the time actually employed. And the county clerks of the respective counties shall be allowed a reasonable compensation, in the discretion of the county court, to be paid in the same

manner as the county surveyors, for all abstracts, certificates, copies of records, official searches, and other services necessarily rendered by them to and at the request of such surveyors in surveying and locating said lands.

(28.) SEC. XXII. The surveyor shall be required to file in the office of the auditor of public accounts, an affidavit, setting forth the number of days he was actually and necessarily employed, and the number of days that each person, naming such person, was actually and necessarily employed by him, and when a team was employed, the number of days such team was actually and necessarily employed, and when an assistant surveyor was employed, that such assistant is a practical surveyor, and was authorized by him to make selections of swamp and overflowed lands.

(29.) SEC. XXIII. Assistant surveyors shall be required to file in the office of the auditor of public accounts, a like affidavit as that required of the surveyor in the preceding section.

(30.) SEC. XXIV. Assistant surveyors shall only receive the pay allowed by this act to assistant surveyors, where they have been employed separate and apart from the surveyor; and no assistant surveyor shall be entitled to pay as an assistant surveyor where he has been employed in selecting the same lands selected by the surveyor, or for lands selected by them jointly, which fact shall be proven by the affidavit of the surveyor.

(31.) SEC. XXV. When accounts are proved and filed as provided for in this act, in such manner as shall be satisfactory to the auditor, the auditor is hereby authorized and required to draw his warrant on the treasurer for the amount thereof in favor of the persons entitled thereto, or on their written order. The several amounts authorized to be paid by this act, are hereby appropriated: *Provided*, That the auditor shall charge the several amounts so paid, to the drainage fund of the several counties, and the same shall be a debt due and owing from such fund to the State; and it is hereby made the duty of the drainage commissioners to pay, out of the first moneys received from the sale of lands, to the collectors of the several counties, the said amounts so charged by the auditor against such drainage funds as aforesaid, which said amounts shall be paid by said collectors into the State treasury as other State funds.

(32.) SEC. XXVI. Each and every person who, on the twenty-eighth day of September, one thousand eight hundred and fifty, was the owner of any improvement made previous to that date, or who since that date has become the owner of such improvement, on any of the said swamp and overflowed lands, and who became such owner with a view to a residence on or occupation of such land for agricultural purposes, shall have the right to purchase, at the appraised value thereof, a quantity of land, including his said improvement, to be bounded by the legal subdivisions, not exceeding one quarter section, to consist of the quarter quarter, half quarter, or quarter section: *Provided*, That any person claiming the right to purchase under this act shall, within three months from the passage of this act, file in the clerk's office of the county court of the proper county, a notice of his, her or their claims, describing the land by its numbers, accompanied with an affidavit stating the date and object of the improvement, the time and manner, where and how, he, she or they became the owner thereof, and also the affidavits of two residents of the county, proving the facts in relation to such claims: *And provided, further*, That any person claiming the right to

purchase as aforesaid, shall, within twelve months from the day fixed for the letting of the section in which his said improvement may be situated, pay to the drainage commissioner the consideration money for the land claimed, or the person so claiming shall be allowed to pay the same in labor, according to the provisions of this act, which payment shall entitle him, her or them to a deed, conveying an estate in fee; but in case of failure to make such payment, or to pay in labor as aforesaid, the right to make the purchase shall cease. When two or more persons claim the right to purchase the same land, and file the proof of ownership as herein required, the person proving the first residence or ownership, by himself or those under whom he claims the improvement, shall have the right to make the purchase, but no sale or conveyance of any lot of land under the provisions of this section, shall affect the rights or equities of parties claiming the same as between each other.

(33.) SEC. XXVII. All business in relation to the swamp and overflowed lands shall be transacted at the regular term of the county courts, except on extraordinary occasions, when said county courts shall have the power to appoint special terms for the transaction of such business. And where said counties have adopted the township organization law, and are acting under its provisions, the county judge in such counties shall exercise the same powers and perform the same duties as the judges of the county courts are required to exercise and perform under the provisions of this act, and they shall hold meetings for the transaction of all business connected with the swamp and overflowed lands in their counties, at such times as the county courts are required to do, and they may convene on extraordinary occasions to transact such business, when the nature of the case shall require it. The fees of officers and others necessarily employed, shall be as follows: To the drainage commissioner, such reasonable compensation as may be allowed by the county court or county judge; to the county judge, or judge and clerks, the same fees as are now allowed by law for the performance of their other duties: *Provided*, That the clerks shall prepare all deeds to be executed by said county judges or judge, for which they shall be allowed one dollar, to be paid in all cases by the purchaser; to surveyors, chainmen and others necessarily employed, a reasonable compensation, to be fixed by the court or county judge; which fees, with the exception aforesaid, shall be paid out of the drainage fund. It shall be the duty of all constables, coroners, sheriffs, justices of the peace, county surveyors and grand jurors, to take notice of all trespasses committed on such lands, either by cutting timber or otherwise; and to take all legal steps, under the laws of this State, to bring such offenders to punishment. And it shall be the duty of the State's attorneys in the respective judicial circuits, to give this section specially in charge to the grand jurors of such counties at each circuit court.

(34.) SEC. XXVIII. This act to take effect and be in force from and after its passage.

An Act to amend an Act to dispose of the Swamp and overflowed Lands, and to pay the Expenses of selecting and surveying the Same, approved June 22, 1852.

[Approved Feb. 3, 1853. Laws, 1853, p. 93.]

(35.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the twenty-fifth section of said act

be and the same is hereby so amended as to authorize the auditor of public accounts to receive of the agent appointed by the governor to select and report the swamp and overflowed lands in the county of Iroquois, any number of townships said agent may report as complete, and pay the expense of selecting the same, at any time. Any number of townships may be reported, instead of receiving the reports of the county complete, as is now required by said act.

(36.) SEC. II. This act to be in force and effect from and after its passage.

An Act to amend an Act entitled "An Act to dispose of the Swamp and overflowed Lands, and to pay the Expenses of selecting and surveying the Same," approved June 22, 1852.

[Approved March 4, 1854. Laws, 1854, p. 19.]

(37.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in all cases where any of the lands granted to the counties by the act to which this act is amendatory, have been sold by the United States since the passage of the act of Congress entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," approved September 28, 1850, the county courts of the several counties in this State shall, by an order to be entered of record at any regular or special term, sitting for the transaction of county business, make all necessary orders for securing to the purchasers who have purchased swamp and overflowed lands situated in their respective counties, since the passage of the act of Congress as aforesaid, in pursuance and in the manner prescribed by the act of the General Assembly of this State, to which this is an amendment: *Provided*, That the county courts may in their discretion require the purchasers aforesaid to pay to the drainage commissioner, for the use of said county, the cash, at the rate they purchased the lands from the United States, within the time to be specified by said court, by an order entered of record as aforesaid; and on a failure on the part of all such purchasers to comply with the terms of said court, as specified by this act, the said swamp and overflowed lands purchased from the United States as aforesaid, may be sold by the county courts or drainage commissioners, as other swamp and overflowed lands are sold.

(38.) SEC. II. That in all cases where the county courts shall require the purchasers to pay to the drainage commissioners the cash for said lands, as prescribed by the first section of this act, the purchaser, his heirs or assigns, are hereby entitled to receive from the United States, or the State of Illinois, the original consideration paid by him for lands as aforesaid, whether in money or military bounty land warrants, as the case may be.

(39.) SEC. III. The board of supervisors, in counties that have adopted township organization, are hereby vested with all the powers, and may make all orders and regulations that county courts are authorized to make and receive by this act.

(40.) SEC. IV. A certified copy of all orders made by county courts, or the board of supervisors, requiring the purchasers aforesaid to pay to the drainage commissioner the cash for swamp and overflowed lands, shall, by said courts or board of supervisors, be published four weeks successively in some public newspaper published in such counties respectively; and if there shall be no newspaper published in such counties, then such orders shall be

published in the nearest newspaper to said counties, and copies of the paper containing said orders shall be filed by the clerks of the county courts, or board of supervisors, among the records of swamp and overflowed lands; said orders to be published immediately after the adjournment of the court or board of supervisors making such orders, and all expenses incurred for copying, certifying and printing, as specified in this act, shall be paid out of the drainage fund of such county.

(41.) SEC. V. County courts or the board of supervisors, as the case may be, may, in their discretion, after the incidental expenses of selecting, surveying, draining, reclaiming, platting, selling, &c., are fully paid, apply the excess, if any there be, arising from the sales of the swamp and overflowed lands, situate in their counties respectively, to such purposes as they may deem expedient: *Provided*, That the disposition of said fund shall be entered of record at any regular or special term or terms at which the same shall be applied.

(42.) SEC. VI. All persons having the right of pre-emption in any of the swamp or overflowed lands, may prove the same at any time before the day of sale, and upon filing the proof thereof, shall be entitled to a pre-emption in like manner as if such pre-emption had been proven within the time required by the act to which this is an amendment.

(43.) SEC. VII. Whenever it shall be necessary to take private property in carrying out the general provisions of this act, or the act to which it is an amendment, the county or the persons desiring to use such property or materials, shall make a just compensation therefor to the person whose property or materials may be wanted, taken or injured; and in case the amount of injury, value or damages and compensation thereof cannot be agreed upon, the same shall be determined, valued, condemned, paid for, and taken by virtue of, under, and according to the provisions of the laws of this State now in force in relation to the right of way; and when said value or damages are assessed, and paid or tendered, according to the provisions of said act, the said county, or persons acting under the county, may take and use the property so condemned for the purpose of said drainage.

(44.) SEC. VIII. The evidence of title from the general government, of the swamp and overflowed lands granted to this State by act of Congress of September 28, 1850, shall be filed in the auditor's office, and as soon as practicable thereafter, the auditor of public accounts shall cause to be made out, for each of the several counties, a correct abstract or list of said lands, the correctness of which list shall be certified to by the said auditor, with the seal of his office attached thereto, and the lists so made out shall be sufficient evidence of the title of the lands therein described; said lists shall be forwarded by mail or other safe conveyance to the clerk of the county court of the proper county, and upon the receipt of such lists, the said clerk shall file them in his office, and shall cause them to be recorded in a proper and well-bound book. The lists conveying the land as aforesaid shall have the same force and effect as patents issued for school lands, and duly certified copies thereof shall be received in all courts, and have the same force and effect as the original lists so filed and recorded.

(45.) SEC. IX. It shall be the duty of the auditor to cause the lists or patents received from the general government to be recorded in a well-bound book, and safely preserved in his office, and abstracts or diagrams therefrom,

properly certified by the auditor, shall be evidence of the facts therein stated.

(46.) SEC. X. The clerk of the county court shall be allowed and paid for recording the lists aforesaid, two cents per tract for each and every tract contained therein, to be paid out of the swamp land fund; and the auditor shall be allowed like compensation for recording the lists or patents from the general government in his office, and for making out the lists for the several counties, to be paid out of the State treasury.

(47.) SEC. XI. The clerks of the county courts, respectively, shall execute all deeds for swamp or overflowed lands, and affix the seal of the county court thereto, which deeds shall vest in the purchaser an absolute title in fee simple to the lands therein described.

(48.) SEC. XII. All the parts of the acts to which this is an amendment, which appear to grant the swamp and overflowed lands to the townships in the several counties, and which authorize the county judges to execute deeds, and all other parts of said acts which are inconsistent with the provisions of this act, are hereby repealed; and all the swamp and overflowed lands granted to the State of Illinois by the act of Congress aforesaid, are hereby granted to and vested in the several counties in which they are situated.

(49.) SEC. XIII. *Provided*, That nothing herein contained shall change or vitiate the sales or applications of sales made by any county previous to the passage of this act; and the secretary of State is hereby required to cause to be sent to the clerks of the county courts, respectively, a certified copy of this act. County courts, or boards of supervisors, shall have power to remove from office drainage commissioners, if in their opinion the public interest requires it, and fill vacancies.

(50.) SEC. XIV. This act to take effect from and after its passage.

An Act to amend an Act entitled "An Act to dispose of the Swamp and overflowed Lands, and to pay the Expenses of selecting and surveying the Same," approved June 22, 1852; and to vest the Title of such of the said Lands as lie in Kankakee County in said Kankakee County, and to provide for the Payment of selecting, surveying and locating said Lands.

Approved March 1, 1854. Private Laws, 1854, p. 100.]

(51.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all the swamp and overflowed lands lying within the boundaries of the county of Kankakee, in the State of Illinois, that are and may hereafter be donated by the government of the United States to the State of Illinois, shall belong to the county of Kankakee, in the manner they would have done if said county had been formed before any action had been had in relation to said lands, by the act to which this is an amendment: *Provided*, The county judge of said county of Kankakee shall, within six months from the passage of this act, appear at a term of the county courts of the counties of Will and Iroquois, and settle with said courts to the satisfaction of said courts, either by paying the amounts expended by said counties of Will and Iroquois, and each of them, in selecting, surveying and locating said lands, by paying them the money or securing the payment and interest, as may be agreed upon between the parties, and shall pay all expenses that may have accrued in draining, and carry out all contracts already entered into for draining said lands.

(52.) SEC. II. The auditor of State shall, upon the receipt of the returns of swamp and overflowed lands selected by the counties of Will and Iroquois,

or so much thereof as may be approved by the general government, shall be listed to the county of Kankakee, which list shall be certified to by the auditor of public accounts, with the seal of his office attached thereto, and said list so made out shall be sufficient evidence of title to the lands therein described. The remainder of said lands reported by the counties of Will and Iroquois, shall be conveyed to them: *Provided*, The county of Kankakee shall produce a receipt in full satisfaction for the expense of selecting, surveying and locating the same from the counties of Will and Iroquois.

(53.) SEC. III. This act to take effect and be in force from and after its passage.

An Act to vest the Board of Supervisors of Cook County to control the Swamp and overflowed Lands situate therein.

[Approved March 4, 1854. *Private Laws*, 1854, p. 184.]

(54.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the care and superintendence of so much of the swamp and overflowed lands granted to the State of Illinois by the act of Congress entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," approved September twenty-eighth, one thousand eight hundred and fifty, as lies in the county of Cook, is hereby vested in the board of supervisors of said county, and the said board of supervisors are hereby vested with all the powers in relation thereto heretofore given to the county court, subject in all respects to the provisions of the act entitled "An act to dispose of the swamp and overflowed lands, and to pay the expenses of selecting and surveying the same," approved June 22nd, 1852.

(55.) SEC. II. This act shall be in force from and after its passage.

An Act to amend an Act entitled "An Act to dispose of the Swamp and overflowed Lands, and to pay the Expenses of selecting and surveying the Same," approved June 22, 1852.

[Approved Feb. 15, 1855. *Laws*, 1855, p. 149.]

(56.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That whenever it shall appear by a special report made in writing by the drainage commissioner to the county commissioners' court of Jersey county, that the lands lying in the county of Jersey, granted to the said county by the act to which this is an amendment, are not susceptible of improvement by drainage or embankment, by the expenditure of the proceeds arising from the sales of the same, the said county courts may order the said lands to be sold as they may direct, and in such tracts and subdivisions as said court may deem expedient, and the money arising from such sales shall constitute a part of the school fund in each township in said county, and shall be divided equally between them.

(57.) SEC. II. This act to take effect from and after its passage.

An Act to amend the several Laws of this State in relation to Swamp Lands.

[Approved Feb. 15, 1855. *Laws*, 1855, p. 176.]

(58.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the board of supervisors of the county of Adams be and are hereby authorized and empowered to value the swamp lands in said county remaining unsold, and to proceed to sell the same at any

time hereafter in the manner now provided for by law, anything in the laws of this State in relation to swamp lands to the contrary notwithstanding.

(59.) SEC. II. This act shall be deemed a public act, and be in force from and after its passage.

An Act to provide for the Sale of the State Lands and Liquidation of State Indebtedness, and to grant the Right of Pre-emption to Settlers on State Lands.

[Approved Feb. 14, 1853. *Laws*, 1853, p. 231.]

(60.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the auditor of public accounts be and he is hereby required to offer at public sale, in accordance with the provisions and requirements of this act, all the lands owned by the State of Illinois, and withheld from sale by an act entitled "An act to suspend the sale of lands owned by the State," approved February 7, 1851.

(61.) SEC. II. The auditor shall cause all the said lands to be offered at public sale by auction, within a period of twelve months from the passage of this act, and shall sell said lands for gold or silver, to the highest bidder: *Provided*, That any of said lands shall not be struck off and sold for a less amount per acre than three dollars and fifty cents; and all such lands as may be appraised at less than that sum, may be struck off and sold at their appraisement, as made in pursuance of "An act to provide for the sale of public property, and the payment of the public debt," in force March 4, 1843.

(62.) SEC. III. The auditor shall cause all such lands to be offered for sale at the several county seats in which said lands are situated; notices of such sales to be published in two newspapers in the county where such land is located, if any there be, if not, in the nearest newspaper published in the vicinity; and in those counties where no newspaper is published, in addition to the foregoing notice, the auditor shall cause printed notices of such sale, to be posted in at least three public places within such county, four weeks before the day of sale, of which sales he shall give public notice in the newspapers published in the aforementioned places, if any there be, and if not, in the newspaper or newspapers, as he may determine, published nearest to such places, describing, by numbers of the United States surveys, each tract of land which will be offered for sale, and stating that the same will be sold for gold or silver only; which notices shall be so published four successive times, at least eight weeks before the time of sale.

(63.) SEC. IV. Said sale shall be continued, from day to day, until each tract shall have been once offered, giving a reasonable time for bids to be made for each tract; and all such lands remaining unsold, after having been so offered, shall then be subject to entry, in the auditor's office, for gold or silver, at the rate of three dollars and fifty cents per acre, except such lands as are appraised at less than that sum, which shall be subject to entry at their appraisement. And no person shall be allowed to buy at any of such sales a larger quantity of said lands than the amount of three hundred and twenty acres. And one year from and after the said lands shall be so offered at public sale, the price thereof shall be reduced fifty cents on each and every acre, and the auditor shall so continue, at the expiration of each and every year thereafter, to reduce the price of

said lands fifty cents per acre, until the same shall be sold; but in no case shall any of said lands be sold for a less sum than one dollar and fifty cents per acre. After holding such sales, the auditor shall cause separate lists to be made of the lands remaining unsold in each county, and shall send such lists to the clerks of the county courts of such counties, to be by them kept in their offices for inspection.

(64.) SEC. V. The auditor shall issue a certificate to all purchasers, stating therein the amount bid per acre for each tract, which shall entitle the holder thereof, or his heirs or other legal representatives, to a deed, to be made in the same manner as deeds or patents were made to such lands before they were withheld from sale by the act to suspend the sale of lands owned by the State, approved February seventh, one thousand eight hundred and fifty-one.

(65.) SEC. VI. All moneys received by the auditor for such lands, shall be by him paid over to the State treasurer monthly, who shall give him a voucher therefor, which shall be filed in the auditor's office; and the auditor shall enter an account of all such sales upon a book or books to be kept, or now kept, in his office, which books shall be open to the inspection of any person interested.

(66.) SEC. VII. All moneys so received into the treasury shall be invested, by the governor, in bonds, scrip or other State indebtedness now due, or which may hereafter become due, and the governor shall cancel all such indebtedness, of whatever kind, and deliver the same to the auditor, together with a statement showing the numbers and description of such indebtedness, and the amount paid therefor; also the names of the persons from whom such bonds, scrip or other State indebtedness were purchased; all of which shall be reported to the next General Assembly, and biennially thereafter, until all such lands are sold by the auditor, who shall also make a record in his office of all such indebtedness so cancelled.

(67.) SEC. VIII. Any person having become an actual settler on any forty or eighty acre tract of land now belonging to the State, previous to the entry or selection of said land by the State, or owner or owners, in possession at the time of the passage of this act, of any improvement so made, he or she shall be entitled to the right of pre-emption to any such tract or tracts of land, not exceeding eighty acres, extending to the period of two years from the passage of this act, at the price of one dollar and twenty-five cents per acre, with six per cent. per annum interest from the date of entry or selection by the State until paid for by the person having such pre-emption right. And any owner or owners of any improvement at the time of the passage of this act, made on any forty or eighty acre tract of said lands previous to the first day of October, one thousand eight hundred and fifty-two, he or she shall be entitled to the right of pre-emption to any such tract or tracts of land, not exceeding eighty acres, extending to the period of two years from the passage of this act, at the price per acre of the last appraisalment made by authority of the State: *Provided*, That every person claiming the right of pre-emption under this act, shall file his or her claim with the auditor of public accounts within six months from the passage of this act, authenticated by his or her affidavit, and by the oath of one or more competent witnesses, establishing his or her claim, made before some person having the authority to administer oaths under the laws of this State, par-

ticularly and accurately describing such tract or tracts of land, and setting forth that such person had settled on the same previous to the entry or selection thereof by the State, or had purchased and was the owner of an improvement so made, or was the owner of an improvement, at the passage of this act, made previous to the first day of October, 1852, as the case may be.

(68.) SEC. IX. All bills for expenses necessarily incurred by the auditor in carrying out the provisions of this act, shall be submitted to the governor, and, upon his approval, the auditor shall issue his warrants on the State treasury for the payment of the same.

(69.) SEC. X. Any such lands to which pre-emption rights may be established within the time specified by this act, shall not be offered at public sale, nor be subject to entry until the pre-emption right thereto shall have expired.

(70.) SEC. XI. All combinations, agreements, contracts and bargains, of every kind and description, intended to enable any person or persons to acquire more than three hundred and twenty acres of land under the provisions of this act, shall be unlawful and void, and the title to the land attempted to be illegally conveyed shall remain in the State, without refunding the money paid therefor.

(71.) SEC. XII. This act to be in force from and after its passage, and to be immediately published by the secretary of State in the public papers printed in Springfield; to defray the expenses of which, the auditor is hereby authorized, on the certificate of the secretary, to draw his warrant on the treasurer.

An Act amendatory of an Act entitled "An Act to provide for the Sale of the State Lands and Liquidation of State Indebtedness, and to grant the Right of Pre-emption to Settlers on State Lands," in force February 14, 1853.

[Approved Feb. 10, 1855. *Laws, 1855, p. 45.*]

(72.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the right of pre-emption to State lands, as provided for in the eighth section of the above recited act, be and it is hereby continued in full force and virtue for the further period of one year from and after the thirteenth day of February, of the year one thousand eight hundred and fifty-five, subject, however, to regulations and restrictions prescribed by the said section: *Provided always*, That the owners of improvements, at the time of the passage of the act to which this is an amendment, made on any forty or eighty acre tract of said lands, shall be entitled to purchase and have said tract, not exceeding eighty acres, at the sum of three dollars and fifty cents per acre.

(73.) SEC. II. This act shall take effect and be in force from and after its passage.

PRIOR LAWS. An act concerning occupying claimants of land; approved Feb. 23, 1819. *Rev. Laws, 1833, p. 416.*

An act to provide for the collection of demands growing out of contracts for sales of improvements on public lands; approved Feb. 15, 1831. *Rev. Laws, 1833, p. 420.*

An act to define the extent of possession in cases of settlement on the public lands; approved Feb. 27, 1837. *Laws, 1837, p. 154.*

An act supplemental to an act entitled "An act to define the extent of possession in cases of settlement on the public lands," approved Feb. 27, 1837; approved Feb. 16, 1839. *Laws, 1839, p. 124.*

An act to provide for the collection of demands growing out of contracts for the sales of the possession of the public lands; in force Feb. 2, 1839. Laws, 1839, p. 47.

An act to provide for settlers on lands purchased by the State; approved Feb. 27, 1841. Laws, 1841, p. 191.

An act to revive an act to provide for settlers on lands purchased by the State; approved Feb. 21, 1843. Laws, 1843, p. 184.

**DECISIONS.** A promise to pay for improvements upon the public lands does not bind the promisor, if made after his purchase of the lands. *Carson v. Clark*, 1 S. 113. See also, *Roberts v. Garen*, 1 S. 396; *Townsend v. Briggs*, 1 S. 472.

The statute of 1831, respecting the sale of improvements on the public lands, applies only to the sale of improvements which are on land owned by the government, at the time the contract of sale is made. *Hutson v. Overturf*, 1 S. 170.

A purchaser of land from the United States, or this State, acquires the right to all the improvements made on it before his purchase. *Blair v. Worley*, 1 S. 178.

To recover for improvements made on the public lands, the plaintiff is only required to prove an express promise to pay; and if no price be agreed on, the value must be ascertained by proof thereof. *Johnson v. Moulton*, 1 S. 532.

Mere entry on land, without color of title, constitutes possession of what is inclosed only. *Webb v. Sturtevant*, 1 S. 181.

A settler on the public lands of the United States cannot maintain trespass against one who enters and cuts down timber upon any part of the land not actually occupied and inclosed by the settler. *Lovett et al. v. Noble*, 1 S. 185.

Where the plaintiff had made rails from timber on government land, and left them on the land, and the defendant afterwards purchased the land of the government, and converted the rails to his own use: *Held*, that the rails did not pass with the land, and that their value could be recovered in trespass. *Wincher v. Shrewsbury*, 2 S. 283.

To maintain trespass, under the "Act to define the extent of possession in cases of settlement on government lands," it is not necessary that the premises should be inclosed by a fence, nor that the plaintiff should be settled on the tract where the trespass is committed, or on an adjoining tract. In the trial of a trespass suit under that act, evidence may be given of the custom of the neighborhood in relation to claims, not exceeding 320 acres. *Gleason et al. v. Edmunds*, 2 S. 448.

The possession of land, or a claim of title thereto, may be the subject of sale or transfer; and such sale or transfer, made by one in possession of government land, is a good consideration for a note given for the price. *Doyle et al. v. Knapp*, 3 S. 334.

The lands of the United States, in possession of occupants, are treated by the laws of Illinois as the property of the occupants, and as such, are controlled by the law so far as the occupants are concerned, except that no disposition can be made of them to affect a title derived from the United States. Persons in possession and owning claims and improvements on the public lands, whether pre-emptors or not, are included within the provisions of the mechanics' lien law. *Turney et al. v. Saunders et al.*, 4 S. 527.

Improvements on government lands are by law regarded as property, and under the United States bankrupt law of Aug. 19, 1841, such improvements would pass to the assignee of the bankrupt. *French v. Carr*, 2 G. 664.

Improvements on the public lands are property, and the subject matter of contracts. They may be sold on execution, and the purchaser may maintain ejectment for their possession, but these rights cannot be enforced against the United States or its grantee, and they cease to exist on the sale of the land by the United States. *Switzer v. Skiles et al.*, 3 G. 529.

To constitute a valid claim to unsurveyed public lands, the claim must be plainly marked, so as to distinguish it from adjacent lands. *Sergeant v. Kellogg et al.*, 5 G. 273.

The 1st section, 61st chapter, Rev. Stat., 1845, makes valid all "contracts, promises, assumpsits or undertakings," made in good faith, for the sales of improvements on the public lands. The statute authorizes a recovery upon such promises and undertakings as do not strictly amount to a contract, and authorizes a promise to be enforced which is a mere gratuity. *Taylor v. Davis*, 11 Ill. 10.

The statute concerning occupying claimants of land, is constitutional. *Ross v. Irving*, and *Pryor v. Irving*, 14 Ill. 171.



A COMPILATION  
OF THE  
STATUTES OF THE STATE OF ILLINOIS,

OF A  
GENERAL NATURE,

IN FORCE JANUARY 1, 1856,

COLLATED WITH REFERENCE TO

DECISIONS OF THE SUPREME COURT

OF SAID STATE, AND TO

PRIOR LAWS RELATING TO THE SAME SUBJECT MATTER.

---

BY N. H. PURPLE,  
A MEMBER OF THE ILLINOIS BAR.

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PART II.

CHICAGO:  
PUBLISHED BY KEEN & LEE, BOOKSELLERS.  
1856.

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*Chapman*  
*1853*

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STATUTES OF THE STATE OF ILLINOIS.

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PART II.

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## CHAPTER LXII.

## LAWS.

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[Approved March 3, 1845. Rev. Stat. 1845, p. 337.]

(1.) SECTION I. The common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British parliament made in aid of, and to supply the defects of the common law, prior to the fourth year of James the First, excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter of thirteenth Elizabeth, and ninth chapter of thirty-seventh Henry eighth; 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.

(2.) SEC. II. 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 a 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.

(3.) SEC. III. 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, (Sundays excepted,) and the General Assembly being in session, it has become a law, this — day of —, C. F., Secretary of State."

(4.) SEC. IV. Whenever the General Assembly shall, by their adjournment before the expiration of ten days after the passage of any bill, render the return of such bill by the council of revision within that time impracticable, and the same shall not be returned on the first day of the next meeting of the General Assembly, and shall thereby become a law, the fact shall be authenticated in the manner provided in the preceding section.

(5.) SEC. V. 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 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 when such request has heretofore been made, it shall not be the duty of the governor again to make it.

(6.) SEC. VI. Any expense incurred by virtue of the preceding section, 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.

(7.) SEC. VII. The secretary of State, on the completion of the printing and binding of the acts of the 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, each of the justices of the supreme court, attorney general, circuit attorneys, secretary of the senate and clerk of 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 probate justice, county commissioner, coroner, clerk of a court, county treasurer, sheriff, justice of the peace, county surveyor, constable, county recorder, school commissioner, 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; and the reasonable expenses attending such distribution shall be paid out of the State treasury.

(8.) SEC. VIII. The clerks of the several county commissioners' courts, on receiving the laws for distribution as aforesaid, shall give their 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.

(9.) SEC. IX. 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.

(10.) SEC. X. 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 chapter, 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 commissioners' 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.

(11.) SEC. XI. There shall be added to each copy of the laws published in conformity to this chapter, 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.

(12.) SEC. XII. The journals of the General Assembly shall be distributed among the several counties according to the number of white inhabitants, reserving in the office of the secretary of State one hundred copies.

(13.) SEC. XIII. It shall be the duty of the secretary of State to distribute, with the laws of the General Assembly, to each of the clerks of the county commissioners' courts in this State, excepting those counties to which the same shall have already been sent, one set of the documents, legislative and executive, of the Congress of the United States, in relation to the public lands, to be kept by said clerks in their offices for the use of the people of their respective counties.

(14.) SEC. XIV. The secretary of State shall also send to each senatorial district in this State, to which the same shall not have already been sent, one copy of the acts of Congress, from eighteen hundred and twenty-two to the present time, to be deposited with the clerk of the county commissioners' court where the votes for said district are canvassed, for the use of the people of said district, and hereafter with each distribution of the laws of this State there shall be sent out as aforesaid, to each of said districts, one copy of the acts of Congress which may hereafter be received.

An Act to provide for Copying and Distributing the Laws and Journals, and for other Purposes.

[Approved Feb. 12, 1849. Laws, 1849, p. 95.]

(15.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the secretary of State, within five days after the passage of this act, to cause an advertisement to be published in each of the newspapers printed in the city of Springfield, inviting proposals for copying the laws and joint resolutions of the present General Assembly; said proposals to be delivered to the secretary of State within ten days after the date of the first advertisement, which shall designate the time and place of opening proposals; and the said proposals shall embrace the copying of the laws of the present General Assembly, and be accompanied by a specimen of the hand-writing (of at least ten lines in quantity) of the person proposing to do said copying, and shall also contain the names of two persons offered as security for the faithful performance of said contract. The person entering into contract for said copying, shall be required to return said laws within thirty days after the adjournment of the legislature, together with the copies of the same, properly arranged, to the secretary of State, whose duty it shall be to file the originals in his office, and furnish said copies to the printer.

(16.) SEC. II. At the time designated in said advertisement, the secretary of State shall open the proposals received by him, in the presence of such persons as may desire to witness the same, and shall give the contract to the lowest competent responsible bidder, who shall be required, within two days after the opening of said proposals, to file a good and sufficient bond, with security, to be approved by the governor, in the sum of one thousand dollars, for the faithful performance of said contract.

(17.) SEC. III. Within thirty days previous to the meeting of any future General Assembly, the secretary of State shall cause an advertisement to be published in at least six of the newspapers printed in this State, inviting proposals for copying the laws, joint resolutions and journals of the General Assembly. The advertisement shall be published at least three weeks, and designate the time and place when proposals will be examined; said proposals to be delivered to the secretary of State within twenty days from the date of the first advertisement. Proposals shall be examined, and the contract given in the manner and form prescribed in the second section of this act, and shall state specifically the price at which it proposed to do said copying of the laws, journals and joint resolutions; which price shall not exceed the sum of twenty cents for each and every one hundred words.

(18.) SEC. IV. The secretary of State shall be required to furnish a well-bound book, in which the journals shall be copied; and shall also furnish the stationery necessarily used in copying the laws. In case the person contracting for said copying shall fail to comply with his contract, by neglect to enter into bond within the time prescribed, the secretary of State shall cause the same to be done by some competent person, who shall receive for his services a compensation not exceeding the sum of twenty cents for each and every one hundred words.

(19.) SEC. V. Within twenty days after the adjournment of the present or any future session of the General Assembly, the secretary of State shall cause an advertisement to be published in six of the newspapers printed in this State, inviting proposals for distributing the laws, journals and reports,

and any other matter that the legislature shall designate, to the several counties in this State. Said distribution to be in districts of not less than ten counties each, to be designated in said advertisement, and in such manner, and within such time, as shall be therein specified. Said advertisement to be published at least three weeks, and to name the time and place where said proposals will be opened and decided upon.

(20.) SEC. VI. At the time and place specified in said advertisement, the secretary of State shall open the proposals filed in his office for the distribution aforesaid, in the presence of all persons who may desire to witness the same, and shall give said contract to the lowest competent responsible bidder; who shall, within three days thereafter, file a good and sufficient bond, with satisfactory security to be approved by the governor, for the faithful performance of said contract. In case of failure to enter into a bond as aforesaid, or to perform said contract, the secretary of State shall cause the laws, journals and reports to be distributed by some competent person. The compensation for distributing the laws, journals and reports, shall in no case exceed the sum heretofore allowed by the State for similar services.

(21.) SEC. VII. It shall be the duty of the secretary of State, on or before the first day of July in each year, to cause an advertisement to be published in the newspapers published in Springfield, for proposals for furnishing the necessary fuel for the use of the State during the next ensuing winter; the quantity and quality of the same to be designated in said advertisement; and at the time and place specified, said proposals shall be opened in public, and the contract be given to the lowest responsible bidder or bidders, who shall, within two days, enter into bond, with satisfactory security, for the prompt and faithful delivery of said fuel, according to the terms of the contract. In case of failure to comply with said contract, the secretary of State shall cause said fuel to be supplied without delay: *Provided*, That in no case shall there be allowed a higher price for said fuel, per cord, than has heretofore been paid by the State.

(22.) SEC. VIII. It shall be the duty of the secretary of State, within six months previous to the meeting of any future General Assembly, to cause an advertisement to be published in three of the newspapers printed in this State, and in one of the newspapers printed in St. Louis, New York and Boston, for proposals to furnish all stationery necessary for the use of the General Assembly, and the several departments of State; the articles of the stationery to be designated in said advertisements; and the proposals to be accompanied by specimens of the articles proposed to be furnished, with the price charged for each article. All of said articles shall be delivered at the office of the secretary of State, in Springfield, at a time to be specified in said advertisement; the advertisement to be published not less than three weeks, and to designate the time and place of opening and examining said proposals. On the day named in the said advertisement, the secretary of State shall open the proposals in public, and contract with the lowest responsible bidder or bidders for the prompt delivery of all the articles of stationery necessary for the use of the State. A good and sufficient bond, for the faithful performance of the contract, shall be filed in the office of the secretary of State within three days after the proposals shall have been decided upon. In case of failure to deliver said articles of stationery according to



the terms of the contract, and of the quality of the specimens accompanying the proposals, the secretary of State shall cause the same to be furnished and paid for as formerly: *Provided*, That the prices allowed for any of the articles enumerated in said advertisement, shall in no case exceed the prices which have been heretofore paid by the State for similar articles furnished for the use of the General Assembly.

(23.) SEC. IX. The binding of the laws, journals and reports of the General Assembly shall be given out by contract, to the lowest responsible bidder, at the time and in the manner and form prescribed in the eighty-fourth chapter of the Revised Statutes. Said binding shall be done at prices not exceeding those now allowed by law.

(24.) SEC. X. In case of failure to file proposals under the provisions of this act, or in case any person or persons entering into contract shall fail to comply faithfully and promptly with the terms of said contract and proposals, it shall be the duty of the secretary of State to cause the articles to be supplied, or the services performed without unnecessary delay, as nearly as possible within the time and in the manner prescribed by law, and at prices not exceeding those specified in this act. And when said articles are delivered, or the service completed, to the satisfaction of the secretary of State, he shall certify the amount due the persons furnishing or performing the same. Upon the presentation of such certificate, approved by the governor, the auditor of public accounts shall draw his warrant upon the treasurer for the amount due said person or persons, as certified as aforesaid. All advertisements for proposals of any kind shall be paid for out of the public treasury, upon the warrant of the auditor of public accounts.

(25.) SEC. XI. This act to take effect from and after its passage.

An Act to amend an Act entitled "An Act to provide for Copying and Distributing the Laws and Journals, and for other Purposes."

[Approved Feb. 17, 1851. Laws, 1851, p. 148.]

(26.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter contractors for distributing the laws, journals and reports, under the provisions of the fifth and sixth sections of the act entitled "An act to provide for copying and distributing the laws and journals, and for other purposes," approved Feb. 12, 1849, shall be allowed twenty days from the time of opening bids and the acceptance of their proposals, in which to file bonds for the faithful performance of their contracts, as required by law; and it shall be the duty of the secretary of State, immediately after such contracts are awarded, to cause notice to be given to successful bidders.

(27.) SEC. II. Hereafter it shall be the duty of the secretary of State, whenever the laws and journals are distributed, to cause the reports of the supreme court belonging to the several officers of the respective counties, which may remain in his office, to be distributed in the same manner as said laws and journals.

(28.) SEC. II. There shall be printed for the use of the State, and for distribution to the several counties, under the provisions of section seven, of chapter sixty-two, Revised Statutes, eight thousand copies of the acts and resolutions of the present session of the General Assembly; and hereafter, until otherwise directed, a sufficient number of copies of the acts of each

session shall be printed to enable the secretary of State to make such distribution thereof as is now or may be required by law.

(29.) SEC. IV. The secretary of State shall cause to be printed and bound with the volume of public acts of the present session, the public acts of the late special session of the General Assembly, causing said acts of the special session to be placed and indexed in the fore part of said volume.

(30.) SEC. V. It shall be the duty of the said secretary of State to cause to be printed and distributed, as now provided by law, a number of copies of said acts of the present and late special session, equal to one-eighth the whole number required for distribution, to be deposited with the counties respectively, in the proportions to which they are now entitled, for future distribution, as the future wants of the respective counties may demand.

(31.) SEC. VI. Until otherwise provided by law, there shall be printed for the use of the State, and for distribution to the several counties, eight thousand copies of the laws of the General Assembly, over and above the eighth part to be deposited with the counties, as provided for in the above sections.

(32.) SEC. VII. It shall be the duty of the secretary of State to give four weeks' notice, biennially, in the month of May, by advertising in the papers published in the places named as required in the first section of "An act concerning public printing," approved Feb. 8, 1849, that he will receive sealed proposals for executing the printing of the journals, reports and laws, and all other printing ordered by the General Assembly. Said proposals to be delivered to the secretary of State within forty days after the last day of May, biennially.

(33.) SEC. VIII. Hereafter, and until otherwise provided by law, there shall be printed for the use of the State, and for distribution to the several counties, one thousand copies of the reports. This section to apply to the reports of the present session.

(34.) SEC. IX. This act to take effect and be in force from and after its passage.

An Act to provide for the Reprinting of the Public Laws enacted the First Session of the Sixteenth General Assembly of Illinois, together with the Constitution.

[Approved Feb. 14, 1853. Laws, 1853, p. 230.]

(35.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That it shall be the duty of the secretary of State, and he is hereby required to cause to be printed and distributed, with the laws of the present session of the General Assembly, five thousand copies of the public laws enacted at the first session of the sixteenth General Assembly of this State, together with the constitution.

(36.) SEC. II. Said five thousand copies shall be distributed among the several counties in this State, in proportion to the number of copies of the laws to which each county is now entitled, and the county clerks of the several counties shall distribute them among such officers as are entitled to copies of the laws, and are now unprovided with the public laws of 1849.

(37.) SEC. III. There shall be printed and distributed, in like manner, five thousand copies of the laws of this State of 1847.

(38.) SEC. IV. There shall be printed, along with the other laws, one thousand extra copies of each session, which shall be kept by the secretary of State, and sold at cost, and the proceeds accounted for by him.

(39.) SEC. V. This act to take effect and be in force from and after its passage.

PRIOR LAWS. An act declaring what laws are in force in this State; in force Feb. 4, 1819. Laws, 1819, p. 3; Laws, 1833, p. 425.

An act directing the manner of distributing the laws of the General Assembly of the State of Illinois. Laws, 1821, p. 31.

An act prescribing the manner of authenticating acts of the General Assembly, which may become laws, notwithstanding the objections of the council of revision; in force Dec. 26, 1826. Rev. Laws, 1827, p. 280; Rev. Laws, 1833, p. 437.

An act to provide for the publication of the revised and other laws of this State, passed at the present session of the General Assembly; in force Feb. 19, 1827. Rev. Laws, 1827, p. 281.

An act concerning the revival of statutes; in force Jan. 19, 1826. Rev. Laws, 1833, p. 421.

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. Rev. Laws, 1833, p. 442.

An act regulating the publication and distribution of the laws and journals of the General Assembly; in force Jan. 14, 1829. Rev. Laws, 1833, p. 422.

An act to repeal certain laws; in force March 30, 1819. Rev. Laws, 1833, p. 425.

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. Rev. Laws, 1833, p. 426.

An act relative to printing certain acts, and for other purposes; in force Feb. 27, 1833. Rev. Laws, 1833, p. 438.

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. Rev. Laws, 1833, p. 438.

An act concerning the publication of the laws and journals; in force Jan. 16, 1836. Laws, 1836, p. 236.

An act to distribute the revised laws of 1833; in force Jan. 16, 1836. Laws, 1836, p. 240.

An act providing for the binding of the laws and journals; in force Jan. 31, 1840. Laws, 1840, p. 34.

An act to amend an act regulating the publication and distribution of the laws and journals of the General Assembly; in force Jan. 29, 1840. Laws, 1840, p. 65.

An act in relation to the distribution of the laws and documents of the Congress of the United States; in force Feb. 2, 1843. Laws, 1843, p. 173.

An act to amend an act entitled "An act providing for the binding of the laws and journals," approved Jan. 31, 1840; in force Feb. 23, 1843. Laws, 1843, p. 173.

## CHAPTER LXIII.

### LIBRARY—STATE.

SECTION	SECTION
1. Books of State to be kept by secretary of State, except those kept by clerk of the supreme court.	7. Surplus volumes of Statutes of 1845, &c., to be sold by secretary of State.
2. Secretary to be librarian; his duties.	8. Duty of secretary of State in regard to State library; compensation.
3. Who may take out books.	9. Shall make a catalogue of books, &c.
4. Librarian to keep register; how long books may be retained.	10. Application of proceeds of sale.
5. Penalty for improperly retaining or injuring books; auditor to withhold pay of members of assembly until all books are returned.	11. Prohibitions.
6. Fines, &c., how recovered and disposed of; entries of librarian to be evidence in suits for the recovery of penalties.	12. Appropriation for purchase of books.
	13. Appropriation for library room.
	14. When act to take effect.
	15. Proceeds of sales of surplus copies of laws of State, how to be applied.
	16. Appropriation for years 1855 and 1856.

[Approved March 3, 1845. Rev. Stat. 1845, p. 340.]

(1.) SECTION I. The books now belonging to the State, and such as shall be hereafter purchased or received by the State, except the law books now in the custody of the clerk of the supreme court, and such additions as hereafter may be made to them, which shall remain under the direction and control of the supreme court, shall be kept in the office of the secretary of State, and shall compose the State library.

(2.) SEC. II. The secretary of State shall be librarian, and take charge of the library and all papers, maps and charts properly belonging thereto, under such regulations as are hereinafter established, and shall take special care that none of them be lost or injured.

(3.) SEC. III. Books may be taken from the State library by the members of the General Assembly and its officers during the session of the legislature, and at any time by the governor and the officers of the executive department of this State, who are required to keep their offices at the seat of government, the justices of the supreme court and attorney general: *Provided*, That no person shall be permitted to take or detain from the library more than two volumes of miscellaneous works at any one time.

(4.) SEC. IV. The librarian shall cause to be kept a register of all books issued and returned at the times they shall be so issued and returned; and none of the books except the laws, journals and reports of this State, which may be taken from the library by members of the legislature or its officers during the session, shall be retained more than two weeks; and all the books taken by members of the General Assembly or its officers, of every kind, shall be returned at the close of the session.

(5.) SEC. V. If any person injure or fail to return any book taken from the library within the time prescribed in the foregoing section, he shall forfeit and pay to the librarian, for the benefit of the library, three times the value thereof, or of the set to which it belongs; and before the auditor shall issue his warrant in favor of any member or officer of the General Assembly, for his services during the session, he shall be satisfied that such member or officer has returned all books taken out of the library by him, and has settled all accounts for injuring such books or otherwise.

(6.) SEC. VI. All fines and forfeitures accruing under and by virtue of this chapter, shall be recoverable by action of debt before any justice of the peace or court having jurisdiction of the same, in the name of the people of the State of Illinois, for the use of the State library; and in all such trials, the entries of the librarian, to be made as hereinbefore described, shall be evidence of the delivery of the book or books, and of the date thereof; and it shall be his duty to carry the provisions of this chapter into execution, and sue for all injuries done to the library, and for all penalties under this chapter.

An Act to amend an Act in relation to the State Library.

[Approved Jan. 26, 1847. Laws, 1847, p. 160.]

(7.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That it shall be the duty of the secretary of State, under the direction of the governor, to sell or cause to be disposed of, in such manner as he shall deem proper, at a price not less than the

original cost of the same to the State, the surplus volumes of the Revised Statutes of Illinois for 1845, the surplus volumes of the American State papers, relating to public lands, the surplus volumes of the sixth census of 1840, now belonging to the State of Illinois, and such other surplus volumes as shall be deemed by the governor unnecessary to be retained in the State library, and for the use of the State; a sufficient number of the above mentioned works, for all the purposes of the State, and for the use of the State library, are to be retained out of the sales aforesaid.

(8.) SEC. II. It shall be the duty of the secretary of State, in addition to his duties in charge of the State library, and as librarian of the same, as is now required by law, to cause all books belonging to the State library to be returned to said library on or before the second Monday before the commencement of each regular session of the State legislature, and to make a report to each regular session of the legislature, of the condition of the library, what books, maps and pamphlets have been added to the same since the previous session of the legislature, what have been lost, if any, and the names of all persons who stand charged with books delivered, which have not been returned; for all which services, as State librarian, the secretary of State shall receive such compensation as the State library committee shall agree upon, not exceeding one hundred dollars per annum:

(9.) SEC. III. It shall be the duty of the librarian, as soon as the same can be done to the best advantage to the State library, to make or cause to be made a catalogue of all books, pamphlets, maps, &c., in the same, and cause three hundred of the same to be printed.

(10.) SEC. IV. The proceeds of the sales of the surplus books, as mentioned in section one of this act, after paying the necessary expenses of such sale, and all other sums of money appropriated and unexpended, or which may be hereafter appropriated for the use of said State library, shall be expended by the secretary of State, under the direction of the governor, for the sole and express benefit of said library.

(11.) SEC. V. The copy of the narrative of the United States exploring expedition, furnished by the government of the United States, together with such other volumes in relation to said expedition as may hereafter be published by order of Congress, and the copy of the natural history of the State of New York, presented to the library by said State, shall not be permitted to be taken out of the library room.

An Act to increase the State Library.

[Approved Feb. 8, 1849. Laws, 1849, (1st Sess.) p. 98.]

(12.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the sum of five hundred dollars is hereby appropriated, to be expended under the direction of the justices of the supreme court, in the purchase of books for the supreme court, at the seat of government.

An Act to authorize the State Librarian to repair the Library Room, and for other Purposes.

[Approved Feb. 12, 1853. Laws, 1853, p. 229.]

(13.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the sum of nine hundred dollars be

and the same is hereby appropriated, for the purpose of putting up additional shelves in the library room, and making glass cases in which to keep the most valuable works; also for repairing the said library room and the office of secretary of State; which said sum of money shall be expended under the direction of the secretary of State, and the auditor is hereby required to issue his warrant on the treasurer for said amount, to be paid to the said secretary for the purposes aforesaid.

(14.) SEC. II. This act to take effect and be in force from and after its passage.

An Act to authorize the Purchase of Books for the State Library.

[Approved Feb. 15, 1855. Laws, 1855, p. 171.]

(15.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the secretary of State to apply the proceeds of the sales of the surplus copies of the laws of this State, and all other sums of money appropriated and unexpended, or which may be hereafter appropriated for the use of said State library, for the sole and express benefit of said library.

(16.) SEC. II. That there be appropriated for the years 1855 and 1856, the sum of five hundred dollars, to be applied in the purchase of books for the State library; and that the State librarian or secretary of State shall report to the legislature at its every session, (regular and special,) the number and title of books purchased, their price per volume, and the aggregate amount expended for said purpose.

PRIOR LAWS. An act making an appropriation for a library for the use of the legislature and supreme court; approved Feb. 22, 1839. Laws, 1839, p. 149.  
An act concerning the State library; approved Dec. 15, 1842. Laws, 1842, p. 290.

## CHAPTER LXIV.

### LICENSES.

SECTION	SECTION
1. No person permitted to sell without license.	19. General provisions against selling spirituous liquors.
2. County commissioners' court may grant licenses.	20. Penalty for selling to minors.
3. Extent of such licenses.	21. Penalty for selling to servants without consent of masters.
4. If court be not in session, clerk may grant licenses; its provisions and time.	22. Agents of foreign insurance companies to notify clerk of county commissioners' court of their appointment.
5. Court at next term to examine license granted by clerk.	23. Such agents to pay a tax of three per cent. on premiums; money thus collected, how disposed of.
6. Penalty for selling without license.	24. Penalty if agent fail to pay.
7. Preceding section not to apply to certain persons.	25. Officers collecting fines to pay money into county treasury.
8. What trade with Indians prohibited.	26. Prosecutors may be witnesses.
9. Groceries, on what conditions licensed.	27. Penalties, how collected and disposed of.
10. Court may reject or grant application.	28. Appeals and writs of error allowed.
11. Court may revoke license for violation of law.	29. Prohibition; penalty.
12. Grocery keeper not to sell liquors in more than one place.	30. Further penalty.
13. What deemed a grocery.	31. Fines, how recovered.
14. Authorities of incorporated towns, have exclusive control of licenses.	32. Druggists and physicians excepted.
15. Penalty for selling liquor without a license; <i>proviso</i> concerning fine.	33. Act to be given in charge to grand juries.
16. Penalty for selling liquor to Indians.	34. Acts repealed; <i>proviso</i> .
17. Accounts of over fifty cents for liquor, void, if made for liquor sold in less quantities than one quart.	35. Fines, how applied.
18. Grocery keeper punished for keeping disorderly house.	36. Laws re-enacted; <i>proviso</i> . When act shall take effect. Further <i>proviso</i> . Acts repealed.

[Approved March 3, 1845. Rev. Stat. 1845, p. 341.]

(1.) SECTION I. No merchant, auctioneer, peddler or other person or persons, company or corporation, shall be permitted to sell, vend or retail, either at private sale or public auction, any goods, wares or merchandise, without having first obtained a license for that purpose, as hereinafter provided.

(2.) SEC. II. The county commissioners' courts of the respective counties in this State shall have power to grant such licenses, on the payment into the county treasury, by the applicant for such license, of a sum to be assessed by said court, not less than five nor more than one hundred dollars.

(3.) SEC. III. Such license shall authorize the person receiving it, to vend, sell and retail goods, wares and merchandise within said county for the space of one year from the time of granting the same.

(4.) SEC. IV. If the county commissioners' court shall not be in session when the application is made, the clerk may grant a written permission to the applicant to vend, sell and retail goods, wares and merchandise until the end of the next term of the court, or if the court take no action upon the case, for the term provided in the third section of this chapter. At the time of granting such permission, the clerk may assess the amount to be paid by the applicant, which shall be paid into the county treasury accordingly.

(5.) SEC. V. When a permission shall be granted by the clerk in vacation as aforesaid, it shall be the duty of the county commissioners' court, at their next term thereafter, to examine such permit, and if approved, to proceed forthwith to assess the amount to be paid for license, to be paid as in the case of original applications. But if the court do not approve the same, the license shall be vacated, and no other sum shall be required to be paid, than that fixed by the clerk.

(6.) SEC. VI. If any person or persons, company or corporation, shall, directly or indirectly, keep a store, or sell, vend or retail any goods, wares or merchandise, without being first duly authorized by 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.

(7.) SEC. VII. The preceding section shall not be construed to extend to the sale of goods, wares and merchandise, by persons who are not merchants, auctioneers, grocers, grocery keepers or peddlers, nor to merchants who pay an annual tax upon merchandise, assessed according to the revenue laws of this State, nor to persons who sell commodities manufactured by themselves in this State.

(8.) SEC. VIII. No citizen 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 offense, recoverable before any court of competent jurisdiction; the one-half part thereof for the use of the county in which such offense is committed, and the other half to the person informing.

(9.) SEC. IX. County commissioners' courts may grant licenses to keep groceries upon the following conditions, to wit: First, the applicant shall pay into the county treasury, for the privilege granted, a sum not exceeding three hundred dollars nor less than twenty-five dollars, in the discretion of

the court; Second, the applicant shall execute bond, in the penalty of five hundred dollars, with one or more securities, to be approved by the court, conditioned that the applicant will keep an orderly house, and that he will not permit any unlawful gaming or riotous conduct in his house.

(10.) SEC. X. Upon applications for licenses to keep groceries, the court may reject or grant the same in their discretion.

(11.) SEC. XI. County commissioners' courts shall have power, upon complaint being made to them, to revoke any license granted to keep a grocery, whenever they may be satisfied that the privileges granted have been abused, or that the person to whom the license was granted, has violated the law.

(12.) SEC. XII. Licenses granted to keep groceries, shall not authorize the person obtaining the license, to vend or sell spirituous or vinous liquors in more than one place or house, and every license shall describe the house and place intended to be occupied.

(13.) SEC. XIII. A grocery shall be deemed to include all houses and places where spirituous or vinous liquors are retailed by less quantities than one quart.

(14.) SEC. XIV. The president and trustees of incorporated towns, shall have the exclusive privilege of granting licenses to groceries within their incorporated limits; and all sums of money which may be received for licenses granted as aforesaid, shall be paid into the county treasury.

(15.) SEC. XV. Every person, not having a legal license to keep a grocery, who shall barter, sell, exchange or otherwise dispose of, for his gain or benefit, any vinous, spirituous or mixed liquors in less quantities than one quart, or shall permit the same to be done on his premises, for his gain and benefit, shall forfeit and pay the sum of ten dollars for each offense, together with costs of suit, one-half to any person who shall give information, the other half to be paid into the county treasury: *Provided*, That a conviction under the one hundred and thirty-second section of chapter thirty of the Revised Statutes, shall bar any suit under this section for the same offense; and judgment under the provisions of this section shall be an effectual bar to a prosecution under the provisions of the said one hundred and thirty-second section.

(16.) SEC. XVI. No 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 offense; the one-half thereof for the use of the county wherein the offense is committed, and the other half for the person informing.

(17.) SEC. XVII. All accounts of 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 grocer or other retailer as aforesaid, in which there shall be more than fifty cents charged for liquor; and if any 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 section contained shall prevent any grocer, retailer or other person as aforesaid, from selling spirituous

liquors larger in quantity than one quart, and suing for and recovering pay for the same.

(18.) SEC. XVIII. Every person licensed to keep a grocery, who shall knowingly suffer any disorder, drunkenness or unlawful games whatever, in his, her or their houses, his, her or their license or licenses shall be suppressed by the county commissioners' court.

(19.) SEC. XIX. No person or persons other than such as are or shall be qualified so to do by this law, shall presume, under any color or pretense, to sell, barter with or deliver any wine, rum, brandy or other spirits, or any mixed or strong liquors, to be used, or drank within his, her or their houses yards or sheds, or to be with his, her or their knowledge, privity or consent, used or drank in any shelter, 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, by less quantity or measure than one quart, 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; and any person offending against the provisions of this section, shall be subject to all the penalties which are herein provided against selling without a license.

(20.) SEC. XX. If any grocery keeper or other retailer of liquors shall receive, harbor, entertain or trust any minor or any servant, knowing them or either of them to be such, or after having been cautioned or warned to the contrary by the parent, guardian, master or mistress of such minor or servant, in the presence of one or more credible witnesses, such grocery keeper or retailer of liquors so offending, shall, for the first or second offense, being duly convicted thereof, forfeit and pay the sum of three dollars for every such offense, 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 offense, 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 grocery or of retailing liquor within the State.

(21.) SEC. XXI. 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, 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 offense, of three dollars, and for every succeeding offense, four dollars, to be recovered 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.

(22.) SEC. XXII. All agents of foreign insurance companies shall, upon their acceptance of such agencies, signify the same in writing, to the clerk of the county commissioners' court of their respective counties, which notice shall be filed by the clerk in his office, which shall entitle the agent to grant policies of insurance, according to the laws governing the company of such agency.

(23.) SEC. XXIII. The said agent or agents shall be required to pay over

to the clerk of the county commissioners' court, three per cent. on the amount of premiums charged by him on all policies by him issued; and the said clerk shall give to the agent, duplicate receipts, one of which the clerk shall retain; and the said clerk shall enter the amount so received in a book kept by him for that purpose, designating the time when and from what agent the same was received; and the said clerk shall, on the first day of January and the first day of July annually, (if he has in his hands any funds so received,) make out an abstract of the same, and shall forward said abstract, together with the money on hand, to the treasurer of the State of Illinois, who shall receive the same and enter the amount so received in a book kept by him for that purpose, with the time when and from what clerk and county the same was received; and the moneys so received shall be considered as revenue to the State, and by the treasurer paid out as such.

(24.) SEC. XXIV. Any agent failing to pay over to the clerk of the county commissioners' court, the per cent. as directed in this chapter, shall subject himself to be fined double the amount of the premium upon which he failed to pay over the per cent. as directed in this chapter; one-half to the informer, and the other half to be paid over to the clerk of the county commissioners' court, and paid over by him to the State treasurer, in like manner as the per cent. in this chapter is directed to be paid.

(25.) SEC. XXV. Every magistrate or other officer to whom any fines or penalties imposed by this chapter, shall be paid for the use of the county, shall, at the next term of the county commissioners' court, make a report of the amount thereof, and pay the same into the county treasury.

(26.) SEC. XXVI. Persons prosecuting or giving information under the provisions of this chapter, may be competent witnesses on the trial, notwithstanding their interest in the penalty to be recovered.

(27.) SEC. XXVII. Penalties incurred by a violation of the provisions of this chapter, may be recovered by action of debt by summons 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 competent jurisdiction of the proper county, upon complaint of any citizen of such county; and any justice of the peace or other officer into whose hands such penalty shall properly come, shall, unless otherwise required by law, make report of such recovery to the county commissioners' court, and at its next regular term succeeding the collection of such penalty, pay into the county treasury, the part thereof which shall be payable to such county, and the remainder to the person informing or prosecuting.

(28.) SEC. XXVIII. Appeals and writs of *certiorari* may be taken from proceedings had under the provisions of this chapter, as in other cases.

An Act to prohibit the Retailing of Intoxicating Drinks.

[Approved Feb. 1, 1851. Laws, 1851, p. 18.]

(29.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That every person who shall, by himself or agent, barter, sell or exchange any wine, rum, brandy, gin, whisky, or other vinous, spirituous or mixed liquors, by a less quantity than one quart, or who shall barter, sell or exchange the said liquors, or any of them, by any quantity, and suffer them to be drunk in any house, tavern, store, grocery, out-house, shed or other building, occupied by him, her or them, shall, on

conviction, be fined for every offense twenty-five dollars. The giving away of any of the aforesaid liquors for the purpose of avoiding the provisions of this act, shall be construed as selling, within the meaning of this act.

(30.) SEC. II. Every person who shall sell or give away any of the liquors specified in the first section of this act to any person under the age of eighteen years, shall, on conviction thereof, be fined for every such offense in any sum not less than thirty dollars nor more than one hundred dollars.

(31.) SEC. III. The fines herein provided for may be recovered, either by indictment in any court having jurisdiction of such offense, or by action of debt in the name of the people of the State of Illinois, before any justice of the peace of the proper county.

(32.) SEC. IV. The provisions of this act shall not extend to druggists or physicians who shall sell or give away any of the said liquors in good faith, for purely medical, mechanical or sacramental purposes.

(33.) SEC. V. The circuit courts of the several counties in this State shall give, or cause to be given in charge, the provisions of this act to the grand jury at every regular term of the court.

(34.) SEC. VI. All laws and parts of laws authorizing licenses to be granted to keep groceries, or for the sale of vinous, spirituous or mixed liquors, are hereby repealed, and the provisions of this act shall extend to all incorporated cities or towns in this State, anything in their charters to the contrary notwithstanding: *Provided*, That nothing contained in this act shall affect the rights, privileges or liabilities of persons to whom licenses have heretofore been granted.

(35.) SEC. VII. All fines collected under the provisions of this act shall be paid into the proper county treasury, and set apart as a fund for the support of paupers in the county in which the same shall be collected.

See Sections 6, 7, 8, 9 and 10 of "An act to incorporate the firemen's benevolent association, and for other purposes," approved June 21, 1852, (Laws, 1852, p. 68,) which repeal the 22nd, 23rd and 24th sections of chapter LXIV, title "LICENSES," so far as they relate to fire insurance or fire insurance agents in the city of Chicago.

An Act to prohibit the Sale of Intoxicating Drinks.  
[Approved Feb. 12, 1853. Laws, 1853, p. 91.]

(36.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all laws, or parts of laws, which were in force in relation to the granting of license to persons for the purpose of retailing spirituous, vinous or mixed liquors, at the time of the passage of an act entitled "An act to prohibit the retailing of intoxicating drinks," approved February 1, 1851, be and are hereby re-enacted and in full force and effect, as if never repealed: *Provided*, That no license shall be granted to any person for a less sum than fifty dollars, nor more than three hundred dollars per annum. This act shall take effect from and after its passage. *And provided further*, That a grocery shall be deemed to include all houses and places where spirituous or vinous liquors are retailed by less quantity than one gallon. The act entitled "An act to amend an act to reduce the laws incorporating the city of Chicago, and the several acts amendatory thereof, into one act, and to amend the same," and to amend an act to charter the city of Peru, be and the same hereby is repealed, and the provisions therein repealed are hereby revived and re-enacted.

**PRIOR LAWS.** An act requiring merchants, auctioneers, peddlers 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. Rev. Laws, 1833, p. 438.

An act to prevent the selling of spirituous liquors in this State, and for other purposes; approved Feb. 14, 1823. Rev. Laws, 1833, p. 594.

An act to regulate and license taverns; approved Feb. 27, 1819. Rev. Laws, 1833, p. 595.

An act regulating the mode of granting license to clock peddlers; in force Jan. 31, 1835. Laws, 1835, p. 63.

An act regulating tavern and grocery license; approved March 2, 1839. Laws, 1839, p. 71.

An act to amend an act entitled "An act to regulate tavern and grocery licenses;" in force March 1, 1841. Laws, 1841, p. 178.

An act supplemental to an act to amend an act entitled "An act to regulate taverns and groceries;" approved Feb. 18, 1841. Laws, 1841, p. 179.

An act in relation to peddlers; approved Feb. 27, 1841. Laws, 1841, p. 179.

An act to regulate foreign insurance company agencies established in the State of Illinois; in force May 1, 1841. Laws, 1841, p. 180. Repealed March 4, 1843. See repealing act, Laws, 1843, p. 165.

An act to prohibit shows of wax figures, tricks of jugglers, &c.; in force May 1, 1829. Rev. Laws, 1833, p. 532.

**DECISIONS.** A law prohibiting selling spirits without a license, is not unconstitutional. *King et al. v. Jacksonville*, 2 S. 305.

The 5th section, act 1831, (Laws, 1831, p. 84,) which confers on incorporated towns the power to "provide for licensing public shows," supersedes so much of the act of May 1, 1829, (Rev. Laws, 1833, p. 582,) as requires a license from the county treasurer. *Woodward v. Turnbull*, 3 S. 1.

Under the license law of 1845, the county commissioners cannot grant a license for less than \$25; such a license attaches to the person, and is not transferable, nor can it be issued on credit. *Munsell v. Temple*, 3 G. 93. See also, *Lombard v. Cheever et al.*, 3 G. 469.

The 7th section of the act of March 2, 1839, authorized incorporated towns to grant licenses to keep groceries, but to pay all moneys received therefor into the county treasury; this does not repeal a special law, of earlier date, empowering a particular town to grant such licenses and retain the moneys therefor. *Ottawa v. La Salle County*, 12 Ill. 339.

The license law (Chap. LXIV, Rev. Stat. 1845,) does not conflict with that provision of the constitution requiring all taxation to be by valuation and uniform. Nor does it violate that provision of the United States constitution regulating commerce. Nor was the license law repealed, by abolishing the office of clerk of the county commissioners' court; by fair construction the clerk of the county court succeeds the clerk of the county commissioners' court. *People v. Thurber*, 13 Ill. 554.

The General Assembly may repeal that part of an act incorporating a city, which gives it authority to grant licenses to sell liquor. *Gutzwiller v. The People*, 15 Ill. 142.

A town charter gives the corporation power to declare what shall be a nuisance, &c. Under this the authorities may ordain that selling spirituous liquors is a nuisance, and impose fines for violation of such ordinance. *Goddard v. Jacksonville*, 15 Ill. 588.

## CHAPTER LXV.

## LIENS.

## SECTION

1. Person building on land or town lot, to have lien on the same for his labor or materials furnished.
2. Extent of lien; limitation as to time.
3. Claimant to file his petition in circuit court, for an order of sale and payment.
4. What facts petition shall contain; summons to issue.
5. Court may permit amendments, and exercise general chancery jurisdiction.
6. Suits to be placed on the common law docket; summons, how served and returned.

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7. Answer to be on oath; issue, how made up and tried.
8. When defendant to answer; testimony.
9. Publication, when sufficient.
10. All interested persons may become parties to suit.
11. No preference given to prior contract creditor.
12. Court shall direct disposition of proceeds.
13. When contractor is prevented by default of owner of land, from fulfilling his contract, he may recover his proper proportion of the contract price.



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14. Premises to be divided, if practicable.
15. Creditors whose claims are not due, may become parties, and receive proportion of assets.
16. Order in which different claims may be tried, and rights of respective claimants.
17. Any estate in the lands improved may be sold to satisfy lien.
18. Suits may be maintained by or against heirs, &c.
19. Claimants may contest each other's rights; how such contests to be tried.
20. Subsequent encumbrance not to affect lien; prior

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- encumbrance to hold only to the extent of value of land before being improved.
21. Who considered parties in interest.
22. Creditors may contest validity of former encumbrances.
23. Chancery rules to be observed, so far as applicable.
24. Suit to enforce lien, or not to affect other creditors, after payment due, or not affected.
25. Right of action at law not affected.
26. Money arising from sale, how distributed; deficiency, how made up; excess, how applied.
27. Costs, how taxed and apportioned.

[Approved March 3, 1845. Rev. Stat. 1845. p. 345.]

SECTION I. Any person who shall, by contract with the owner of any piece of land or town lot, furnish labor or materials for erecting or repairing any building, or the appurtenances of any building on such land or lot, shall have a lien upon the whole tract of land or town lot, in the manner herein provided, for the amount due to him for such labor or materials.

SEC. II. The lien shall extend to all work done and materials furnished under the provisions of the contract, whether the kind or quantity of the work, or amount to be paid, be specified or not: *Provided*, That the time of completing the contract shall not be extended for a longer period than three years, nor the time of payment beyond the period of one year, for the time stipulated for the completion thereof.

SEC. III. When any sum due by such contract shall remain unpaid after the same is payable, the creditor may, upon bill or petition to the circuit court of the county in which the land or lot lies, obtain an order for the sale thereof, and for applying the proceeds of such sale to the discharge of his demand; and the filing of the bill or petition in the clerk's office, and suing out a summons thereon, shall be deemed the commencement of the suit.

SEC. IV. The bill or petition shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises which are subject to the lien, and all other material facts and circumstances necessary to a full understanding of the rights of the parties, and shall be considered as the foundation of the plaintiff's action; and upon the filing of which with the clerk, a summons shall issue thereon against all persons made parties, as is required upon filing bills in chancery.

SEC. V. For the purpose of bringing all parties in interest before the court, the court shall have power to permit amendments to any part of the pleadings, and to issue process, make all orders requiring parties to appear, and requiring notice to be given by publication in newspapers, that are or may be authorized in proceedings in chancery; and the court shall have the same power and jurisdiction over the parties and subject that are or may be conferred upon courts in chancery in respect to proceedings before that court.

SEC. VI. Suits instituted under the provisions of this chapter, shall be placed upon the common law docket, and shall stand for trial at the term of the court to which the summons is made returnable. The summons shall be served by the sheriff as other process; but if not served ten days before the return day thereof, the cause shall be continued, unless the parties agree to a trial at that term of the court.

SEC. VII. Defendants, in proceedings under the provisions of this chap-

ter, shall answer the bill or petition under oath, and the plaintiff shall except or reply to the answer as though the proceeding was in chancery; the answer shall be regarded as the plea of the defendant, and by the replication thereto, an issue or issues shall be formed, which shall be tried by the court or by a jury under the direction of the court, as the court may direct or the parties agree.

SEC. VIII. Every defendant served with process ten days before the return day thereof, shall answer the bill or petition on or before the day on which the cause shall be set for trial on the docket, and the issue or issues in the cause shall be made up under the direction of the court, and oral testimony shall be received as in cases at law.

SEC. IX. Notice given to parties by publication in newspapers, under the direction of the court, shall be equivalent to personal service of such notice.

SEC. X. In proceedings under this chapter, all persons interested in the subject matter of the suit, or in the premises intended to be sold, may, on application to the court wherein the suit is pending, become parties at any time before final judgment.

SEC. XI. Upon questions arising between different creditors, no preference shall be given to him whose contract was first made.

SEC. XII. Upon the trial of causes under the provisions of this chapter, the court shall ascertain the amount due each creditor, and shall direct the application of the proceeds of sales to be made to each, in proportion to their several amounts.

SEC. XIII. When the owner of the land shall have failed to perform his part of the contract, and by reason thereof the other party shall, without his own default, have been prevented from performing his part, he shall be entitled to a reasonable compensation for as much thereof as he has performed, in proportion to the price stipulated for the whole, and the court shall adjust his claim accordingly.

SEC. XIV. If any part of the premises can be separated from the residue, and sold without damage to the whole, and if the value thereof should be sufficient to satisfy all the claims proved in the cause, the court may order a sale of that part.

SEC. XV. Parties entitled to liens under the provisions of this chapter, whose claims are not due or payable at the time of the commencement of suit by any other party, shall be permitted to become parties to the suit, and their claims shall be allowed, subject to a reduction of interest from the date of judgment to the time such claim is due or payable.

SEC. XVI. In cases under the provisions of this chapter, where there are several claimants, the issue of law and fact, or either, may be tried separately, and in no case shall the want of preparation for trial to one claim delay the trial in respect to others; but trials shall be had upon issues between such parties as are prepared, without reference to issues between other parties; and when one creditor shall have obtained a verdict or judgment for the amount due, the court may order a sale of the premises on which the lien operates, or a part thereof, so as to satisfy the judgment: *Provided*, That the court may, for good causes shown, delay making any order of sale until the rights of all parties in interest shall be ascertained and settled by the court.

SEC. XVII. If the person who procures work to be done, or materials furnished, has an estate for life only, or any other estate less than a fee simple in the land or lot on which the work is done, or materials furnished, or if such land or lot, at the time of making the contract, is mortgaged, or under any other encumbrance, the person who procures the work or materials shall, nevertheless, be considered as the owner within the meaning of this chapter, to the extent of his right and interest in the premises; and the lien herein provided for, shall bind his whole estate and interest therein in like manner as a mortgage would have done; and the creditor may cause the right of redemption, or whatever other right or estate such owner had in the land at the time of making the contract, to be sold, and the proceeds of sale applied according to the provisions of this chapter.

SEC. XVIII. Suits may be instituted under the provisions of this chapter in favor of administrators or executors, and may be maintained against the representatives in interest of those against whom the cause of action accrued; and in suits instituted under the provisions of this chapter, the representatives of any party who may die pending the suit, shall be made parties as though it were a suit in chancery.

SEC. XIX. Upon proceedings under the provisions of this chapter, parties claiming may contest each other's rights as well with respect to amount due, as with respect to their right to the benefit of the lien hereby created; and upon all questions made by parties, the court shall require issues of law or fact to be formed, so as to bring about a speedy decision thereof.

SEC. XX. No encumbrance upon land created before or after the making of a contract under the provisions of this chapter, shall operate upon the building erected or materials furnished, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied; and upon questions arising between previous encumbrances and creditors, under the provisions of this chapter, the previous encumbrance shall be preferred to the extent of the value of the land at the time of making the contract, and the court shall ascertain by jury or otherwise, as the case may require, what proportion of the proceeds of any sale shall be paid to the several parties in interest.

SEC. XXI. Parties in interest, within the meaning of this chapter, shall include all persons who may have any legal or equitable claim to lands or lots upon which a lien may be attempted to be enforced under the provisions of this chapter.

SEC. XXII. Creditors who file bills or petitions under the provisions of this chapter, may contest the validity of encumbrances, as well in regard to amount as to their justice; and any encumbrance, whether by mortgage, judgment or otherwise, charged and shown to be fraudulent in respect to such creditor, or in respect to creditors generally, may be set aside by the court, and the premises made subject to the claim of the creditor, freed and discharged from such fraudulent encumbrance.

SEC. XXIII. In proceedings under the provisions of this chapter, the courts are vested with all the powers of courts of chancery, and shall be governed by the rules of proceeding and decision in these courts, so far as that power may be necessary to carry into full and complete effect the provisions hereof, and so far as those rules of proceeding and decision are applicable to cases and questions presented for adjudication and decision.

SEC. XXIV. No creditor shall be allowed to enforce the lien created under the provisions of this chapter, as against or to the prejudice of any other creditor or any encumbrance, unless suit be instituted to enforce such lien within six months after the last payment, for labor or materials, shall have become due and payable.

SEC. XXV. Nothing contained in this chapter, shall be construed to prevent any creditor from maintaining an action at law upon his contract, in like manner as if he had no lien for the security of his debt.

SEC. XXVI. If, upon making sale of any premises under this chapter, the proceeds of such shall not be sufficient to pay the claims of all parties, according to their rights, the judgment shall be credited by the amount of such sale, and execution may issue in favor of any creditor, whose claim is not satisfied, for the balance due, as upon a judgment in actions of debt or assumpsit; and in case of excess of sales over the amount of judgment, such excess shall be paid to the owner of the land, or to the person who may be entitled to the same, under the direction of the court.

SEC. XXVII. The costs of proceeding under the provisions of this chapter, as between creditors claiming liens and the person against whom the lien is intended to be enforced, shall abide the event of the suit; and the costs, as between creditors aforesaid, in contests relative to each other's claims, shall be subject to the order of the court, and the same rule shall prevail in respect to costs growing out of proceedings against and between encumbrancers.

PRIOR LAWS. An act for the benefit of mechanics; approved Feb. 22, 1833. Rev. Laws, 1833, p. 447.

An act to provide for securing to mechanics and others, liens for the value of labor and materials; in force Dec. 10, 1839. Laws, 1839, p. 147.

DECISIONS. Under the mechanics' lien law of 1833, the petition cannot be filed till the contract is completed, and within three months from the time payment is to be made. *Kinney v. Hudnut*, 2 S. 472.

The act of 1833, for the benefit of mechanics, requires the contract, by virtue of which the lien is claimed, to be set out in the petition; to set out a note, and allege it to be given for work done on defendant's building, is not sufficient. *Logan v. Dunlap*, 3 S. 188.

The proceeding, under the mechanics' lien law of 1833, is only *in rem.*, and the remedy is cumulative, and cannot be pleaded in abatement of an action to recover for work or materials. *Delahay v. Clement*, 3 S. 201.

The petition for a lien, under the act of Dec. 10, 1839, should contain a precise statement of the contract, when made, when performed, when payable, and showing the right to recover, and apprising all parties of the nature and character of the claim. *Muller v. Smith*, 3 S. 543.

Persons in possession and owning improvements on the public lands of the United States, whether entitled to pre-emptions or not, are within the meaning of the lien law of Dec. 10, 1839. That act fixes no time within which the suit must be commenced, as between the parties to the contract. A lien growing out of a contract, made before the act of 1839, but not completed till after the passage of that act, should be enforced under that act. The completion of his contract by the plaintiff, and the liability of the defendant to be sued, are the "rights acquired and liabilities incurred," under the act of 1833, which are not affected by the repeal of the latter statute. The premises, upon which the lien is sought to be enforced, should be so clearly described in the petition as to leave no room for doubt or mistake. *Turney et al. v. Saunders et al.*, 4 S. 527.

Proceedings to enforce a lien under the act of 1839, are in the nature of chancery proceedings, and governed by the rules and practice of the courts of chancery. The same rules of evidence apply, except that parol proof is admitted; and the answer, so far as responsive to the petition, is evidence. In the 11th section of the act, the word "creditors," means those who claim a lien under the act. *Kimball et al. v. Cook*, 1 G. 423; *Shaeffer v. Weed et al.*, 3 G. 511.

Under the lien law of Dec. 10, 1839, no limitation, in time, is placed upon the right of the creditor to enforce his lien, as against the debtor. The answer of the defendant to the petition in such cases, is evidence for the jury, so far as it is responsive to the petition. The decree, on such petition,

can affect only the legal and equitable interest of the defendant in the premises. *Garrett v. Stevenson et al.*, 3 G. 261.

A widow's dower is not affected by the lien given to mechanics, nor is she a proper party to proceedings under the law, when her only interest is her dower. The word "creditor," as used in the 65th chapter of Rev. Stat. 1845, is applied to him who has a lien by contract made under the law, and the term "encumbrancer," to one who has a lien by mortgage or otherwise, not under the law. A creditor who does not file his bill till after the expiration of six months from the time payment is due by the contract, loses his lien, as against any other such creditor, or as against an encumbrancer by mortgage or otherwise, existing at the time of the rendition of his judgment, whether they are creditors before or after the making of the contract. *Shaeffer v. Weed et al.*, 3 G. 511.

A mechanics' lien, under chapter 65, Rev. Stat. 1845, does not attach before performing the labor, or furnishing the materials; and judgment creditors cannot be affected by suits to enforce a lien, unless made parties thereto. *McLagan v. Brown et al.*, 11 Ill. 519.

The lien law of March 3, 1845, creates a lien in favor only of those who perform labor, or furnish materials at the instance of the owner of the property, not in favor of those who labor or furnish materials on account of the contractor. *Dawson v. Harrington*, 12 Ill. 300.

The party complaining of the verdict in a suit for a mechanics' lien, should preserve the evidence in the record, either by bill of exceptions or the certificate of the judge. The sale may be made either by a master, or a commissioner, or by the sheriff under a special execution; and the decree need not direct to whom the surplus money, if any, is to be paid. The rights of those not made parties are not affected by the decree. *Kelly et al. v. Chapman*, 13 Ill. 530.

The using, on the premises, of materials furnished, and attaching them to the freehold, and not the place of making the contract, entitles the party to a lien on the premises for their value; and the destruction of such materials by fire, does not destroy the lien. Money derived from a sale of property on which there is a mechanics' lien, will, by a court of equity, be followed into the hands of the party who has converted the property into money. *Gaty et al. v. Casey et al.*, 15 Ill. 189.

Under the 8th Sec. of the lien law of March 3, 1845, a certificate that notice was "inserted in said paper, commencing with Aug. 21, 1852, and ending Oct. 2, 1852, six weeks," is sufficient. The act only gives a lien upon contracts with the owner, who owns at the time of the contract. *Underhill v. Corwin et al.*, 15 Ill. 556.

## CHAPTER LXVI.

### LIMITATIONS.

#### SECTION

1. What actions limited to five years.
2. What actions limited to two years.
3. Actions for words spoken, limited to one year; for malicious prosecution to two years.
4. What actions limited to sixteen years; provisions concerning them.
5. Judgments in courts of record, may be revived by *scire facias* within twenty years.
6. Persons having right of entry, to enter within twenty years.
7. Real, possessory, mixed action, &c., to be brought in twenty years.
8. What actions relating to real estate, must be brought in seven years; provisions in such cases.
9. Possession, what constitutes.
10. Right of heirs, &c., secured.
11. Persons having certain rights respecting real estate, to make entry within seven years.
12. In case of appeal, writ of error, non-suit, &c., how time to be computed.

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13. If defendant be absent from State, time, how to run.
14. If person having right of entry, be a minor, insane, &c., how time to run.
15. Actions of trespass, detinue, &c., when to be commenced. Portions of acts repealed.
16. Act subject to certain conditions.
17. Actions upon promissory notes, &c., must be brought within sixteen years.
18. Actions upon accounts, &c., to be commenced within five years.
19. Provisions, &c., to which this act is subject.
20. Portion of act repealed: *proviso*.
21. When action to be brought within two years.
22. When act to take effect.
23. Rule as to causes of action which accrued under act of Feb. 10, 1849.
24. Rule in causes of action which accrued previous to said act.
25. When act to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 343.]

(1.) SECTION I. All actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover and replevin, for taking away goods and chattels,

all actions for arrearages of rent, due on a parol demise, and all actions of account, and upon the case, except actions for slander, and except also, actions for malicious prosecution, and such actions as concern the trade of merchandise, between merchant and merchant, their factors or agents, shall be commenced within five years next after the cause of such actions shall have accrued, and not after.

(2.) SEC. II. All actions of trespass for assault, battery, wounding 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.

(3.) SEC. III. 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.

(4.) SEC. IV. 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.

(5.) SEC. V. 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.

(6.) SEC. VI. 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.

(7.) SEC. VII. 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 the right or title thereto, or cause of such action accrued, and not after.

(8.) SEC. VIII. 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 this 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.

(9.) Possession, as described in the preceding section, 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.

(10.) SEC. X. The heirs, devisees and assigns of the person having such possession and title, shall have the same benefit of this chapter as the person from whom the possession was derived could have had by virtue of such possession.

(11.) SEC. XI. No person who has or 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 this 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.

(12.) SEC. XII. If, in any of the said actions specified in any of the preceding sections of this chapter, 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.

(13.) SEC. XIII. If any person or persons against whom there is or shall be any cause of action, as is specified in the preceding sections of this chapter, except real or possessory actions, shall be out of this State at the time of the cause of such action accruing, or any time during which a suit might be sustained on such cause of action, then the person or persons who shall be entitled to such action, shall be at liberty to bring the same against such person or persons, 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 chapter.

(14.) SEC. XIV. In all the foregoing cases in which the person or persons who shall have right of entry, title or cause of action, is, are or shall be, at the time of such right of entry, title or cause of action, under the age of twenty-one years, insane, or *feme covert*, such person or persons may make such entry or institute such action, so that the same be done within such time as is within the different sections of this chapter limited, after his or her becoming of full age, sane, or *feme sole*.

An Act to amend Chapter LXVI of the Revised Statutes, entitled "Limitations."

[Approved Feb. 10, 1849. In force April 13, 1849. Laws, 1849, p. 132.]

(15.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all actions of trespass, detinue, trover and replevin; all actions founded on any promissory note, bill of exchange, book account, or simple contract; all actions founded on any promis-

sory note, bond, judgment, contract, or indebtedness executed, rendered, entered into, or accrued, beyond the limits of this State; and all actions on the case, shall be commenced within five years next after such recovery, or the cause of such action shall have accrued, and not after. All parts of acts inconsistent with the provisions of this act shall be and the same are hereby repealed.

(16.) SEC. II. This act shall be subject to the same conditions as are provided in the twelfth section of the sixty-sixth section [chapter] of the Revised Statutes, entitled "LIMITATIONS."

An Act to amend the several Laws concerning Limitations of Actions.

[Approved Nov. 5, 1849. Laws, 1849, (2nd Sess.) p. 37.]

(17.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all actions founded upon any promissory note, simple contract in writing, bond, judgment, or other evidence of indebtedness in writing, made, caused or entered into after the passage of this act, shall be commenced within sixteen years after the cause of action accrued, and not thereafter.

(18.) SEC. II. All actions founded upon accounts, bills of exchange, orders, or upon promises not in writing, express or implied, made after the passage of this act, shall be commenced within five years next after the cause of action shall have accrued, and not thereafter.

(19.) SEC. III. *Be it further enacted*, That this act and the several acts to which this is an amendment, shall be subject to the several provisions, conditions and restrictions contained in the twelfth and thirteenth sections of the sixty-sixth chapter of the Revised Statutes of this State.

(20.) SEC. IV. So much of the sixty-sixth chapter of the said Revised Statutes, entitled "LIMITATIONS," as is in conflict with this act, is hereby repealed; and so much of the said act amendatory thereof, passed February tenth, one thousand eight hundred and forty-nine, as is inconsistent with this act, is hereby repealed: *Provided, always*, That the several acts aforesaid shall be hereafter, in all actions instituted upon causes of action arising during the period in which said laws were respectively in force, be the rule of limitation and adjudication in all such cases, and that neither this act nor said amendatory act shall be so construed as to limit or affect the right of action upon any matter of indebtedness or cause of action existing or accruing before their several enactment.

(21.) SEC. V. No action of debt shall be maintained on any open account or any promise, not in writing, unless the same be brought within five years next after the cause of action accrued; but if said cause of action has accrued five years before the passage of this act, then such action shall not be maintained, unless the suit is brought within two years next after the passage of this act.

(22.) SEC. VI. This act to take effect from and after its passage.

An Act to amend the several Laws in relation to Limitations.

[Approved Feb. 17, 1851. Laws, 1851, p. 182.]

(23.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all causes of action which accrued during the time that the act entitled "An act to amend the sixth chapter of

the Revised Statutes, entitled 'LIMITATIONS,' approved on the tenth day of February, one thousand eight hundred and forty-nine, was in force, and where a different period is prescribed by that act from the one provided by the act entitled "An act to amend the several acts concerning limitations of actions," approved on the fifth day of November, one thousand eight hundred and forty-nine, shall be governed by the provisions of the latter act.

(24.) SEC. II. That all causes of action existing at the time, or which had accrued prior to the thirteenth day of April, one thousand eight hundred and forty-nine, when the first of the above recited acts became a law, and for the barring of which there was no previous statute, shall be governed by the provisions of that act; the time limited thereby, to commence to run from and after said act became a law.

(25.) SEC. III. This act to take effect on its passage.

**PRIOR LAWS.** An act regulating the practice in the supreme and circuit courts of this State, and for other purposes; section 8; approved March 22, 1819. Laws, 1819, p. 139.

An act of limitations relating to lands and tenements; approved Feb. 18, 1823. Laws, 1823, p. 183; R. E. S., (Real Estate Statutes,) p. 420.

An act for the limitation of actions, and for avoiding vexatious law suits; approved Feb. 10, 1827; in force June 1, 1827. Rev. Laws, 1827, p. 284; R. E. S., p. 422.

An act to amend "An act for the limitation of actions and for avoiding vexatious law suits," approved Feb. 10, 1827; approved Jan. 17, 1835. Laws, 1835, p. 42; R. E. S., p. 424.

An act to amend an act entitled "An act for the limitation of actions and for avoiding vexatious law suits," approved Feb. 11, 1837. Laws, 1837, p. 160; R. E. S., p. 424.

An act to quiet possessions and confirm titles to land; approved March 2, 1839. Laws, 1839, p. 266; R. E. S., p. 426.

**DECISIONS.** An unqualified promise to pay a debt, takes a case out of the statute of limitations. Where the promise to pay is qualified, the burden of proof is on the plaintiff to do away with the qualification, or show that the contingency has happened. An acknowledgment that a debt is due, will infer a promise to pay; and proof of payment of a part, will authorize the jury to infer a promise to pay the balance. *Mellick v. Seelhorst*, Breese, 171.

Proof that the defendant promised to pay is insufficient alone to take a case out of the statute, without evidence of the original consideration. Such a promise only removes the bar of the statute, and leaves the case to be proved as if no statute had been pleaded. The promise must be absolute and unqualified, and is not to be extended by implication. *Kimmel v. Schwartz*, Breese, 216.

In an action of slander, if the words were spoken within one year before the repeal of the statute, the repealed statute will be no bar; if the cause of action accrued one year before the repeal, the old statute is a bar. *Naught v. O'Neal*, Appendix to Breese, 29.

The act of March 22, 1819, could not, in an action of assumpsit, be pleaded in 1822, in bar to a contract made in 1812. The statute had not then run five years. *Tifts v. Rice*, Appendix to Breese, 30.

A State is not barred by the statute of limitations, unless expressly named. *State Bank v. Brown et al.*, 1 S. 106.

Non-residents are exempted from the provisions of the limitation law of Feb. 10, 1827. The limitation of sixteen years in that statute, applies only to actions of debt, covenant, and on awards. *White v. Hight*, 1 S. 204.

If five years do not elapse between the time of making the promise to pay money, and the commencement of suit on such promise, the statute of limitations is no bar. *Prevo v. Lathrop*, 1 S. 305.

The limitation law, in force June 1, 1835, is no bar to a recovery until seven years after it took effect. *Rhinehart v. Schuyler*, 2 G. 473.

The defense of the statute of limitations cannot be interposed in the supreme court when it has not been pleaded or specially insisted on in the circuit court. *Wilson et al. v. Van Winkle*, 2 G. 684.

An executor, claiming to have overpaid a legatee, cannot, ten years after such payment, recover the excess claimed; he is barred by the statute of limitations. The statute begins to run when a cause of action accrues; and when some act or condition precedent is required, to entitle a party to sue, he must exercise reasonable diligence, or he is barred by the statute. *Shelburne, Ex'r, v. Robinson*, 3 G. 597.

Before the statute will bar an action of debt, the defendant must reside sixteen years in the State

after the cause of action accrues, and before suit brought. The time of the defendant's absence from the State, is no part of the sixteen years. The "limitation" laws of a foreign country, must be pleaded in suits brought here, upon instruments made in such foreign country, before they can be given in evidence; and the time within which a remedy must be enforced, is governed solely by the *lex fori*. *Chenot v. Lefevre*, 3 G. 637.

Such absence from the State as prevents service of process, suspends, for the time of absence, the operation of the statute of limitations. *Vanlandingham v. Huston*, 4 G. 125.

Actions of the classes enumerated in the first section of the act of March 3, 1845, must be commenced within five years after the cause of action accrued; and actions enumerated in the fourth section, within sixteen years. The first section bars the action of assumpsit in all cases except such as concern the trade of merchandise between merchant and merchant, their factors or agents, in five years; but the action of debt is not barred in five years, except for arrearages of rent due on parol demise. Justices of the peace, having jurisdiction both in debt and assumpsit, and the form of their summons not distinguishing the form of action, when the statute of limitations is made a defense before them, the law will presume the form of action to be that which will best advance the plaintiff's remedy. In the first section of the act, the term "actions of account," comprehends the action of assumpsit, express or implied, as well as actions *ex delicto*. In construing statutes of limitation, only cases within the words of the statute are barred, not those within the reason of the statute only. *Bedell v. Janney et al.*, 4 G. 193.

The limitation law which was in force June 1, 1835, is no bar to a recovery, unless the party has been in possession for seven years thereafter. *Bruce v. Schuyler et al.*, 4 G. 221. See *Moore et al. v. Capps*, 4 G. 315.

The limitation law of Feb. 10, 1849, which took effect April 13, 1849, operates only on causes of action accruing after it took effect, and has a prospective effect only. *Thompson v. Alexander*, 11 Ill. 54.

The 3rd section of the limitation law of March 3, 1845, requiring "every action on the case for words" to be "commenced within one year next after the words spoken," does not include actions for libel, but for verbal slander only. *Hazell v. Shelby*, 11 Ill. 9.

That part of the statute of limitations which requires certain real actions to be brought within seven years after possession taken by a defendant, does not apply against premises dedicated to the public. *City of Alton v. Illinois Transportation Company*, 12 Ill. 38.

An account was read to the defendant, who admitted the correctness of the whole, and of each item, but thought some of the items had been paid, and said he would see plaintiff and settle with him; *Held*, not to take the case out of the limitation law of five years. In such case there must be a promise to pay, which promise may be inferred from the admission that the debt is due and unpaid. In assumpsit on an open account, the last item of which accrued more than five years before the commencement of the action, the statute of limitations is a good defense. *Ayers v. Richards*, 12 Ill. 146.

The limitation of twenty years' possession does not begin to run until the land is bought of the United States. *Spellman v. Curtin*, 12 Ill. 409.

A certificate showing that a party had proved himself entitled to a pre-emption, is not such title, or claim or color of title, as can be made the foundation of seven years' possession, against one who entered the land afterwards under another pre-emption. *Idem*.

The defense of the statute of limitations must be made by plea, not by a motion to dismiss. *Burnap v. Wight*, 14 Ill. 303.

The limitation act of Feb. 10, 1849, is prospective only; and that part thereof which limited the bringing suit to two years, upon all causes of action existing five years before its passage, was repealed by the 2nd section, act, Feb. 15, 1851. A plea of the statute of limitations, to an action commenced within five years from the passage of the act of Feb. 10, 1849, though upon a cause of action existing five years before the passage of the act of 1849, is bad. *Trustees of Schools v. Chamberlain et al.*, 14 Ill. 495; *Watt v. Kirby*, 15 Ill. 200.

Adverse possession in order to defeat a legal title, must be hostile in its inception, and so continuous constantly for twenty years. It need not be under a rightful claim, or a muniment of title, but must be actual, visible, exclusive, and retained under claim of title, inconsistent with that of the true owner. If entry is made under paper title, the occupation of a part will be possession of the whole; if not under paper title, the possession is adverse only to the part actually occupied. *Turney v. Chamberlain*, 15 Ill. 271.

A guardian's deed does not constitute such claim and color of title made in good faith, as is required by the statute of limitations of 1839. *Rawlings v. Bailey*, 15 Ill. 178.

The words "claim and color of title made in good faith," under the act of March 2, 1839, mean such a title as tested by itself would appear to be good; not a paramount title, but a *prima facie* title. Such a title, connected with seven years' possession and payment of taxes, is invincible. *Irving v. Brownell*, 11 Ill. 402.

The word "prosecution" in the limitation law of 1845, includes cases where a party has been maliciously prosecuted, and imprisoned without cause, as well in civil as criminal proceedings. *Burnap v. Marsh et al.*, 13 Ill. 535.

## CHAPTER LXVII.

## MANDAMUS.

## SECTION

1. Circuit courts may issue writs of *mandamus*; appeals may be taken; writs of error may be prosecuted: allowance of writ to stay proceedings.
2. When writ issued, duty of officer.
3. Facts stated in return, may be traversed: person making return, may take issue; subsequent proceedings; if verdict be against person returning

## SECTION

- writ, damages, how assessed; peremptory mandamus may be granted; if judgment be for defendant, he may recover costs.
4. Recovery of damages to bar other action for same matter.
5. Court issuing writ, &c., to give sufficient time for pleading, making return, &c.

[Approved March 3, 1845. Rev. Stat. 1845, p. 351.]

SECTION I. 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 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 termination of such writ of error.

SEC. II. When 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*.

SEC. III. 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.

SEC. IV. If any damages shall be recovered by virtue of the provisions of this chapter, 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.

SEC. V. 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, anything herein contained to the contrary notwithstanding.

PRIOR LAWS. An act to regulate proceedings on writs of mandamus. In force June 1, 1827. Laws, 1827, p. 287; Rev. Laws, 1833, p. 444.

DECISIONS. A peremptory mandamus will issue to a county commissioners' court, to compel them to restore a clerk, the cause of whose removal is not stated on their records. *Street v. County Commissioners, Gallatin, Breese, 25.*

A mandamus will not issue to compel a person to do an act, when it is doubtful whether he has the right by law to do such act. *The People v. Forquer, Breese, 68.*

A motion was made by the defendant to continue a cause, because the plaintiff had not filed an account with his declaration, which contained a special count on a note, and the money counts. The plaintiff offered to file a stipulation that he only claimed to recover on the note, a copy of which was duly filed, but the court continued the case. The supreme court awarded a peremptory writ of mandamus to the judge, directing him to proceed with the cause without requiring an account to be filed. *The People v. Pearson, 1 S. 458. People ex rel. v. Pearson, 1 S. 473.*

When a judge of the circuit court refused to sign a bill of exceptions, as tendered, but signed it after striking out material portions, an alternative writ of mandamus was awarded, requiring him to sign the bill as originally tendered. When such alternative writ was delivered to the judge, but not returned by him, a peremptory writ of mandamus was issued, requiring him to sign the bill of exceptions. The judge should have either signed the bill of exceptions, in obedience to the alternative writ, or returned the causes of his objection. The supreme court would not require him to sign a bill of exceptions not truly stating the facts. The signing a bill of exceptions is a ministerial act, which the supreme court will compel by writ of mandamus. *The People ex rel. v. Pearson, 2 S. 189.*

On judgment against a defendant, he moved to set aside the judgment and grant a new trial, and pending the motion, the court adjourned. The clerk, on application of the plaintiff, refused to issue execution because the motion was undecided. The supreme court awarded an alternative writ of mandamus to the clerk, requiring him to issue execution, or show cause for refusal. *People ex rel. v. Cloud, 2 S. 362.*

A sheriff elect, at the first term of the circuit court of his county, after notice of the receipt of his commission by the clerk, prepared his bond, which was approved by the court. After the adjournment of the court, but within thirty days after notice of the receipt of his commission, the sheriff presented his bond to the clerk, and offered to take the oaths of office; but the clerk refused to receive the bond, or administer the oaths. A writ of mandamus issued to compel the clerk to receive the bond and administer the oaths. *The People v. Fletcher, 2 S. 482.*

A patent cannot be set aside or vacated on motion for a mandamus against the auditor, requiring him to issue a second patent for the same land. *The People v. The Auditor, 2 S. 567.*

A party excepting to the opinion of the court, should prepare and tender a correct bill of exceptions, and if the judge refuse to sign it, should apply to the supreme court for a writ of mandamus. *Weatherford v. Wilson, 2 S. 253.*

The supreme court has jurisdiction to award writs of mandamus to circuit judges; and when such a writ has been served on any person, and he refuses to obey it, an attachment for contempt will issue. Any person may serve a writ of mandamus. When the person served with an alternative writ of mandamus neglects to return it, a peremptory writ will issue, without first taking a rule for a return of the alternative writ. A judge may be punished for refusing to obey a writ of mandamus, even after he has resigned his office. *The People v. Pearson, 3 S. 270.*

A writ of mandamus may be granted against the board of canal commissioners, to require them to perform duties imposed on them by law. *People v. Canal Commissioners, 3 S. 153.*

A writ of mandamus may issue to compel a sheriff (or his successor, who has the means of doing it,) to execute to the purchaser a good and perfect deed of land sold for taxes. *Marcy v. Clabaugh, 1 G. 28.*

If the overseers of the poor or the county commissioners' court, neglect to perform their respect-



ive duties in regard to contracts for the support of paupers, the remedy in the first instance is by writ of mandamus. *Rouse v. County of Peoria*, 2 G. 99.

A writ of mandamus can issue only to compel a party to act, when it is his duty to act without it. *People, &c., v. Gilmer*, 5 G. 242.

When a writ of mandamus is applied for to enforce a private right, the person interested should be the relator; when the object is to enforce a public right, the people are the real party. By the statute, the successful party in the proceeding recovers costs. *County of Pike v. The State*, 11 Ill. 202.

An alternative mandamus is the foundation of the subsequent proceedings, and must show a clear right to the relief demanded, by setting forth all the facts, so that they may be admitted or denied. The mode of reaching formal defects in an alternative mandamus, is by motion to quash. Objections to substantial defects may be raised at any time. *Canal Trustees v. People*, 12 Ill. 248.

Mandamus is a proper remedy against an ex-mayor to obtain possession of books, &c., the property of the corporation; and a pretended intrusion into, or retention of such office, will not justify the withholding such property, so as to drive the informant to a quo warranto. Every intendment is made against a return to a writ of mandamus, which does not answer the important facts. *The People ex rel. v. Kilduff*, 15 Ill. 492.

## CHAPTER LXVIII. MARKS AND BRANDS.

### SECTION

1. Every person having stock, may have separate ear mark, which shall be recorded.
2. Clerk of county commissioners' court to keep record of marks; his fees.

### SECTION

3. How disputes to be settled.
4. Persons purchasing stock, may change marks in presence of witnesses.

[Approved March 3, 1845. Rev. Stat., 1845, p. 352.]

SECTION I. Every person in this State, who hath cattle, horses, hogs, sheep or goats, may have an ear mark and brand, and but one of each, which shall be different from the ear mark and brand of his neighbors; which ear mark and brand may be recorded by the clerk of the county court, where such cattle, horses, hogs, sheep or goats shall be.

SEC. II. It shall be the duty of the county clerks in the respective counties of this State, to keep a well-bound book, in which they shall record the marks and brands of each individual who may apply to them for that purpose; for which they shall be entitled to demand and receive the sum of twelve and a half cents; and the book in which the same are recorded, shall be open to the examination of every citizen of the county at all reasonable office hours, free of charge.

SEC. III. If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the county clerk, but such book shall be *prima facie* evidence only.

SEC. IV. Any person purchasing or acquiring horses, cattle, hogs, sheep or goats, when he brands or marks the same in his brand or mark, after the acquisition of the same, may do it in the presence of one or more of his neighbors, who are authorized to certify to the fact of the marking or branding being done, when done, and in what brand or mark the same were, previously, and in what brand or mark they were re-branded or re-marked.

Such certificate shall not be deemed evidence of property in the animal branded, but only *prima facie* evidence of the facts therein certified to.

PRIOR LAWS. An act concerning marks and brands; in force Feb. 6, 1835. Laws, 1835, p. 51. See note in Gale's Statutes, p. 457.

## CHAPTER LXIX. MARRIAGES.

### SECTION

1. At what age persons may contract marriage; when consent of parents necessary.
2. Persons of different color not permitted to contract marriage; penalty for; clerk issuing license to such persons, and officers solemnizing their marriage, how punished.
3. Who, in religious societies, may solemnize marriages according to their custom.
4. What declaration of parties sufficient; before whom such declaration may be made.
5. Persons celebrating marriage, to file certificate thereof in office of clerk of county commissioners' court.

### SECTION

6. Clerk to keep registry thereof; copies to be evidence.
7. Clerk refusing to register marriage, how punished.
8. Penalty for neglecting to file certificate; penalty for celebrating marriage contrary to law.
9. Two weeks' publication, or a license, required before marriage.
10. License, when necessary; its contents; consent of parents and guardians, when necessary; penalty if clerk issue license to minors without such consent; how sued for and recovered; how fact of age ascertained.
11. Marriages solemnized by ministers, legalized; *pro-viso*.

[Approved March 3, 1845. Rev. Stat. 1845, p. 353.]

(1.) SECTION I. 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.

(2.) SEC. II. 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 marriage contracts, entered into between such colored person and white person, shall be null and void in law; and any person so marrying or contracting to marry, shall be liable to pay a fine, be whipped in not exceeding thirty-nine lashes, and be imprisoned, not less than one year; and 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 offending 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.

(3.) SEC. III. 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.

(4.) SEC. IV. Any person wishing to marry, or be joined in marriage, may go before any regular minister of the gospel, authorized to marry by the custom of 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.

(5.) SEC. V. Any minister of the gospel, justice of the supreme court, judge or justice of the peace, who shall celebrate any marriage, 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.

(6.) SEC. VI. The clerk of the county commissioners' court, 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 surnames 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, indorse 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.

(7.) SEC. VII. 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 one hundred dollars, to the use of the party injured, to be recovered by action of debt in any court having cognizance of the same.

(8.) SEC. VIII. 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 hereinbefore excepted, shall solemnize and join in marriage any couple without a license as aforesaid, he shall, for every such offense, forfeit and pay one hundred dollars, to the use of the county, to be recovered by indictment.

(9.) SEC. IX. No persons 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.

(10.) SEC. X. 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 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.

An Act to amend the Law in relation to Marriages.

[Approved Feb. 16, 1847. Laws, 1847, p. 57.]

WHEREAS under the provisions of the law regulating the mode of celebrating the rites of matrimony, and designating the persons who may so solemnize those rites, doubts are entertained as to the right of ministers of the gospel to officiate in the premises, unless they have authority conferred upon them by some express action of the society or church to which they belong, therefore,

(11.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all marriages heretofore, as well as those which may hereafter be solemnized by acting ministers of the gospel, in regular standing with the church or society to which they belong, shall be deemed and held to be lawful, and the issue of such marriages shall be deemed legitimate: *Provided,* That this act shall not operate upon any marriage or issue, when such marriage was or may be consummated contrary to the laws of the land, for any other cause than that mentioned and provided for herein.

PRIOR LAWS. An act regulating marriages; in force Feb. 20, 1819. Laws, 1819, p. 26.  
An act concerning marriages; in force June 1, 1827. Laws, 1827, p. 288; Rev. Laws, 1833, p. 444.  
An act to amend the "Act concerning marriages;" in force March 2, 1839. Laws, 1839, p. 277.

DECISIONS. Under the statute of 1819, males of the age of seventeen and females of fourteen, could be joined in marriage, "if not prohibited by the laws of God." "A." married the daughter of his sister, and the marriage was held to be within the Levitical degrees, and voidable, though not absolutely void. For all civil purposes such marriage is valid, until sentence of separation; which sentence must be in the lifetime of the parties. *Bonham et al. v. Badgley et al.*, 2 G. 622.

## CHAPTER LXX.

## MILITIA.

## SECTION

1. Who shall be enrolled in the militia; when, and how enrolled; how to be armed; officers how to be armed; arms, &c., exempt from execution.
2. Militia divided into divisions, brigades, regiments, battalions and companies; divisions, &c., particularly defined.
3. Militia of the State, how officered.
4. What officers appointed by the governor; their rank.
5. Rank, how assigned; numbers, how fixed.
6. Mode of proceeding in creating or changing brigade districts or dividing regiments; changes not to disturb commissions of officers; changing regimental districts, how accomplished.
7. Who may be officers of militia; oath to be taken; officer elected, failing to take oath, to be displaced; who may administer oath.
8. One company of artillery, and one of cavalry to each regiment, and one of grenadiers, &c.; *proviso*, as to number composing such company.
9. Independent companies, how armed and equipped; of what number of officers and privates they shall consist; may choose their own uniform.
10. Term and condition of service of independent companies.
11. Resignations, how made; how received; how vacancies, thus occasioned, may be filled.
12. Manner of voting in elections of officers; votes, how recorded; returns, how made; if election be contested, to whom transmitted.
13. Contested elections, how decided.
14. Officers appointed to try contested election to be notified; fined for failure to attend.
15. What officers shall attend at contested elections, in the various grades of officers.
16. How decision in contested case certified and returned; successful party to be commissioned.
17. Witnesses may be examined; delinquent witnesses, how punished.
18. Oath of officers, form of.
19. Color banners to be appointed to each battalion.
20. Officers serving seven years, being equipped, to be exempt from militia duty.
21. If company be disorganized by failure to elect officers, to be enrolled in next nearest company.
22. Volunteer companies, when to equip.
23. Fine to be proportioned to delinquency of officer.
24. Cause of resignations, how noted.
25. Regimental musters to be held once in each year.
26. Battalion musters once in each year.
27. Company musters, when held; notices.
28. Regimental musters, by whom notice of to be given.
29. Commanders of regiments to give notices, &c.
30. Brigadier general, his duty; brigade inspector to inspect arms and report.
31. Regimental drill musters to continue two days; officers to attend, and how armed, &c.
32. Fines, their amount; for what assessed.
33. When regimental musters to be held at county seats.
34. Who exempt from military duty on account of conscientious scruples; commutation to be paid.
35. Governor to furnish independent companies with arms; to take bond for their safe return.
36. Governor to deliver arms to independent companies.
37. Court martial, when held; its duty; its power to assess fines; appeals, &c.: fines, how collected; form of warrant of collection; constable to collect and pay over; his fees for collection.
38. Scale of forfeitures and penalties.

## SECTION

39. When officer charged with any offense, how complained of, arrested and tried.
40. Witnesses, how subpoenaed; how compelled to attend; penalty for failure to attend.
41. Courts to try officers of the respective grades, how selected; officers, how punished.
42. Form of oaths to be taken by officers composing court martial, and by witnesses.
43. Commander-in-chief, in what cases, and in what order he may call out the militia.
44. Duty of inferior officers in such cases.
45. How men to be selected in certain cases.
46. In what cases men may be drafted.
47. Parents and guardians bound for minors.
48. Militiaman having served a tour of duty or paid fine, exempt from service; fines, how applied.
49. Duty of several officers, when militia are called into service.
50. Officers, how detailed for duty; term, manner and order of service.
51. How persons disabled, may be exempted from service.
52. Militia to serve six months; where to rendezvous; who to command them; how discharged.
53. Compensation of officers.
54. Additional persons exempt from militia duty.
55. Uniform prescribed to be worn.
56. Officers to appoint places and days for musters; roll call; exercise; discipline prescribed.
57. Colors and musical instruments to be provided.
58. Additional duty of major generals.
59. Additional duty of brigadier generals.
90. Additional duties of colonels commanding regiments, and majors commanding odd battalions.
61. Additional duties of lieutenant colonels, and majors commanding battalions.
62. Further duties of commandants of companies.
63. Vacant offices, how filled.
64. Subordination and preservation of order.
65. Adjutant general to keep his office at the seat of government; his duties generally.
66. Division inspector, his duties.
67. Brigade majors, further duties.
68. Adjutants of regiments for odd battalions, further duties.
69. Serjeant majors, their duties.
70. Quarter-master general, his duties.
71. Staff officers, their duties.
72. Paymasters of regiments, their duties.
73. Paymasters, how punished for delinquency.
74. Expenses not herein provided for, to be paid out of contingent fund.
75. When a new division or brigade is created, new elections, how and when held.
76. Independent company may adopt its own by-laws.
77. Orderly sergeant, his duty.
78. Independent companies may, in their by-laws, assess fines, &c.
79. Independent companies to muster at least once in each year.
80. How such fines may be collected.
81. Constitution and by-laws of independent company, how authenticated; members may be witnesses.
82. Fines, by whom received, and how applied.
83. In what case volunteer companies may form regiments and battalions.
84. Such regiment or battalion may adopt constitution and by-laws.
85. Eight years' service in independent company, to exempt from militia duty.

[Approved March 3, 1845. Rev. Stat. 1845, p. 355.]

SECTION I. 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 he actually has them.

SEC. II. 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 Greene, shall compose the third division; the counties of Sangamon, Tazewell, McLean, Macon, Shelby, Fayette, Champaign and Vermilion, shall compose the fourth division; the counties of Calhoun, Pike, Schuyler, Adams, Hancock, McDonough, Warren, Knox, Fulton, Peoria, Henry and Mercer, shall compose the fifth division; and 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 Clinton, St. Clair, Monroe and Randolph, 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; and 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; and 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 Greene and Macoupin shall compose the second brigade in the third division; and the county of Morgan shall compose the third brigade of the third division. The counties of Sangamon and Tazewell shall compose the first brigade of the fourth division, and the counties of McLean, Macon, Shelby, Fayette, Champaign and Vermilion, shall compose the second brigade of the fourth division. The counties of Calhoun, Pike, Schuyler and Adams, shall compose the first brigade of the

fifth division; 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. III. 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 a 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.

SEC. IV. There shall be one adjutant general, quarter-master general and paymaster 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.

SEC. V. 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. VI. 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 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. But commissioned officers, living in the bounds of any regiment so created, or of the old regiment, shall continue to hold their respective offices as though no such division had been made. In like manner, whenever it shall become necessary to alter any old regimental district, 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. VII. 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 bounds at least ten days; and every officer commissioned by virtue of this chapter, 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 indorsed 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 chapter, any judge, justice of the peace, or officer of the militia, duly commissioned and sworn, shall be authorized to administer such oaths.

SEC. VIII. There may be one company of artillery and one company of

cavalry attached to each regiment, to be raised by voluntary enrollment; and one company of grenadiers, light infantry or riflemen, attached to each battalion, to be raised also by voluntary enrollment: *Provided*, It shall not reduce a district company in such regiment or battalion below the number of forty-two, rank and file; 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 to appear that there are at least forty-two men authorized to serve, enrolled in such intended company.

SEC. IX. 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.

SEC. X. 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.

SEC. XI. 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 divisions. 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 indorsed 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, 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.

SEC. XII. 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:

"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 _____, ETC.		
	C	D	F
A. B.	1		
C. D.		1	

When all the votes shall be given, they shall be examined and counted; and 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 Brigadier 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., }  
C. D., } Judges of Election  
E. F., }

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 inquiry, in which such contest shall be tried; and the person having the greatest number of votes shall be declared duly elected.

SEC. XIII. 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.

SEC. XIV. 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. XV. 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.

SEC. XVI. 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.

SEC. XVII. 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.

SEC. XVIII. 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 dueling, 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 indorsed on the commission or certificate, (as the case may be,) and certified by the officer administering the same.

SEC. XIX. 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.

SEC. XX. 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.

SEC. XXI. 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.

SEC. XXII. 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.

SEC. XXIII. In all cases where militia officers shall be fined for appear-



ing on parade without equipments, the fine shall be proportioned according to the extent to which the uniform of such officer shall be deficient.

SEC. XXIV. In all cases hereafter, where a resignation is accepted, the cause of such resignation may either be indorsed on the commission, or, if the commission be not surrendered, on the letter of resignation.

SEC. XXV. 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.

SEC. XXVI. 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. XXVII. 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.

SEC. XXVIII. 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.

SEC. XXIX. 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 courts of assessment 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.

SEC. XXX. And the brigadier generals are hereby required to attend the regimental musters in their respective brigades, accompanied by their brigade inspectors, 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 their brigades may belong, within thirty days thereafter; and the said brigadier generals are hereby required to review each regiment of their brigades before they are dismissed from parade.

SEC. XXXI. 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 accoutrements: *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 surgeons and surgeon's mates 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 companies respectively, stating the time and place for all the musters and courts of assessment and appeals, for that year.

SEC. XXXII. 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 epaulets, or subaltern officer for failing to equip himself in time of peace.

SEC. XXXIII. In all cases where there is only one regiment in the county, the regimental muster shall be held at the county seat.

SEC. XXXIV. No person conscientiously opposed to doing military duty, by reason of his 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 him to support all poor persons connected with such 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.

SEC. XXXV. When any independent company of grenadiers, light infantry, riflemen, artillery or cavalry, shall become organized and uniformed according to law, 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; 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 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. XXXVI. The governor, upon application being made to him as aforesaid, may, if there be any arms or other equipments, so petitioned for, within the State, or due to this State from the United States, immediately furnish him with the same; and the person so applying, shall, upon their being delivered, consider them in his care, and from that time shall become responsible for the same, upon the conditions of his bond; and said company shall be permitted to use the same upon all occasions, whenever they may be called together for any kind of duty.

SEC. XXXVII. There shall be held, annually, at the same place, on the same day week next succeeding the regimental muster, a court of inquiry 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 chapter; 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; 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 show 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 indorsed at any time when it may be necessary, which shall be his authority for collecting and paying over the same, to wit:

"STATE OF ILLINOIS, }  
County, } ss. 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

respective 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. 18—.

A. F.,

Colonel of the ——— Regiment —, and President of the Court."

And any constable collecting any fines under the provisions of this chapter, 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 colonel; and if, in the opinion 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.

SEC. XXXVIII. 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, the sum of twenty dollars; by the commandants of brigades, for neglect of any lawful orders of their superior officers, or any of the duties enjoined on them, the sum of fifteen dollars; by the commandant of a regiment, for neglect of any orders of his superior officers, or any of the duties enjoined on him, 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, the sum of eight dollars; by the commandant of a company, for neglect of any orders of his superior officers, or any of the duties enjoined on him, 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, 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 officers, or any of the duties enjoined on them, the sum of fifteen dollars; by a division inspector, division quarter-master, division paymaster, or either of the aids-de-camp to the major general, for neglect of any orders of their superior officers, or any of the duties enjoined on them, the sum of ten dollars; by a brigade major, brigade quarter-master, 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, the sum of eight dollars; by adjutant, quarter-master, paymaster, surgeon or surgeon's mate of a regiment, for neglect of any orders of their superior officers, or any of the duties enjoined on them, 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, 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 law, 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, 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 payment of fines incurred by their wards; and masters, for the payment of fines incurred by their apprentices; to be charged and collected accordingly.

SEC. XXXIX. 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 him by law, 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 reasons the complaining officer may send, together with the charges, to the next common superior, who may, if he think it correct, order the arrest and trial of such officer.

SEC. XL. In all cases where an officer is arrested, the officer who orders the arrest, shall issue any subpoenas 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 subpoena may appoint, may serve the same, and indorse 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 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 subpoena relative to the service thereof. Any person who neglects or refuses to attend a court martial, after being subpoenaed, 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 chapter; 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 subpoenaed.

SEC. XLI. 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 a court 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 suspension, fining, cashiering and disqualification to hold any office in the militia of this State: *Provided*, That when the militia are 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 are designated in the twenty-seventh article of war.

SEC. XLII. When any court martial is met, 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 him, 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.

SEC. XLIII. 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 detached under any particular act of the United States, to indorse 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 of 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 defense 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.

SEC. XLIV. Whenever any detachment of militia of this State shall be ordered into actual service, to perform a tour of duty, under 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 case of the 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 enroll such man or men, and cause them to be marched agreeably to the orders he may have received for that purpose.

SEC. XLV. When any class shall be called on to furnish a militiaman, 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, 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 cer-

tify 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.

SEC. XLVI. If either of the classes, when regularly formed and notified, shall neglect or refuse to comply with the requisitions of this chapter, 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 a 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. XLVII. 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.

SEC. XLVIII. No militiaman who has served a tour of duty, either by himself or substitute, nor 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 each remaining member of the class has 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.

SEC. XLIX. 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.

SEC. L. For the purpose of having the militia, when called 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 general's command; and if more than one brigadier general's command, the next senior brigadier general shall be called to take command; subordinates, 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 their divisions; 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 chapter. 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 were 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 chapter, for a private failing to perform a tour of duty, after being regularly drafted on such a tour: *Provided*, That the commander-in-chief 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. LI. 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. LII. 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 chapter; 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. LIII. 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. LIV. In addition to the persons exempted from military duty by the laws of the United States and by this chapter, 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. LV. The following shall be the uniform and equipments of the several officers of the militia of this State, to be worn 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 shown, 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.

SEC. LVI. 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 chapter 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; 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.

SEC. LVII. 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 battalions, 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; the captains commanding companies shall furnish their respective musicians with proper instruments; and 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.

SEC. LVIII. In addition to the services required of the major generals by this chapter, it shall be their 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 divisions; 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 chapter, or which may appertain to the office of major general.

SEC. LIX. In addition to the services required of the brigadier generals by this chapter, it shall be their duty to review the 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, 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 chapter, or which may be necessary to the perfection of discipline, or which may in anywise appertain to the office of brigadier general.

SEC. LX. In addition to the services required of the colonels commanding regiments, and majors commanding battalions not attached to a regiment, it shall be their 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, and 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. 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. LXI. In addition to the service required of lieutenant colonels and majors commanding battalions, 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.

SEC. LXII. In addition to the services required of captains or officers commanding companies, it shall be their further duty to take command of their respective companies, at all company, battalion and regimental musters, at ten 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, in 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 twelve o'clock of the day of holding such court, by every such commanding officer, which shall be considered good



evidence against all delinquents therein returned; also, to make out and deliver to the commanding officers of their respective regiments or battalions, on the day of holding the regimental or battalion musters in the fall, a complete return of the companies under their command; 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 ten o'clock; and to do and perform such services as may in anywise appertain to their respective stations.

SEC. LXIII. In case of 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 chapter. 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 he present, for any neglect of his duties.

SEC. LXIV. 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 chapter, shall be so construed as to prevent any superior officer from taking the command, at any muster of the militia of this State.

SEC. LXV. 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, 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 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 chapter, and to do and perform all other acts and duties which appertain to the office of adjutant general.

SEC. LXVI. 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 division; also, a detail of all detachments marched

into service from their divisions, 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.

SEC. LXVII. In addition to the services required of the brigade majors, it shall be their duty to attend all regimental musters, and all officer 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, and 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, 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.

SEC. LXVIII. In addition to the services required of the adjutants of regiments or odd battalions, it shall be their duty to attend all regimental, drill and battalion musters, and courts martial, or courts of inquiry 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, and 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, and on the day of holding their annual court, 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 required 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.

SEC. LXIX. 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.

SEC. LXX. 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 anywise appertain to the office of quarter-master general.

SEC. LXXI. All officers belonging to the general or regimental staff, whose duties are not defined particularly by this chapter, shall attend all musters held by their respective commanding officers, obey all orders from them, or any superior officer, and do and perform such other duties as may in anywise appertain or belong to their respective stations.

SEC. LXXII. Each regimental paymaster appointed under the provisions of this chapter, shall and is 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 his bond; it shall also be his duty to receive all money belonging to his regiment or odd battalion, (as the case may be,) which he shall only pay out by an order from the regimental court, taking, at all times, proper vouchers for any moneys so paid; to attend all courts of inquiry held in his regiment or battalion, 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 book; and to do and perform such other services as may be required, or which may in anywise appertain to the office of paymaster.

SEC. LXXIII. If any paymaster shall neglect or refuse to pay over any moneys that may be in his 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 parol 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. LXXIV. When any necessary expense shall accrue in carrying into effect the provisions of this chapter, for the payment of which no provision is hereinbefore made, the same shall be paid out of the contingent fund, by the order of the commander-in-chief.

SEC. LXXV. Whenever there is any new division or brigade created,

the elections to fill such vacancies shall be held on the third Saturday of September; 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; 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; or if there be pressing necessity therefor, at any other time he may appoint.

SEC. LXXVI. Whenever any volunteer or independant company shall be 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.

SEC. LXXVII. 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.

SEC. LXXVIII. 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.

SEC. LXXIX. No company shall be entitled to any of the benefits hereof, which shall not provide in its constitution or by-laws for company musters at least once in each year.

SEC. LXXX. 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.

SEC. LXXXI. It shall be sufficient evidence that the constitution or by-laws have been regularly adopted, if they are signed by the acting 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. LXXXII. All fines collected 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.

SEC. LXXXIII. 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.

SEC. LXXXIV. 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 orderly sergeant.

SEC. LXXXV. 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.

PRIOR LAWS. An act organizing the militia of this State; in force March 26, 1819. Laws, 1819, p. 270.

An act amending an act entitled "An act organizing the militia of this State;" in force Feb. 8, 1821. Laws, 1821, p. 106.

An act forming a new brigade out of the first brigade of the first division of the militia of this State; in force Feb. 5, 1823. Laws, 1823, p. 113.

An act relative to the times of holding company musters; in force Feb. 14, 1823. Laws, 1823, p. 141.

An act to amend an act for the organization of the militia of this State; in force Jan. 15, 1825. Laws, 1825, p. 117.

An act in addition to the act entitled "An act for the organization and government of the militia of this State," approved Jan. 25, 1826; in force Feb. 9, 1827. Laws, 1827, p. 290.

An act for the relief of persons having conscientious scruples against bearing arms; in force Feb. 6, 1827. Laws, 1827, p. 276.

An act to amend an act entitled "An act for the organization and government of the militia of this State," approved March 2, 1833; in force March 4, 1837. Laws, 1837, p. 163.

DECISIONS. No appeal or writ of *certiorari* can be taken from a judgment of a justice of the peace, in a suit brought to recover an assessment upon a member of a class, made under the 45th section of the militia law of July 2, 1833. *Yunt v. Brown*, 1 S. 264.

## CHAPTER LXXI.

### MILLS AND MILLERS.

#### SECTION

1. Person desiring to erect mills and not owning lands on both sides of the stream, may have writ of *ad quod damnum*, to assess damages due to other owner.
2. Jury to be summoned, and notice given.
3. Jury to assess damages, and set apart the necessary quantity of land.

#### SECTION

4. After return of jury, owner of lands to be taken, to be notified to appear at county commissioners' court, &c.
5. When writ may be had as to overflowing lands and endangering the public health.
6. When leave to erect dam not to be given; when to be given.

#### SECTION

7. Title to land acquired under inquiry to be perfected; how forfeited.
8. Inquest of jury not to bar action for damages subsequently ascertained.
9. Person failing to erect or keep in repair, his mill dam, to forfeit rights hereby conferred.
10. Public mills, what deemed.

#### SECTION

11. Duty of millers, to grind, &c.; rates of toll.
12. Further duties, and fine for neglecting.
13. Miller, to what extent accountable for grain, &c., left at his mill.
14. Penalty for taking excess of toll.
15. Penalties, how sued for and recovered.
16. Privileges extended. When act to take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 378.]

(1.) SECTION I. When any person owning lands on one side of any stream or water-course, the bed of which wholly or in part belongs to himself or herself, and may be desirous of building a water grist mill or saw-mill on such lands, or of erecting 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.

(2.) SEC. II. 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.

(3.) SEC. III. 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 may 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.

(4.) SEC. IV. 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 show cause why leave should not be granted to build such mill and dam; which notice shall be served as before directed.

(5.) SEC. V. 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.

(6.) SEC. VI. 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. 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.

(7.) SEC. VII. If the party applying obtain leave to build the said dam, he shall, on paying to the proprietor or proprietors of the lands located, 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 time shall be allowed after such disability is removed.

(8.) SEC. VIII. 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 chapter never been passed, other than for such injuries as were foreseen and estimated by the jury.

(9.) SEC. IX. Any person, having obtained leave to erect any dam and mill as aforesaid, who shall neglect to finish the same within the time before prescribed in this chapter, 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 the provisions of this chapter.

(10.) SEC. X. 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.

(11.) SEC. XI. The owner or occupier of every public mill within 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.

(12.) SEC. XII. It shall be the duty of each and every owner and occu-

pier 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 chapter, 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.

(13.) SEC. XIII. 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.

(14.) SEC. XIV. If any miller, or the occupier of any mill, shall take a greater proportionate quantity of toll than is allowed by this chapter, 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.

(15.) SEC. XV. All penalties under the provision of this chapter may be sued for and recovered before any justice of the peace of the county where such penalties are incurred.

An Act to amend an Act entitled "Mills and Millers."

[Approved Feb. 28, 1847. Laws, 1847, p. 57.]

(16.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the provisions contained in the first nine sections of the said act, entitled "MILLS AND MILLERS," which provide for and regulate the erection of mill-dams, be and they are hereby extended to the management and erection of dams on streams, for other machinery as well as for mills; and said nine sections shall be extended to the erection of dams for any and all kinds of machinery, in the same manner as the said original act applies to the erection of mill-dams. This act to take effect and be in force from and after its passage.

PRIOR LAWS. An act regulating grist-mills and millers; in force March 25, 1819. Laws, 1819, p. 264.

An act regulating mills and millers; in force June 1, 1827. Rev. Laws, 1827, p. 297. Rev. Laws, 1833, p. 449.

An act to amend an act entitled "An act regulating mills and millers," approved Feb. 7, 1827; in force March 3, 1843. Laws, 1843, p. 179.

DECISIONS. Every flowing back or throwing water on the land of another, entitles the party injured to his action; and this is so, though the act in itself be lawful, if the necessary consequences are such as to injure another. He who first occupies and constructs a mill and dam on a stream, does not thereby acquire a right to overflow the land of his neighbor. *Stout v. McAdams*, 2 S. 67. See *Evans v. Merriweather*, 3 S. 492; *Plumleigh v. Dawson*, 1 G. 344; *Hill v. Ward*, 2 G. 285.

## CHAPTER LXXII.

## NE EXEAT AND INJUNCTIONS.

## SECTION

1. Writs of *ne exeat republica* may issue whether demand be actually due or not.
2. Co-obligor or joint debtor may have writ to compel payment or securing of proportion due from debtor about to remove; security may also have this writ against principal.
3. No writ granted without bill or petition filed, and bond given; suit on bond.
4. Writ to be issued by judge or clerk of circuit court, and made returnable thereto.
5. Writ shall be a summons to appear and answer bill; defendant to give bond not to leave the State; temporary absence not a breach.
6. Security may surrender principal in discharge of his liability.

## SECTION

7. On return of writ, how court to proceed to examine.
8. *Ne exeat* and injunction, who may grant; writ not to issue for less than twenty dollars.
9. Return of writ into what court.
10. In case of injunction to stay judgment at law, where proceedings may be had; subpoena may issue to any county.
11. Effect of injunction; not to issue without bond; conditions of bond.
12. Punishment for disobeying injunction.
13. On filing answer, court may dissolve injunction; may hear proof; on dissolution of injunction, complainant may have time to prove answer untrue; testimony; how taken and read.

[Approved March 3, 1845. Rev. Stat. 1845, p. 381.]

SECTION I. 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 show that his debt or demand is purely of an equitable character, and only cognizable before a court of equity.

SEC. II. 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 co-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 co-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 yet be due, and the principal or co-security is about removing out of the State.

SEC. III. No writ of *ne exeat* shall be granted but upon bill or petition filed, and affidavit of the truth of the allegations therein contained; upon the granting of any such writ, the court or judge granting the same, shall indorse, or cause to be indorsed 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.

SEC. IV. 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 direct the clerk of the said circuit court to issue the said writ, and to take bond of the complainant as above required.

SEC. V. 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 indorsed 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.

SEC. VI. 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. VII. 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. VIII. 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.

SEC. IX. When an injunction shall be granted by the supreme court, or a judge thereof, it shall be made returnable into the circuit court of the proper county.

SEC. X. When 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.

SEC. XI. No injunction shall be granted to stay any judgment at law, for a greater sum than the complainant shall show himself equitably 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 enjoined. 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. XII. 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.

SEC. XIII. 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.

PRIOR LAWS. An act regulating the issuing of writs of ne exeat and injunctions; in force June 1, 1827. Laws, 1827, p. 304; Rev. Laws, 1833, p. 466.

An act to provide for issuing writs of ne exeat and habeas corpus, and for other purposes; in force Feb. 11, 1835. Laws, 1835, p. 32.

DECISIONS. Under the statutes, the circuit court has power to dissolve an injunction upon the filing of answer, if the answer denies the equity of the bill. But it does not follow that the bill should be dismissed, because the injunction is dissolved. *Beams et al. v. Denham et al.*, 2 S. 58.

An injunction to stay a judgment at law, releases errors; but an injunction to stay proceedings at law, before judgment, does not. *McConnel v. Ayres*, 3 S. 210.

A bill for a writ of ne exeat, which set forth that the petitioner had obtained a judgment against the defendant, before a justice, which had been appealed by the defendant, that the surety in the appeal bond had become insolvent and left the State, and that the defendant was also about to leave the State, was held to show sufficient equity on its face. *Fisher v. Stone*, 3 S. 68.

The supreme court has no jurisdiction of an application to grant a writ of injunction; the application should be made to one of the justices of the court. *Hall v. O'Brien*, 4 S. 410.

The circuit court, sitting in chancery, may, by injunction, restrain a commissioner from executing a decree of sale, and the commissioner cannot inquire into the propriety of the injunction, but must obey it. *The People ex rel. v. Gilmer*, 5 G. 242.

An injunction should not be dissolved upon the filing of an answer not under oath, or without evidence of the truth of the answer. *Gray v. McCance*, 11 Ill. 325.

Though an injunction will not be granted in the first instance upon an unsworn bill, yet it will not be refused for that reason upon a final hearing, if the party shows himself entitled to it. *Hawkins v. Hunt et al.*, 14 Ill. 42.

In order to compel an execution of its decree, a court of chancery may prevent a defendant from leaving its jurisdiction *pendente lite*, by a writ of ne exeat. *Enos et al. v. Hunter*, 4 G. 211.

An injunction should not be granted against more of a judgment than the complainant shows to be unjust in his bill. *Duncan v. Morrison et al.*, Breese, 113.

## CHAPTER LXXIII.

## NEGOTIABLE INSTRUMENTS.

SECTION	SECTION
1. Ten per cent. damages on foreign bill of exchange protested.	8. If note, &c., be indorsed over after it is due, demands against original payee may be set off.
2. Five per cent. damages on inland bill protested.	9. Payments made on note, &c., before due, may be set off against assignee, if he had notice of such payments.
3. Construction and effect of note, &c., in writing.	10. Failure of consideration, in whole or in part, may be pleaded; right of bona fide assignee not affected by failure of consideration.
4. Notes, &c., assignable by indorsement.	11. Fraud in procuring note may be pleaded in bar.
5. Assignee of notes, &c., may bring suit in his own name or otherwise.	12. If note, &c., be for the delivery of property, how delivery or tender may be made.
6. Payment by maker to payee after assignment, not to be alleged as a defense against assignees.	13. Legal tender to discharge maker from liability; property vested in payee; what if property be perishable.
7. Assignor, how liable; due diligence necessary in collecting from the maker; proviso, if suit against maker would be unavailing, need not be brought in order to make indorser liable.	

[Approved March 3, 1845. Rev. Stat. 1845, p. 384.]

SECTION I. When any foreign bill 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 indorser 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 costs and charges of protest.

SEC. II. 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 for value received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser 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. III. 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.

SEC. IV. Any such note, bond, bill or other instrument in writing, made payable to any person or persons, shall be assignable, by indorsement 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.

SEC. V. Any assignee or assignees, to whom such sum of money or personal property is, by such indorsement or indorsements, 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 executed 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.

SEC. VI. No maker of any such note, bond, bill or other instrument in writing, or other person liable thereon, shall be allowed to allege payment to the payee, made after notice of such assignment, as a defense against such assignee or assignees.

SEC. VII. 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.

SEC. VIII. If any such note, bond, bill or other instrument in writing, shall be indorsed after the day on which the money or property therein mentioned, becomes due and payable, and the indorsee 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 defense 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.

SEC. IX. If any such note, bond, bill or other instrument of writing, shall be indorsed before the day the money or property therein mentioned, becomes due and payable, and the indorsee 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 indorsed 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 indorsement.

SEC. X. 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: *Provided*, 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 chapter, when such assignment was made before such instrument became due.

SEC. XI. 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.

SEC. XII. In all cases when 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. Any tender made in pursuance of this section, shall be equally valid and legal, in case any such instrument of writing shall have

been assigned in pursuance of the first section of this chapter, as if no such assignment had been made.

SEC. XIII. 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 and 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.

PRIOR LAWS. An act making promissory notes, bonds, bills and writings obligatory, negotiable; approved Feb. 6, 1819. Laws, 1819, p. 4.

An act to prevent the circulation of any paper currency unauthorized by law; approved Feb. 8, 1821. Laws, 1821, p. 115.

An act regulating bills of exchange; approved Feb. 14, 1821. Laws, 1821, p. 169.

An act concerning bills of exchange; in force June 1, 1827. Rev. Laws, 1827, p. 87.

An act relative to promissory notes, bonds, due-bills and other instruments in writing, and making them assignable; in force July 1, 1827. Rev. Laws, 1827, p. 320; Rev. Laws, 1833, p. 482.

DECISIONS. A note for a certain sum of money, payable in pork, is assignable. *Thompson v. Armstrong*, Breese, 23.

An averment in the declaration that the maker was insolvent at the time the note became due, and continued to be so to the time of trial, dispenses with the necessity of diligence to collect the note of the maker. *Idem*.

A note payable in mason work, is not negotiable. *Ramson v. Jones*, 1 S. 291.

The assignee of a promissory note cannot sue in his own name, unless the whole interest therein has been assigned to him. *Miller v. Bledsoe et al.*, 1 S. 530.

Under the statute of this State, the assignor of a promissory note is not liable unless due diligence has been used to collect the same from the maker; or unless the maker was a non-resident or insolvent at the time the note became due. *Mason v. Wash*, Breese, 16; *Thompson v. Armstrong*, Breese, 23; *Tarlton v. Miller*, Breese, 39; *Lusk v. Cook*, Breese, 53; *Humphreys v. Collier et al.*, 1 S. 47; *Brown v. Knozer et al.*, 1 S. 469; *Raplee v. Morgan*, 2 S. 561; *Coules v. Litchfield*, 2 S. 360; *Harmon et al. v. Thornton*, 2 S. 355; *Saunders v. O'Briant*, 2 S. 370; *Bestor v. Walker*, 4 G. 3.

When a promissory note is assigned before it is due, to a bona fide assignee, no equities existing between the original parties, will affect the right of such assignee. *Woods v. Hines*, 3 S. 103; *Mobley v. Ryan*, 14 Ill. 51; *Harlow v. Boswell*, 15 Ill. 56.

Where a note is assigned after maturity, the maker may make any defense against it in the hands of the assignee, that he could have done against the original payee. *Lazell v. Francis*, 4 S. 423; *Sargeant v. Kellogg*, 5 G. 3; *Mobley v. Ryan*, 14 Ill. 51; *Morrison v. Davidson*, Breese, 33.

Under the act of March 2, 1839, in a suit on a promissory note, when the general issue only is pleaded, it is not necessary for the plaintiffs to prove their christian and surnames. *Hollenback v. Williams et al.*, 1 S. 544.

In an action by the indorsee against the maker of a note, payable at a particular place, a presentment of the note on the day and at the place of payment, is unnecessary. *Armstrong v. Caldwell*, 1 S. 546.

Under the statute of Illinois, notice of non-payment is not required to charge an indorser. *State Bank of Illinois v. Headley*, 1 S. 580.

Fraud which will vitiate a negotiable instrument in the hands of a bona fide assignee, must be in obtaining the making or execution of the same. *Mulford v. Shepherd*, 1 S. 583; *Adams v. Woodbridge*, 3 S. 256.

When a note is indorsed in blank, the holder may sue in his own name, without filling up the assignment. *Gilham v. State Bank of Illinois*, 2 S. 247; *McHenry v. Ridgely*, 2 S. 310.

In an action by the assignee against the assignor of a promissory note, where the plaintiff relies upon proving diligence to collect the note of the maker, he may give in evidence an execution against the maker, without showing a judgment. The defendant is held to be *priei* to such judgment. *Raplee v. Morgan*, 2 S. 561.

When a suit is commenced by the assignee of a note against the maker, before a justice of the

peace, it is not due diligence to take out an execution, and have a return of "no property" made upon the judgment before the justice. He should file a transcript of the judgment in the office of the clerk of the circuit court, issue execution from that court, and have the same returned "no property." *Saunders v. O'Briant*, 2 S. 371; *Raplee v. Morgan*, 2 S. 562.

In an action by an assignee against an assignor of a note, the measure of damages is the amount paid by the assignee. *Raplee v. Morgan*, 2 S. 562.

A note indorsed in blank; the indorsement or assignment may be filled up at the trial. *Jackson v. Haskell*, 2 S. 565.

A remote assignor of a promissory note is liable to a remote assignee, provided due diligence has been used to collect the same of the maker. *Clifford v. Keating*, 3 S. 253.

No defense, except some statutory one, which makes a note void in its inception, can be set up against the bona fide holder of a note assigned to him before maturity. *Adams v. Woodbridge*, 3 S. 256; *Conkling v. Underhill*, 3 S. 388; *Mobley v. Ryan*, 14 Ill. 51.

An assignor of a note does not become liable to the assignee, because the maker is absent temporarily from the State when the note falls due; but if he is absent when, in order to fix the assignor's liability, suit should be commenced against him, the assignor will be liable. *Illiburn v. Artus et al.*, 3 S. 345.

A note, payable to bearer, is not assignable by delivery only, so as to enable the holder to sue in his own name. *Idem*.

The presumption of law is, when a note is assigned without date, that the same was done before it was due. *Adams v. Woodbridge*, 3 S. 256; *Pettis v. Westlake*, 3 S. 538; *Mobley v. Ryan*, 14 Ill. 51.

A note, payable in cattle on a certain day, becomes payable in cash, if not paid at maturity. *Vanhooser et al. v. Loyal*, 3 S. 390.

The signature of a third person upon the back of a note, after the payee has indorsed it, is evidence of a contract to become responsible as second indorser. *Camden et al. v. McCoy et al.*, 3 S. 447.

Such signature of a third person, while the note is in the hands of the payee, is a guarantee of the payment of the note. *Idem*. See also, *Cushman v. Dement*, 3 S. 499.

In a suit between the assignee and assignor of a note, the latter will be liable: 1st, when the assignee has used due diligence to collect the same of the maker, by suit; 2nd, when suit could not have been instituted because the maker had left the State or absconded, when the note became due; 3rd, when the institution of a suit would have been unavailing. *Bledsoe v. Graves*, 4 S. 384; *Schuttler v. Piatt*, 12 Ill. 417; *Pierce v. Short*, 14 Ill. 144.

If the institution of a suit by the assignee against the maker on an assigned note would be unavailing, the assignee may sue the assignor as soon as the note falls due. *Bledsoe v. Graves*, 4 S. 384.

A prior indorser cannot maintain an action against a subsequent indorser of a note, who has re-indorsed the note to such prior indorser, unless under peculiar circumstances. *Carstens et al. v. Little et al.*, 4 S. 410.

When the declaration in a suit by an assignee against an assignor on a note, contains an averment that the "defendant then and there indorsed the same to the plaintiff, whereof the defendant then and there had notice," this is a sufficient allegation of an assignment of the note. *Simpson v. Ranlett*, 2 G. 312.

To render the assignor of a note liable to the assignee, he, the assignee, must not only use due diligence in prosecuting his suit and obtaining judgment, but he must also use diligence in enforcing the judgment by execution; but if such process would be unavailing, he need not sue out execution. If the maker was solvent at the commencement of the suit, but became insolvent afterwards, that fact should be alleged in the declaration. *Bestor v. Walker*, 4 G. 3.

A note for forty dollars, which the maker may pay in corn at twenty cents per bushel, is not assignable under the statute. The maker of such a note, in order to discharge himself from liability, must tender the corn at the residence of the payee, or at some other reasonable place the payee may appoint. *Borah v. Curry et al.*, 12 Ill. 66.

A note payable to a person "when he is twenty-one years old," is not assignable so as to enable the assignee to sue in his own name. *Kelly v. Hemingway*, 13 Ill. 604.

If a party put his name upon the back of a note before it is delivered to the payee, he becomes a guarantor of the note, and may be sued as such. *Carroll v. Weld*, 13 Ill. 682.

But the presumption that he is such guarantor, may be rebutted by parol evidence. *Idem*.

The legal title to a note cannot be transferred by a separate instrument. An assignment or indorsement must be made on the note itself, to enable the holder to sue in his own name. *Ryan v. May*, 14 Ill. 49.

It is a good defense to a note in the hands of a bona fide assignee, that the execution thereof was obtained by fraud. *Mobley v. Ryan*, 14 Ill. 51.

Payment to the payee of a note, is good against an assignee who takes the note after maturity, whether indorsed on the note or not. *Capps et al. v. Gorham*, 14 Ill. 198.

The liability of an assignor of a note assigned in this State, will be governed by the laws of this State. *Crouch v. Hall*, 15 Ill. 263.

Where an assignor seeks to recover of an assignee, upon the ground that suit against the maker would be unavailing, he must state in his declaration the reasons why such suit would be unavailing. *Idem*.

## CHAPTER LXXIV.

## NEGROES AND MULATTOES.

## SECTION

1. On what condition negroes and mulattoes, may reside in this State; bond to be given; certificate to be given by clerk.
2. Penalty for harboring negro not having certificate.
3. Negroes, on procuring certificates, to register their families; jurisdiction of overseers of the poor, reserved.
4. Free negroes to register certificate of freedom.
5. Negro not having certificate, how dealt with.
6. Suits for freedom, when to be dismissed.
7. Servant fulfilling time, to have free papers recorded; copy thereof, evidence of freedom.
8. Penalty for bringing slaves into this State for the purpose of liberating them.
9. Servant, &c., more than ten miles from home, may be apprehended.
10. Slave intruding upon plantation, how punished.
11. Unlawful assemblies of servants, punishable.
12. Penalty for permitting reveling, &c., of slaves.
13. Duty of sundry officers to arrest disorderly persons.
14. Whipping, when substituted for fine.
15. Penalty for trafficking with slaves.
16. Disorderly conduct, how punished.
17. Contracts between masters and servants, void.
18. Contract for service, how assignable.
19. Negroes, mulattoes and Indians, not to own white servants.

## SECTION

20. Servants to be fed and clothed by masters.
21. If servants acquire property, they may hold the same to their own use; masters to support servants, if sick or lame; master putting away slave when sick, to pay his expenses.
22. Circuit court shall receive complaints of servants, and of masters, and try same.
23. Persons of different colors, unlawfully cohabiting together, how punishable.
24. Penalty for bringing negro or mulatto slave into the State.
25. On indictment found, court to notify governor. Duty of governor; *proviso*.
26. Negro or mulatto coming into this State, with intention to reside, penalty.
27. Found guilty, and not paying fine, to be delivered to sheriff; justice to sell him at public auction.
28. Liable to second prosecution.
29. Appeal to circuit court. Proceedings, if judgment of justice affirmed; *proviso*.
30. Prosecutor entitled to one-half the fine.
31. Owner to prove property.
32. Penalty for refusal to act; *proviso*.
33. Who deemed mulatto.
34. When act shall take effect.

[Approved March 3, 1845. Rev. Stat. 1845. p. 387.]

(1.) SECTION I. No black or mulatto person 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 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. And it shall be the duty of such clerk to make an entry of the certificate so produced, and indorse a certificate on the original certificate, stating the time the said bond was approved and filed; 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.

(2.) SEC. II. 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 anywise 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: *Pro-*

*vided*, This section shall not affect any negro or mulatto who is now a resident of this State.

(3.) SEC. III. It shall be the duty of all free negroes and mulattoes who shall come to reside in this State, having a family of his or her own, and having a certificate, as mentioned in the first section of this chapter, to give to the clerk of the county commissioners' 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 chapter, 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 laws concerning the poor.

(4.) SEC. IV. Every black or mulatto person (slaves and persons held to service excepted,) residing in this State, shall enter his or her name, (unless they have heretofore entered the same,) together with the name or names of his or her family, with the clerk of the county commissioners' 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*, That nothing in this chapter contained shall be construed to bar the lawful claim of any person or persons to any such negro or mulatto.

(5.) SEC. V. Every black or mulatto person who shall be found in this State, and not having such a certificate as is required by this chapter, 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 him, shall advertise him, 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 his freedom within the time aforesaid, it shall be the duty of the sheriff to hire him 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 the person shall be deemed a free person, unless he shall be lawfully claimed by his 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 section.

(6.) SEC. VI. 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 it 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.

(7.) SEC. VII. 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 certificate should happen to be torn or lost, the clerk, upon request, shall issue another, reciting therein the loss of the former.

(8.) SEC. VIII. 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 or mulatto person to settle or reside therein, shall be fined one hundred dollars, on conviction on indictment, or before any justice of the peace in the county where such offense shall be committed.

(9.) SEC. IX. 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.

(10.) SEC. X. 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.

(11.) SEC. XI. Riots, routs, unlawful assemblies, trespasses and seditious speeches, by any slave or slaves, servant 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.

(12.) SEC. XII. 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 by indictment, in any court of record proper to try the same.

(13.) SEC. XIII. 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.

(14.) SEC. XIV. 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.

(15.) SEC. XV. 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 received, to be recovered with costs of suit, before any court having cognizance of the same.

(16.) SEC. XVI. 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 by the court, for the payment in money within six months after he shall be free from service, and shall accordingly pay the same.

(17.) SEC. XVII. All contracts between masters and servants, during the time of service, shall be void.

(18.) SEC. XVIII. The benefit of any 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.

(19.) SEC. XIX. No negro, mulatto or Indian, shall at any time purchase any servant, other than of his 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.

(20.) SEC. XX. 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 pairs of stockings, two shirts, a hat and blanket.

(21.) SEC. XXI. If any servants shall at any time bring in goods or money during the time of their service, or shall, by gift or other lawful means, acquire goods or money, they shall have the property and benefit thereof for 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 offense 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.

(22.) SEC. XXII. 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 allowances of food, raiment or lodging, or any failure in the duties of such master or mistress as prescribed in this chapter; and the said circuit court shall 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.

(23.) SEC. XXIII. Any black, colored or mulatto man and white woman, and any white man and black, colored, or mulatto woman, who shall live together in an open state of adultery or fornication, or adultery and fornication, shall be indicted, and, on conviction, severally fined, in any sum not exceeding five hundred dollars, and confined in the penitentiary for a term not exceeding one year. For the second offense, the punishment shall be double; for the third, trebled, and in the same ratio for each succeeding offense.

An Act to prevent the Immigration of Free Negroes into this State.

[Approved Feb. 12, 1853. Laws, 1853, p. 57.]

(24.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That if any person or persons shall*

bring, or cause to be brought into this State, any negro or mulatto slave, whether said slave is set free or not, shall be liable to an indictment, and, upon conviction thereof, be fined for every such negro or mulatto, a sum not less than one hundred dollars, nor more than five hundred dollars, and imprisoned in the county jail not more than one year, and shall stand committed until said fine and costs are paid.

(25.) SEC. II. When an indictment shall be found against any person or persons, who are not residents of this State, it shall be the duty of the court before whom said indictment is pending, upon affidavit being made and filed in said court by the prosecuting attorney, or any other credible witness, setting forth the non-residence of said defendant, to notify the governor of this State, by causing the clerk of said court to transmit to the office of the secretary of State a certified copy of said indictment and affidavit; and it shall be the duty of the governor, upon the receipt of said copies, to appoint some suitable person to arrest said defendant or defendants, in whatever State or county he or they may be found, and to commit him or them to the jail of the county in which said indictment is pending, there to remain and answer said indictment, and be otherwise dealt with in accordance with this act. And it shall be the duty of the governor to issue all necessary requisitions, writs and papers to the governor or other executive officer of the State, territory or province where such defendant or defendants may be found: *Provided*, That this section shall not be construed so as to affect persons, or slaves, *bona fide* traveling through this State from and to any other State in the United States.

(26.) SEC. III. If any negro, or mulatto, bond or free, shall hereafter come into this State and remain ten days, with the evident intention of residing in the same, every such negro or mulatto shall be deemed guilty of a high misdemeanor, and for the first offense shall be fined the sum of fifty dollars, to be recovered before any justice of the peace in the county where said negro or mulatto may be found. Said proceedings shall be in the name of the people of the State of Illinois, and shall be tried by a jury of twelve men. The person making the information or complaint shall not be a competent witness upon said trial.

(27.) SEC. IV. If said negro or mulatto shall be found guilty, and the fine assessed be not paid forthwith to the justice of the peace before whom said proceedings were had, it shall be the duty of said justice to commit said negro or mulatto to the custody of the sheriff of said county, or otherwise keep him, her or them in custody; and said justice shall forthwith advertise said negro or mulatto, by posting up notices thereof in at least three of the most public places in his district, which said notices shall be posted up for ten days, and on the day and at the time and place mentioned in said advertisement, the said justice shall, at public auction, proceed to sell said negro or mulatto to any person or persons who will pay said fine and costs, for the shortest time; and said purchaser shall have the right to compel said negro or mulatto to work for and serve out said time, and he shall furnish said negro or mulatto with comfortable food, clothing and lodging during said servitude.

(28.) SEC. V. If said negro or mulatto shall not, within ten days after the expiration of his, her or their time of service as aforesaid, leave the State, he, she or they shall be liable to a second prosecution, in which the



penalty to be inflicted shall be one hundred dollars, and so on for every subsequent offense the penalty shall be increased fifty dollars over and above the last penalty inflicted, and the same proceedings shall be had in each case as is provided for in the preceding sections for the first offense.

(29.) SEC. VI. Said negro or mulatto shall have a right to take an appeal to the circuit court of the county in which said proceedings shall have been had, within five days after the rendition of the judgment, before the justice of the peace, by giving bond and security, to be approved by the clerk of said court, to the people of the State of Illinois, and to be filed in the office of said clerk within said five days, in double the amount of said fine and costs, conditioned that the party appealing will personally be and appear before said circuit court, at the next term thereof, and not depart said court without leave, and will pay said fine and all costs, if the same shall be so adjudged by said court; and said security shall have the right to take said negro or mulatto into custody, and retain the same until the order of said court is complied with. And if the judgment of the justice of the peace be affirmed in whole or in part, and said negro or mulatto be found guilty, the said circuit court shall thereupon render judgment against said negro or mulatto and the security or securities on said appeal bond, for the amount of fine so found by the court, and all costs of suit, and the clerk of said court shall forthwith issue an execution against said defendant and security as in other cases, and the sheriff or other officer to whom said execution is directed, shall proceed to collect the same by sale or otherwise: *Provided*, That this section shall not be so construed as to give the security on said appeal bond right to retain the custody of said negro or mulatto for a longer time than ten days after the rendition of said judgment by said circuit court.

(30.) SEC. VII. In all cases arising under the provisions of this act, the prosecuting witness, or person making the complaint and prosecuting the same, shall be entitled to one-half of the fine so imposed and collected, and the residue of said fine shall be paid into the county treasury of the county in which said proceedings were had; and said fines, when so collected, shall be received by said county treasurer, and kept by him as a distinct and separate fund, to be called the "charity fund;" and said fund shall be used for the express and only purpose of relieving the poor of said county, and shall be paid out by said treasurer upon the order of the county court of said county, drawn upon him for that purpose.

(31.) SEC. VIII. If, after any negro or mulatto shall have been arrested under the provisions of this act, any person or persons shall claim any such negro or mulatto as a slave, the owner, by himself, or agent, shall have a right, by giving reasonable notice to the officer or person having the custody of said negro or mulatto, to appear before the justice of the peace before whom said negro or mulatto shall have been arrested, and prove his or their right to the custody of said negro or mulatto as a slave, and if said justice of the peace shall, after hearing the evidence, be satisfied that the person or persons claiming said negro or mulatto, is or are the owner or owners of and entitled to the custody of said negro or mulatto, in accordance with the laws of the United States passed upon this subject, he shall, upon the owner or agent paying all costs up to the time of claiming said negro or mulatto, and the costs of proving the same, and also the balance of

the fine remaining unpaid, give to said owner a certificate of said facts, and said owner or agent so claiming, shall have a right to take and remove said slave out of this State.

(32.) SEC. IX. If any justice of the peace shall refuse to issue any writ or process necessary for the arrest and prosecution of any negro or mulatto under the provisions of this act, upon complaint being made before said justice by any resident of his county, and his fees for said service being tendered him, he shall be deemed guilty of non-feasance in office, and upon conviction thereof, punished accordingly; and in all cases where the jury find for the negro or mulatto, or that he, she or they are not guilty under the provisions of this act, the said justice of the peace shall proceed to render judgment against the prosecuting witness, or person making the complaint, and shall collect the same as other judgments: *Provided*, That said prosecuting witness, or person making said complaint, in case judgment is rendered against him, shall have a right to take an appeal to the circuit court, as is provided for in this act, in case said negro or mulatto is found guilty.

(33.) SEC. X. Every person who shall have one-fourth negro blood, shall be deemed a mulatto.

(34.) SEC. XI. This act shall take effect and be in force from and after its passage.

PRIOR LAWS. An act respecting free negroes, mulattoes, servants and slaves; in force March 30, 1819. Laws, 1819, p. 354; Rev. Laws, 1833, p. 457.

An act to amend an act entitled "An act respecting free negroes, mulattoes, servants and slaves," approved March 30, 1819; in force Jan. 3, 1825. Laws, 1825, p. 50.

An act respecting free negroes, mulattoes, servants and slaves; in force Jan. 17, 1829. Rev. Laws, 1833, p. 463.

An act to amend an act entitled "An act respecting free negroes, mulattoes, servants and slaves," approved Jan. 17, 1829; in force Feb. 1, 1831. Rev. Laws, 1833, p. 462.

An act to amend an act entitled "An act respecting free negroes, mulattoes, servants, and slaves," approved March 30, 1819; in force March 1, 1833. Rev. Laws, 1833, p. 466.

An act in relation to free negroes and mulattoes; in force Feb. 19, 1841. Laws, 1841, p. 189.

DECISIONS. To create the relation of master and servant, under the territorial act of Sept. 17, 1807, the indenture should be executed by both parties, before the clerk. *Cornelius v. Cohen*, Breese, 92. See *Nance v. Howard*, Breese, 183.

The act of 1807, respecting the introduction of negroes and mulattoes into the territory, is void, it being repugnant to the 6th article of the ordinance of 1787; but indentures made under that law, are valid by the 3rd section, 6th article, of the constitution of Illinois. *Phoebe v. Jay*, Breese, 207. See *Choisser v. Hargrave*, 1 S. 317.

The children of negroes and mulattoes, registered under the territorial laws of Indiana and Illinois, are free; and the proviso of section 3, article 6, of the constitution of Illinois, does not render the persons therein named subject to servitude. *Boon v. Juliet*, 1 S. 258.

In the State of Illinois every person is presumed free, without regard to color, and the sale of a free person is illegal. *Bailey v. Cronwell et al.*, 3 S. 71; *Kinney v. Cook*, 3 S. 232. See also, case of *Sarah v. Borders*, 4 S. 341, in which the case of *Phoebe v. Jay*, Breese, 207, is re-affirmed.

The State of Illinois has power to prohibit the introduction of negro slaves into the State, and to punish its citizens who introduce them. *Eells v. The People*, 4 S. 498.

The clerks of the county commissioners' courts, as successors of the clerks of the court of common pleas, and of the county courts, have the same powers and duties as their predecessors, in reference to the registering of indentured servants, under the territorial laws of Indiana and Illinois. The facts necessary to warrant the registry need not be recited therein. The point settled in the case of *Phoebe v. Jay*, Breese, 207, is recognized in this case. *Hays v. Borders*, 1 G. 46.

A colored person may maintain an action for services rendered, and in such action his right to freedom may be tried. The descendants of the slaves of the old French settlers, born since the ordinance of 1787, and before or since the adoption of the constitution of Illinois, cannot be held in slavery in this State. *Jarrot v. Jarrot*, 2 G. 1.

Section 5, chapter 74, Rev. Stat., 1845, is void, because it assumes to legislate on the subject of the recapture of fugitive slaves, over which subject Congress has supreme and exclusive power. *Thornton's case*, 11 Ill. 332.



The statute in reference to negroes and mulattoes, does not authorize the taking of a bond, until the negro or mulatto has produced his certificate of freedom; and such negroes and mulattoes only can reside here, who furnish evidence of their freedom and give bond under the statute. *Owens et al. v. People, &c.*, 13 Ill. 59.

A contract made in Illinois, for the sale of a person as a slave, who is, at the time, in the State, and to a citizen of the State, is illegal and void. *TRUMBULL, J.* A note, taken in consideration of such a sale, will not be enforced, unless there is affirmative proof to rebut the legal presumption of freedom. *CATON, J. Hone v. Ammons*, 14 Ill. 29.

## CHAPTER LXXV.

### NOTARIES PUBLIC.

#### SECTION

1. Governor to appoint notaries public; when additional notaries may be appointed.
2. Vacancies, how filled.
3. Notary to surrender papers, &c., to successor; how punished for refusal.
4. Duty of, as to protests; notice to indorsers, &c.

#### SECTION

5. To keep record of business done; such record to be competent evidence.
6. Manner of serving notices; when in person; when by mail.
7. Notary to give bond to governor; suit may be had on bond for use of party injured.

[Approved March 3, 1845. *Rev. Stat. 1845, p. 391.*]

SECTION I. 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 the State. And whenever fifty legal voters of any city, town, village or township in this State, shall, by petition to the governor, request the appointment of a notary public in such city, town, village or township, the governor shall, by and with the advice and consent of the senate, appoint a notary public conformably to such petition; but no more than five shall be appointed in any one city, town, village or township, and not more than one shall be appointed on the same petition, and such petition shall be signed by different voters. An additional notary public may also be appointed in any county, whenever it shall be petitioned for as above provided; but not more than one notary public shall be appointed in the same precinct of any county except in the case of cities, &c., and the said notaries public, when so appointed, shall hold their offices for four years, and until their successors are appointed and qualified.

SEC. II. If a vacancy shall occur in the office of notary public during the recess of the senate, the governor shall fill such vacancy by appointment.

SEC. III. Whenever the successor of any notary public shall be appointed and qualified, it shall be the duty of said notary public, to surrender to such successor all books, papers, vouchers and other documents belonging to his office. Any notary public who shall neglect or refuse to surrender all the books, papers and vouchers, for ten days after the same shall have been demanded by his successor, may be indicted, and, on conviction, shall be fined, in a sum not exceeding one thousand dollars, and stand committed until paid.

SEC. IV. It shall be the duty of each and every notary public in this State, whenever any bill of exchange, promissory note or other written in-

strument 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 indorser of any bill of exchange, and to the maker or makers of, and each and every security or indorser 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. V. 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. VI. 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, than the said notice may be forwarded by mail or other safe conveyance.

SEC. VII. 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.

PRIOR LAWS. An act for the appointment of notaries public; in force Feb. 22, 1819. *Laws, 1819, p. 31.*

An act to amend "An act for the appointment of notaries public;" in force Feb. 10, 1823. *Laws, 1823, p. 121.*

An act for the appointment of notaries public; in force June 1, 1829. *Rev. Laws, 1833, p. 470.*  
An act to amend an act entitled "An act for the appointment of notaries public, approved Feb. 22, 1819; in force Jan. 12, 1833. *Rev. Laws, 1833, p. 471.*

An act to amend an act entitled "An act for the appointment of notaries public," approved Dec. 30, 1828; in force Jan. 16, 1837. *Laws, 1837, p. 175.*

An act to provide for the appointment of notaries public; in force Feb. 22, 1839. *Laws, 1839, p. 148.*

An act to fix the tenure of certain officers; in force Feb. 21, 1843. *Laws, 1843, p. 10.*

DECISIONS. The notarial protest of an inland bill of exchange, is not evidence of a demand of payment on the drawee, nor of notice to the drawer of non-payment. *Kaskaskin Bridge Company v. Shannon et al.*, 1 G. 15.

The signature of a notary public to the *jurat* of an affidavit, without his seal, is sufficient within the county where the notary resides; if the affidavit is to be used out of his county, his seal, or some other evidence of his official character, is necessary. The statute does not require a notary to verify his acts by seal, except in the acknowledgment of deeds. *Stout v. Slattery*, 12 Ill. 162. See also, *Mason v. Brock*, 12 Ill. 273.

The letters "N. P." are an abbreviation of the words "Notary Public," and clearly indicate that office. *Rowley v. Berrian*, 12 Ill. 198.

The provision of law which authorized certain officers to use their private seals till public ones were provided, does not apply to notaries public. *Mason v. Brock*, 12 Ill. 273.

## CHAPTER LXXVI.

## OATHS AND AFFIRMATIONS.

## SECTION

1. Form and manner of swearing.
2. Persons having conscientious scruples, to be affirmed; false affirmation considered perjury.
3. Who may administer oaths, and on what occasions.

## SECTION

4. Chairman of committee of either house of the General Assembly, may administer oaths.
5. False swearing under the provisions of this chapter, considered and punished as perjury.

[Approved March 3, 1845. Rev. Stat. 1845, p. 393.]

SECTION I. 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 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 willful and corrupt perjury, as oaths administered in the usual form.

SEC. II. 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 willful and corrupt perjury.

SEC. III. All courts now established, or hereafter to be established, and each judge, justice and clerk thereof, and all justices of the peace and notaries public, shall, respectively, have power to administer oaths and affirmations to witnesses and others, concerning anything depending, or proceeding commenced or to be commenced before them, respectively; and the said courts, the judges, justices, notaries public 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.

SEC. IV. The chairman, or any member of any committee appointed by either branch of the General Assembly of the State of Illinois, or any

member of any joint committee appointed by the two houses of the General Assembly aforesaid, shall be authorized, under the direction of such committee, to administer oaths and affirmations to witnesses called before such committee, for the purpose of giving evidence touching any matter or thing which may be under the consideration or investigation of the committee; and oaths and affirmations administered as aforesaid, shall be deemed and considered as having been administered lawfully.

SEC. V. All oaths, affirmations, affidavits and depositions administered or taken as provided in this chapter, shall subject any person who shall so swear or affirm, willfully 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 willful and corrupt perjury.

PRIOR LAWS. An act authorizing certain persons to administer oaths; approved March 30, 1819. Laws, 1819, p. 348.

An act concerning oaths and affirmations; approved Dec. 26, 1826. Rev. Laws, 1827, p. 308; Rev. Laws, 1833, p. 472.

An act in addition to the act concerning oaths and affirmations; approved Feb. 9, 1831. Rev. Laws, 1833, p. 472.

DECISIONS. Swearing a witness by the uplifted hand, is a legal mode of swearing, independent of the statute. By the common law, oaths are to be administered in the manner which most affects the conscience. *Gill v. Caldwell*, Brees, 28.

An oath administered by holding up the hand, though the gospels were not presented to the witness, and though he did not declare that he had conscientious scruples against being sworn on the gospels, is legal and valid, no objection being made at the time by the prisoner or his counsel. *McKinney v. The People*, 2 G. 540.

## CHAPTER LXXVII.

## OFFICERS.

## SECTION

1. What officers to reside at the seat of government.
2. Auditor to sue and defend in behalf of State; duty of attorney general.
3. Appeals allowed; auditor not personally bound.
4. When judgment is had against the State, how satisfied.

## SECTION

5. Duty of certain officers to report defects in laws, and suggest amendments thereto.
6. Clerks of courts may appoint deputies.
7. Principal clerk, when able, to perform duties.
8. Clerk to reside at county seat.
9. If officer remove from county, his office to be vacated.

[Approved March 3, 1845. Rev. Stat. 1845, p. 394.]

SECTION I. The governor, the secretary of State, the auditor, the treasurer, the clerk of the supreme court, and the attorney general, shall keep their residence at the seat of government.

SEC. II. It shall 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 be impleaded, to answer and to 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.

SEC. III. 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. IV. When judgment shall be rendered against the auditor of public accounts for the State of Illinois, it shall be his 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. V. 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, 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.

SEC. VI. The clerk of the supreme court, and the several clerks of the circuit and county commissioners' courts, may appoint deputies, who shall severally take an oath for the faithful discharge of the duties of their offices, and for whose conduct the principal clerk shall, in all cases, be responsible.

SEC. VII. 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.

SEC. VIII. 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 his election or appointment, 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.

SEC. IX. If any officer of a county shall remove from, and permanently reside out of the same, his office shall be deemed vacant, and such vacancy shall be filled as in other cases.

PRIOR LAWS. An act for the appointment of circuit attorneys, and defining their duties and the duties of the attorney general; approved March 23, 1819. Laws, 1819, p. 204.

An act defining the duties of auditor and treasurer; approved March 24, 1819. Laws, 1819, p. 240.

An act defining and regulating the duties of the secretary of State; approved March 1, 1819. Laws, 1819, p. 87.

An act regulating and defining the duties of justices of the supreme court; approved March 31, 1819. Laws, 1819, p. 373.

An act requiring the several clerks of this State to keep their respective offices at the county seat; approved Jan. 11, 1823. Laws, 1823, p. 70; Rev. Laws, 1833, p. 144.

An act relating to the attorney general and State's attorneys; approved Feb. 17, 1827. Rev. Laws, 1827, p. 79. Rev. Laws, 1833, p. 97.

An act requiring certain official reports to be made to the General Assembly; approved Feb. 20, 1819. Rev. Laws, 1833, p. 504.

An act relative to several officers therein named; approved Jan. 22, 1829. Rev. Laws, 1833, p. 504.

An act to authorize clerks of the circuit and county commissioners' courts to appoint deputies in certain cases; approved Feb. 9, 1831. Rev. Laws, 1833, p. 127.

An act defining and regulating the duties and term of service of the secretary of State; approved Feb. 14, 1831. Rev. Laws, 1833, p. 567.

An act further defining the duties of the attorney general, and for other purposes; approved Feb. 26, 1841. Laws, 1841, p. 35.

## CHAPTER LXXVIII.

### OFFICIAL BONDS.

#### SECTION

1. Judge of circuit court to examine official bonds of sheriffs, &c., at each term of court; may require additional security.
2. County commissioners' courts to examine bonds of certain officers; may require additional security.
3. Probate justice to examine, periodically, the bonds of executors, &c.; may require new bond.
4. Persons interested in official bond, may try sufficiency thereof.
5. Circuit court to make record of examination of bonds.
6. If officer fail to give additional security when required, to be superseded.
7. Securities, how may be released from liability on official bond.
8. Other security to be substituted in such case.

#### SECTION

9. Time in which to file additional bond.
10. If bond not filed, office vacant.
11. When securities on old bond discharged; when those on new bond to become liable.
12. Embezzlement, how punished.
13. Officer failing to file new bond, to deliver his papers, &c., to his securities.
14. Penalty for refusal, or for acting officially before giving new bond.
15. Securities on old bond, not released by the giving of new.
16. Principal and securities in bond may be sued jointly or severally.
17. Property of sureties not to be taken in execution until that of principal be exhausted.

[Approved March 3, 1845. Rev. Stat. 1845, p. 396.]

SECTION I. It shall be the duty of the presiding judge of the circuit court of each county in this State, at every term of said circuit court, on the first day of the term, in open court, to examine and inquire into the sufficiency of the official bonds of the sheriff, coroner and clerk of the circuit court; and if it shall appear that any one or more of the securities on the official bond of any such sheriff, coroner or clerk of the circuit court, has or have removed from the county, died or become insolvent, an order shall be entered of record, requiring such sheriff, coroner or clerk of the circuit court, to file in the office of the clerk of the circuit court a new bond, to be approved and recorded as is now required by law, unless the number and pecuniary abilities of other securities on the bond shall be such as to satisfy the judge that the bond is sufficient, notwithstanding one or more of the securities may have removed, died or become insolvent or of doubtful solvency, in which case the bond in question may, in the discretion of said judge, be held to be sufficient.

SEC. II. It shall be the duty of the county commissioners' court, at the

regular June and December terms of said court, in each year, on the first day of the term, in open court, to examine and inquire into the sufficiency of the official bond of each probate justice of the peace, justice of the peace, constable, collector, county treasurer, recorder, and clerk of the county commissioners' court, and if it shall appear that any one or more of the securities on the official bond of any such probate justice of the peace, justice of the peace, constable, collector, county treasurer, recorder, or clerk of the county commissioners' court, has or have removed from the county, died or become insolvent or of doubtful solvency, the said court shall cause such probate justice of the peace, constable, collector, county treasurer, recorder, or clerk of the county commissioners' court, to be summoned to appear before said court on a day fixed therein, to show cause why he should not be required to give a new bond with security; and if at the appointed time he should fail to satisfy the court as to the sufficiency of the present security, an order shall be entered of record, requiring such probate justice of the peace, justice of the peace, constable, collector, county treasurer, recorder, and clerk of the county commissioners' court, to file in the office of the clerk of the county commissioners' court, within thirty days, a new bond, to be approved, as is now required by law, unless the number and pecuniary ability of other securities on the bond shall be such as to satisfy the court that the bond is sufficient, notwithstanding one or more of the securities on said bond may be removed, dead or insolvent, or of doubtful solvency; in which case the bond in question may, in the discretion of the court, be held to be sufficient.

SEC. III. It shall be the duty of each probate justice of the peace, at two terms in each year, to be holden on the first Mondays in January and July, on the first day of the term, in open court, to examine and inquire into the sufficiency of the official bond of each executor, administrator, guardian, and of any other official bond that may be filed in his office; and if it shall appear that any one or more of the securities on the official bond of any such executor, administrator, guardian or other officer, has or have removed from the county, died or become insolvent, or of doubtful solvency, the said probate justice shall cause such executor, administrator, guardian or other officer to be summoned to appear before him on a day to be named in said summons, to show cause why he should not be required to give a new bond with security; and if at the appointed time he should fail to satisfy such probate justice of the sufficiency of the present security, an order shall be made on the records of the probate justice of the peace, requiring such executor, administrator, guardian or other officer, to file in the office of the probate justice, a new bond, to be approved as is now required by law, unless the number and pecuniary ability of other securities on the bond shall be such as to satisfy the court that the bond is sufficient, notwithstanding one or more of the securities on said bond may be removed, dead or insolvent, in which case the bond in question may, in the discretion of the court, be held to be sufficient.

SEC. IV. Any person having any pecuniary interest in the sufficiency of the official bond of any of the officers hereinbefore named, may appear at the prescribed time and place, and shall be allowed to introduce any evidence legally conducing to prove the removal, death or insolvency, or doubtful solvency of any security on such official bond, and the officer interested, or any of his securities, may also appear and introduce any evidence legally conducing to establish the sufficiency of such official bond.

SEC. V. It shall be the duty of the respective courts above named, to enter upon their respective records, at the times hereinbefore prescribed for an examination, that an examination and inquiry into the sufficiency of the official bonds within their cognizance, has been made, and that they severally are deemed sufficient or insufficient, as the facts may justify.

SEC. VI. If any officer hereinbefore enumerated, shall fail to file a new bond within the prescribed time, when an order of the appropriate court entered of record shall require the filing of such new bond, the officer in default shall be deemed and held to have vacated his office, and the same steps shall be taken to fill such vacancy thus created as are now taken to fill a vacancy by the death or resignation of such officer.

SEC. VII. Any person who now is, or who hereafter may become the security of any sheriff, coroner or clerk of the county commissioners' court, shall have the power of releasing himself from such securityship, by filing with the clerk of the circuit court, a notice that he is unwilling longer to be security for said sheriff, coroner or clerk of county commissioners' court; and any person who now is, or hereafter may become security for any justice of the peace, probate justice of the peace, constable, school commissioner, collector of State and county revenue, or clerk of the circuit court, may in like manner become released, by filing with the clerk of the county commissioners' court, a like notice.

SEC. VIII. When any notice shall be filed as aforesaid with the clerk of the circuit court, he shall immediately give notice thereof to the sheriff, coroner or clerk of the county commissioners' court, as the case may be, who shall thereupon file other security, to be approved by the circuit court, if the same shall then be in session, or if a session thereof be commenced within ten days after said notice shall have been given; but if said court be not in session, nor a session thereof be commenced within ten days, then the said sheriff or coroner shall, within ten days, file said bond with the clerk of said court, which clerk shall, in that case, judge of the sufficiency of said bond, subject, however, to the decision of the judge of the circuit court, as in other cases.

SEC. IX. When any notice shall be filed with the clerk of the county commissioners' court as aforesaid, he shall, in like manner, give notice to the justice, probate justice, constable, school commissioner or collector of State and county revenue, as the case may be, who shall, within ten days thereafter, file another bond, to be approved by said clerk.

SEC. X. If said sheriff, coroner, justice, probate justice, constable, school commissioner or collector of State and county revenue, as the case may be, shall not, in the time and manner aforesaid, file bond, to be approved as aforesaid, the said office shall become vacant, and said vacancy shall be filled as required by law.

SEC. XI. If a new bond shall be given by any officer, as provided in the foregoing sections of this chapter, then the former securities shall be entirely released and discharged from all liabilities incurred by any such officer in consequence of business which may have come to hand from and after the time of the approval of the said new bond, and the securities to the new bond are hereby declared to be liable for all the official delinquencies of said officer, whether of omission or commission, which may occur after the approval of the new bond as aforesaid.

SEC. XII. If any sheriff, coroner, justice of the peace, probate justice of the peace, constable, school commissioner or collector of State and county revenue, shall embezzle, or appropriate to his own use, any money which may be paid him by virtue of his office, he shall be liable to be indicted therefor, and upon conviction thereof, the court shall pass judgment that the office held by such officer shall be vacated; and a new election shall be held to fill the vacancy thereby created.

SEC. XIII. It shall be the duty of such sheriff, coroner, justice of the peace, probate justice of the peace, constable, school commissioner or collector of State and county revenue, if he shall fail to give bond as provided for in this chapter, to deliver over to his sureties forthwith, all books, moneys, vouchers, papers, and every description of property whatever, pertaining to his said office, and the said sureties may, at any time after said failure to file said bond, maintain an action of replevin, or other appropriate action, to recover such property, money or effects from their said principal.

SEC. XIV. If any officer designated in the foregoing sections of this chapter, shall fail to deliver any money, property or effects as aforesaid, to his securities, or shall act, or attempt to act, in his said office, after failing to give a new bond as aforesaid, he shall be deemed guilty of a high misdemeanor, and upon indictment and conviction therefor, shall be fined, in any sum not less than five hundred dollars nor more than five thousand dollars.

SEC. XV. The provisions of this chapter shall not be so construed as to operate as a release of the securities of any of the aforesaid officers, for liabilities incurred previous to the filing of a new bond, as required in the foregoing sections of this chapter.

SEC. XVI. Whenever the condition of the bond of any public officer shall be violated, suit may be instituted on such bond, and prosecuted to final judgment against such officer, and any or all of the securities, or against one or more of them, jointly and severally, without first establishing the liability of the principal, by obtaining judgment against him alone.

SEC. XVII. Execution may issue on any judgment so rendered as in ordinary cases, but the officer executing the same shall not levy upon the property of the sureties, until he shall fail to find sufficient property of the principal to satisfy such execution: *Provided, however,* The judgment and execution shall be a lien upon the property of the sureties, as in ordinary cases.

PRIOR LAWS. An act in relation to official bonds; in force Jan. 23, 1843. Laws, 1843, p. 40. An act for the relief of certain securities therein named; in force Dec. 5, 1842. Laws, 1842, p. 222.

## CHAPTER LXXIX.

## PARTITIONS.

## SECTION

1. When lands held in joint tenancy, &c., any person interested may, by petition to the proper court, have partition and sale.
2. Petition, what facts to set out.
3. Who shall be made parties.
4. If persons in interest be unknown, or their interest uncertain, that fact to be set out in petition.
5. How such unknown persons to be made parties.
6. How they may be summoned; non-resident parties, how notified.
7. Any person interested, may become party defendant by interpleader.
8. Court to try cause and determine the interest of the respective parties.

## SECTION

9. Court ordering partition, to appoint commissioners; their duty; their report, and order of the court thereon.
10. Compensation of commissioners.
11. When lands, &c., cannot be properly divided, to be sold, and proceeds divided; proceedings thereon to be reported; order of court.
12. Uncialmed moneys to be deposited in the State treasury, to be drawn by order of court.
13. Claimants of such money, to preserve same by order of court.
14. Plea in abatement, not allowed.

[Approved March 3, 1845. Rev. Stat. 1845, p. 399.]

SECTION I. When any lands, tenements or hereditaments, shall be held in joint tenancy, tenancy in common or coparcenery, whether such right or title be derived by purchase, devise or descent, or whether any, all or a part of such claimants be of full age or minors, it shall be lawful for any one or more of the persons interested, by themselves, if of full age, or by their guardians, if minors, to present to the circuit court of the county where such lands or tenements lie, or where the lands or tenements lie in different counties, in the circuit court of the county in which the major part of such lands lie; but if the major part of such lands do not lie in any one county, then to the circuit court of any county in which any of such lands lie, their petition, praying for a division and partition of such premises, according to the respective rights of the parties interested therein, and for a sale thereof, if it shall appear that partition cannot be made without great prejudice to the owners.

SEC. II. The petition shall particularly describe the premises sought to be divided or sold, and shall set forth and make exhibits of the rights and titles of all parties interested therein, so far as the same are known to the petitioners, including tenants for years, for life, by the courtesy, or in dower; and of persons entitled to the reversion, remainder or inheritance; and of every person who, upon any contingency, may be or become entitled to any beneficial interest in the premises, so far as the same are known to the petitioners; and such petition shall be verified by affidavit.

SEC. III. Every person having such interest as is specified in this chapter, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, shall be made a party to such petition.

SEC. IV. In cases where one or more of such parties shall be unknown, or the share or quantity of interest of any of the parties is unknown to the petitioner, or where such share or interest shall be uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be contingent, so that such parties cannot be named, the same shall be so stated in the petition.

SEC. V. All persons interested in the premises of which partition is

sought to be made according to the provisions of this chapter, whose names are unknown, may be made parties to such petition, by the name and description of unknown owners or proprietors of the premises, or as the unknown heirs of any person who may have been interested in the same.

SEC. VI. All persons having such interest as is specified in this chapter, in any premises of which partition is sought to be made, or the guardians of such as are under age, who shall not have joined in the petition, (and if any person so interested, be under age and without a guardian, the court shall appoint a guardian *ad litem*, for such minor,) shall have notice of such application by summons duly served, which summons shall issue against such persons by the name and description given in the petition. And when the names of persons having any such interest in such premises are unknown, and when parties whose names are known, do not reside in this State, or cannot be found, they shall have further notice by advertisement, as provided in sections eight, forty-one and forty-two of chapter twenty-one, and after such advertisement, the court shall proceed to act in the premises as though the parties had been duly served with summons, or had been notified by their proper names.

SEC. VII. 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.

SEC. VIII. The court shall ascertain from the evidence, in case of default, or from the confession by plea, of the parties, if they appear, or from the verdict, by which any issue of fact shall be determined, and shall declare the rights, titles and interests of all the parties to such proceedings, petitioners as well as defendants, and give such judgment as may be required by the rights of the parties.

SEC. IX. The court, when it shall order a partition of any premises to be made, under the provisions of this chapter, 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, in accordance with the judgment of the court, as to the rights and interests of parties, if the same can be done consistently with the interests of the estate; and the said commissioners shall go upon the premises and make partition of said lands, tenements and hereditaments, assigning to each party his or her share, by metes and bounds; and may make report, which shall be under their hands and seals, to the court, during the same or next succeeding term at which they were appointed; and the court may, at the term when such report shall be made, make all such orders upon such reports as may be necessary to a final disposition of the case.

SEC. X. The commissioners to be appointed under this chapter, shall be allowed, as a compensation for their services, one dollar per day each, to be taxed as other costs.

SEC. XI. When 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 commis-

sioners, 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 commissioners or persons making such sale, shall report their proceedings to the court, and shall pay over the moneys arising therefrom, to the parties entitled to receive the same, under the direction of the court; the court to make such order in relation to costs as shall seem right.

SEC. XII. When a sale of any lands or premises shall be made, in accordance with the preceding section, and no persons shall appear to claim such portions of the money as may belong to any non-resident or person whose name is unknown, the court shall, thereupon, require the money belonging to the person 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.

SEC. XIII. When money shall be deposited in the State treasury under the provisions of this chapter, 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, her or their right thereto.

SEC. XIV. No plea in abatement shall be received in any suit for partition, nor shall such suit abate by the death of any tenant.

PRIOR LAWS. An act for the partition of lands; approved Feb. 20, 1819. Laws, 1819, p. 335.  
An act concerning partitions and joint rights and obligations; approved Jan. 13, 1821. Laws, 1821, p. 14. Rev. Laws, 1833, p. 472.  
An act for the speedy assignment of dower, and partition of real estate; in force June 1, 1827. Rev. Laws, 1827, p. 183; Rev. Laws, 1833, p. 236.

DECISIONS. The circuit court can set aside the report of commissioners of partition, for inequality of value or quantity, and such inequality may be shown by depositions. *Riggs v. Dickinson et al.*, 2 S. 437.

The act to amend the act entitled "An act for the relief of Nathaniel Pope and others," approved July 21, 1837, in force Jan. 18, 1839, although a special act, authorizing a partition, is constitutional. *Edwards v. Pope et al.*, 3 S. 465.

In a suit for partition, under the statute, the defendant is not required to make discovery, or answer under oath, and the testimony may be *vide voce*. The proceedings are summary and *in rem*. The only duty of the court is to direct a division according to the legal interests of the parties; their equities are to be determined by some other remedy. When the report of the commissioners is approved, the tenancy is terminated, and each holds the portion allotted to him in severalty. *Louvalle et al. v. Menard et al.*, 1 G. 39.

Courts of equity have jurisdiction in matters of partition, and a bill in chancery lies therefor, notwithstanding an adverse possession, unless the possession be a bar to recovery under the statute of limitations. *Howey v. Goings*, 13 Ill. 95.



## CHAPTER LXXX.

## PAUPERS.

SECTION	SECTION
1. Who considered paupers; what relatives to support each other; penalty for neglect; <i>proviso</i> .	23. County commissioners may purchase farm for poor-house establishment.
2. Order in which relatives shall be liable.	24. Town authorized to support their own paupers.
3. When pauper has no relatives, how relieved.	25. Duty of county clerk.
4. If non-resident pauper be sick, or die, expenses, how paid.	26. Overseers of the poor, duty of.
5. Who shall be overseers of the poor.	27. Non-resident paupers, how provided for.
6. Duty of overseers; poor, how provided for; duty of persons taking them to support.	28. Provisions of Revised Statutes, how to apply.
7. Overseers to report to county commissioners' court.	29. Paupers, on what towns to be chargeable.
8. Duty of court, as to allowance to poor person.	30. Application of provisions of Revised Statutes.
9. Sum may be lessened or increased without affecting validity of the bond.	31. When act to take effect.
10. Overseers may change custody of poor person.	32. Counties of Bureau and McHenry to support paupers; <i>proviso</i> .
11. As to labor of pauper.	33. Duty of county clerk.
12. Residence of pauper, how ascertained.	34. In case separate township support be adopted, duty of overseers of the poor.
13. Non-resident pauper to be removed to proper county.	35. How provisions of Revised Statutes to apply. When act to take effect.
14. Liability of such proper county.	36. Towns in Kane county to support their own paupers.
15. Term "residence" defined.	37. Duty of overseer of the poor.
16. Penalty for conveying pauper into county in which he is not resident.	38. Persons becoming chargeable in township in which they are not residents, duty of overseer.
17. Poor-houses to be established.	39. Certain provisions of Revised Statutes applicable to townships.
18. Land therefor may be acquired and held.	40. This act to be submitted to the legal voters; notice; votes canvassed; certificate of judges and clerks.
19. County commissioners may receive donations for poor-houses; may levy tax for same purpose.	41. When act to take effect.
20. May employ agents.	42. Towns in Kane county to support their own paupers.
21. When poor-house established, overseers of poor superseded.	43. Duty of overseer of poor.
22. Title of estate to be in county.	44. Where poor are residents of other townships.
	45. Application of chapter eighty, Revised Statutes.

[Approved March 3, 1845. Rev. Stat. 1845, p. 402.]

(1.) SECTION I. 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, grand-father, 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.

(2.) SEC. II. 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.

(3.) SEC. III. 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, in the manner hereinafter provided.

(4.) SEC. IV. 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 poor of the proper district, 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.

(5.) SEC. V. The justices of the peace in each justice's district, in conjunction with such other person as the county commissioners in the several counties in this State may appoint, shall be, and are hereby, made overseers of the poor, and are vested with the entire and exclusive superintendence of the poor in their respective districts, excepting in case of corporate towns or cities, to which such superintendence and jurisdiction shall be by law granted.

(6.) SEC. VI. It shall be the duty of said justices within their respective districts, and the person appointed as aforesaid, diligently to inquire after all such persons as are unable to earn a livelihood, in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, and to provide for them the necessary comforts of life, by confiding the care of such poor person or persons to some moral and discreet householder or householders in the district, of sufficient ability to provide for them. Every person to whom the care of such poor person shall be committed, shall execute a bond to the county in which said poor person shall reside, conditioned that he will treat said poor person with humanity, and afford to him or her the necessary attention and comforts of life, fitted to his or her condition. Said bond shall set forth the sum to be given by said county for keeping such poor person or persons.

(7.) SEC. VII. Said overseers shall, at each session of the county commissioners' court, make a full report of their actings and doings under this chapter, and return a list of all the poor within their respective districts, specifying the age, sex and infirmities of each.

(8.) SEC. VIII. Upon the making of said report, it shall be the duty of the several county commissioners' courts, to make such appropriations as will justify the person having the custody of any poor person, in affording to him or her suitable clothing, and such comforts as may be suitable to their state and condition.

(9.) SEC. IX. Any sum set forth in the bond executed by any county

as aforesaid, may be lessened or increased at the discretion of said county, without affecting, in either case, the validity of the bond.

(10.) SEC. X. The county commissioners' court may, at any regular term of said court, remove any poor person from the custody of the person or persons to whose care the overseers may have committed the keeping of such poor person, without subjecting the overseers or the county to any claim for damages.

(11.) SEC. XI. The overseers, in fixing the amount to be paid for keeping any poor person, shall take into the calculation the ability of the poor person to labor.

(12.) SEC. XII. Any person becoming chargeable as a pauper in this State, shall be chargeable as such pauper in the county in which he or she resided at the commencement of the thirty days immediately preceding such person becoming so chargeable.

(13.) SEC. XIII. If any person shall become chargeable in any county in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of by the proper authority of the county where he or she may be found; and it shall be the duty of the clerk of the county commissioners' court, to send notice by mail to the clerk of the county commissioners' court of the county in which such pauper resided, as before stated, that said person has become chargeable as a pauper, and requesting the authorities of said county to remove the said pauper forthwith, and to pay the expense accrued in taking care of him or them.

(14.) SEC. XIV. If said pauper, by reason of sickness or disease, or by neglect of the authorities of the county to which he or she belongs, or for any other sufficient cause, cannot be moved, then the county taking charge of such individual or individuals may sue for and recover from the county to which said individual or individuals belong, the amount expended for and in behalf of such pauper or paupers, and in taking care of the same.

(15.) SEC. XV. The term "residence" mentioned in this chapter, shall be taken and considered to mean the actual residence of the party, or the place where he or she was employed, or in case he or she was in no employment, then it shall be considered and held to be the place where he made it his or her home.

(16.) SEC. XVI. 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 offense, 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.

(17.) SEC. XVII. The county commissioners' court in each county, is hereby authorized (whenever it shall see fit so to do,) to establish a poor-house.

(18.) SEC. XVIII. The county commissioners are hereby authorized to take to the county, by grant, devise or purchase, any tract of land, not exceeding six hundred and forty acres, for the purposes of said poor-house.

(19.) SEC. XIX. Said county commissioners' courts are hereby empowered to receive donations to aid in the establishment of such poor-house, and are also empowered, from time to time, if they shall see fit, to levy and collect

a tax, not exceeding one-fourth of one per cent., on the taxable property of the county, and to appropriate the same to the purchase of land, not exceeding the aforesaid six hundred and forty acres, and to erect and furnish buildings suitable to a poor-house, and to put it into operation, and to defray the annual expenses of said poor-house, should the labors of the inmates be inadequate thereto.

(20.) SEC. XX. Said county commissioners' courts are hereby authorized to employ such agents and other persons as may be necessary, to establish and put into operation such poor-house.

(21.) SEC. XXI. Whenever any county commissioners' court shall enter upon their records, that they have established a poor-house, and that such poor-house is ready for the reception of the poor of the county, then the authority conferred upon the overseers of the poor, shall cease to be in force in said county: *Provided, however*, If there be any particular case or cases which the court should deem prudent to put out under the provisions of this chapter, they may do so, making a proper entry of the circumstances upon their records.

(22.) SEC. XXII. The title to the property authorized to be acquired by this chapter, for the purpose of said poor-house, shall be made to the county.

(23.) SEC. XXIII. The county commissioners' court of any county in this State may, if they shall at any time deem it to the interest of said county, appropriate out of any fund appropriated to said county for any purpose, or other money belonging to said county, any sum, not exceeding two thousand five hundred dollars, for the purpose of purchasing a farm, and erecting thereon suitable buildings for a poor-house for said county, as contemplated in sections seventeen, eighteen and nineteen of this chapter.

An Act to provide for the Support of Paupers in Lake County.

[Approved Feb. 17, 1851. *Laus*, 1851, p. 183.]

(24.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the several townships in the county of Lake, be and they hereby are empowered to support all paupers residing within their respective limits, out of the treasury thereof: *Provided*, That at the next general election to be held in said county, on the Tuesday after the first Monday in November next, a majority of the legal voters of said county voting at said election, shall vote in favor of such separate township support; which vote shall be by ballot, written or printed, or partly written or partly printed, "For township support," or "Against township support;" which shall be canvassed and returned in the same manner as in cases of elections for county officers.

(25.) SEC. II. It shall be the duty of the clerk of the county court of said county to give notice of the said election in the same manner as is provided for giving notices of general elections.

(26.) SEC. III. That in case separate township support shall be adopted in said county, agreeably to the provisions of the first section of this act, then the overseers of the poor of the several townships aforesaid shall take charge of, maintain and support the poor of their respective townships, in manner as is now or may hereafter be provided by law; and all expenses incurred for such maintenance and support shall be considered a township charge; and it shall be the duty of said overseers to present to the board

of township auditors of their respective townships, at each regular annual meeting thereof, a true account of all expenditures incurred under the provisions of this act; which shall be audited and paid as other township charges are audited and paid.

(27.) SEC. IV. If any person shall become chargeable in any township of said county, in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be taken care of by the overseer of the poor of such township; and if such poor person was a resident of any other township of said county, within the thirty days aforesaid, then the overseer of the poor of the township having such poor person in charge, shall give notice to the overseer of the poor where such pauper resided as aforesaid, stating that such pauper became chargeable as a pauper, and requesting said overseer to remove said pauper forthwith, and pay the expense incurred in taking care of him or her.

(28.) SEC. V. That the provisions of sections fourteen, fifteen and sixteen, of chapter eighty of the Revised Statutes, entitled "PAUPERS," shall apply to and operate, as between the several townships of said county, in the same manner as they do between the several counties of this State. And if any person shall become chargeable in any township of said county, who did not reside in said county at the commencement of the thirty days as aforesaid, then the overseer of the poor having such pauper in charge, shall give notice thereof to the county clerk of said county, whose duty it shall be to give notice thereof to the authorities of the proper county, as in other cases. And the expenses of taking care of such pauper, when received from such foreign county, shall be paid into the treasury of the proper township.

An Act to provide for the Residence of Paupers in Tazewell County.

[Approved June 21, 1852. Laws, 1852, p. 118.]

(29.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That if any person shall become chargeable in any township of the county of Tazewell, in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be taken care of by the overseers of the poor of such township, and if such poor person was a resident of any other township of said county, within the thirty days aforesaid, then the overseers of the poor of the township having such poor person on charge, shall give notice to the overseers of the poor where such pauper resided as aforesaid, stating that such pauper became chargeable as a pauper, and requesting said overseers to remove said pauper forthwith, and pay the expenses incurred in taking care of him or her.

(30.) SEC. II. That the provisions of sections fourteen, fifteen and sixteen, of chapter eighty of the Revised Statutes, entitled "PAUPERS," shall apply to and operate as between the several townships of said county in the same manner as they do between the several counties of this State; and if any person shall become chargeable in any township of said county, who did not reside in said county at the commencement of the thirty days as aforesaid, then the overseer of the poor having such pauper in charge, shall give notice thereof to the county clerk of said county, whose duty it shall be to

give notice thereof to the authorities of the proper county as in other cases and the expenses of taking care of such pauper, when received from such foreign county, shall be paid into the treasury of the proper township.

(31.) SEC. III. This act to take effect from and after its passage.

An Act to provide for the Support of Paupers in Bureau and McHenry Counties.

[Approved Feb. 10, 1853. Laws, 1853, p. 261.]

(32.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the several townships in the counties of Bureau and McHenry, be and they are hereby empowered to support all paupers residing within their respective limits, out of the treasury thereof: *Provided,* That at the next election for township officers, to be held in the several townships in said county on the first Tuesday of April next, a majority of the legal voters of said county, voting at said election, shall vote in favor of such separate township support; which vote shall be by ballot, written or printed, or partly written or partly printed, "For township support;" or "Against township support;" which shall be canvassed and returned in the same manner as in cases of elections for county officers.

(33.) SEC. II. It shall be the duty of the clerk of the county court of said counties to give notice of the said election in the same manner as is provided for giving notice of general elections.

(34.) SEC. III. That in case separate township support shall be adopted in said county, agreeably to the provisions of the first section of this act, then the overseers of the poor of the several townships aforesaid, shall take charge of, maintain and support the poor of their respective townships in manner as is now or may hereafter be provided by law; and all expenses incurred for such maintenance and support, shall be considered a township charge, and it shall be the duty of said overseers to present to the board of township auditors of their respective townships, at each regular meeting thereof, a true account of all expenditures incurred under the provisions of this act, which shall be audited and paid.

(35.) SEC. IV. That the provisions of sections fourteen, fifteen and sixteen, of chapter eighty of the Revised Statutes, entitled "PAUPERS," shall apply to and operate as between the several townships of said county, in the same manner as they do between the several counties of this State; and if any person shall become chargeable in any township in said county who has not resided in said county thirty days, then the overseers of the poor having such pauper in charge, shall give notice thereof to the county clerk of said counties, whose duty it shall be to give notice thereof to the authorities of the proper county as in other cases; and the expenses of taking care of such pauper, when received from such foreign county, shall be paid into the treasury of the proper township. This act to take effect from and after its passage.

An Act requiring the Towns in Kane County to Support their own Paupers.

[Approved Feb. 11, 1853. Laws, 1853, p. 275.]

(36.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the several townships in the county of Kane, be and they hereby are empowered and required to support all paupers residing within their respective limits, out of the treasury thereof.

(37.) SEC. II. That the overseers of the poor of the townships aforesaid shall take charge of, maintain and support the poor of their respective townships in manner as is now or hereafter may be provided by law, and all expenses incurred for such maintenance and support, shall be considered a township charge, and it shall be the duty of said overseers to present to the board of township auditors of their respective townships, at each regular annual meeting thereof, a true account of all expenditures incurred under the provisions of this act, which shall be audited and paid as other township charges are audited and paid.

(38.) SEC. III. If any person shall become chargeable in any township of said county in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be taken care of by the overseers of the poor of such township; and if such poor person was a resident of any other township of said county, within the thirty days aforesaid, then the overseer of the poor of the township having such poor person in charge, shall give notice to the overseer of the poor where such pauper resided as aforesaid, stating that such pauper became chargeable as a pauper, and requesting said overseer to remove said pauper forthwith, and pay the expenses incurred in taking care of him or her.

(39.) SEC. IV. That the provisions of sections fourteen, fifteen and sixteen, of chapter eighty of the Revised Statutes, entitled "PAUPERS," shall apply to and operate as between the several townships of said counties, in the same manner as they do between the several counties of this State. And if any person shall become chargeable in any township of said county, who did not reside in said county at the commencement of the thirty days as aforesaid, then the overseer of the poor having such pauper in charge, shall give notice thereof to the authorities of the proper county, as in other cases. And the expenses of taking care of such pauper, when received from such foreign county, shall be paid into the treasury of the proper township.

(40.) SEC. V. That at the annual town meeting held in said county next after the passage of this act, the legal voters of said county may vote upon the question whether this act shall become a law or not; which said question shall be submitted to be voted upon in the following manner, viz.: In giving notice of the annual town meeting in said county, it shall be the duty of the town clerk to state in said notice that said question will be submitted to a vote at such meeting, and at said town meeting, said question shall be voted upon, by ballot, either written or printed, "For county support," "For township support," which said votes shall be canvassed and entered upon the minutes by the town clerk, in the same manner as other votes cast at said town meeting, and the town clerks of the several towns, within twenty days after said town meetings, shall make out and transmit to the clerk of the county court of said county, a certificate of the said judges and clerks of said elections, showing the whole number of votes given at said town meetings upon said question; and if it shall appear that a majority of all the votes cast are in favor of or for township support, then the foregoing provisions of this act, in relation to the support of paupers, shall be in force in said county, otherwise not.

(41.) SEC. VI. This act to take effect immediately.

An Act to provide for the Support of Paupers in Kane County.

[Approved Feb. 10, 1853. Laws, 1853, p. 276.]

(42.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the several townships in the county of Kane be, and they hereby are, empowered and required to support all paupers residing within their respective limits, out of the treasury thereof.

(43.) SEC. II. That the overseers of the poor of the townships aforesaid, shall take charge of, maintain and support the poor of their respective townships, in manner as is now or may hereafter be provided by law, and all expenses incurred for such maintenance and support shall be considered a township charge; and it shall be the duty of said overseers to present to the board of township auditors of their respective townships, at each regular annual meeting thereof, a true account of all expenditures incurred under the provisions of this act, which shall be audited and paid as other township charges are audited and paid.

(44.) SEC. III. If any person shall become chargeable in any township of said county, in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be taken care of by the overseer of the poor of such township; and if such poor person was a resident of any other township of said county within the thirty days aforesaid, then the overseer of the poor of the township having such poor person in charge, shall give notice to the overseer of the poor where such pauper resides as aforesaid, stating that such poor person became chargeable as a pauper, and requesting said overseer to remove said pauper forthwith, and pay the expenses incurred in taking care of him or her.

(45.) SEC. IV. That the provisions of sections fourteen, fifteen and sixteen, of chapter eighty of the Revised Statutes, entitled "PAUPERS," shall apply to and operate as between the several townships of said county, in the same manner as they do between the several counties of this State; and if any person becomes chargeable in any township of said county, who did not reside in said county at the commencement of the thirty days as aforesaid, then the overseer of the poor having such pauper in charge, shall give notice thereof to the authorities of the proper county, as in other cases, and the expenses of taking care of such paupers, when received from such foreign county, shall be paid into the treasury of the proper township.

PRIOR LAWS. An act for the relief of the poor; in force March 5, 1819. Laws, 1819, p. 127.  
An act to amend an act entitled "An act for the relief of the poor," passed March 5, 1819; in force Feb. 6, 1821. Laws, 1821, p. 100.

An act for the maintenance of the poor; in force May 1, 1827. Laws, 1827, p. 309.

An act for the relief of the poor; in force March 1, 1833. Rev. Laws, 1833, p. 480.

An act to amend the act entitled "An act for the relief of the poor," approved March 1, 1833; in force Feb. 13, 1835. Laws, 1835, p. 66.

An act to amend an act entitled "An act for the relief of the poor," approved March 1, 1833; in force Feb. 21, 1839. Laws, 1839, p. 138.

An act in relation to paupers; in force Feb. 20, 1841. Laws, 1841, p. 190.

DECISIONS. One who has rendered aid to a person acknowledged as a pauper by the county commissioners, and at their request, need not prove that such person was entitled to aid, under the laws for the support of the poor, in order to recover for his services. *Vermillion County v. Knight*, 1 S. 97.

A contract for the support of a pauper, or for medical services for him, is not obligatory upon a

county, unless a majority of the overseers of the poor make such contract, and report it to the county commissioners court for approval. The court may then approve or disapprove, increase or diminish the sum agreed to be paid, and make appropriation therefor out of the county treasury. *Rouse v. County of Peoria*, 2 G. 99.

The board of supervisors, in those counties which have adopted township organization, are required to provide for the support of the paupers of the county. There is no distinction between town and county paupers. *Supervisors v. South Ottawa*, 13 Ill. 480.

Under the act incorporating the city of Alton, the obligation on the city to support its paupers is legal and binding, and may be enforced. Such corporation would not be liable to an individual for relief of a pauper, till an opportunity was given it to make the necessary provision; after notice, and neglect to provide, the corporation would be liable to individuals. *Seagraves v. City of Alton*, 13 Ill. 366.

A party contracted with Macoupin county, to feed and clothe every pauper sent him by the county court, for a specified sum each: *Held*, that he could recover no more than that sum for a lunatic pauper, although the trouble and expense might be greater; and that the term pauper, in the statute, includes lunatic paupers. *Macoupin County v. Edwards*, 15 Ill. 197.

## CHAPTER LXXXI.

## PENITENTIARY.

## SECTION

1. Governor to appoint inspectors of the penitentiary; to hold office for two years.
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6. If labor of convicts be not sufficient for their support, State to pay deficit.
7. Salary of warden.
8. Inspectors to meet once in each month; shall keep minutes.
9. One inspector to visit penitentiary once in each week.
10. Warden to report once in each month.
11. Police regulations and discipline.
12. Each convict to have a Bible.
13. List and particular description of each convict to be kept in a book.
14. Convicts may be paid for extra work.
15. Weekly record made, of behavior and health of convicts.
16. Compensation for extra work, how applied.
17. Inspectors not to have pecuniary interest.
18. Inspectors and warden to be sworn.
19. Each inspector to give bond.
20. Warden to give bond.
21. Spirituous liquors forbidden.
22. Inspectors may lease penitentiary.
23. Lease not to affect pardoning power.
24. No right to remove prisoners to another building.
25. Copies of lease, how disposed of.
26. Lessee, on becoming warden, to be sworn.
27. Lease not transferable except by written consent.
28. Proposals for leasing to be received.
29. Warden, unless he be the lessee, not to be interested, &c.
30. Governor may remove inspector for misconduct, and appoint a successor.
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33. If penitentiary be not leased, how expenses paid, and convicts employed.
34. Compensation of inspectors.
35. Convicts, how and where confined; convicts, how

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- and by whom conveyed to penitentiary; duty of sheriff.
36. Sheriff, conveying convicts, to employ guards; duty and compensation of sheriff.
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39. Flogging, when to be inflicted.
40. Penitentiary leased to Samuel A. Buckmaster, upon certain conditions.
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42. How inspectors to proceed; *proviso*, limiting expenditures.
43. Inspectors to contract for work.
44. Work to be estimated by three mechanics, if lessee of penitentiary contract.
45. If contract not taken by lessee of penitentiary, how to proceed.
46. Certain convicts to be separated from others.
47. Seats and tables to be provided for convicts.
48. Warden to keep a record.
49. Physician's report.
50. Money, clothing, &c., allowed to convicts.
51. Divine service to be performed every Sabbath.
52. Pay of chaplain.
53. Compensation to appraisers.
54. Powers of city of Alton.
55. Amount allowed for building warden's house.
56. Warden shall keep account of money paid, &c.; *proviso*.
57. Warden to cause convicts to attend Sabbath service.
58. Provision for books.
59. Saving clause.
60. When act shall be in force.
61. Inspectors to purchase lots; *proviso*.
62. And take and execute deed.
63. Inspectors empowered to sell lots; *proviso*.
64. To contract for building wall.
65. Price of same.
66. Appropriation for wall in front of prison.
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69. Governor to appoint chaplain.
70. His duty.

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71. When act shall be in force.
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78. Guards of penitentiary exempt from road labor.
79. When act to take effect.
80. Inspectors to make addition to penitentiary.
81. Also to purchase ground for cemetery; *proviso*.
82. Duty of auditor in the premises.
83. When act shall take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 405.]

(1.) SECTION I. 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.

(2.) SEC. II. The said inspectors, or a majority of them, shall have power, and it shall be their duty, from time to time, to examine and inquire 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 moneyed 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.

(3.) SEC. III. 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.

(4.) SEC. IV. The inspectors of the penitentiary are authorized and empowered to appoint a warden, and all inferior officers and agents in the said penitentiary, to superintend and manage the affairs of the same. The inspectors shall have power to revoke the appointment of the warden and inferior officers and agents, whenever, in their opinion, the interests of the State shall require it; but, unless so revoked, he shall hold his office for the term of two years, and until his successor is appointed and qualified.

(5.) SEC. V. For the purpose of preventing the escape of convicts, the warden, with the approbation of the inspectors, may employ three able-bodied and trusty men as prison guards, who shall alternately, under the direction of the warden, guard the prisoners, as well by night as by day; which number of prison guards may be increased by the inspectors, when the increased number of convicts shall render it necessary: *Provided*, That not more than three guards shall be employed, unless the number of convicts shall amount to forty.

(6.) SEC. VI. On failure to realize from the labor of the convicts confined in said penitentiary, a sum sufficient to defray the incidental expenses of the same and support the convicts, the inspectors shall have power to draw on the auditor for a sum, not exceeding fifteen hundred dollars per annum, to supply the deficiency.

(7.) SEC. VII. The warden shall receive a salary, at the rate of one

thousand dollars a year, payable quarterly out of any money in the treasury not otherwise appropriated; but if any convicts shall escape from said penitentiary during his continuance in office, a deduction of thirty dollars shall be made from his salary, for every convict so escaping.

(8.) SEC. VIII. The inspectors shall meet at the penitentiary on the first Monday of every month, at such hour as they shall appoint. They shall appoint one of their number to act as secretary, who shall enter in a book to be provided for the purpose, all orders, regulations and other transactions of the board.

(9.) SEC. IX. One of the inspectors, to be designated by the board, shall visit the penitentiary once a week; and each inspector may visit the penitentiary as often as he shall think necessary.

(10.) SEC. X. At every monthly meeting of the board of inspectors, the superintendent shall make a report of the receipts, expenses and condition of the penitentiary during the preceding month.

(11.) SEC. XI. The inspectors shall establish and maintain a rigid system of police in the penitentiary; and, so far as practicable, they shall prevent any conversation between the convicts.

(12.) SEC. XII. The inspectors are authorized to furnish, at the expense of the State, a copy of the Bible to each convict who is able and willing to read the same.

(13.) SEC. XIII. The warden is authorized, under the direction of the inspectors, to procure, at the expense of the State, a book or books, in which he shall keep a descriptive list of all the convicts, stating their age, place of birth, place and time of conviction, crime of which they were convicted, duration of sentence, time of reception into the penitentiary, trade, business or profession, former habits of life, whether married or unmarried, and such other particulars as the inspectors may direct.

(14.) SEC. XIV. The inspectors are authorized, if, in their opinion, the public interest will be promoted thereby, to cause a separate account to be opened by the warden with each convict, in which such convict shall be credited with all the extra work which he may perform, and charged for all the time he may lose by refusal to labor, or misconduct of any kind.

(15.) SEC. XV. At the close of each week, the warden shall make an entry in a book to be kept for that purpose, of the good or bad behavior of each convict during the week; also, of the state of such convict's health, and such other particulars as, in the opinion of the inspectors, it may be useful for them to know.

(16.) SEC. XVI. The inspectors are authorized, if they shall deem it expedient, to allow compensation to the convicts for work performed over and above the quantity usually required of workmen, such compensation to be applied, under the direction of the inspectors, in supplying such convicts with useful reading; to the support of their families, if they have any; or it may be placed to their credit, and paid to them when they are discharged from the penitentiary.

(17.) SEC. XVII. No inspector of the penitentiary shall become personally interested, either directly or indirectly, in any purchase, sale, lease or contract of any kind, to be entered into by the board of inspectors, on behalf of the State, with any person or persons whomsoever, under a penalty of two hundred dollars.

(18.) SEC. XVIII. Before entering upon the the duties of their respective offices, the inspectors and warden of the penitentiary shall severally take and subscribe an oath to support the constitution of the United States and of this State, and faithfully to perform the duties of their respective offices according to law and to the best of their ability. Such oaths may be administered by any judge, justice of the peace or notary public, of this State, and shall be transmitted by the inspectors to the secretary of State, and filed in his office.

(19.) SEC. XIX. Each of the inspectors of the penitentiary, before entering upon the duties of his office, shall execute a bond to the governor, for the use of the people of this State, in the penal sum of five thousand dollars, with sufficient sureties, to be approved by the judge of the second judicial circuit, with the condition that such inspector shall faithfully perform the duties of his office according to law; which bond shall be transmitted by the inspectors to the secretary of State, and filed in his office.

(20.) SEC. XX. The warden of the penitentiary, before entering upon the duties of his office, shall execute a bond to the governor, for the use of the people of this State, in the penal sum of ten thousand dollars, with sufficient sureties, approved by the judge of the second judicial circuit, conditioned that the said warden shall faithfully and truly perform the duties of said office according to law.

(21.) SEC. XXI. No spirituous liquors shall be given or furnished to any convict, unless prescribed by a physician.

(22.) SEC. XXII. The inspectors of the penitentiary are hereby authorized, if, in their opinion, the interests of the State will be promoted thereby, to lease the penitentiary and the labor of the convicts, for a term of years, not exceeding three, to some qualified and responsible person, who shall thenceforth, during the continuance of the lease, be the warden of the penitentiary, and shall perform all the duties required of that officer by law; such lessee being required to furnish all necessary food, clothing and bedding for the convicts; to hire all the necessary guards; and in all respects, to manage the affairs of the penitentiary in such a manner as best to promote the reformation, improvement and health of the convicts: *Provided*, That the penitentiary shall not be leased for a longer term than three years, nor upon any terms which will make the penitentiary a cost to the State.

(23.) SEC. XXIII. No contract shall be entered into by the inspectors with any lessee, which will restrain or affect the power of the executive to pardon any convict confined in the penitentiary, or to grant the lessee any remuneration in consequence of the exercise of the pardoning power.

(24.) SEC. XXIV. No contract which may be entered into by the inspectors with any lessee, shall be so construed as to interfere with the right of the State to remove the convicts to another building hereafter to be erected; but the right to make such removal is hereby reserved, and when such removal shall have been made, the lease herein provided for shall no longer attach to the present penitentiary buildings, but shall thenceforth attach and apply to such new penitentiary.

(25.) SEC. XXV. Triplicate copies of such lease shall be executed by the parties; one copy of which shall be kept by the lessee, one retained by the inspectors, and the other copy shall be transmitted by them to the secretary of State, and filed in his office.



(26.) SEC. XXVI. The person who may become warden of the penitentiary, by virtue of a lease as herein provided, shall be required to take an oath of office, and give bond as in other cases, but shall receive no salary or other compensation, except such as shall be stipulated in such lease.

(27.) SEC. XXVII. No lease entered into by the inspectors in pursuance of this chapter, shall be transferable by the lessee without the written assent of the inspectors.

(28.) SEC. XXVIII. Before executing any lease of the penitentiary, and of the labor of the convicts, the inspectors shall appoint a day on which they will receive written proposals for such lease; and they shall cause four weeks' notice to be given of the same, by advertisement in the newspapers published at Alton, and in the newspaper published by the State printer. In deciding upon the proposals received, the inspectors shall take into consideration the qualifications and ability of the persons offering the same.

(29.) SEC. XXIX. No warden of the penitentiary, unless he is also the lessee thereof, shall become personally interested, either directly or indirectly, in any purchase, sale or contract to be entered into by the board of inspectors on behalf of the State, with any person or persons whomsoever, under a penalty of two hundred dollars.

(30.) SEC. XXX. The governor shall have power to remove from office any inspector of the penitentiary for misconduct or long continued neglect of the duties of his office, and to appoint another person to fill the vacancy, until the end of the next succeeding session of the General Assembly.

(31.) SEC. XXXI. Whenever the inspectors shall lease the penitentiary, they shall make an inventory of all the tools and all the manufactured articles and raw materials belonging to the penitentiary, and fix upon them such prices as, in their judgment, they will readily sell for; a copy of which inventory shall be signed by the inspectors, and filed in the office of the auditor of public accounts.

(32.) SEC. XXXII. The lessee of the penitentiary may receive such property at said valuation, on a credit of one year, by securing the payment of the same. If he declines to receive it on these terms, the inspectors shall have power to dispose of such property on the best terms they can procure.

(33.) SEC. XXXIII. If the inspectors of the penitentiary shall fail to lease the penitentiary within a reasonable time, they shall be authorized to draw on the auditor of public accounts for a sum not exceeding three thousand dollars, payable out of any money in the treasury not otherwise appropriated; which sum shall be applied exclusively to the purchase of materials for making barrels and other articles, the manufacture of which, at the penitentiary, may be considered by the inspectors advantageous to the State.

(34.) SEC. XXXIV. 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.

(35.) SEC. XXXV. All persons sentenced to hard labor, or solitary imprisonment and hard labor, shall be imprisoned, restrained and employed

in and within the precincts of the penitentiary, located at the city of Alton, in the county of Madison; and the court before whom any such conviction may be had, is hereby authorized and empowered by its 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 the 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 such convicts into the custody of the warden or other officer, who may have charge of said penitentiary; and the said sheriff, or his deputies shall have all the power of sheriffs and deputies in all counties in this State, which they 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 may be had, to make out and deliver to the sheriff of the county, a copy of said conviction and judgment, and order thereon; and the said sheriff or deputy shall leave an attested copy thereof, with a copy of his return thereon, with the warden or other officer having the charge or custody of said penitentiary, and the sheriff shall make due return to the court of its said order.

(36.) SEC. XXXVI. It shall be the duty of the sheriff of the county where the conviction was had, to supply 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 traveled in going to the penitentiary with each convict, when taken separately, but when more than one convict shall be sentenced to the penitentiary at the same term of the court, twenty-five cents per mile shall be allowed for the second, and the same compensation for any greater number of convicts sentenced at the same term of the court, to be paid out of the State treasury, on the warrant of the auditor, which shall be issued in favor of such sheriff, on the presentation of the warden's certificate that such convict or convicts had been delivered into his custody by such sheriff; and which shall be in full compensation for all charges and expenses of himself and guards, in conveying such convict or convicts to the penitentiary.

(37.) SEC. XXXVII. It shall be the duty of the warden or officer having charge or custody of said penitentiary, to receive such persons as may be convicted, sentenced and ordered to be imprisoned in said penitentiary, and them safely keep at hard labor, or solitary confinement and hard labor, within the precincts of said penitentiary, pursuant to their sentence, until their time shall fully expire, or they be otherwise discharged by due course of law. The said warden or officer having charge or custody of said penitentiary and the convicts therein confined, shall not, under any circumstances whatever, permit or suffer any convict to leave the prison or yard connected therewith, for any purpose whatever, excepting in working in the stone quarry belonging to the State and connected with said prison, at such times as additions may be making to the prison buildings or walls connected therewith; in assisting in the conveyance of articles manufactured in the prison, to the landing in front of the penitentiary; and in the unloading of boats of

such articles and materials as may be intended for the use of the penitentiary, and in the conveyance of any such articles to the same: *Provided, however,* That in case of any accident happening to the prison, or the walls thereof, the inspectors may permit and direct the removal of the convicts confined therein, or any part of the same, to any other place of security, for such length of time as they may deem necessary, or until such repairs shall be made to said prison; and in the event of any contagious disease breaking out among the convicts in said prison, the inspectors may, if they deem it necessary, order and direct that such diseased convict or convicts be removed to some safe and secure place, where they shall receive such medical treatment and nursing as their circumstances may require; and as soon as their health will permit, and the safety and health of the other convicts will not be endangered thereby, said convicts shall be returned to their confinement in said prison, to serve out their time pursuant to their sentence.

(38.) SEC. XXXVIII. If at any time the warden or officer having charge of said penitentiary, and the convicts confined therein, shall violate any of the provisions of the foregoing section of this chapter, such officer shall, on conviction, be fined in a sum not less than five nor more than eight hundred dollars for each and every violation, and the judge of the second judicial circuit shall give this chapter in charge to the grand jury, at every term of the circuit court of Madison county.

(39.) SEC. XXXIX. The using of the lash in the infliction of punishment upon convicts, is hereby expressly forbidden, (unless sanctioned and ordered by the inspectors,) and it shall be their duty to examine into all disorderly conduct of the convicts, when requested by the warden, and when it shall appear that any convict has been disorderly, refractory or disobedient, they may order such corporal punishment as they may deem necessary to enforce obedience, not inconsistent with humanity.

An Act to Lease the Penitentiary.

[Approved March 1, 1845. Laws, 1845, p. 105. App. Rev. Stat. 1845, p. 582.]

(40.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the penitentiary of the State of Illinois, located at Alton, in the county of Madison, in said State, and the labor of the convicts now or hereafter to be confined therein, shall be and the same is hereby leased and granted to Samuel A. Buckmaster, upon the following terms and conditions, to wit:

First. The said lease herein authorized and granted, shall take effect and the term thereof commence from and after the tenth day of June, A. D. one thousand eight hundred and forty-five, and shall continue to the said S. A. Buckmaster, his executors, administrators and assigns, for a period of eight years from the commencement of the same, and until the tenth day of June, A. D. eighteen hundred and fifty three, unless sooner avoided, for reasons specified in this act.

Second. The said lessee shall pay, annually, into the treasury of the State, a bonus of five thousand and one hundred dollars, which said bonus shall be paid in gold, silver, auditor's warrants, or in other State indebtedness, at its current value at the time of paying the same; the first payment of five thousand and one hundred dollars to be made on the tenth day of June, A. D. eighteen hundred and forty-six; and a like sum of five thousand and

one hundred dollars, per annum, on the tenth day of June, of every year thereafter, during the continuance of said lease, and until the entire rent herein stipulated for and reserved shall have been paid: *Provided,* That the said bonus accruing for the last year of said term shall be paid in advance.

Third. The said lessee, within one year from the commencement of the term herein granted and authorized, shall apply the labor of one-fourth of the convicts confined in said penitentiary, to the manufacture of hempen articles; and within two years from the commencement of the said term, the said lessee shall divert and apply the labor of a majority of the said convicts to the said manufacture of hempen articles; and during the remainder of the said term, the labor of a major part of the convicts who may be from time to time confined in the said penitentiary, shall be applied entirely and exclusively to the manufacture of hempen articles, and to no other employment or purpose whatever.

Fourth. The said lessee, in addition to the bonus hereinbefore prescribed, shall pay the usual fees of the inspectors, shall furnish, at his own expense, the necessary guards, shall feed and clothe the convicts, and furnish all necessary beds and bedding for the cells, and all necessary bills of physicians, and shall save the State harmless from all expense by reason of any of the items specified in this article.

Fifth. The said lessee shall enter into bond, conditioned to abide by and comply with all the provisions of this act, so far as they shall apply to the duties to be performed by said lessee; which bond shall be made to the people of the State of Illinois, in the penal sum of twenty thousand dollars, with Washington Libby, Robert Ferguson, Lansing T. Wells, Lewis J. Clanson, B. C. Webster & Co., James L. Lamb, Wm. Tyler Brown, or such of them as shall be approved and deemed sufficient by the governor, as his securities; which said bond shall be executed within ten days after the passage of this act, and shall be filed with the secretary of State, and shall be renewable every two years, or oftener, if, in the opinion of the inspectors, the securities become insufficient to secure the interests of the State, with such securities as the governor for the time being shall approve.

Sixth. The said lessee, his executors, administrators or assigns, shall be bound by all the provisions of this act; and if at any time for a period of thirty days after the same shall become due and payable, the yearly bonus, as herein provided, shall remain unpaid, or the said lessee shall fail to comply with any of its substantial provisions, the lease hereby granted shall therefor become forfeited: *Provided,* That the said lessee and his securities shall not be released from the amount of any bonus due at the time that the said penitentiary shall be resumed by the State, by reason of said forfeiture, nor from any loss that may accrue to the State by reason of a less bonus being obtained upon a re-letting of the same.

Seventh. The said S. A. Buckmaster, by virtue of this act, shall be warden of the said penitentiary, and shall take an oath, possess all the right, and perform all the duties of warden of the said penitentiary, as is now provided by law; and all laws not coming within the purview of this act, respecting the power of the inspectors and the police and management of the said penitentiary, and such other laws, not inconsistent with the terms of this act, as the legislature may, from time to time, prescribe for the welfare and reformation of the said convicts, shall be in force and binding upon the said warden and lessee.

Eighth. If the said lessee shall be called upon by the State, during the term of the said lease, to construct a warden's house, the said lessee shall be and hereby is bound to construct the same complete, according to the original plan, for the sum of three thousand dollars, to be deducted from the said sum of five thousand one hundred dollars, accruing for the year when such warden's house shall be built.

Ninth. All laws coming within the purview of this act, and all laws that authorize the inspectors of the penitentiary to lease the same, and appropriate the proceeds of said lease to any purpose, are hereby repealed. This act shall be in force from and after its passage.

An Act concerning the Penitentiary.

[Approved Feb. 28, 1847. Laws, 1847, p. 64.]

(41.) SEC. I. *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 of the penitentiary of this State, to proceed, as soon as practicable, to the election [erection] and completion of ninety-six additional cells in said penitentiary, of the same dimensions and structure of those already in use, and complete the fourteen cells now in an unfinished state, except that they make such alterations as to the ventilation and admission of light therein as they may deem necessary, consistent with the safe-keeping of the prisoners. They shall also, in the same manner, cause to be erected an additional story to the house already occupied by the warden as a dwelling house, which, when suitably completed, shall be used and appropriated for a hospital for said prisoners; also a warden's house, in the niche at the south-west angle of the area of the out wall of said penitentiary, to be three stories high, and about forty-four feet by thirty-six feet in dimensions, to be built of either brick or stone, as said inspectors may determine; also a cooper shop, one hundred feet in length by fifty in width, to be erected at a suitable distance from the outer walls, and of such materials as said inspectors shall deem most suitable; also a cistern, of suitable dimensions to afford a bathing place for said convicts, and the supply of water for the extinguishment of fires, and other necessary purposes, about said prison; also a kitchen, of suitable size and structure, adjoining the dining-room, for the use of said convicts; also a smith shop and wagon maker shop, of such dimensions and materials as are suitable therefor. Said inspectors shall also cause to be erected and kept open a common sewer, for carrying off the water and filth within the said prison, unless in their judgment they can provide some other convenient mode of accomplishing said object, in which case they may adopt such mode in lieu of said sewer. They shall also cause the whole of the area of said prison inclosing the same, to be suitably macadamized or paved, as they shall deem best. The said inspectors shall also have the authority to cause such supports and additions as they may deem most advisable for the preservation and security of the walls around said prison, to be erected.

(42.) SEC. II. The said inspectors shall proceed in the execution of said works, in such a manner as to have those first completed which may be most needed, keeping in view the necessity of having the hospital in a state of readiness for the approaching sickly season; and also the accrual of the bonus due and to become due, by the lessee of said prison to the

State, out of which the expenses for the improvements contemplated in the preceding section are to be paid: *Provided*, That the expenditures herein authorized shall, in no event, exceed the bonus due and to become due to the State from the present lessee.

(43.) SEC. III. The said inspectors shall contract, on the best terms they can, for the erection and completion of the works set forth in the first section of this act, and in so doing shall require the contract to be reduced to writing, in which shall be stated particularly the time and manner in which the same shall be completed, and that it shall be finished in a substantial and workmanlike manner; and in case the work should be let to any other person than the lessee of said penitentiary, bond and security shall be required for its faithful performance, according to the terms of the contract.

(44.) SEC. IV. The lessee of said penitentiary may also contract for said work, and in case it is adjudged to him by said inspectors, the work shall be estimated by three mechanics, one to be chosen by said lessee, the other by said inspectors, and they two shall choose a third, by whom the value of the work shall be estimated under oath; and the said inspectors shall have the right to elect whether they will pay for said work according to the contract with said lessee, or the estimation thereof; and the lessee shall have the right to employ any of the convicts in said prison in the construction of said work; and the said inspectors may give to said lessee, certificates stating the value of the work done by said lessee, according to their judgment, as the said work progresses, which he may file with the treasurer of State, which shall be considered as so much money paid by said lessee into the State treasury; but which shall not be deemed final and conclusive between the parties, but shall abide the election of the said inspectors as to the choice of payment.

(45.) SEC. V. Should the contract authorized to be made by this act not be taken by the lessee, the persons who may do the work, shall receive from the inspectors, certificates of the amount of work done from time to time, and which certificates shall be paid by the lessee out of the bonus due to the State, and which certificates when returned to the treasurer, shall be in full for the bonus due to the State, so far as said certificates may go.

(46.) SEC. VI. The said warden shall not place convicts for slight offenses in the same cell with those guilty of enormous crimes.

(47.) SEC. VII. The convicts in said penitentiary shall be provided with comfortable seats at tables ranged crosswise of the said dining room, for their accommodation while at meals and during divine service.

(48.) SEC. VIII. The said warden shall be required to have and preserve a record of the convicts received hereafter, their names and description, the counties from whence sent, the crimes for which they were convicted, the term of time for which they were sentenced, the country and State in which they were born, and the nature and degree of their education, together with such other information as he shall deem necessary, and he shall report the same to each session of the legislature; he shall also keep a journal of the number of violations of the regulations of said prison, and the nature and extent of the punishment therefor, an abstract of which shall be reported at the same time.

(49.) SEC. IX. The physician in attendance upon said prison shall be required to report to the warden, who shall report to the legislature at each

session, a list of the names and ages of those who may die, with the nature and description of the disease, together with such other information as he may deem important.

(50.) SEC. X. The said warden, under the direction of the inspectors, shall allow to each person, upon the expiration of his term of service, either by pardon or lapse of time, such sum of money as may be deemed suited to his wants, and also a comfortable suit of citizen's clothes suited to his condition, if the said person have not such clothes of his own.

(51.) SEC. XI. The said inspectors shall procure some suitable person to perform divine service every Sabbath day, at least once, for the benefit of said convicts, for which they shall allow the sum of five dollars per week; and [in] case of sickness of any convict, upon his request to that effect, any clergyman or other religious person, of any denomination designated by him, shall be procured, if possible, to administer such spiritual consolation as such convict may need.

(52.) SEC. XII. The inspector shall give a certificate to said person officiating as chaplain of said prison, stating the amount due to him, which shall be paid by the warden and deducted out of his bonus.

(53.) SEC. XIII. The inspectors shall allow to the persons selected to appraise the work done pursuant to the provisions of this act, such compensation as they may deem suitable, which shall be paid out of any funds belonging to said penitentiary, or by the said warden, and their receipt shall be allowed him as credit in his settlement with the State.

(54.) SEC. XIV. The city of Alton shall not have any control over the penitentiary landing except for police regulations and wharfage purposes, and for keeping the same in repair, reserving to the State and the lessee of the penitentiary all rights belonging to them therein.

(55.) SEC. XV. The warden of the penitentiary shall not be allowed, in any event, more than three thousand dollars for building the warden's house, in conformity with the provisions of the eighth section of an act entitled "An act to lease the penitentiary," approved March 1st, 1845.

(56.) SEC. XVI. The warden of the penitentiary shall keep an exact account of the money paid and the value of clothes furnished to discharged convicts, under the provisions of this act, and shall be allowed to deduct the same out of [the] bonus due by him to the State: *Provided*, That the inspectors shall first pass upon the correctness of said account, and allow the same.

(57.) SEC. XVII. The warden shall see that said convicts are brought out every Sabbath day to attend divine service, as prescribed in this act, except in cases of probable insurrection or other imminent danger.

(58.) SEC. XVIII. That fifty dollars a year, to be paid out of the bonus, be appropriated for the purchase of such books as the inspectors may designate for the use of said convicts, which said money is also to be expended by the inspectors, and that all books donated to the use of the convicts, shall be applied and kept by the warden for the purpose for which they were donated, and for no other purpose whatever.

(59.) SEC. XIX. No forfeiture shall accrue against said lessee by reason of his not employing any greater number of hands in the manufacture of hempen articles than are now employed for that purpose.

(60.) SEC. XX. This act shall be in force from and after its passage.

An Act to provide for Improvements to the Penitentiary.

[Approved Feb. 3, 1849 Laws, 1849, p. 101.]

(61.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That it shall be the duty of inspectors of the penitentiary in this State to proceed, as soon as practicable, to purchase, in the name of the people of the State, a certain tract of land, consisting of five lots in Alton, lying on the north side of Wall street and on the west side of William street, being originally a portion of the penitentiary grounds, being numbered lots forty-five, forty-six, forty-seven, forty-eight and forty-nine, as per plat of Alton: *Provided*, Said inspectors shall not pay over the sum of two thousand two hundred dollars for said lots of land.

(62.) SEC. II. The said inspectors shall take and have properly executed and recorded a deed in favor of the State of Illinois, in fee simple, for said lots when purchased as aforesaid.

(63.) SEC. III. Said inspectors shall have power and are hereby authorized, to sell and dispose of, to the highest and best bidder, for cash or on credit, as they deem proper, the gore or tract of land lying on the south side of Second or Short street, being a part of the wharfage ground belonging to said penitentiary: *Provided*, The same shall not be sold for less than the value set upon it by the said inspectors. The governor is hereby authorized to make out a patent to the purchaser or purchasers thereof, upon being satisfied from the certificate of the said inspectors, or a majority thereof, of the payment of the money as agreed upon.

(64.) SEC. IV. *Be it further enacted*, That the inspectors of the prison be authorized, and the same are hereby authorized, to contract with the present warden for the erection of a wall, commencing at the north-east corner of the penitentiary yard, running north one hundred and sixty-three feet, thence west three hundred and thirty feet, thence south one hundred and sixty-three feet, to the north-west corner of aforesaid yard; the said wall to be thirty feet high and three and a half feet thick on an average, lattering from bottom to the top, the foundation of which shall be sunk three feet below the level of the grade of [the] prison yard, and securely bound together by regular bands running through said wall, and thoroughly grouted, so as to make it permanent and secure. The said wall shall be examined by three competent mechanics, whose decision shall be in accordance with this act; and if said appraisers shall decide that said wall is not in accordance with this act, then they shall state the amount which shall be deducted from the price as allowed by this act.

(65.) SEC. V. *Be it further enacted*, That the inspectors be and the same are hereby authorized to pay for the above-named wall, the sum of one dollar and twenty-five cents for every perch, to be paid out of rent of prison; and if said appraisers shall estimate the work below the sum named in this act, then such amount of appraisement shall be allowed, and no more.

(66.) SEC. VI. *Be it further enacted*, That the inspectors be and the same are hereby authorized to pay the sum of one hundred and fifty dollars to the warden of the prison, for building a wall in front of prison, three hundred and thirty feet long, five feet high and two thick, which shall be a good, firm wall; the same to be paid out of rents of prison.

(67.) SEC. VII. *Be it further enacted*, That the inspectors be and are hereby authorized to extend the lease, until the improvements contemplated in this act shall be paid for: *Provided, nevertheless*, That the time of lease shall not extend over one year beyond the present lease.

(68.) SEC. VIII. *Be it further enacted*, That should the lease be extended the above-named one year, the inspectors shall be and are hereby authorized to pay the balance in their hands to the contingent expenses, as the condition of the prison may require.

(69.) SEC. IX. *Be it further enacted*, That the governor be and hereby is authorized to appoint some suitable person as chaplain, who shall be paid from rents of said prison, as is now provided for by law.

(70.) SEC. X. *Be it further enacted*, That the chaplain shall not pass any letters, or other communication, to or from the prison, without the advice or consent of the warden of the prison.

(71.) SEC. XI. *Be it further enacted*, That this act be in full force and effect from and after its passage.

An Act to amend an Act entitled "An Act to Lease the Penitentiary," approved March 1st, 1845.

[Approved Jan. 31, 1851. Laws, 1851, p. 13.]

(72.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the lease granted to Samuel A. Buckmaster, by the legislature of this State, by an act entitled "An act to lease the penitentiary," approved March 1st, 1845, be and the same is hereby extended for and during the period of five years, from and after the expiration of the present lease, granted by the said act to which this is an amendment.

(73.) SEC. II. The said Samuel A. Buckmaster shall pay, annually, the sum of five thousand and one hundred dollars bonus, or rent, for said penitentiary, as is provided by section two of the act to which this is an amendment.

(74.) SEC. III. The said Samuel A. Buckmaster shall enter into bond, conditioned to comply with the provisions of this act, and the act to which this is an amendment; which bond shall be made to the people of the State of Illinois, in the penal sum of twenty thousand dollars, with good and sufficient securities, to be approved by the governor of this State; which bond shall be executed within thirty days after the passage of this act, and shall be renewable every two years, or oftener, if, in the opinion of the inspectors of the penitentiary, the securities become insufficient.

(75.) SEC. IV. This act to take effect and be in force from and after its passage.

An Act in relation to the Penitentiary.

[Approved Feb. 10, 1851. Laws, 1851, p. 25.]

(76.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the inspectors of the penitentiary be and they are hereby authorized to settle with the lessee of the penitentiary, for the improvements made by him, and which they, in their reports to the legislature, recommend to be paid for, and that they issue their certificate in favor of said lessee for the amount so allowed; which said certificate shall be received by the treasurer of this State as so much money paid by said

lessee, and the said treasurer shall give his receipt for the same, to apply on any bonus or rent due or to become due from said lessee to the State of Illinois.

(77.) SEC. II. The inspectors of the penitentiary are hereby authorized to make such improvements in the penitentiary as are recommended by their reports, or such as they may deem necessary, from time to time, to be made, or for the safe-keeping or successful working of the convicts: *Provided, however*, That they shall keep in view the bonus due or to become due from time to time, and that in no case shall they be allowed to draw on the treasury for making such improvements.

(78.) SEC. III. The guards of the penitentiary are by this [act] declared exempt from doing road labor, during their service as such guards.

(79.) SEC. IV. This act to take effect from and after its passage.

See 5th section of an act amendatory of, and supplemental to, an act therein named; approved Feb. 12, 1853. Laws, 1853, p. 177.

An Act in relation to the Penitentiary.

[Approved Feb. 14, 1855. Laws, 1855, p. 146.]

(80.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the inspectors of the penitentiary be and they are hereby authorized to contract, without delay, for the erection and completion of one hundred and fifty cells, in addition to said penitentiary, to be built of cut stone, and finished in every particular in the same manner as those last built, and to cause the same to be covered with a good tin roof, thoroughly painted; and also, to cause the old roof to be taken off of the main prison building and warden's house, and cause them also to be covered with a good tin roof, and thoroughly painted.

(81.) SEC. II. The inspectors of the penitentiary are also authorized to purchase a lot of ground, in some convenient place, without the limits of the city of Alton, not to exceed two acres, to be used by the penitentiary as a burial place for the convicts that die: *Provided*, That said ground shall not cost to exceed three hundred dollars.

(82.) SEC. III. The auditor of public accounts is hereby directed to draw his warrant on the treasurer, payable to the order of the inspectors of the penitentiary, for such sum or sums, and in such instalments, as the said inspectors may order, in payment for the improvements provided for in sections one and two of this act, which, when completed, shall not cost to exceed the sum of thirty-five thousand dollars, payable out of any money in the treasury not otherwise appropriated by law.

(83.) SEC. IV. This act shall take effect and be in force from and after its passage.

PRIOR LAWS. An act concerning the Saline reserves, a penitentiary, and the improvement of certain navigable streams; approved Feb. 15, 1827. Rev. Laws, 1827, p. 353.

An act to amend an act entitled "An act relative to criminal jurisprudence," approved Jan. 26, 1827, and to provide for the regulation and government of the penitentiary; approved Feb. 15, 1831. Rev. Laws, 1833, p. 474.

An act to regulate the penitentiary; approved Feb. 19, 1833. Rev. Laws, 1833, p. 477.

An act to amend an act entitled "An act to regulate the penitentiary," approved Feb. 19, 1833; approved Feb. 9, 1835. Laws, 1835, p. 52.

An act to regulate the salary of the warden of the penitentiary; approved Jan. 16, 1836. Laws, 1836, p. 238.

An act to amend the several acts in relation to the penitentiary; approved Jan. 18, 1836. Laws, 1836, p. 250.

An act in relation to the penitentiary; approved July 21, 1837. Laws, 1837, (Special Session,) p. 47.

An act making an appropriation for the penitentiary; approved Jan. 19, 1839. Laws, 1839, p. 46.

An act for the relief of the late warden of the penitentiary; approved Jan. 18, 1839. Laws, 1839, p. 46.

An act in relation to the penitentiary; approved March 2, 1839. Laws, 1839, p. 278.

An act to provide for the regulation of the penitentiary; approved March 4, 1843. Laws, 1843, p. 180.

An act in relation to the penitentiary; approved March 2, 1843. Laws, 1843, p. 181.

## CHAPTER LXXXII.

### PETITIONS.

#### SECTION

1. Notice to be published, of all petitions to the General Assembly, which affect the rights of counties or persons.
2. No county to be divided, or county seat removed, unless a majority of voters petition.
3. State roads, notice to be given of intended petition to alter or create.

#### SECTION

4. How petition to be signed and proved; and by whom certified.
5. People of county in which road is to be made, to petition therefor.
6. Certificate of regular notice having been given, to be made by the county commissioners' clerk.

[Approved March 3, 1845. Rev. Stat. 1845, p. 411.]

SECTION I. No petition or petitions shall be finally acted upon by the General Assembly, 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 courthouse door in said county, at least two months before such petition or petitions shall be presented to the General Assembly.

SEC. II. 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.

SEC. III. When any of the citizens of this State shall deem the establishment or relocation of any State road to be of public utility, they, or some two of them, shall give four weeks' public notice, by at least four written notices posted up in the most public place in each county in which the proposed location, change or alteration is about to take place, that they will petition the next session of the legislature to establish or relocate such road; in which notice a particular description of the road shall be set forth.

SEC. IV. At least fifty householders and citizens of the county or counties through which said road shall pass, are necessary to sign the petition; and before the petition shall be presented to the legislature, the persons

giving said notice, or other credible persons, shall make affidavit of such advertisements having been made as required by the preceding section, before the clerk of the court of any county through which the road may pass; a certificate of which shall be given by the clerk and accompany the petition.

SEC. V. No State road shall be established or relocated, except upon the petition of a portion of the citizens of the county in which the same is to be established or relocated.

SEC. VI. The clerks of the county commissioners' courts shall, severally, issue the certificates aforesaid, upon oath being made by any credible person that said notices were given according to the provisions of section three.

PRIOR LAWS. An act requiring persons who petition the General Assembly to give certain notices before such petitions are finally acted upon; approved Dec. 26, 1826. Gale's Statutes, p. 522; Rev. Laws, 1833, p. 479.

An act to define the manner of proceeding in petitioning the General Assembly, for locating or altering State roads; approved Feb. 27, 1839. Laws, 1839, p. 167.

DECISIONS. The legislature cannot abolish, change or remodel counties, or remove the county seats, without submitting the act to the vote of the inhabitants affected. *People v. Marshall*, 12 Ill. 391.

A law for the division or alteration of a county, conditioned to take effect upon a vote of the majority of the voters, is constitutional. 5 G. 1.

## CHAPTER LXXXIII.

### PRACTICE.

#### SECTION

1. Summons, when to be first process; how issued, sealed, tested, dated; to whom directed; when returnable.
2. Suit to be brought in the county in which a party, either plaintiff or defendant, resides, or where demand is payable; judgment not to go against defendants not resident of the county, unless against those who are.
3. Service of process, return, fees, &c.
4. In suits against corporations, service how made: not to affect suits against counties, or on special statutes.
5. When process not served in time, defendant entitled to continuance to succeeding term.
6. If first summons be not served, *et. al.* &c., may successively issue; when part of defendants are served, how plaintiff to proceed; when defendants not served, made parties by *set. fa.*; rights of such defendant on hearing of *set. fa.*
7. Officer failing to make return, may be ruled to do so, and refusing, attached.
8. Declaration, &c., to be filed ten days before court, or defendant entitled to continuance.
9. Clerk to keep docket; order in which entries shall be made: when subpoenas returnable.
10. Clerk fined for refusing to issue subpoenas.
11. When parties agree, law and fact may be tried by the court.
12. Power of court as to production of writings, &c.; defendant to file bill of particulars with plea.
13. Time to plead allowed: judgment by default, when

#### SECTION

- taken; causes to be disposed of in their order on the docket; continuances for want of testimony, when and on what conditions granted.
14. Defendant may plead several pleas; may give notice of set-off; replications and rejoinders may be several, by special permission of the court; plea denying signature, to be verified by affidavit; executor, &c., may swear as to his belief.
15. When damages may be assessed by clerk; when by jury.
16. Default, court may set aside, on conditions.
17. Affidavits read, to be filed.
18. In actions on penal bonds, judgment to be for penalty and to stand security for damages to be assessed; as to damages assessed after first suit.
19. In action upon contract, defendant may set off counter demands.
20. Challenge of jurors in civil action; jury may take papers on retiring.
21. Exceptions to decision, how taken, sealed and made part of the record.
22. Exceptions, in what cases allowable.
23. Additional cases in which exceptions are permitted.
24. Verdict, how pronounced; form thereof; entry; party desiring to except, &c., to give notice before entry of final judgment; not more than two trials granted; irregularity, verdict not set aside for, after close of same term.
25. Verdict good if one count be good; faulty counts to be disregarded.



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26. In attachment cases, declaration to be filed as in other cases.
  27. Debtor may confess judgment; same to operate as a release of errors.
  28. Courts to instruct jury as to law only.
  29. Non-suit must be taken before jury retire.
  30. Papers read, though not under seal, may be taken by jury.
  31. Interpreters.
  32. If judgment be arrested, how cause to proceed.
  33. Form of commencing suit by petition.
  34. Form of noting assignments.
  35. Petition and summons, how served.
  36. Effect of petition: pleadings, trial and judgment.
  37. Bail in such case: form of affidavit to hold to bail.
  38. Costs, plaintiff not to recover after tender.
  39. Declaration not necessary on *sci. fa.*
  40. Fee books and fee bills to be made, and how.
  41. Incorrect fee bill void: if amount be paid, it may be recovered back; witnesses' names stated.
  42. Costs, &c., what part of inserted in docket book.
  43. Clerk of circuit court to keep judgment docket; entries therein: penalty, if clerk neglect duty.
  44. Officer neglecting to pay over money collected, how dealt with: punishment for contem-*pt*, &c.
  45. Clerk to make entry of officer's return.
  46. Stay of proceedings, how procured out of term.
  47. Appeals to supreme court, how taken: when to be prayed for: bond to be given: bond, when may be put in suit.

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48. Record to be filed in supreme court; within what time.
  49. Supreme court may give final judgment, and remand cause or issue execution.
  50. On dismissal of appeal or writ of error, duty of clerk of the court below.
  51. One party, plaintiff or defendant, may appeal.
  52. Partial reversal.
  53. Time limited in which writ of error may be brought.
  54. *Supersedeas*, when writ of error to operate as; judgment.
  55. Equal division of supreme court, an affirmation.
  56. A scrawl deemed a seal.
  57. When appeal dismissed for want of prosecution, damages may be awarded for the delay.
  58. If appellee from judgment of justice fail to prosecute, he shall pay damages for the delay.
  59. Assignment of note, &c., need not be proved, unless put in issue on oath.
  60. Instructions of judge of circuit court to be in writing.
  61. Duty of judge on instructions asked.
  62. Jury to return instructions.
  63. Certain acts repealed; others revived.
  64. What defendant may plead, in certain actions on replevin bonds.
  65. When act shall be in force.
  66. In actions of replevin and distress for rent, when defendant has left the State, how court to proceed.

[Approved March 3, 1845. Rev. Stat. 1845, p. 412.]

(1.) SECTION I. 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 clerk of such court, dated on the day it shall be issued, and signed with his name; and shall be directed to the sheriff, (or if he be interested in the suit,) to the coroner of the county; and shall be made returnable on the first day of the next circuit court in which the action may be commenced.

(2.) SEC. II. 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. And 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.

(3.) SEC. III. 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 indorsement 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.

(4.) SEC. IV. In all suits instituted against any incorporated company in this State, a summons returned executed on the president thereof, or served by leaving a copy of the summons with the principal clerk, cashier or secretary of such company, at his office, within such time and under such regulations as are herein provided for the service of such process in suits against natural persons, shall be deemed a sufficient service whereon to ground subsequent proceedings and judgment against such company, in any court of this State having jurisdiction: *Provided*, That the provisions of this section shall not be construed to interfere with any mode of suing counties, or other corporations specially provided in any statute law of this State.

(5.) SEC. V. 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.

(6.) SEC. VI. 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 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 show 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.

(7.) SEC. VII. 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 show 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 shown 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.

(8.) SEC. VIII. 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.

(9.) SEC. IX. 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.

(10.) SEC. X. 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.

(11.) SEC. XI. In all cases pending in any circuit court in this State, if both the parties shall agree, both matters of law and fact may be tried by the court.

(12.) SEC. XII. The several circuit courts shall have power, in any action pending before them, upon motion, and good and sufficient cause shown, and reasonable notice thereof given, to require the parties, or either of them, to produce books and 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 to the jury.

(13.) SEC. XIII. 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, showing 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.

(14.) SEC. XIV. The defendant may plead as many matters of fact in several pleas as he may deem necessary for his defense, 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 defense 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; and whenever it shall become necessary for the attainment of justice, to allow a plaintiff to reply several matters to the plea of a defendant, or to allow a defendant to rejoin several matters to the replication of a plaintiff, the court in which the action shall be pending, on the special application of the party desiring so to reply or rejoin, may allow the same to be done. But no person 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 defense or set-off, unless the person so denying the same, shall, if defendant, verify his plea by affidavit, and if plaintiff, 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.

(15.) SEC. XV. In all cases where interlocutory judgment shall be given in any action brought upon a penal bond, or upon any instrument of writing for the payment of money only, and the damages rest in computation, the court may refer it to the clerk to assess and report the damages, and may enter the final judgment therefor, without a writ of inquiry, and without empanneling a jury for that purpose; and in all other actions, when judgment shall go by default, the plaintiff may have his damages assessed by the jury in court.

(16.) SEC. XVI. 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.

(17.) SEC. XVII. All affidavits read in court during the progress of any cause, and relating thereto, shall be filed and preserved by the clerk.

(18.) SEC. XVIII. 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 indorse thereon the amount of the damages assessed by the jury, with the costs of suit, and the sheriff or coronor shall only collect the amount so indorsed: *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.

(19.) SEC. XIX. 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 fourteenth section of this chapter, 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 defense, and execution shall be issued on such judgment, as in other cases.

(20.) SEC. XX. In all civil actions, each party shall be entitled to a challenge of three jurors, without showing cause for such challenge; and when the jury retire to consider their verdict, they shall be permitted to take any papers that may have been used as evidence on the trial.

(21.) SEC. XXI. 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.

(22.) SEC. XXII. 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.

(23.) SEC. XXIII. 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 be allowed; and the party excepting may assign for error any opinion so excepted to.

(24.) SEC. XXIV. 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 shown for the same, during the sitting of the court at the term such judgment or verdict shall be given.

(25.) SEC. XXV. 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. But if one or more counts be faulty, the defendant may apply to the court to instruct the jury to disregard such faulty counts.

(26.) SEC. XXVI. 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.

(27.) SEC. XXVII. 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.

(28.) SEC. XXVIII. The circuit courts in charging the jury, shall only instruct as to the law of the case.

(29.) SEC. XXIX. Every person desirous of suffering a nonsuit on trial, shall be barred therefrom unless he do so before the jury retire from the bar.

(30.) SEC. XXX. Papers read in evidence, though not under seal, may be carried from the bar by the jury.

(31.) SEC. XXXI. Interpreters may be sworn truly to interpret when necessary.

(32.) SEC. XXXII. When 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.

(33.) SEC. XXXIII. Any person holding a bond or note for the direct payment of property or money, desiring to put the same in suit, may elect to do so, by filing it with the clerk of any circuit court having jurisdiction thereof, together with a petition purporting as follows:

"F. Circuit, }  
                  }    sect. . . . 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."

(34.) SEC. XXXIV. If the plaintiff shall hold the bond or note as indorsee, then after reciting the bond or note, say:

"On which are the following assignments, (recite the assignments,) whereby the plaintiff hath become the proprietor thereof, of which the defendant hath had due notice."

(35.) SEC. XXXV. A copy of the petition shall be sent out, with a summons annexed thereto, requiring the defendant or defendants to appear and answer the said demand, 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.

(36.) SEC. XXXVI. 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 by default, and final judgment as in other cases.

(37.) SEC. XXXVII. When a petition shall have been filed according to the provisions of sections thirty-three and thirty-four of this chapter, 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 hath 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.

A. B.  
 Sworn to, and subscribed before me, at my office, this \_\_\_\_\_ day of \_\_\_\_\_, 18—. E. F., Clerk."

Which affidavit may be made before the clerk of the proper county, or before any justice of the peace in this State.

(38.) SEC. XXXVIII. In all cases when a tender shall be made and full payment 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.

(39.) SEC. XXXIX. It shall not be necessary to file a declaration in any *scire facias* to revive a judgment, or foreclose a mortgage, in any court of record in this State.

(40.) SEC. XL. 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.

(41.) SEC. XLI. 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.

(42.) SEC. XLII. 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.

(43.) SEC. XLIII. The clerks of the several circuit courts shall provide

and keep in their respective offices, well-bound books 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, showing 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.

(44.) SEC. XLIV. 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.

(45.) SEC. XLV. 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 forty-third section of this chapter.

(46.) SEC. XLVI. 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.

(47.) SEC. XLVII. 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: *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 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.

(48.) SEC. XLVIII. 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 shown.

(49.) SEC. XLIX. 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.

(50.) SEC. L. 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 the order of the supreme court dismissing said appeal or writ of error, or affirming said judgment, 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.

(51.) SEC. LI. 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 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.

(52.) SEC. LII. The supreme court, in case of a partial reversal, shall give such judgment or decree as the inferior court ought to have given; or remand the cause to the inferior court for further proceedings, as the case may require.

(53.) SEC. LIII. A writ of error shall not be brought after the expira-

tion 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.

(54.) SEC. LIV. 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 indorse 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 cases of appeals.

(55.) SEC. LV. 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.

(56.) SEC. LVI. 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.

(57.) SEC. LVII. In all cases of appeals to the supreme court, where the appellant shall fail to prosecute the appeal, the supreme court shall, upon dismissing the appeal, enter judgment against the appellant, for not less than five nor more than ten per cent. upon the amount of the judgment, for damages, in consequence of the delay occasioned by such appeal.

(58.) SEC. LVIII. In cases of appeals to the circuit court, from judgments of justices of the peace, the appellee shall be entitled to judgment, not exceeding ten per cent. damages upon the amount of the judgment, if the appeal is dismissed for want of prosecution, or if the court shall be satisfied that the appeal was prosecuted for purposes of delay.

(59.) SEC. LIX. In actions upon bonds, notes and all other writings made assignable by law, in the name of the assignee, the plaintiff shall not be held bound to prove the assignments or the signature of any assignor unless the fact of assignment be put in issue by plea, verified by the affidavit of the defendant or some credible person, stating that he verily believes the facts stated in the plea are true.

An Act to amend the Practice Act.  
[Approved Feb. 25, 1947. Laws, 1947, p. 63.]

(60.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter no judge of the circuit court shall instruct the petit jury, in any case, civil or criminal, unless such instructions are reduced to writing.

(61.) SEC. II. And when instructions are asked which the judge cannot give, he shall, on the margin thereof, write the word "refused;" and such as he approves he shall write, on the margin thereof, the word "given;" and he shall in no case, after instructions are given, orally qualify, modify, or in any manner explain the same to the jury.

(62.) SEC. III. And such instructions, so given, shall be taken by the jury in their retirement, and returned by them, with their verdict, into court.

(63.) SEC. IV. That an act to regulate the salaries of justices of the

supreme court hereafter to be elected, approved February the twelfth, eighteen hundred and forty-five, and so much of the forty-first chapter of the Revised Statutes as provides that the justices of the supreme court elected or appointed subsequently to February the twelfth, one thousand eight hundred and forty-five, shall each receive one thousand dollars, approved March the third, one thousand eight hundred and forty-five, be and the same are hereby repealed; and the twenty-sixth section of chapter twenty-nine of the Revised Statutes, approved March the third, one thousand eight hundred and forty-five, be, and the same is hereby, revived, from and after the first of January, one thousand eight hundred and forty-seven.

An Act concerning Practice.

[Approved March 1, 1847. Laws, 1847, p. 62.]

(64.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all actions upon replevin bonds, where the merits of the case have not been determined in the trial of the action of replevin in which the bond was given, the defendant may plead the above facts, and also his or her title to the property in dispute in said action of replevin.

(65.) SEC. II. This act shall be in force from and after its passage.

An Act amendatory of the Practice Act.

[Approved Feb. 10, 1849. Laws, 1849, p. 102.]

(66.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all actions of replevin, and in all actions which have been or may be commenced to perfect a distress for rent in any of the courts of this State, when the defendant or defendants shall have left the State, or cannot be found, they shall have further notice, by advertisement, as provided in section eight, of chapter twenty-one of the Revised Laws of the State of Illinois, of A. D. 1845; and, after such advertisement, the court shall proceed to act in the premises as though the parties had been duly served with summons, or had been notified by their proper names; and in all cases of appeal from the judgment of a justice of the peace, where summons and alias summons have been duly issued against the appellee, and returned without being duly served, it shall be lawful for the circuit court to proceed and try said appeal as if the said appellee had been duly served with process.

See ante, p. 322, "An act to regulate the practice in the circuit court of Cook county, and the Cook county court of common pleas."

PRIOR LAWS. An act regulating the practice in the supreme and circuit courts of this State, and for other purposes; approved March 22, 1819. Laws, 1819, p. 139.

An act regulating the practice at law and in chancery; approved Jan. 25, 1821. Laws, 1821, p. 8.

An act constituting and regulating the supreme and circuit courts of this State; approved Dec. 9, 1824. Laws, 1824, p. 36.

An act concerning practice in courts of law; in force June 1, 1827. Rev. Laws, 1827, p. 310; Rev. Laws, 1833, p. 486.

An act concerning practice; approved Feb. 2, 1827. Rev. Laws, 1833, p. 496.

An act to amend an act entitled "An act concerning practice in courts of law," approved Jan. 29, 1827; approved Feb. 9, 1831. Rev. Laws, 1833, p. 496.

An act to amend an act entitled "An act concerning practice in courts of law," approved Jan. 29, 1827; approved March 1, 1833. Rev. Laws, 1833, p. 497.

An act simplifying proceedings at law for the collection of debts; in force June 2, 1833. Rev. Laws, 1833, p. 497.

An act to amend the practice act of 1827; approved Feb. 7, 1835. Laws, 1835, p. 152.

An act concerning process; in force May 1, 1837. Laws, 1837, p. 178.

An act to amend the act entitled "An act concerning practice in courts of law," approved Jan. 29, 1827; approved July 21, 1837. Laws, 1837, (2nd Sess.) p. 109.

An act to amend the several laws in relation to practice in courts of law, and for the benefit of A. McPhail and T. C. Kirkman; approved March 2, 1839. Laws, 1839, p. 271.

An act regulating evidence in certain cases; in force Feb. 1, 1842. Laws, 1841-2, p. 112.

DECISIONS. The facts which the defendant relies upon for a defense, under a plea of failure of consideration, must be stated in the plea. *Taylor v. Sprinkle*, Breese, 1; *Cornelius v. Vanorsdall*, Breese, 5; *Pool v. Vanlandingham*, Breese, 22; *Bradshaw v. Newman*, Breese, 94; *Sims v. Klein*, Breese, 234; *Evans v. School Commissioner*, 1 G. 654.

An amendment to a declaration in matter of form merely, does not entitle the defendant to a continuance. *Scott v. Cromwell*, Breese, 7; *Crane v. Gravis*, Breese, 37.

Otherwise, when the amendment is substantial. *Covell v. Fell*, 1 S. 525.

Oyer may be had of writings not under seal. *Mason v. Buckmaster*, Breese, 9.

But not of records and judgments. *Giles v. Shaw*, Breese, 169.

On *scire facias* to foreclose a mortgage, two returns *nil*, are equivalent to actual service. *Cox v. Ferron*, Breese, 10.

In a declaration in slander, charging the defendant with having said of the plaintiff that "he had sworn a lie," there must be a *colloquium*, showing the occasion. *Blair v. Sharp*, Breese, 11.

A plea that a note was given without any consideration, is good, under the statute, and throws the burden of proof on the plaintiff. *Pool v. Vanlandingham*, Breese, 22. *Contra*, *Stacker et al. v. Tyler*, 1 S. 207.

Under the practice act of 1819, the sheriff was not authorized to assign bail bonds. *Hunter v. Gilham*, Breese, 51.

When there is a general demurrer to a declaration containing good and bad counts, the demurrer will be overruled. *Lusk v. Cook*, Breese, 53.

Debts to be set off must be mutual and due in the same right. *Gregg v. James et al.*, Breese, 107.

A plea of payment is a good plea in an action of assumpsit; without it, evidence of counter demands cannot be received. *Jones, Administrator, v. Francis*, Breese, 125.

Suit is commenced against three persons, upon a joint liability; two are served with process, and one appears by attorney. Judgment should be given against all, or none. It is irregular to take judgment against the two served, and discontinue as to the other. *Ladd and Taylor v. Edwards*, Breese, 139; *Dougherty v. Birch*, 1 S. 552; *Oyden et al. v. Bowen*, 2 S. 33; *Hoxey v. County of Macoupin*, 2 S. 36; *Rider et al. v. Allen*, 2 S. 474.

Bills of exceptions must be taken upon the trial, and at the time the evidence is admitted or rejected, or decision of the court made, or instructions given or refused. *Clemson v. Kruper*, Breese, 162; *Swafford v. Governor*, 1 S. 165; *Gillmore v. Ballard*, 1 S. 252; *Peck v. Boygess*, 1 S. 281; *Leigh v. Hodges*, 3 S. 15; *Gibbons v. Johnson*, 3 S. 61; *Udike v. Armstrong*, 3 S. 564; *Hill v. Ward*, 2 G. 285.

A return to a writ by a person who signs himself "deputy sheriff," is irregular. *Ryan v. Eads*, Breese, 163; *Ditch v. Edwards*, 1 S. 127.

A sheriff's return should state the manner in which the writ was served, and the time. *Ogle v. Coffey*, 1 S. 239; *Garratt et al. v. Phelps et al.*, 1 S. 331; *Bellingall v. Gear*, 3 S. 575.

Where the declaration is in debt, the judgment must be for the debt and damages; a general judgment for damages is erroneous. *Jones v. Sorrel et al.*, Breese, 174.

When the declaration has not been filed ten days before the court, a judgment by default cannot be entered. *Gore v. Smith*, Breese, 206.

When a defendant appeals from the judgment of a justice, the plaintiff in the circuit court cannot be compelled to give security for costs. *Teague v. Wells*, Breese, 297.

When the defendant has pleaded, a judgment by default cannot be entered. *Semple v. Lock*, Appendix to Breese, 5.

A default may be set aside at a term subsequent to that when the judgment is rendered. *Bell v. Whiteside*, Idem, 6. *Quere, Hall v. Byrne et al.*, 1 S. 141.

Further time to file a transcript in the supreme court, must be obtained within the three first days of court, or the appeal will be dismissed. *Rager v. Taylor*, Idem, 21; *Green v. McConnell*, Idem, 32.

Under the 30th section of the practice act of 1827, a sheriff who refuses to pay over money collected by him, is liable for the principal and 20 per cent. per annum, damages. *Beard v. Foreman*, 1 S. 40.

A writ of error from the supreme court to a circuit court, lies in all cases, at law and in chancery. *Bowers v. Clark*, 1 S. 42.

A set-off will not be allowed, unless the claim proposed to be set off existed at the time of the commencement of the suit. *Irvin and Wife v. Wright*, 1 S. 135.

A bill of exceptions does not lie in a case tried in the circuit court without a jury. *Swafford v. Governor*, 1 S. 165; *White v. Barnes*, 1 S. 169; *Gillmore v. Ballard*, 1 S. 252; *Stringer v. Smith*, 1 S. 295; *Bellingall v. Spraggins*, 1 S. 330; *Arens v. Riley*, 1 S. 340.



A sheriff's return must show the time when the process was served. *Clemson et al. v. Hunter*, 1 S. 176.

It is irregular to enter up final judgment upon the forfeiture of a recognizance; a *scire facias* must first issue against the cognizers. 1 S. 187.

A defendant who has suffered a default, cannot except to testimony given before the jury of inquest. He may cross-examine the witnesses. *Morton v. Bailey et al.*, 1 S. 213.

A *scire facias* to foreclose a mortgage, is both process and a declaration; a demurrer is the proper method of taking advantage of defects therein. It may be amended. *Marshall v. Mawry*, 1 S. 231.

Reasons filed for a new trial, are no part of the record unless made so by a bill of exceptions. *Vandlandingham v. Folloes et al.*, 1 S. 233.

A writ of inquiry may be executed in vacation, and at any place in the county. *Idem.*

The circuit court, for good cause shown, may set aside the inquest. *Idem.*

A summons, issued by a clerk of a circuit court, not under seal, is voidable, and should be quashed on motion. *Hammann v. Thompson*, 1 S. 238; *Anglin v. Nott*, 1 S. 395.

But if defendant enters a general appearance, he cannot afterwards object on account of the summons having no seal. *Euston et al. v. Altum*, 1 S. 250.

A writ of error does not lie in behalf of the people in a criminal proceeding. *People v. Dill*, 1 S. 257.

A notice under the statute, that a party will prove his claim by his own oath or by that of the adverse party, must be served on the party and not on the attorney. *Curver v. Crocker*, 1 S. 265.

Appeal bonds in prosecutions for assault and battery, are not amendable. *Scafford v. The People*, 1 S. 289.

Want of consideration may be pleaded to an action on a bond for conveyance of land. *Buckmaster v. Grundy*, 1 S. 310.

When a record shows that a plea was filed on the same day of a judgment by default, the judgment will be reversed. *Lyon v. Barney*, 1 S. 387.

It is erroneous to enter a judgment in debt and damages, in an action of assumpsit. *Idem.*

It is erroneous to enter judgment by default after a plea is filed. *Manlove et al. v. Gallipot*, 1 S. 390.

As to the necessary averments in a declaration, when process issues to a foreign county, and the decisions upon the several provisions of the statute, see *ante*, p. 358, title "COURTS."

Where there is a general demurrer to several pleas, some of which are good and some bad, the demurrer will be overruled. *Stacy, Administrator, v. Baker*, 1 S. 417.

A defendant on trial cannot deny the execution of the instrument on which suit is brought, unless he verifies his plea by affidavit. *Linn v. Buckingham et al.*, 1 S. 451.

Unliquidated damages, arising *ex contractu*, may be set off in assumpsit. *Edwards et al. v. Todd*, 1 S. 462; *Nichols v. Ruckles*, 3 S. 298.

When appeal bonds are insufficient, the statute is imperative that the circuit court shall permit them to be amended. *Hubbard et al. v. Freer*, 1 S. 467; *Waldow et al. v. Averty*, 1 S. 487.

When a bill of exchange or promissory note is sued on, and the declaration contains the common counts, and the bill or note is the only claim of the plaintiff, it is unnecessary to file any copy of the account sued on, except the bill or note. *People v. Pearson*, 1 S. 458, 473.

Since the passage of the act of 1837, an appeal may be prosecuted from the decision of the circuit court, refusing a new trial. *Smith v. Shultz*, 1 S. 491.

Applications for leave to amend pleadings, are addressed to the discretion of the court; a refusal to grant them, is not error. *Phillips v. Dana*, 1 S. 498.

A default cannot be entered where there is a demurrer to the declaration, filed. *McKinney v. May*, 1 S. 534.

A party, intending to move to quash an execution, must give notice to the opposite party. *Dazey v. Orr*, 1 S. 535.

When matters of law and fact are submitted to the court, and the court finds the issues for the plaintiff, on a promissory note, the clerk may assess the damages. *Burlingham et al. v. Turner*, 1 S. 588.

Circuit courts cannot amend papers on an appeal by striking out one of the defendant's names. *Macey v. Padfield*, 1 S. 590.

Prayer for an appeal to the supreme court, may be made at any time during the term. *Ballance v. Frisby*, 1 S. 595.

An appeal to the supreme court, when the judgment (exclusive of costs) exceeds \$20, or relates to a franchise or freehold, is matter of right. *Emerson v. Clark*, 1 S. 596; *Idem*, 2 S. 489.

To give the municipal court of the city of Chicago, jurisdiction to send its process to a foreign county, the same averments in the declaration are necessary, as in like cases in the circuit court. *Vanhorn v. Clark et al.*, 2 S. 1.

A return upon a *scire facias* to foreclose a mortgage, "executed the within as the law directs, by reading and delivering to defendant a true copy, Nov. 1, 1837," the process being returnable on the first Monday of November, A. D. 1837, is a sufficient return. *Mitcheltree v. Stewart et al.*, 2 S. 17; *Beaubien v. Sabine*, 2 S. 457.

A motion to amend a petition and summons is addressed to the discretion of the courts. *Warren v. McHatton*, 2 S. 32.

As to what is a good plea of partial failure of consideration, see *Purkett v. Gregory*, 2 S. 44.

A variance in the amount of costs between an *alias* or *pluries* and an original writ, is not material. The clerk is authorized to add accruing costs to each successive execution. *Bryan et al. v. Smith et al.*, 2 S. 47.

It is error to render a judgment upon sustaining a demurrer to special pleas, where there is a plea of *nil debet* on the files, unanswered. *Merryweather v. Gregory*, 2 S. 50.

Pleas of failure of consideration decided to be insufficient. *Merryweather v. Gregory*, 2 S. 50; *Merryweather v. Smith*, 2 S. 31; *Wann v. McGoon*, 2 S. 74; *Dunbar v. Bonesteel*, 3 S. 32; *Wagy v. Lane*, 3 S. 237; *Averill v. Field*, 3 S. 390; *Owings v. Thompson*, 3 S. 502; *Duncan v. Charles*, 4 S. 561.

Pleas of failure of consideration decided to be sufficient. *Kinzie v. Trustees of Chicago*, 1 S. 187; *Gorham et al. v. Peyton*, 2 S. 363; *Tyler v. Young*, 2 S. 444; *Myers v. Aikman*, 2 S. 452; *Bailey v. Cromwell et al.*, 3 S. 71; *Capps v. Smith et al.*, 3 S. 179; *Gregory v. Scott*, 4 S. 392; *Hull v. Perkins*, 4 S. 548.

The object of the law relating to commencing suits by petition and summons, was to enable every man to bring his own suits. *Evans v. Landon*, 2 S. 54.

A note payable in good bank paper may be sued in this way. *Idem.*

An averment "that the debt remains unpaid," is sufficient. *Idem.*

A bill of exceptions must be signed and sealed by the judge who tried the cause, or the supreme court will not notice it. *Jones v. Sprague*, 2 S. 55.

*Non est factum* may be pleaded to an action of debt on a sealed promissory note, though not verified by affidavit. *Russell et al. v. Hamilton*, 2 S. 56.

A motion to amend an appeal bond in case of forcible entry and detainer, is addressed to the discretion of the court. *Harlan v. Scott*, 2 S. 65.

When affidavits for continuances will be held sufficient. *Adams v. Colton*, 2 S. 71; *Doe, ex dem. McConnell v. Johnson*, 2 S. 522.

When a defendant is arrested on a *capias* and gives bail, and the bail is discharged for insufficiency in the affidavit, the *capias* will stand in the place of a summons. *Wann v. McGoon*, 2 S. 74.

On appeals in the circuit court, the parties are precluded from litigating other and different claims from those tried before the justice. *Brookbank v. Smith*, 2 S. 78.

It is error for the circuit court to dismiss a suit for a failure to file a copy of the account sued on, unless a rule for that purpose has been taken, and the party has neglected to comply therewith. *Kimball v. Kent*, 2 S. 217.

A writ returnable to a remote and not to the first term after it issues, is a nullity. *Calhoun v. Webster et al.*, 2 S. 221.

Counsel have a right to have instructions given or refused, as asked; but if they are calculated to mislead a jury, the court may qualify or explain them. *State of Illinois v. Wilson*, 2 S. 225.

Under the act of July 21, 1837, a party has a right to except to the opinion of the court, overruling a motion for a new trial. *Weatherford v. Wilson*, 2 S. 251.

An affidavit does not give a court jurisdiction to send its process out of the county. The averment of jurisdiction must be made in the declaration. *Shepard v. Ogden*, 2 S. 257.

After a jury has retired to consider of their verdict, if they return and receive further instructions, the plaintiff may take a new trial. *Berry et al. v. Savage*, 2 S. 261.

Appearance and pleading will cure a defect in the service of process. *Berry v. Savage*, 2 S. 261.

In a suit against several, when one pleads and the others suffer a default, the proper course is to call a jury to try the issue as to the party pleading, and assess the damages as to the others. *Teal v. Russell et al.*, 2 S. 319.

Two summons were issued, returnable to different terms; neither was served. On the fifth day of the second term, the defendant appeared. He was not bound to plead at that term. He had a right to file pleas, and the court erred in refusing him that privilege. *Little v. Carlisle*, 2 S. 377.

When a witness is unable to attend court on account of sickness in his family, the cause should be continued, whether the witness has been subpoenaed or not. *Allen et al. v. Dowling*, 2 S. 454.

An immaterial amendment is no ground for the continuance of a cause. *Russell and Wife v. Martin*, 2 S. 492.

Part failure of consideration cannot be given in evidence under a plea of total failure, nor under the general issue with notice of set-off. *Swaim et al. v. Cawood*, 2 S. 505.

A petition and summons will lie upon a note under seal. *Duncan v. McAfee*, 2 S. 559.

It is unnecessary to file a copy of the instrument on which suit is brought, where the same is set out in *haec verba* in the declaration. *Benjamin v. Delahay*, 2 S. 574.

A bill of exceptions, under the practice act, is to be construed as a pleading of the party, and most strongly against the party preparing it. *Rogers v. Hall*, 3 S. 5.

An appearance in a cause waives all irregularities in the service of process. *Vanderbilt v. Johnson & S.* 48.

When a cause is tried by the court, and a motion is made for a new trial, the motion and reasons for such new trial, and the affidavits and evidence, &c., will not be noticed in the supreme court, unless incorporated into a bill of exceptions. *Idem. McLoughlin v. Walsh*, 3 S. 185.

Where a judgment by default is rendered on a note, the court may assess the damages. *Wilcox v. Woods et al.*, 3 S. 51.

Where there is a general verdict on several counts, one of which is good, the verdict must be sustained. *Snyder v. Gaither*, 3 S. 91.

A default cannot be entered unless it appears by the return of the sheriff that the summons had been served ten days before court. *Pattison v. Hood*, 3 S. 152.

When all of the defendants pray an appeal to the supreme court, they must all execute the bond. *Carson v. Merle*, 3 S. 163.

A motion for a re-hearing will not be entertained after the lapse of a term. *Weatherford v. Fishback*, 3 S. 170; *People v. Pearson*, 3 S. 406.

Where a defendant denies the execution of a note sued on, he should plead *non-assumpsit*, and swear to the truth of the plea. *Hinton v. Husbands*, 3 S. 187.

A change of venue may be ordered upon the consent of the parties. *The People v. Scates*, 3 S. 351.

In all criminal cases, not capital, a writ of error is a writ of right. An appeal lies in a case of a proceeding for a contempt of court. *Stuart v. The People*, 3 S. 395.

A mistake or error in assessing damages cannot be inquired into in the supreme court, unless the same is shown by the bill of exceptions. *Smith v. Lusk*, 3 S. 411.

A *scire facias* to make a joint debtor, not served with process, a party to a judgment rendered against his co-debtor, may issue at any time, without an order of court. *Tiffany v. Breese*, 3 S. 499; *Ryder v. Glover*, 3 S. 547.

Under the act of March 2, 1839, the assignee is not required to prove the assignment of a note, unless the same is denied by affidavit. *Archer v. Bogue*, 3 S. 526.

The plea of set-off is an affirmative plea and must be proved. The party setting it up must also show that the claim was due to him at the commencement of the suit. *Pettis v. Westlake et al.*, 3 S. 536; *Kelly v. Garrett*, 1 G. 649.

Judgment was rendered against three defendants; two prayed an appeal. One who prayed the appeal, and one who did not, signed the appeal bond. The appeal was dismissed. *Ryder v. Stevenson*, 3 S. 539. See also, *Watson v. Thwall*, 3 G. 68.

A summons returnable on the fourth day of the term of a court, is void. *Rattan v. Stone*, 2 S. 540.

Judgment against two, when process is only served on one, is erroneous. *Idem*.

An attachment may issue in aid of a *scire facias* to make a party to the judgment. *Ryder v. Glover*, 3 S. 547.

A party is not bound to pay any attention to a notice to produce a paper upon a trial, unless such notice is in writing and given a reasonable time before trial. What is reasonable notice is a matter in the discretion of the court. If the party have the paper in court, notice given on the trial is sufficient. *Cummings v. McKinney*, 4 S. 58.

If the transcript of a record is not duly certified to the supreme court, the suit will be dismissed. *Morse v. Williams*, 4 S. 285.

Where thirty days intervene between the time of the order, allowing an appeal to the supreme court, and the session of that court, the record must be filed within the first three days of that court. *Vance v. Schuyler*, 4 S. 286; *Frink v. Phelps*, 4 S. 580.

On the trial of appeals from justices, parties may, by leave of court, file additional accounts. If the other party is surprised thereby, he will be entitled to a continuance. *Webb v. Losalar*, 4 S. 544.

Unliquidated damages, arising *ex contractu*, may be set off. *Kaskaskia Bridge Company v. Shannon et al.*, 1 G. 15.

When a declaration is amended in matter of substance, the defendant is entitled to a continuance. *Illinois Mutual Fire Insurance Company v. Marsailles Manufacturing Company*, 1 G. 236.

A writ of error does not lie, until final judgment is entered in the circuit court. *Hedges v. County of Madison*, 1 G. 306.

The trial of an appealed case in the circuit court, is *de novo*, and either party may file additional accounts, upon such terms as the court may direct. *Waterman v. Bristol et al.*, 1 G. 593.

A city order may be set off in a suit brought by a city in an action of debt, to recover a penalty. *City of Springfield v. Hickox*, 2 G. 241.

Under the act of July 21, 1837, exceptions may be taken to decisions of the circuit courts for overruling motions in arrest of judgment, motions for new trials and continuances. *Hill v. Ward*, 2 G. 285.

A writ of *scire facias* cannot be served after the return day. *Hitchcock v. Haight*, 2 G. 603.

A year is not an unreasonable time to take a deposition in China. Where a party uses due diligence to obtain the testimony of a witness, and the court refuse a continuance, the judgment will be reversed in the supreme court. *Lyon et al. v. Boilvin*, 2 G. 629.

Under the 12th section of the practice act of Jan. 29, 1827, a defendant cannot deny the execution of the instrument sued on, unless he verify his plea by affidavit. *Stevenson v. Furnsworth*, 2 G. 715.

Where there are two defendants, and one only denies the execution of the instrument sued on under oath, the execution of the same need be proved only as to the party making such denial.

By the act of Feb. 17, 1841, when two persons are sued as partners, upon a written instrument purporting to have been executed by the firm, and one denies its execution, under oath, it is sufficient to prove that the same was executed by one of the members of the firm, and that the party denying its execution was a partner. *Stevenson v. Furnsworth*, 2 G. 715.

If a party, upon due notice, refuses to produce papers, parol evidence may be given of their contents, and if the evidence is vague, &c., every intendment will be made against the party refusing to produce the papers. *Rector v. Rector*, 3 G. 105.

A writ of inquiry may be executed at any place within the county, and the sheriff may make his return to the writ even after the cause is pending in the supreme court, and such return may be certified to the supreme court and made part of the record. *Moore v. Purple*, 3 G. 149.

Unliquidated damages arising out of covenants, contracts or torts, totally disconnected with the subject matter of the plaintiff's claim, are not such claims or demands as constitute the subject matter of set-off, under the statute. *Hawks v. Lands*, 3 G. 227.

The practice act is applicable to civil cases only. *Baxter v. The People*, 3 G. 368.

When an appeal to the supreme court is prayed by several defendants and the bond is signed by one only, the appeal will be dismissed. *Johnson v. Barber*, 4 G. 1.

Demands to be set off must be mutual, and due in the same right. *Hinckley v. West*, 4 G. 136.

No appeal lies to the supreme court, unless the judgment (exclusive of costs) amounts to twenty dollars, or relates to a franchise or freehold. *Washington County v. Parlier et al.*, 4 G. 353.

The supreme court has no jurisdiction of an agreed case pending in a circuit court, until there has been a decision in that court, and the cause has been duly certified to the supreme court. *Plumleigh v. White*, 4 G. 388.

A re-hearing will be allowed in the supreme court, at a subsequent term, when the party was prevented from making the application at the term when judgment was rendered. *Pearl v. Wellman*, 4 G. 395; *Selby v. Hutchinson*, 5 G. 261.

The statute does not authorize a defendant to plead specially, and also give notice under the general issue; but the court, in its discretion, may permit it to be done. *Benjamin v. McConnell*, 4 G. 536.

A bill of exceptions should in all cases appear on its face to have been signed at the trial. It may, by consent of parties, be signed out of term. *Evans v. Fisher*, 5 G. 453.

The provisions of section 7, chapter 40, of Revised Statutes, extends as well to suits before justices of the peace as in the circuit court. Partnerships need not be proved unless they are denied under oath. *Evans v. Fisher*, 5 G. 569.

An appeal is not pending in the supreme court until a bond is filed. *Peck v. Stevens*, 5 G. 127.

Suits commenced to a regular term of a circuit court, will be returnable to a special term, appointed after the commencement of the suit. But cases returnable to a prior regular term, will still be returnable to that term, although the same is continued into the special term. *Rucker v. Fuller*, 11 Ill. 223.

A plea in abatement, sworn to, puts in issue the partnership of plaintiffs. A plea of the general issue, verified by affidavit, does not. *Warren v. Chambers*, 12 Ill. 124.

A plaintiff cannot take a non-suit after the cause has been submitted to the jury. *Ross v. City of Chicago*, 12 Ill. 336.

Where an appeal to the supreme court is prayed and allowed within thirty days of the session of the court, the appellant is not bound to file his record until the second term, and the appellee need not appear till the second term. *Hagar v. Phillips*, 13 Ill. 292.

Exceptions to instructions should be taken at the time they are given. *Martin v. The People*, 13 Ill. 341.

A declaration must be filed ten days before the second term, or the suit will be dismissed. The omission to hold the court does not change this right of the party. *Dowley v. Smith*, 13 Ill. 671.

Where an order is made that a bill of exceptions be filed in vacation, it will be understood to mean the next ensuing vacation after the court at which the order was made. *Saltonstall v. Canal Commissioners*, 13 Ill. 705.

An affidavit for a continuance should state facts with certainty, so that the opposite party may admit the same and go to trial if he chooses to do so. It is too indefinite to state that the whole or some part of the claim has been paid. *McBain v. Enloe*, 13 Ill. 76.

An application for a continuance, not within the provisions of the statute, is addressed to the discretion of the court. The overruling of such motion cannot be assigned for error. *Ault v. Rawson*, 14 Ill. 484.

A plea of failure of consideration cannot be interposed to a note in the hands of a *bona fide* assignee, before maturity. *Harlow v. Boswell*, 15 Ill. 56.

## CHAPTER LXXXIV.

## PRINTING AND BINDING.

## SECTION

1. Public printer to give bond; its requirements.
2. Public work to be given to public printer.
3. Journals of General Assembly, how kept; printer to be furnished with copies of, every morning; originals, how disposed of.
4. Secretary of State to give printer copies of laws and resolutions in ten days after adjournment.
5. Secretary to superintend publication.
6. Laws, how arranged in volume; index, &c.
7. Marginal notes, &c.
8. Forty days allowed printer to complete printing.
9. Two thousand copies of laws, one thousand each of the Senate and House journals and reports to be published.
10. Prices for printing.
11. Who shall examine printer's accounts.
12. Printer's accounts, when settled; paper account to be settled.
13. Secretary to purchase paper.
14. Paper, how contracted for.
15. Proposals to be filed.
16. Bond to be given by contractor for paper.
17. Paper, how paid for.
18. Printer to report to General Assembly.
19. Messages, &c., how printed.
20. Binding, how contracted for, and prices.
21. Secretary to contract for less prices, if possible.
22. Binder to give bond.

## SECTION

23. When printer shall deliver work to the binder; when binder shall deliver to the secretary of State.
24. Printing and binding, how paid for; distribution of laws, &c.
25. Penalty if printer or binder fail to perform their duties according to law.
26. Public binders to give bond for \$10,000. When act to be in force.
27. Secretary of State to advertise for proposals for public printing.
28. Contractor must be resident of State.
29. Bids to specify prices; no bid received unless accompanied by bond.
30. When proposals to be opened, and by whom. To whom contracts given; *proviso*.
31. Contract, how drawn; what to include; *proviso*.
32. Time within which printing to be completed.
33. Contractor failing to comply with requirements of law, duty of secretary of State.
34. How contractor paid.
35. Number of journals, reports and laws to be printed.
36. Who to be printer of present session; his compensation.
37. Report of secretary and treasurer of State to be printed before sitting of Assembly; also, governor's message, if prepared.
38. Acts of present Assembly to be bound.

[Approved March 3, 1845. Rev. Stat. 1845, p. 422.]

(1.) SECTION I. The public printer shall give bond to the governor, with good security, previous to entering upon the discharge of the duties of his office, in the penalty of ten thousand dollars, conditioned that he will faithfully perform and execute all the public printing required to be done in pursuance of law, by the direction of either branch of the General Assembly, or any officer of the State, and that he will do and perform all other acts and things required, or which may hereafter be required, of him according to law, which said bond shall be approved by the governor and filed in the office of the secretary of State.

(2.) SEC. II. All laws, journals, bills, messages, 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 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, who may, from time to time, be elected under the constitution of this State, unless otherwise provided by law.

(3.) SEC. III. 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 of the General Assembly, deposit the original journals kept by them as aforesaid, with the secretary of State.

(4.) SEC. IV. The secretary of State is 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 required to be printed; and such copies so made out he shall deliver to the person or persons authorized to print the same, within ten days after the adjournment of each session of the General Assembly.

(5.) SEC. V. 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, his certificate that the acts and resolutions so printed are exact copies of the rolls in his office.

(6.) SEC. VI. Such laws shall be arranged in alphabetical order, according to their subject matter; and prefixed to each volume, there shall be a table of contents, and at the end thereof a full and complete index.

(7.) SEC. VII. Each edition of the laws required 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, in any of the modes prescribed in the constitution, 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.

(8.) SEC. VIII. The public printer or printers shall be allowed forty days from the adjournment of the legislature to complete the printing of the laws, journals and reports of each session of the legislature.

(9.) SEC. IX. There shall be published, at the close of each session of the legislature, two thousand copies of the laws, passed at such session; one thousand copies of the journals of the senate; one thousand copies of the journals of the house of representatives; and one thousand copies of the reports of the two houses.

(10.) SEC. X. The prices of public printing shall be as follows, to wit: For plain work, fifty-six and one-fourth cents per thousand ems; for figure work, eighty-four cents per thousand ems; and for rule and figure work, one dollar and twelve and a half cents per thousand ems, for composition; and fifty-six and one-fourth cents per token for press work. For blanks, certificates and circulars, for the use of the legislature, and the several departments of the State government, one dollar for the first quire, and for each additional quire of the same kind ordered at the same time, seventy-five cents; excepting when said blanks contain so much rule and figure work as would demand an additional charge from journeymen for composition; in which case the public printer may make an advance of fifty per cent. on the charge of his journeymen as aforesaid; the paper for such blanks, certificates and circulars to be furnished by the public printer, at his own proper cost and charge; and 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 for 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.

(11.) SEC. XI. 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 not be satisfied that the charges have been correctly made.

(12.) SEC. XII. Immediately after the printing of any session of the General Assembly shall have been completed, it shall be the duty of the auditor, treasurer and secretary of State, to settle the accounts of the public printer according to the preceding section, and to ascertain the quantity of paper which has been properly used by the public printer in the printing for said session, according to the provisions of the preceding section.

(13.) SEC. XIII. Thereupon the secretary of State shall cause an advertisement to be published three times in the newspaper published by the public printer, and in some newspaper published at each of the following places, to wit: St. Louis, Louisville, Pittsburgh, Philadelphia, New York and Boston; the third insertion of such advertisement to be at least one month previous to the time appointed for receiving proposals; said advertisement shall specify the quantity, size and quality of paper which will be required for the public printing, the time and place of delivering the same, and the time when, and the place where, sealed proposals will be received for furnishing the same. The quantity of paper to be furnished, shall be ascertained by adding one-fourth to the quantity used for the printing of the preceding session of the legislature, and deducting from the whole amount the quantity of surplus paper remaining in the hands of the public printer for the time being.

(14.) SEC. XIV. At the close of the period for said advertisement, the secretary of State shall, in the presence of the auditor and treasurer, open all the proposals he may have received, and thereupon shall accept the proposal of the lowest responsible bidder, and immediately notify such bidder of such acceptance.

(15.) SEC. XV. The secretary of State shall file such proposal in his office.

(16.) SEC. XVI. The person receiving the contract for furnishing the paper for the use of the State, shall, at the time of the execution of such contract, give bond to the governor, in the penalty of ten thousand dollars, conditioned that he will faithfully furnish and deliver the said paper in kind, quality and quantity, at the times, places, and upon the terms mentioned in said contract; and that he will, in all respects, comply faithfully with the provisions of such contract, and of the law by virtue of which such contract shall have been made, which said bond shall be approved by the secretary of State, auditor and treasurer, and filed in the office of the secretary of State.

(17.) SEC. XVII. Upon the delivering of the paper in pursuance of and according to such contract, the auditor, with the concurrence of the secretary of State and treasurer, shall draw his warrant in favor of such contractor for such sum of money as he shall be entitled to therefor.

(18.) SEC. XVIII. The public printer shall, within the first week of each session, report to the legislature the amount of work done by him, the nature of said work, the amount of money received therefor, and the amount and quality of paper used by him as public printer since the commencement of the preceding session of the General Assembly.

(19.) SEC. XIX. In printing messages, reports and other documents ordered by either branch of the General Assembly, or in pursuance of any law or resolution of the legislature, the State printer may place a title at the top of the first page of every such document, but shall dispense with a title page, and with all unnecessary blank pages: *Provided*, That a title page shall be prefixed to the volume of reports, and to the journals of the General Assembly.

(20.) SEC. XX. It shall be the duty of the secretary of State, after having given six weeks' notice, to be published in one of the newspapers printed at the city of Springfield, and one at the city of Chicago, of the time of letting the folding, stitching and binding, to contract with some responsible book binder or binders, who reside in this State, be forethe commencement of each regular or special session of the General Assembly of this State, to do the folding, stitching and binding of the approaching session, consisting of reports, journals and laws, in the following manner and at no greater prices than those annexed, to wit: For folding, stitching and covering with blue paper, and cutting the edges of the journals, three and one-half cents for each one hundred pages in the volume; for folding and stitching reports, two cents for each one hundred pages in the volume; for binding laws and journals and reports for secretary's office, with leather backs and paper sides, when the number of pages do not exceed one hundred and fifty, twelve and one-half cents for each one hundred pages; when the volume of laws contains over one hundred and fifty pages, the price shall be ten cents for each one hundred pages of the volume.

(21.) SEC. XXI. The secretary of State is hereby required and authorized to contract for the binding in the preceding section specified, at less prices therein named, if in his power so to do.

(22.) SEC. XXII. It shall be the duty of the public binder or binders, to give bond with sufficient security, to be approved by the governor, in the penal sum of ten thousand dollars, for the faithful performance of his or their contract, agreeable to law.

(23.) SEC. XXIII. It shall be the duty of the public printer or printers to deliver to the public binder or binders, each form of the laws and journals, dry and in good order, as fast as they are printed; and after the last form of the laws is so printed and delivered, the said binder or binders shall bind and deliver to the secretary of State, one thousand copies of the laws in fifteen days, and at the rate of one thousand copies every twelve days afterward, (Sundays excepted.) Also, after the last form of the journals are delivered to said binder or binders, they shall do them up as above specified, and deliver them at the rate of one thousand copies every ten days, (Sundays excepted.)

(24.) SEC. XXIV. On the fulfillment of any contract for 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 shall issue his warrant on the treasurer for the sum due such person for such binding, folding, stitching or distributing.

(25.) SEC. XXV. If the public printer shall fail to print the laws and journals within the time limited by law, or if the binder shall fail to have the laws and journals bound 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 or binder, after making the deductions aforesaid.

An Act to amend an Act entitled "An Act to provide for the Binding of the Laws and Journals," approved Jan. 31, 1840.

[Approved Feb. 26, 1845. Laws, 1845, p. 46.]

(26.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the third section of the act to which this is an amendment, be so amended that it shall be the duty of the public binder or binders to give bond, with sufficient security, to be approved by the governor, in the penal sum of ten thousand dollars. This act to be in force from and after its passage.

An Act concerning the Public Printing.

[Approved Feb. 8, 1849. Laws, 1849, p. 104.]

(27.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the secretary of State, within seven days after this act shall take effect, to cause an advertisement to be published in the newspapers printed at Springfield, and in some one of the papers printed at Chicago, Quincy, Shawneetown and Charleston, giving notice that he will receive sealed proposals for executing the printing of the journals, reports and laws, and all other printing ordered by the General Assembly; said proposals to be delivered to the secretary of State within thirty days after the date of the first advertisement. In the notice required to be given, the secretary of State shall name the day, and between what hours, the several proposals will be opened.

(28.) SEC. II. No person, unless he be a resident of the State, shall be permitted to contract for the public printing; and the printing, thus contracted for, shall be executed within the limits of this State.

(29.) SEC. III. Each bid shall specifically set forth the price or prices at which it is proposed to do and perform the printing of the laws, journals and reports, and all other printing that may be ordered by the General Assembly of this State, or either branch thereof; and no bid for said printing shall be received or considered unless the same be accompanied by a bond, in the penal sum of ten thousand dollars, with a good and sufficient security, to be approved by the governor, for a faithful performance of said printing in a correct and workmanlike manner.

(30.) SEC. IV. All proposals shall be delivered to the secretary of State sealed, and shall not be opened until the hour of the day designated in his advertisement inviting bids for said printing; which opening of such bids shall be public, in the presence of the governor and auditor of public accounts; at which time those interested in said bids shall be permitted to attend. Such contracts shall be given to the lowest responsible bidder or bidders, whose proposals are the most favorable to the State in all respects,

having reference to his or their competency to do and perform the work contracted for: *Provided,* Such bids shall not, in any event, exceed the sum or sums allowed for public printing as specified in the eighty-fourth chapter of the Revised Laws, approved March 3rd, 1845.

(31.) SEC. V. The contracts entered into under the provisions of this act, shall be so drawn as to cover all special sessions of the legislature, if any there should be, and extend until the close of the next biennial regular session of the General Assembly; and shall contain all necessary provisions to guard against and prohibit any extra compensation to the successful bidder or bidders, other than the prices specifically agreed to be paid by the terms of said contract. The contracts for printing may include the blanks, certificates and circulars required by the several departments of the State government in the performance of their public duties: *Provided,* The secretary of State shall be authorized to receive (separate and distinct from other printing,) bids for said blanks, certificates and circulars; and said bids shall be accompanied by a bond of five hundred dollars, to be approved by the governor, for the faithful performance of said contract.

(32.) SEC. VI. The printing of the laws, journals and reports shall be completed within the time now prescribed by law; and in case of failure to complete the same within such time, the contractor or contractors shall be liable to the penalty provided for in the twenty-fifth section of the eighty-fourth chapter of the Revised Laws; and the laws, journals and reports, when printed, shall be delivered to the person or persons authorized to do the binding of the same, without any additional charge or expense to the State.

(33.) SEC. VII. In all cases of failure of any persons making proposals under the provisions of this act, to comply with the requirements of the law in the execution of their contract, it shall be the duty of the secretary of State to cause the same to be performed without unnecessary delay, and in conformity with the public interests; the same to be well and faithfully performed, as nearly as possible within the time prescribed by law, and at prices not exceeding those specified in the eighty-fourth chapter of the Revised Laws.

(34.) SEC. VIII. When the printing of said laws, journals and reports, and all other printing ordered by the General Assembly, shall be completed, as required by this act, the secretary of State shall certify the amount due the contractor or contractors who shall have performed the same; and upon the presentation of such certificate, the auditor of public accounts shall draw his warrant upon the treasurer for the amount due said contractor or contractors, as certified as aforesaid.

(35.) SEC. IX. Until otherwise provided by law, there shall be printed for the use of the State, and for distribution to the several counties, two thousand copies of the journals, two thousand copies of the reports, and four thousand copies of the laws of the General Assembly.

(36.) SEC. X. The public printer elected at the last session of the General Assembly, shall be and he is hereby authorized to print the journals, reports and laws, and all other printing ordered by the present General Assembly; and for the performance of said work he shall not receive a greater compensation than is allowed by the provisions of the eighty-fourth chapter of the Revised Laws.

An Act in relation to the Public Printing.

[Approved Feb. 12, 1849. Laws, 1849, p. 106.]

(37.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the secretary and treasurer of the State, and auditor of public accounts, to make out and complete their reports at least fifteen days before the sitting of the General Assembly, and furnish the printer with a copy thereof, who shall print five hundred copies of each report, under the inspection of the officer making the same; and when so printed, the same shall be delivered to the secretary of State on or before the first day of the session; and if the governor shall have prepared his message in time, he may cause three thousand copies to be printed in time to lay the same before the legislature on the first day of the session.

(38.) SEC. II. The acts passed by the present General Assembly, shall be bound in half binding, and only five hundred copies of the incorporation and private acts shall be printed; and no reports ordered to be printed shall be included in both the journals and reports.

PRIOR LAWS. An act authorizing the secretary of State to liquidate the accounts of the late public printer; in force Jan. 31, 1821. Laws, 1821, p. 61.

An act defining the duties of public printer, and fixing the time and manner of performing the same; in force Jan. 24, 1835. Laws, 1835, p. 163.

An act in relation to the public printer; in force March 4, 1837. Laws, 1837, p. 179.

An act providing for the binding of the laws and journals; in force Jan. 31, 1840. Laws, 1840, p. 34.

An act supplemental to "An act defining the duties of public printer, and fixing the time and manner of performing the same;" in force Feb. 23, 1841. Laws, 1841, p. 192.

An act to amend an act entitled "An act providing for the binding of the laws and journals," approved Jan. 31, 1840; in force Feb. 23, 1843. Laws, 1843, p. 173.

An act supplemental to the several acts defining the duties of the public printer; in force March 4, 1843. Laws, 1843, p. 194.

## CHAPTER LXXXV.

### PROBATE COURT.

#### SECTION

1. Probate court established in each county, consisting of one officer.
2. Probate justices to be elected in same manner as justices of the peace.
3. How elected; to be sworn; to keep offices at county seats.
4. Powers and jurisdiction as justices of the peace; appeals, *certiorari*, &c.
5. Jurisdiction, when executors, &c., are parties, to extend to one thousand dollars.
6. Additional powers, as courts of probate, particularly defined.
7. How proceedings made matter of record, and used as evidence.
8. Probate court to sit once in each month; to have seal; process; record to be kept; books, &c., how paid for.

#### SECTION

9. Matters of law and fact, how determined; appeals, &c.
10. Proceedings of probate court to be reported to next circuit court; when to become matters of record.
11. Private seal, when may be used.
12. Administrators and executors may be sued on their bonds, in probate court.
13. Books, records, &c., how to be kept; entries, &c., to be made.
14. Power of probate to enforce process; duty of officer serving same, and his fees.
15. Account and record books.
16. Process, &c., to be issued in the name of the people, tested, sealed, &c.
17. Power as to proof and administration of wills, &c.
18. If office become vacant, how filled.
19. Fees of probate justice.

#### SECTION

20. Appeals allowed from acts of probate justice, ministerial as well as judicial.
21. Jury trial secured to parties.
22. Probate justice to keep record of orders, &c.
23. Penalty for willful failure to do so.
24. When act shall take effect.
25. Section of certain act repealed.
26. Duty of council of revision. Enrolled chapters to be filed. Appropriation. When act to establish common schools shall take effect.

#### SECTION

27. Proceedings by probate justices in taking proof of wills, &c., declared matters of record, and entries of such proceedings evidence.
28. Portion of act repealed.
29. Report of probate justice to circuit court not required.
30. Former rights or liabilities not affected.
31. When act to take effect.
32. Executor or administrator removing from State, duty of probate justice.

[Approved March 3, 1845. Rev. Stat. 1845, p. 426.]

(1.) SECTION I. There shall be and remain, as now established, in each county of this State, a court of probate, to be composed of one officer, to be styled a probate justice of the peace.

(2.) SEC. II. Such probate justices of the peace shall be elected at the general elections to be held in their respective counties, as provided by law, in the same manner as provided for the election of other justices of the peace, and shall hold their offices for the term of two years, and until their successors shall be elected and qualified.

(3.) SEC. III. The election of such probate justices of the peace shall, in all respects, be conducted and returns thereof made, in the manner provided or to be provided by law in the case of the election of justices of the peace. The said probate justices of the peace so to be elected under the provisions of this chapter, 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.

(4.) SEC. IV. Said probate justices of the peace are hereby vested with the same powers and jurisdiction in civil cases which are or shall be conferred by law upon other justices of the peace, and in the exercise of said powers and jurisdiction, the rules of law which are or shall be applicable to ordinary justices of the peace, shall be applicable to the probate justices of the peace hereby created, and to all the proceedings before them, growing out of such power and jurisdiction; and appeals may be taken from, and writs of *certiorari* prosecuted upon, their judgments rendered under the power conferred in this section, in the manner provided in case of similar judgments rendered by justices of the peace.

(5.) SEC. V. 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 parties, plaintiff or defendant, and when the amount on either side claimed to be due shall not exceed one thousand dollars.

(6.) SEC. VI. 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:

First. Power to administer all oaths or affirmations concerning any matter or thing before them.

Second. To issue and grant letters of administration, letters testamentary and letters of guardianship, and repeal the same.

Third. To take probate of wills, and record the same.

Fourth. 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.

Fifth. To receive, file and record inventories, appraisement bills and sale bills, as is required by the existing laws.

Sixth. 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 sheriffs of the said counties.

Seventh. 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.

Eighth. To take and certify acknowledgments and proofs of deeds and other instruments; to take affidavits and depositions; and to administer oaths, to the same extent and with like effect, as other justices of the peace.

(7.) SEC. VII. If it should become necessary to use copies of the proceedings had before such probate 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.

(8.) SEC. VIII. 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 disposed of. The said courts shall each have a seal, and may issue all process necessary, under the hand and seal of the probate justice, and all such process shall bear date when issued. The said probate justice shall record all his proceedings at length, in a book or books by him for that purpose furnished; and for all necessary books so furnished, the respective county commissioners' courts shall allow the said probate justice a reasonable compensation, to be paid out of the county treasury.

(9.) SEC. IX. 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 *certiorari* shall lie to the circuit court of the county, to be prosecuted in the same manner as appeals and writs of *certiorari* are prosecuted from the decisions of other justices of the peace.

(10.) SEC. X. The said probate justices of the peace are hereby vested with all the judicial powers usually exercised by former judges of probate; but in all cases of the exercise of such judicial powers, they 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.

(11.) SEC. XI. Letters of administration, letters testamentary, and all process, certificates and all other papers, made or issued by probate justices of the peace, to which the private seal of such justice is or may be affixed,

because of there being no public seal, shall be as valid, to all intents and purposes, as though a public seal had been used.

(12.) SEC. XII. Administrators and executors, and their sureties, may be sued on their bonds in the probate court, subject to the limitation contained in section five of this chapter, and the proofs and proceedings shall be as in ordinary cases.

(13.) SEC. XIII. The probate justices of the peace 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 settlement of estates; and shall enter on their order books the amount of all such inventories, appraisements, sale bills and other exhibits, under a proper heading, for easy reference; and shall enter upon their books 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.

(14.) SEC. XIV. The probate justices of the peace 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.

(15.) SEC. XV. The probate justices of the peace shall provide well-bound books, and enter therein the accounts of executors and administrators, so as to make the same complete records of all accounts allowed, and all settlements of estates made in said courts.

(16.) SEC. XVI. 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 justice 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 teste in the name of such probate justice, and be sealed with the seal of the said court of probate.

(17.) SEC. XVII. The probate justices 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 of estates.

(18.) SEC. XVIII. When any probate justice of the peace shall resign, refuse to qualify, or be removed from office, or the office shall in any way become vacant, such office may be filled by a special election to be called and held in the same manner as in the case of justices of the peace. And if any probate justice of the peace shall refuse to qualify and give bond, in

manner and within the time specified in case of other justices of the peace, the office shall in like manner be deemed vacant.

(19.) SEC. XIX. 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 usually exercised by judges of probate, they shall be allowed such fees as shall be, from time to time, allowed by law.

(20.) SEC. XX. Appeals may be taken from all judgments, decrees and decisions rendered by probate justices of the peace, while acting in the capacity of judges of probate, whether such acts be performed in their judicial or ministerial character; such appeals to be taken and prosecuted in the same manner, and with like effect as appeals from the judgments and decisions of other justices of the peace.

(21.) SEC. XXI. Parties litigant, in suits before such probate justices of the peace, whether acting as courts of probate or justices of the peace, shall be entitled to trial by jury, as is provided in suits before other justices of the peace.

An Act to promote a more faithful Discharge of the Duties of Probate Justices of the Peace, and for other Purposes.

[Approved March 3, 1845. Laws, 1845, p. 40. App. Rev. Stat. 1845, p. 585.]

(22.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of each and every probate justice of the peace in this State, to enter in the proper books of his office, a full and perfect record of all orders, judgments or decrees, which shall be hereafter made by such officer in the due course of his proceedings, when acting as, and discharging the duties of probate justice of the peace.

(23.) SEC. II. If any such probate justice of the peace shall willfully fail, neglect or refuse to make, or cause to be made a full and perfect record of all such orders, decrees or judgments made as aforesaid, within ten days from the time of making the same, he shall be held and taken to be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than five nor more than one hundred dollars.

(24.) SEC. III. This act, and also chapter fifty-four of the Revised Statutes, entitled "INTEREST," passed at the present session, shall take effect, and be in force from and after the first day of May, eighteen hundred and forty-five, any law to the contrary notwithstanding.

(25.) SEC. IV. Section eighty of the act entitled "An act regulating the assessment and collection of the public revenue," passed at the present session, shall be and the same is hereby repealed.

(26.) SEC. V. The council of revision shall, on the approval of the Revised Statutes, deliver the same to the superintendent, appointed in chapter ninety of the Revised Statutes, who shall copy and certify the same, and with the same effect, as the secretary of State is authorized to do, in said chapter. After the same are copied and compared for publication, the enrolled chapters shall be then filed in the office of the secretary of State. The sum of two hundred dollars is hereby appropriated to said superintendent for copying the same for publication. The act to establish and maintain common schools, shall take effect and be in force from and after its passage.

An Act to amend "An Act to provide for the Election of Probate Justices of the Peace."  
[Approved March 1, 1845. Laws, 1845, p. 25. App. Rev. Stat. 1845, p. 586.]

(27.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all the entries which have been made, and which shall hereafter be made, and all proceedings which have been had, or which may hereafter be had, by probate justices of the peace, in the several counties of this State, in taking and entering proof of wills and codicils, and recording the same, granting letters testamentary and letters of administration, and recording the same, taking bonds in all such cases, and recording the same, receiving and recording inventories and sale bills, and all other entries and proceedings of such probate justices of the peace of and concerning the settlement of estates of any deceased person, and the entries and proceedings which have been, or which may hereafter be, made or had, touching the duties of said probate justices, under the laws in reference to minors, orphans and guardians, are hereby declared matters of record; and all the entries of proceedings which may have been or shall hereafter be made by the said probate justices of the peace, or copies thereof, duly certified by them, or either of them, under the hand and seal of the said probate justice of the proper county, shall be good evidence, where such evidence may be required of such entries and proceedings, in all the courts of law and chancery in this State, any law to the contrary notwithstanding.

(28.) SEC. II. And so much of the act entitled "An act to provide for the election of probate justices of the peace," as requires transcripts of proceedings before probate justices to be filed in the clerk's office of the circuit court, in order to be used as evidence in any other State or territory, and so much as requires probate justices to report their proceedings to the circuit courts of their respective counties, for the approval or rejection of such circuit courts, is hereby repealed.

(29.) SEC. III. That in all cases where probate justices have failed to make such report, it shall not be required; but their record, or certified copies of the same, shall be good evidence, as though the same had been reported to the circuit courts of their respective counties, and approved by said courts.

(30.) SEC. IV. That all rights acquired, or liabilities incurred, before this act takes effect, are not to be affected by the passage of this act.

(31.) SEC. V. This act to take effect and be in force from its passage.

An Act further to define the Duties of Probate Justices.  
[Approved Feb. 19, 1847. Laws, 1847, p. 63.]

(32.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That when any executor or administrator may have [removed] or shall remove without the limits of this State, it shall be the duty of the probate justice of the proper county, upon affidavit being filed of such removal by any person interested in the estate in the hands of such executor or administrator, to cause a notice to be published in some newspaper in the county where letters testamentary or of administration may have been granted, for four weeks successively, and if no newspaper is published in said county, then by posting up a notice at the court-house door, setting forth that said affidavit has been filed, and notifying the said

executor or administrator to appear before him, within thirty days after the date of said notice, and make a settlement of his accounts, as now required by law; and in case said executor or administrator shall neglect or refuse to make said settlement as aforesaid, it shall be the duty of said probate justice to remove said executor or administrator from office, and to supply the vacancy as now directed by law in other cases.

See An act to legalize the acts of certain officers therein named; approved Jan. 25, 1849. Laws, 1849, p. 100.

As to Probate Courts, see *ante*, p. 290.

PRIOR LAWS. An act to provide for the election of probate justices of the peace; in force March 4, 1837. Laws, 1837, p. 176.

An act to amend an act to provide for the election of probate justices of the peace; in force July 21, 1837. Laws, 1837, (Special Session,) p. 46.

DECISIONS. Courts of probate have power to revoke letters of administration obtained by fraud. *Marston v. Wilcox*, 1 S. 60.

A court of probate has no power to render a judgment in favor of heirs or devisees, against an executor or administrator, for not paying to such heirs or devisees, their portion of the estate. The remedy against an executor or administrator for not complying with an order of the court of probate, is by attachment for contempt. *Piggott v. Raney et al.*, 1 S. 145.

The certificate of a judge of probate is not admissible in evidence to prove who are the heirs of a deceased person. *Greenwood v. Spiller*, 2 S. 502.

Appeals from judgments of probate justices, under section 4, of the act of March 3, 1845, should be taken in the same manner as appeals from the judgments of justices of the peace. *Gibbons v. Johnson*, 3 S. 61.

The proceedings of a probate justice, in allowing claims against an estate, should be reported to the circuit court at its first term thereafter. The circuit court approves or rejects it, and the effect of its approval, is that it is matter of record and may be certified as such. *Scott v. Crow et al.*, 4 S. 183.

Appeals may be taken from decisions of probate justices, in all cases not included in sections 3 and 4, of the act of March 4, 1837, in the manner prescribed in the statute of wills, for appeals from the old court of probate. *Idem*.

Whether one who acted as probate justice by granting letters of administration and approving the administrator's bond, was, at the time, an officer *de jure*, cannot be inquired into in a suit on such bond. *Pritchett et al. v. The People*, 1 G. 525.

Courts of probate have exclusive jurisdiction over the personalty, but none over the realty. *Ferguson et al. v. Hunter*, 2 G. 657.

Taking proof of the execution of a will, is a ministerial, not a judicial act. *Idem*.

A probate justice of the peace, acts as judge of the probate court, with the powers of that court; and as a justice of the peace in civil cases. As a probate justice he uses the seal of that court, but when acting as a justice of the peace, he is not required to use his official seal. *Williams v. Blankenship*, 12 Ill. 122; *Dunlap v. Ennis*, 3 G. 287.

A claim was filed against an estate, in a probate court; the administrator exhibited a set-off, and obtained judgment in his favor for \$1,450. On appeal to the circuit court, the parties agreed that the cause should be tried on its merits, and judgment was rendered for the administrator for \$1,500, and the clerk directed to certify the proceedings to the probate justice, with orders to issue execution: *Held*, that the circuit court had jurisdiction of the case by consent of the parties, but erred in directing the probate justice to issue execution. *Allen v. Belcher, Administrator*, 3 G. 594.

Probate justices have jurisdiction of suits on official bonds. *Robertson v. County Commissioners*, 5 G. 559.

An order of a probate court, directing a guardian to pay to his successor, money in his hands belonging to the ward, is conclusive on the guardian, unless it can be impeached for fraud or collusion. *Ammons v. The People*, 11 Ill. 6.

When a court of probate has acquired full jurisdiction of an estate, it retains jurisdiction till the estate is fully administered. *People v. White et al.*, 11 Ill. 341.

The authority of a father to appoint a guardian for his children, is higher than the authority of the probate court, and when the former has exercised his right, the latter cannot act. *Holmes v. Field*, 12 Ill. 424.

## CHAPTER LXXXVI.

## QUO WARRANTO.

## SECTION

1. Persons usurping office, franchise, &c., to be proceeded against by *quo warranto*; rights of several may be tried in one information; proceedings to be had of same term at which information is filed.
2. Party found guilty to be ousted, fined and mulcted in costs.
3. Court may allow time for pleading, &c.

## SECTION

4. Appeals to be allowed, on terms; writ of error, &c., to operate as a stay of proceedings.
5. Service of *quo warranto* on defendant without the State, to be at least forty days before commencement of term.
6. Service on incorporated company, what sufficient.

[Approved March 3, 1845. Rev. Stat. 1845, p. 429.]

(1.) SECTION I. 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 by one information, it shall and may be lawful for the said court 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.

(2.) SEC. II. 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.

(3.) SEC. III. It shall be 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 may seem just and reasonable.

(4.) SEC. IV. 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.

An Act to provide for the Service of Process on Information in the Nature of Quo Warranto.

[Approved Feb. 12, 1853. Laws, 1853, p. 151.]

(5.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases of information in the nature of *quo warranto*, the relator may cause a copy of the information, together with a notice of the commencement of such proceedings, to be delivered to any defendant or defendants, or body politic and corporate, interested in such proceedings, and residing or being without this State, not less than forty days previous to the commencement of the term at which such defendants may be required to appear, which service when proved to the court by the oath or deposition of any person competent to be a witness in the cause, shall be as effectual as if such service had been made in the usual form within the limits of this State.

(6.) SEC. II. In cases of such service on any incorporated company, it will be sufficient to make the same upon the president or the principal clerk or cashier, secretary or principal agent or superintendent of such company.

PRIOR LAWS. An act to regulate proceedings upon information in the nature of *quo warranto*; in force Dec. 28, 1826. Rev. Laws, 1827, p. 347; Rev. Laws, 1833, p. 506.

DECISIONS. Where a person is in office by color of right, and exercising the duties thereof, *quo warranto* is the proper remedy for another person claiming the same office. *The People v. Forquer*, Breese, 68. See also, *The People v. Mobley*, 1 S. 215; *Field v. The People*, 2 S. 79.

The question of the forfeiture of a charter cannot be examined collaterally; *quo warranto* is the proper mode. *Wilms v. Bank of Illinois*, 1 G. 667.

To an information in the nature of *quo warranto*, the defendant should plead, not answer. *The People v. Percells*, 3 G. 59.

The proceeding by *quo warranto* is a criminal prosecution, and like an indictment must 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." *Donnelly v. The People*, 11 Ill. 552. See also *People v. Mississippi and Atlantic R. R. Co.*, 13 Ill. 66; *Wight et al. v. The People*, 15 Ill. 417.

When *quo warranto* is resorted to for the protection of private or individual rights, it is in substance, though not in form, a civil suit, and a change of venue will be allowed under the statute. *People ex rel. v. Shaw et al.*, 13 Ill. 581.

In a proceeding by *quo warranto*, the defendant must either disclaim or justify; and if he justifies, must set out his title specially, showing by what warrant he holds and exercises the functions of the office. It will be no answer to allege that the relator is not entitled to the office; the defendant must show himself rightfully in office. *Clark v. The People*, 15 Ill. 213.

## CHAPTER LXXXVII.

## RECORDS AND RECORDERS.

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[Approved March 3, 1845. Rev. Stat. 1845, p. 431.]

(1.) SECTION I. County recorders shall be elected in the several counties of this State on the first Monday in August, on the expiration of the terms

of those now in office, and every two years thereafter. When so elected, they shall continue in office for the term of two years, and until their successors are elected and qualified.

(2.) SEC. II. The election of county recorders shall, in all things, be conducted, and returns thereof be made to the office of the secretary of State, as provided by the chapter regulating elections; and upon such election being made, the governor shall commission such county recorder, to continue in office for two years; which commission shall be transmitted by the secretary of State to the clerk of the county commissioners' court of the proper county, and it shall be the duty of said clerk to give immediate notice to such recorder of the receipt of his commission.

(3.) SEC. III. County recorders, previous to entering upon the duties of their office, shall enter into bond to the people of the State of Illinois, each 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 successor in said office; which said bond shall be filed in the office of the clerk of the county commissioners' court, 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. The securities to such bonds shall be approved by the county commissioners' courts of the respective counties for which said recorders are elected.

(4.) SEC. IV. The election for county recorders shall be held at the same times and places, and conducted in all respects as elections of county commissioners; and all vacancies shall be filled in the same manner; and all contested elections for recorders shall be decided as in other cases. And in case of a contested election between two or more persons who shall have been voted for, for the office of county recorder, a commission shall not issue until such contest shall have been duly decided according to law.

(5.) SEC. V. County recorders may appoint deputies only when they shall be disabled by sickness or other bodily infirmity. They shall keep their offices at the seat of justice of the counties respectively, and on a neglect or a refusal to do so, the county commissioners' court may declare the same to be vacant.

(6.) SEC. VI. No recorder shall enter upon or officiate in his said office, before he hath given such security as is provided in section three, 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.

(7.) SEC. VII. 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 alphabeti-

cal index to each record book, showing 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.

(8.) SEC. VIII. It shall be the duty of the county commissioners' courts to provide the county recorders of their respective counties with well-bound books necessary to the execution of the duties of their offices, to be paid for out of the county treasuries.

(9.) SEC. IX. All copies and transcripts of the ancient books, records and papers, bearing date prior to the thirteenth of July, in the year of our Lord one thousand seven hundred and eighty-seven, now in the office of the recorder of the county of Randolph, 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.

(10.) SEC. X. If any person, whose office has become vacated or determined, or his executors or administrators, shall neglect or refuse to deliver over any record, book, paper, document or other article of public property, 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.

(11.) SEC. XI. 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 by 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.

(12.) SEC. XII. 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, that 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 the provisions of this chapter.

An Act concerning Public Records.

[Approved March 1, 1845. Laws, 1845, p. 37. App. Rev. Stat. 1845, p. 587.]

(13.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the commissioner appointed, or to be appointed, by the county commissioners' court of any county in the military bounty tract, in this State, under an act approved February 12th, 1835, and an act approved February 27th, 1841, concerning the transcribing of certain records, is hereby authorized and required carefully to compare the transcript record with the records so transcribed; and if he find them to be correctly copied, he shall make a certificate to that effect, under his hand and official seal of office, as such commissioner, at the end of each volume of such copies, in lieu of the recorder of the county, having charge of said records.

(14.) SEC. II. So much of said recited acts as conflicts with the provisions of this act, is hereby repealed. This act to be in force from and after its passage.

An Act to authorize Recorders to appoint Deputies.

[Approved Feb. 26, 1845. Laws, 1845, p. 30. App. Rev. Stat. 1845, p. 587.]

(15.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That section second of the act entitled "An act legalizing certain records in Greene county, and authorizing recorders to appoint deputies in certain cases," in force January 24th, 1843, be and the same is hereby repealed.

(16.) SEC. II. That the recorder in each county be and he is hereby authorized to appoint a deputy, who shall be sworn to discharge his duty faithfully, in the same manner as the recorder is now sworn, and the acts of said deputy in recording any writings authorized by law to be recorded, shall be deemed valid in all respects, as if recorded by the recorder himself. The recorder shall, at the time of the appointment of said deputy, enter upon the records of his office the certificate of the appointment aforesaid.

(17.) SEC. III. Hereafter the penalty of each recorder's bond shall be in the sum of not less than two nor more than five thousand dollars, to be determined by the county commissioners' court taking the bond.

An Act to amend Chapter LXXXVII of the Revised Statutes, entitled "Records and Recorders."  
[Approved March 1, 1847. Laws, 1847, p. 69.]

(18.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the recorders of the several counties in this State are hereby required to keep a complete index of all the deeds, mortgages, and other instruments in writing which are required by law to be recorded, and which may have been or which may hereafter be recorded in the several volumes of books in his said office, as a safe and sure reference to any such deed, mortgage, or other instrument in writing so recorded by him, and open at all times to the citizens of such county for inspection, without fee.

(19.) SEC. II. The county commissioners' courts of the several counties in this State are hereby required to furnish the recorder of their respective counties with such books of suitable and convenient size as may be necessary to carry into full effect the first section of this act, and to grant such compensation out of their respective county treasuries, to any such recorder as shall have made out such index, as contemplated in the first section of this act, and has not heretofore been paid therefor, such compensation to be agreed upon between said recorder and the commissioners' court of said county; and should they not agree, then the same shall be submitted to three disinterested citizens of said county, one of whom shall be appointed by the county commissioners' court of said county, at any regular term thereof, as soon after the passage of this act as practicable, and one by said recorder, and the third, if not agreed upon by said court and the recorder, shall be appointed by the two who shall be appointed as aforesaid, and the three so appointed shall inspect said index, and report, upon oath, if required by either party, the sufficiency and value of the same; and when said index shall have been paid for as aforesaid, the same shall be open to inspection for reference to the citizens of said county, without charge.

(20.) SEC. III. In any county where no such index has been made, it shall be the duty of the county commissioners' court of such county to employ some competent person to make out the same, and pay him such compensation out of the county treasury as said court may deem just and reasonable.

(21.) SEC. IV. The county commissioners of the county of Will are hereby authorized to cause an index of the records of judgments rendered in the circuit court of said county, as well as the record of judgments filed in the office of the clerk of the said circuit court, to be made, if, in the opinion of the said commissioners, the making of each index only is necessary; otherwise the said commissioners shall cause to be transcribed the whole of the said judgment record into a well-bound book to be by them provided for that purpose, and the record, so transcribed, shall become and constitute a portion of the records of said circuit court, and shall be as valid in law as if originally recorded in the same. The county commissioners' court of said county shall cause to be paid to the person employed by them to carry out the provisions of this section, a fair and reasonable compensation, and in case of disagreement, the amount shall be determined in the manner already provided in this act for services in transcribing of other records. This act to be in force from and after its passage.



An Act to transcribe the Records of Scott County.

[Approved Feb. 23, 1847. Laws, 1847, p. 70.]

(22.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county commissioners' court of Scott county is hereby authorized to cause to be copied from the recorder's office of Morgan county, all the deeds, mortgages and other writings recorded in the said county of Morgan, concerning or affecting real estate situated in the county of Scott; and said court may employ the recorder of said county, or some other competent person, to copy the said deeds, mortgages, or other writings, into a well-bound book, to be provided for that purpose; and the person so appointed shall have access to the books of the records of Morgan county for the purpose of making the copy aforesaid, free of charge.

(23.) SEC. II. When the deeds, mortgages and other writings aforesaid shall be copied, the recorder of Morgan county shall assist in comparing said copies with the records thereof, and when all errors, if any, shall have been corrected, the person so employed, and the recorder of Morgan county, shall make, sign and make oath to a certificate, stating that said copy has been truly and correctly made from the records of said office, which certificate shall be made upon the book in which the deeds are copied as aforesaid.

(24.) SEC. III. Copies made from the book in which the deeds shall be copied as aforesaid, certified by the recorder of Scott county, may be used as evidence *prima facie* of the existence and contents of the original deeds.

(25.) SEC. IV. The recorder of Morgan county shall be allowed and paid for his services and the use of his office, in comparing and certifying to the deeds copied under the provisions of this act, five cents for each deed or mortgage, which shall be paid by the county of Scott.

(26.) SEC. V. The county commissioners of Scott county may allow the persons authorized to make the copies aforesaid, not exceeding ten cents for every one hundred words of said copy; said court shall also pay for the record book or books used under the provisions of this act.

An Act in relation to the Records of Kendall County.

[Approved Feb. 16, 1847. Laws, 1847, p. 71.]

(27.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county commissioners' court of Kendall county be and it is hereby authorized to employ a competent person to make a complete index to the records in the recorder's office of said county. There shall be an index of the names of the grantors and of the grantees, and also of the tracts or parcels of land; and the recorder of said county, after said index or indexes shall be so made, is hereby required to keep the same in that manner without additional compensation. The said person so employed shall take an oath faithfully to perform the duties herein required of him, which may be taken before the clerk of the said court, and filed in his office. The said county commissioners' court is hereby authorized to pay the person so to be employed, a reasonable compensation, to be fixed by them, out of any money in the treasury of said county not otherwise appropriated.

An Act in relation to the Records of Peoria County.

[Approved Feb. 16, 1847. Laws, 1847, p. 71.]

(28.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county commissioners' court of Peoria county be and it is hereby authorized to contract with the recorder of said county to copy, into new books, so many of the record books of deeds, and mortgages, and town plats, in the office of said recorder, as the said court may think necessary or advisable to be so copied; which books so copied shall be evidence, and copies from said books shall be received in evidence in the same manner as copies of the original records; and the said court is authorized to pay out of the county treasury such sums as it may have been agreed on; and said court is hereby authorized to procure said recorder to make, in one well-bound book, a general index to all the record books of said county, and to make such recorder such compensation as may be agreed on.

(29.) SEC. II. This act to be in force from and after its passage.

An Act to transcribe certain Records in Greene, Will and Pulaski Counties.

[Approved Feb. 11, 1847. Laws, 1847, p. 72.]

(30.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That for the preservation of the records of the sales of lands sold for taxes in Greene county, the clerk of [the] county commissioners' court of said county is hereby authorized and required to transcribe said records into a well-bound book, to be furnished by said court for that purpose.

(31.) SEC. II. When said records have been transcribed as aforesaid, the same shall become and constitute a portion of the records of said court, and shall be as valid in law as if originally recorded in the same. If the said records, when so transcribed, shall not fill the book furnished as aforesaid, sales hereafter made may be recorded in the same.

(32.) SEC. III. The clerk of the county commissioners' court of said county shall be allowed a reasonable compensation for performing the duties required of him under this act, to be paid out of the county treasury.

(33.) SEC. IV. When said records have been so transcribed, it shall be the duty of said court, at some convenient time thereafter, not exceeding three months, to carefully compare the same with the original records, (and make corrections, if any may be required,) and certify the same under their signatures as being a true and perfect transcript of the sales aforesaid, as originally recorded.

(34.) SEC. V. The aforesaid act shall be applicable to the county of Will, and it shall be the duty of the county commissioners' court of the county of Will, to cause the records of said county to be transcribed, as expressed in this act.

(35.) SEC. VI. The recorder of Will county is hereby authorized, by himself or deputy, to transcribe all the records in the Cook County recorder's office, of deeds and mortgages given for lands situated in the county of Will, where the same were recorded in Cook county, previous to the formation of Will county out of a part of the county of Cook. It shall be the duty of the said recorder or his deputy, in transcribing such records, to transcribe, in a neat and accurate manner, all town plats situated in the

county of Will, and recorded as above, as well as every other instrument or article touching the interest of the people of said county, that may have been recorded in Cook county previous to the formation of Will county, in a good and substantial book, which he shall procure for that purpose.

(36.) SEC. VII. The said recorder or his deputy shall have access to all records of the county of Cook for the purpose of making such transcription; and when the same shall have been made, the recorder of Cook county, or his deputy, shall assist the person making such transcription, to compare every article transcribed with the original record, to correct errors, if any shall have been made, and at the close of the same, the said recorder of Cook county shall make a certificate that the foregoing transcribed records have been carefully compared with the original records in his office, and found to be correctly transcribed in every particular.

(37.) SEC. VIII. The county commissioners' court of Will county, at their first term after the completion of the said transcribed record, shall order the clerk of said court to draw an order in favor of the recorder, upon the treasurer of said county, for the sum of two dollars and fifty cents per day for every day actually employed in making out such transcribed record, and also for such an amount as the record book may have cost; the number of days employed to be certified under oath of the person doing the work. They shall also cause to be paid to the recorder of the county of Cook, five cents for each article transcribed; and when the same shall have been transcribed as before mentioned, each article shall be as valid to all intents and purposes as if the same had been originally recorded in the county of Will.

(38.) SEC. IX. That James S. Smith, of North Caledonia, in Pulaski county, be and he is hereby authorized to transcribe the records of Johnson county and Alexander county, so far as the same may affect in any way the rights of persons resident in Pulaski county, or the interests in real estate lying in said county of Pulaski, and shall receive such compensation as the county commissioners' court of Pulaski county shall allow, to be paid out of the treasury of Pulaski county; and for the purposes of transcribing said records, the recorders of Alexander and Johnson counties shall allow said Smith free access to the records of their respective counties, such time as will enable him to complete the same.

(39.) SEC. X. Said James S. Smith shall deposit in the recorder's office of the county of Pulaski, the said records when so transcribed, certified by him to be a true and perfect copy of such parts of the records of said counties of Johnson and Alexander, as affect the interests in Pulaski county of persons and lands; which transcribed records shall have the same force and effect in law that the originals have in the counties from which they have been transcribed; and copies thereof, certified, shall be evidence of the facts contained therein, as if certified from the originals in all respects whatever. This act to be in force from and after its passage.

An Act to legalize the Records of the Recorder's Office in Macoupin County.

[Approved Jan. 20, 1849. Laws, 1849, p. 107.]

(40.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all deeds, mortgages, and other instruments recorded, and all the official business transacted by the deputy

recorder, or the person acting as such, of Macoupin county, and State of Illinois, between the first of May, A. D. 1846, and the first of September, A. D. 1847, shall be legal, valid and binding, as though done by the recorder in person.

An Act to authorize certain Records to be Transcribed.

[Approved Jan. 20, 1849. Laws, 1849, p. 108.]

(41.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That permission be granted to the county commissioners' court of the county of Schuyler, or such court as may hereafter succeed said county commissioners' court, and they are hereby authorized and empowered to appoint some competent person as a commissioner for the purpose hereinafter expressed, whose appointment shall be entered upon the records of said court, and who, when appointed, shall take and subscribe an oath faithfully to perform such duties as are required by this act; which oath may be administered and certified by any justice of the peace of said county.

(42.) SEC. II. It shall be the duty of said court, when they make such appointment, 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.

(43.) SEC. III. As soon as such books shall be delivered to said commissioner, he shall record in each book a copy of the order appointing him, and his oath of office, and proceed in due time to all recording offices in this State, where deeds or title papers for lands lying within the said county of Schuyler 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 books furnished him for that purpose, all deeds and title papers to lands lying in the said county of Schuyler, which have been recorded in any such recording office as aforesaid; after which said commissioner shall return the books so delivered to him to the recorder of the county of Schuyler, and the said recorder shall make a certificate of the delivery of said books to him at the end of each of them.

(44.) SEC. IV. 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 and other title papers to lands lying within the county of Schuyler, have been recorded, to permit said commissioner to make transcripts of all and every such deed and title paper, and for that purpose to have access to and the use of the books in which such deeds or title papers may be recorded.

(45.) SEC. V. The said commissioner, in transcribing the deeds and title papers aforesaid, shall, immediately after transcribing each deed, title paper and acknowledgment, note in the said book at what time, in what office, book and page, the same were originally recorded.

(46.) SEC. VI. When such transcripts shall be delivered to the recorder of Schuyler county by said commissioner, they shall, to all intents and purposes, be considered as books of record of deeds and title papers for the said county of Schuyler, and copies of such transcribed deeds and title papers,

certified by the recorder of Schuyler, shall be evidence in all courts in this State, 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.

(47.) SEC. VII. The said county court shall have power to fill any vacancy which may happen in the said office of commissioner.

(48.) SEC. VIII. The recorder of Schuyler, upon the delivery of the transcribed records aforesaid, by the commissioner aforesaid, shall estimate the number of deeds and other title papers which may have been transcribed by said commissioner as aforesaid, and shall certify the result to [the] county court aforesaid, and said court shall thereupon make an order upon the treasury of the county, in favor of such commissioner, for his services, at and after the rate of twenty-five cents for each and every deed and title paper so transcribed by him as aforesaid; which said order shall be paid as other county orders are now required to be paid.

(49.) SEC. IX. This act to take effect from and after its passage.

An Act to authorize the County of Bureau to transcribe Records of Putnam County.

[Approved Feb. 10, 1849. Laws, 1849, p. 109.]

(50.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county commissioners' or county court of the county of Bureau is hereby authorized and empowered at any regular term thereof, whenever it shall be deemed expedient, to contract with the lowest competent bidder, for transcribing from the records of the county of Putnam, all deeds, title papers, certificates, patents, town plats and all other writings on record in the recorder's office of said county of Putnam, appertaining to lands lying in the county of Bureau.

(51.) SEC. II. The person obtaining the aforesaid contract shall, before entering upon the duties enjoined by this act, take and subscribe an oath or affirmation carefully and faithfully to perform the same; which oath or affirmation may be administered and certified to the clerk of the aforesaid court, by any justice of the peace in said county, and shall also give bond, with good and sufficient security, in such sum as the county commissioners' or county court may determine.

(52.) SEC. III. It shall be the duty of the county commissioners' or county court of said county, after making such contract, or as soon thereafter as may be convenient, to provide a sufficient number of suitable blank books, substantially bound, for the purpose contemplated by this act.

(53.) SEC. IV. As soon as such book or books shall be delivered to the aforesaid contractor, he shall proceed to the office of the recorder of the county of Putnam, and shall from the books in said office make out and record, in a fair and legible manner, in the book or books furnished him, all records contemplated by the foregoing provisions of this act, and shall certify at the end of each volume, that the deeds, certificates, title papers, and all other writings contained therein, are true and correct copies from the records of the county of Putnam. When the said contractor shall have finished transcribing the records contemplated by this act, he shall also certify that these books (naming or numbering them) contain all the records appertaining to real estate lying in the county of Bureau, and on record in the office of the recorder of Putnam county.

(54.) SEC. V. It shall be the duty of the recorder of the county of

Putnam to permit said contractor to make transcripts of all and every record required by the provisions of this act, and for that purpose to use the books in which such instruments may be recorded, free of charge.

(55.) SEC. VI. The said contractor shall be paid for his services out of the county treasury of Bureau county.

(56.) SEC. VII. When the records made by authority of this act are completed in the manner contemplated therein, and deposited in the recorder's office of the county of Bureau, certified copies of the same, made by the recorder of the aforesaid county, shall be evidence in all courts and places, and with the same effect as if made by the recorder of the county of Putnam.

(57.) SEC. VIII. Said county court are hereby authorized, in like manner as is provided by this act for transcribing the records of deeds of said county of Putnam, to cause to be transcribed all records of sales of lands for taxes, made in said county of Putnam, and which lands may lie in said county of Bureau; and also all records of judgments, or other public records of said county of Putnam, necessary for the use or security of the people of said Bureau county, or any lands situate therein. And all such transcribed records, when deposited in the proper office of said Bureau county, as provided by this act for transcripts of the records of deeds aforesaid, and copies duly certified from them, shall be evidence to the same extent that the original records of said Putnam county, or transcripts from them, would be; and the officers of said Putnam county, having the custody of such original records, shall permit said transcripts to be taken therefrom free of charge.

An Act to authorize the Recorder of St. Clair County to transcribe certain Records in said County.

[Approved Feb. 12, 1849. Laws, 1849, p. 110.]

(58.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county commissioners' court of St. Clair county are hereby authorized to provide a suitable record book, into which they may have transcribed all or any portion of the records of said county contained in book (I) in the recorder's office of said county; for which service they shall pay the recorder of said county such reasonable compensation as they may consider just.

(59.) SEC. II. All such records so transcribed shall have the same force, validity and effect as is by law allowed to other records; and copies thereof, duly certified, shall be competent evidence in any of the courts of this State.

An Act to amend an Act entitled "An Act to authorize certain Records to be Transcribed," approved Jan. 29, 1849.

[Approved Feb. 1, 1851. Laws, 1851, p. 18.]

(60.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county court of Schuyler county, Illinois, be and they are hereby authorized to fix the compensation of the commissioners who may be appointed under the provisions of the act to which this is an amendment, at any reasonable sum which they, in the exercise of a sound discretion, may deem proper to allow said commissioners: *Provided,* That such compensation shall not exceed the compensation now allowed by law to county recorders for recording deeds and other evidences of title, anything in the law to which this is an amendment to the contrary notwithstanding.

(61.) SEC. II. All the powers and privileges conferred by this bill or the act to which this is an amendment, upon the county court of the county of Schuyler, be and the same are hereby as fully conferred upon the county court of the county of Brown.

(62.) SEC. III. This act to take effect and be in force from and after its passage.

An Act to amend the Recording Laws of this State.

[Approved Feb. 12, 1851. Laws, 1851, p. 80.]

(63.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any clerk of the circuit court of any county in this State, being recorder of deeds, who shall fail or neglect to perform any of the duties required to be performed by the seventh section of chapter eighty-seven of the Revised Statutes, entitled "RECORDS AND RECORDERS," or who shall fail or neglect to perform any of the duties required by the first section of the act amendatory of said above recited chapter, approved March 1, 1847, shall, for any such failure or neglect, forfeit and pay the sum of five dollars, with costs, recoverable by action of debt, before any justice of the peace of the proper county, in the name and for the use of any person who shall sue for the same.

(64.) SEC. II. That whenever any recorder, heretofore in office, has neglected to keep up said indexes, it shall be the duty of the recorder now in office, to make and complete said indexes mentioned in the preceding section, for which he shall receive a compensation of five cents for each tract of land embraced in the deed, mortgage or other instrument, to be paid out of the county treasury: *Provided,* That after said indexes are completed, no compensation shall be allowed to said recorders for keeping up said indexes.

(65.) SEC. III. All laws in conflict with the provisions of this act are hereby repealed. This act to take effect and be in force from and after its passage.

An Act to authorize the County of Menard to transcribe Records of Sangamon County.

[Approved Feb. 12, 1851. Laws, 1851, p. 80.]

(66.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county court of the county of Menard is hereby authorized and empowered, at any regular term thereof, to direct and authorize the clerk of the circuit court and *ex officio* recorder of Menard county to transcribe from the records of the county of Sangamon, all deeds, title papers, certificates, patents, town plats and all other writings on record in the recorder's office of said county of Sangamon, appertaining to lands lying in the county of Menard.

(67.) SEC. II. The said clerk shall, before entering upon the duties enjoined by this act, take and subscribe an oath or affirmation, carefully and faithfully to perform the same; which oath or affirmation may be administered and certified to the said court by any justice in said county, and shall also give bond in such sum as said court may determine, with good and sufficient security.

(68.) SEC. III. It shall be the duty of said county court of said county of Menard, as soon as may be convenient thereafter, to provide a sufficient number of suitable blank books substantially bound, for the purpose contemplated in this act.

(69.) SEC. IV. As soon as such book or books shall be delivered to the aforesaid clerk and *ex officio* recorder, he shall proceed to the office of the recorder of Sangamon county, and shall, from the books in said office, make out and record, in a fair and legible manner, in the book or books furnished him, all records contemplated by the foregoing provisions of this act, and shall certify, at the end of each volume, that the deeds, certificates, title papers and all other writings contained therein, are true and correct copies from the records of the county of Sangamon. When the said clerk shall have finished transcribing the records contemplated by this act, he shall also certify that these books (naming or numbering them) contain all the records appertaining to real estate lying in the county of Menard, and on record in the recorder's office of Sangamon county.

(70.) SEC. V. It shall be the duty of the recorder of the county of Sangamon, to permit the said clerk of Menard circuit court, and *ex officio* recorder, to make transcripts of all and every record required by the provisions of this act, and, for that purpose, to use the books in which such instruments may be recorded, free of charge.

(71.) SEC. VI. When the records made by the authority of this act are completed, in the manner contemplated herein, and deposited in the recorder's office of Menard county, certified copies of the same, made by the recorder of Menard county, shall be evidence in all courts and places, and with the same effect as if made by the recorder of Sangamon county.

(72.) SEC. VII. The said clerk and *ex officio* recorder of Menard county shall be allowed for his services, required to be performed in this act, the same fees now allowed by law for recording deeds, mortgages, and other instruments in writing, to be paid out of the county treasury of Menard county.

(73.) SEC. VIII. This act to be in force from and after its passage.

An Act in relation to the Records of the Counties of Carroll and Putnam.

[Approved Feb. 15, 1851. Laws, 1851, p. 130.]

(74.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county court of Putnam county and the board of supervisors of the county of Carroll, be, and they hereby are, authorized, each of them, to employ a competent person to make a complete index to the records in the recorder's office of their respective counties. There shall be an index of the names of the grantors and of the grantees, and also of the tracts or parcels of land; and the recorder of said counties, after said index or indexes shall be so made, is required to keep the same in that manner without additional compensation; and such index or indexes shall be kept in said recorder's office. The said persons so employed shall take an oath faithfully to perform the duties herein required of them, which may be taken before any justice of the peace, and shall be filed in the office of the clerk of the circuit court. The said county court and board of supervisors are each respectively authorized to pay the person so to be employed by them, a reasonable compensation, out of any money in the treasury not otherwise appropriated.

An Act to provide for making Indexes to certain Records in La Salle County.

[Approved Feb. 10, 1853. Laws, 1853, p. 167.]

(75.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the clerk of the county court of La Salle county be and he is hereby authorized to make complete indexes of the records of the late county commissioners' court and of the probate court of said county, now remaining in his office, of which no indexes now exist.

(76.) SEC. II. The board of supervisors of said county shall determine the time and the manner of making such indexes, and shall allow and pay to said clerk a reasonable compensation for his services in making such indexes; the amount of said compensation to be fixed by said board of supervisors.

(77.) SEC. III. This act to be in force from and after its passage.

An Act to authorize the County Court of Sangamon to transcribe certain Records.

[Approved Feb. 10, 1853. Laws, 1853, p. 167.]

(78.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county court of Sangamon county are hereby authorized and empowered to have transcribed certain records of deeds, mortgages and other instruments of writing, belonging to the recorder's office of said county.

(79.) SEC. II. That the said transcript, when made and properly certified by the clerk of the circuit court and *ex officio* recorder of said county, shall have all the legal force and effect of the original record.

(80.) SEC. III. This act to be in force from and after its passage.

An Act in relation to certain Records in Crawford County.

[Approved Feb. 11, 1853. Laws, 1853, p. 211.]

(81.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the clerk of the circuit court of Crawford county be and he is hereby authorized to copy into new books, the following records of his said office, to wit: The record of transcripts, record of certificate of purchase, execution docket "A," and the general index of the record of deeds; which books, so copied, shall be evidence, and copies from said books shall be received in evidence in the same manner as copies of the original records; also that he make out, in a suitable book provided for that purpose, a general index of the court journals of said office, for which he shall be allowed eight cents for every one hundred words for said transcribing, to be paid out of the county treasury of said county, upon the affidavit of said clerk.

(82.) SEC. II. This act shall take effect and be in force from and after its passage.

An Act for transcribing certain Records in Coles County.

[Approved Feb. 10, 1853. Laws, 1853, p. 212.]

(83.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That for the preservation of the records of the sales of lands and town lots sold for taxes in Coles county, prior to the 10th day of June, A. D. 1850, and also the records of wills, bonds, letters, inventories, appraisement and sale bills of the probate court of said

county, from record "B." back to the organization of said county, that William D. Latshaw, of Charleston, in said county, is hereby authorized and required, by himself or his authorized deputy or deputies, to transcribe said records into well-bound books, to be furnished by the county court of said county, and for that purpose shall have access to all the public records of said county.

(84.) SEC. II. When said records have been fully transcribed, as aforesaid, the same shall become and constitute a portion of the records of said court, and shall be as valid in law as if originally recorded in the same.

(85.) SEC. III. That the said William D. Latshaw shall be allowed as a compensation for performing the duties required of him under this act, for every one hundred words and figures, in transcribing probate records, eight cents; and for each tract of land and town lot transcribed, five cents; to be paid out of the county treasury from time to time, as the said transcribing progresses.

(86.) SEC. IV. It shall be the duty of the judge of the county court of said county, within three months after the transcribing of the probate records aforesaid shall have been completed, to carefully compare the same, in open court, with the original records, (making corrections, if any be necessary,) and certify the same, under his signature, as being a true and perfect transcript of said records, as originally recorded; and the said judge, having associated with himself one or both of the county justices of the peace of said county, shall, in like manner, examine and compare the transcript of the tax sales with the original records, and certify the same, under their signatures, as being a true and perfect transcript of the sales aforesaid, as originally recorded.

(87.) SEC. V. This act to be in effect from and after the 14th February, 1853.

An Act concerning the Records of Massac County.

[Approved Feb. 10, 1853. Laws, 1853, p. 225.]

(88.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be lawful for the county court of Massac county to employ some suitable person, who will do the work the cheapest, to copy into a well-bound book or books, at the expense of said county, all deeds, mortgages, bonds or other writings for the conveyance of or relating to lands lying in said county, and which deeds, mortgages, bonds or other writings were recorded in the recorders' offices of Johnson and Pope counties, previous to the organization of said Massac county.

(89.) SEC. II. The person or persons employed by the county court of Massac county to procure copies as aforesaid, shall have full access to the books in the recorders' offices of Johnson and Pope counties, for the purpose of making such copies, and the recorders of Johnson and Pope counties shall carefully compare such copies with the records in their offices, and if they find them to be correct, they shall make a certificate to that effect, under their hands and seals, at the end of each volume of said copies.

(90.) SEC. III. At the end of each copy of each deed, or other writing, copied as aforesaid, the person copying the same shall note the volume and page of the record from which it is copied.

(91.) SEC. IV. For their services in comparing such copies, the recorders of Johnson and Pope counties shall be entitled to a compensation not exceeding ten cents for each deed or other writing so compared by them, to be paid by Massac county.

(92.) SEC. V. All copies made, compared and certified as aforesaid, and all transcripts of such copies, certified under the hand and official seal of the recorder of said Massac county, shall be received and taken in all courts of justice, and other places in this State, in as full and ample a manner as the records from which they shall be taken: *Provided, however,* That if any discrepancy or variance shall be found to exist between the said copies and the records of Johnson and Pope counties, certified by the recorders thereof to be correct, and to have been examined with reference to such variance, shall be received as the proper evidence.

(93.) SEC. VI. This act shall not be so construed as to change or affect the existing laws of this State in relation to the admission of copies of deeds and other writings as evidence, but the same rules of evidence, as to the production of the original deeds or writings, shall be pursued as is now provided by law.

(94.) SEC. VII. This act to take effect from and after its passage, and to be deemed a public act.

An Act in regard to Indexes of Records of Deeds, Mortgages and other Instruments.

[Approved Feb. 12, 1853. Laws 1853, p. 254.]

(95.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all the counties of this State when the indexes to records of deeds, mortgages and other instruments, in the recorder's office, have not been made in accordance with chapter eighty-seven of the Revised Statutes, or the first section of an act amendatory thereof, approved March 1st, 1847; or in any county wherein the indexes have been so imperfectly and defectively done, that, in the opinion of the county court or board of supervisors of any such county, new indexes should be made; in any such case, said court are hereby authorized and required to enter an order on their records, stating that new indexes should be made, and on the entry of any such order, it shall be the duty of the recorder of any such county to cause an index to be made, in accordance with the provisions of the act amendatory of chapter eighty-seven of the Revised Statutes, approved March 1st, 1847, and for which index he shall be allowed the same compensation as is by said act of first March, 1847, allowed.

(96.) SEC. II. This act shall take effect and be in force from and after its passage.

An Act in relation to Certain Records.

[Approved Feb. 10, 1853. Laws 1853, p. 260.]

(97.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the clerk of the circuit court of Clark county be required to make out and keep a judgment docket of all judgments rendered in said court prior to the time of his taking charge of the said office of clerk, or which had not, prior to that time, been so docketed.

(98.) SEC. II. Said clerk shall in like manner make and keep an execu-

tion docket of all executions, and the returns thereon, issued by the predecessors in office of the said clerk, or which had not been docketed, as required by law, prior to the said clerk taking charge of said office.

(99.) SEC. III. The county court of said county of Clark, shall pay the said clerk the sum of eight cents for each judgment or execution so docketed as aforesaid.

(100.) SEC. IV. This act to be in force from and after its passage.

PRIOR LAWS. An act establishing a recorder's office, and for other purposes; in force Feb. 19, 1819. Laws, 1819, p. 18.

An act giving the same faith and effect to certain records in the county of Madison as if they had been the records of the county of Bond; in force Jan. 13, 1821. Laws, 1821, p. 14.

An act concerning ancient books, papers and records; in force Jan. 30, 1821. Laws, 1821, p. 46.

An act legalizing certain records in the office of the recorder of Pike county; in force Jan. 10, 1825. Laws, 1825, p. 80.

An act to amend an act entitled "An act establishing a recorder's office, and for other purposes;" in force Jan. 17, 1825. Laws, 1825, p. 135.

An act regulating the office of recorder; in force July 1, 1829. Rev. Laws, 1833, p. 510.

An act providing for the recording of town plats; in force Feb. 27, 1833. Rev. Laws, 1833, p. 599.

An act establishing the office of State recorder; in force June 1, 1833. Rev. Laws, 1833, p. 587.

An act concerning public records; in force Feb. 9, 1835. Laws, 1835, p. 157.

An act to provide for transcribing certain records therein named; in force Feb. 12, 1835. Laws, 1835, p. 158.

An act concerning the transcribing of certain records; in force Jan. 18, 1836. Laws, 1836, p. 226.

An act supplemental to an act entitled "An act concerning public records," approved Feb. 9, 1835; in force Jan. 18, 1836. Laws, 1836, p. 247.

An act relating to the recording or registering of conveyances, or other instruments in writing, executed out of the State and within the United States; in force Feb. 26, 1841. Laws, 1841, p. 66.

An act legalizing certain records in Greene county, and authorizing recorders to appoint deputies in certain cases; in force Jan. 24, 1843. Laws, 1843, p. 203.

An act concerning the records of Jersey county; in force Feb. 1, 1843. Laws, 1843, p. 204.

An act to repair the damages occasioned by the destruction of the records and public documents of Jackson county; in force Feb. 1, 1843. Laws, 1843, p. 205.

An act in relation to certain records in Adams county; in force Feb. 3, 1843. Laws, 1843, p. 208.

An act to amend an act entitled "An act to provide for transcribing certain records therein named," approved Feb. 12, 1835; in force March 4, 1843. Laws, 1843, p. 212.

DECISIONS. A deed is valid between the parties to it, without being acknowledged or recorded. A deed acknowledged before a justice of the peace, can be recorded only in the county where the justice resides and the land lies, unless the clerk's certificate of magistracy be appended. *Semple v. Miles*, 2 S. 315; *McConnel v. Reed*, 2 S. 371.

Under the acts of 1827 and 1829, in regard to recording deeds, *bona fide* subsequent purchasers and mortgagees only are protected against the effect of an unrecorded deed. *Robinson v. Rowan*, 2 S. 499.

The act of 1833, in regard to recording deeds, is remedial, but not retrospective, in its effect. *Idem*.

A deed acknowledged and recorded is admissible in evidence without proof of execution. *McConnel v. Johnson*, 2 S. 522.

It is not the duty of a recorder of deeds to give information as to the legal effect of the records in his office; but he is obliged to search and give information whether deeds, &c., are on record, and refer the party to them. If he give incorrect information, he is guilty of a breach of duty, and is liable therefor on his official bond. *Lusk et al. v. Carlin*, 4 S. 395.

The object of the recording laws is to protect purchasers against latent equities. The deed first recorded, must prevail over a prior unrecorded deed, when the first recorded deed is made in good faith. *McConnel v. Reed*, 4 S. 117.

Such notice of the existence of an unrecorded instrument, as shows a subsequent purchaser guilty of fraud in making his purchase, gives the unrecorded instrument, priority. The effect of recording an agreement for the sale of land, is, under the statute, the same as that of a deed; and



the word "subsequent," in the recording act of 1833, has reference to the time of recording, not the date of the instrument. *Doyle et al. v. Teas et al.*, 4 S. 202.

The registry acts do not apply to patents issued by the State or the United States, nor to unsold lands of the United States. Recording a deed, not required by law to be recorded, is not notice to any one. Under the statute, a deed takes effect from the time of filing the same for record; not from the time when it is actually recorded. *Moore et ux. v. Hunter*, 1 G. 317; *Cook v. Hall*, 1 G. 575; *Rhinehart v. Schuyler*, 1 G. 473.

The statute in regard to recording, applies to administrators' deeds as well as others; and when parties are equally innocent and meritorious, he who first places his title on record must prevail. *Choteau v. Jones et al.*, 11 Ill. 300.

The 7th section of the recording act of 1829, is only directory to the recorder, and the performance of what is there prescribed, is not indispensable to the validity of the deed. A deed delivered to one who has custody of the records, and acts as recorder, is a sufficient delivery to entitle the deed to be filed for record. *Cook v. Hall*, 1 G. 575.

## CHAPTER LXXXVIII.

### REPLEVIN.

#### SECTION

1. Replevin may be maintained for goods wrongfully taken or detained.
2. In what cases action of replevin will not lie.
3. Plaintiff to make oath; its contents.
4. Plaintiff to give bond to the sheriff.
5. Proceedings to be by plaintiff and summons.
6. Judgment in case plaintiff fails; in case he succeeds.

#### SECTION

7. Who may sue on bond, if breach be made.
8. If sheriff fail to take bond, he shall be liable.
9. Avowry and cognizance, in cases of distress for rent.
10. When oath may state belief of defendant.
11. Goods not found, value thereof recoverable.
12. Declaration in trover to be filed.

[Approved March 3, 1845. *Rev. Stat. 1845, p. 433.*]

(1.) SECTION I. Whenever any goods or chattels shall have been wrongfully distrained, or otherwise wrongfully taken, or shall be wrongfully detained, an action of replevin may be brought for the recovery of such goods or chattels, by the owner or person entitled to their possession.

(2.) SEC. II. No action of replevin shall lie at the suit of the defendant in any execution or attachment, to recover goods or chattels seized by virtue thereof, unless such goods or chattels are exempted, by law, from such execution or attachment; nor shall an action of replevin lie for such goods and chattels at the suit of any other person, unless he shall, at the time, have a right to reduce into his possession the goods taken.

(3.) SEC. III. The person or persons bringing such action, or some one in his, her or their behalf, 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 proper county, that the plaintiff in such action is the owner of the property described in the writ and about to be replevied, or that he is then lawfully entitled to the possession thereof; and that the same has not been taken for any tax, assessment or fine, levied by virtue of any law of this State; nor seized under any execution or attachment against the goods and chattels of such plaintiff, liable to execution or attachment.

(4.) SEC. IV. Before the execution of any writ of replevin, the party suing out such 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.

(5.) SEC. V. 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, together with the writ, to the clerk, who shall file the same.

(6.) SEC. VI. If any plaintiff in the action of replevin shall fail to prosecute his suit with effect, and without delay, or shall suffer a non-suit 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.

(7.) SEC. VII. If at any time the condition of the bond required by the fourth section of this chapter 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.

(8.) SEC. VIII. If any sheriff shall fail to take and return a bond, as required by the fourth section of this chapter, 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 neglect; to be recovered by an action on the case in the circuit court.

(9.) SEC. IX. It shall be sufficient for the defendant, in all cases of replevin for distress taken for rent, to avow or make cognizance generally, without particularly setting forth the tenure or title to the lands whereon such distress was taken.

(10.) SEC. X. When the oath required in section three, is made by another in behalf of the claimant, it shall be sufficient to state that he believes the facts stated in such affidavit to be true.

See *ante*, p. 830, under title "PRACTICE," "An act amendatory of the practice act," approved Feb. 10, 1849.

See also, *ante*, p. 830, under title "PRACTICE," "An act concerning practice," approved March 1, 1847.

An Act to amend Chapter LXXXVIII. of the Revised Statutes, approved March 3rd, 1845, entitled "Replevin."

[Approved Feb. 15, 1851. *Laws, 1851, p. 106.*]

(11.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That whenever in any action of replevin*

the goods and chattels specified in the writ of replevin to be replevied, cannot be found by the officer having such writ, or shall not have been delivered to the officer, the defendant shall be summoned by virtue of such writ by the officer reading the same to him, to appear and answer to the plaintiff's action for the recovery of the value of such property; such reading of the writ to have the same force and effect as the service of summons in other actions.

(12.) SEC. II. In such action of replevin, in case the property named in such writ shall not be found or replevied, or shall not have been delivered as aforesaid, and the defendant shall have been summoned as aforesaid, the plaintiff may file his declaration in trover, and the cause shall be heard and determined as other actions of trover; and the plaintiff, if he shall recover, shall be entitled to judgment and execution for the value of such property, or of his interest therein, and such damage as he shall have sustained by reason of the wrongful taking or detention thereof, together with the costs of suit.

PRIOR LAWS. An act to regulate the action of replevin; in force June 1, 1827. Rev. Laws, 1827, p. 349; Rev. Laws, 1833, p. 508.

An act supplemental to an act entitled "An act to regulate the action of replevin," approved Jan. 29, 1827; approved Feb. 12, 1839. Laws, 1839, p. 77.

DECISIONS. Debt is a proper form of action on a replevin bond. The condition of a replevin bond, was in the language of the statute, and in a suit on the bond, the declaration alleged that such proceedings were had in the replevin suit, that the plaintiff was adjudged to take nothing by his writ, and that thereupon a *retorno habendo* issued and was delivered to the officer, and that the plaintiff did not prosecute his suit with effect, or make return of the property: Held, that the breaches were sufficiently set out in the declaration. *Manning et al. v. Pierce*, 2 S. 4.

Property was delivered by A. to B., for which B. gave notes to A., payable thereafter. At the same time, A. gave B. a memorandum, that when the notes were paid, the property should belong to B., and that the memorandum should be "a perfect bill of sale of the same," but that until the payment of the notes, the memorandum should operate as a license to B. to use the property. Before the maturity of the notes, B. sold the property, and A. replevied it of the purchaser. The purchaser knew of the existence of the memorandum, but it did not appear that he knew its contents. Under the instructions of the court, the jury found for the defendant, in replevin, as in case of a non-suit, and assessed his damages. Upon these facts, the supreme court refused to grant a supersedeas. *Morris v. Grover*, 2 S. 528.

In a declaration on a replevin bond, a breach, stating that the judgment was in favor of the defendant, that a return of the property was adjudged to him, and that the plaintiff refused to return the property according to the order, is sufficient; and the declaration need not aver that a writ of *retorno habendo* issued. The breach need not be stated in broader terms than those used in the condition of the bond. *Hunter v. Sherman*, 2 S. 539.

The action of replevin cannot be maintained against a gratuitous bailee, having no interest in the property bailed, and holding possession lawfully for the bailor, without a demand of the possession of the property about to be replevied. *Hulson v. Mize*, 3 S. 579.

The statute of Feb. 12, 1839, on the subject of replevin, enlarges the common law remedy, as well as the remedy given in the statute of June 1, 1827, and extends it to a wrongful detention only. Under the latter statute, the general issue is *non detinet*. At the common law, and under the former statute, the general issue is *non cepit*. Under the plea of *non detinet*, the plaintiff must prove not only the wrongful detention, but also the right to immediate possession. The mode of commencing a suit in replevin, under the statutes, is, first, for the plaintiff to make affidavit of the nature of his complaint; second, for the clerk to issue his writ of replevin, which contains the plaint and summons mentioned in the act of 1827, setting out the substance of the affidavit by way of plaint or complaint, and concluding with a summons to the defendant; and, thirdly, by filing a declaration. See *Anderson v. Talcott*, 1 G. 365; *Amos v. Sinnott*, 4 S. 440.

The affidavit for the writ of replevin, when made by the agent of the plaintiff, should be as positive as when made by the plaintiff himself. In this respect, the 3rd section of the law of 1839, repeals the 6th section of the law of 1827. An insufficient affidavit may be amended on motion seasonably made; but a motion to dismiss, for want of sufficient affidavit, is too late after the party has appeared and pleaded. The affidavit is not the foundation of the jurisdiction of the court. *Frink v. Flanagan*, 1 G. 35.

Under the issue of *non detinet*, found for the defendant in an action of replevin, the writ of *retorno*

*habendo* will not be awarded if the defendant shows no title or right of possession, in himself or any other person, to the property. *Johnson v. Howe et al.*, 2 G. 342.

To a suit on a replevin bond in the name of the sheriff, for the use of one of the parties interested, the defendant demurred; the court held the nominal plaintiff the only one whom it could notice, and the fact that one, of several interested parties, had sued in the name of the sheriff, could not be questioned by a demurrer. *Buckmaster v. Beames et al.*, 4 G. 443.

The plea of *non cepit* in replevin, only puts in issue the taking of the property, and does not warrant a judgment of *retorno habendo*. *Vose et al. v. Hart*, 12 Ill. 378.

The affidavit in replevin should state that the property had not been distrained for taxes assessed. It is not error to refuse leave to amend the affidavit, after judgment given, sustaining a motion to quash the writ. The assessment of damages by the court under the 6th section of the replevin act of 1845, is not a violation of the right of trial by jury. *Campbell v. Head*, 13 Ill. 122.

The owner of property wrongfully taken, may pursue it so long as it can be identified, though changed in form, unless it be made part of some other thing which is the principal, such as coin made into a cup or timber into a house. *Davis v. Easley et al.*, 13 Ill. 192.

A demand and refusal must be proved, in order to recover in an action of replevin in the *detinet*. And such demand, if made by an agent, should be accompanied by proof of the authority of the agent. In replevin in the *detinet* alone, the same proof is required as in the action of trover. *Ingalls v. Bulkeley*, 13 Ill. 315.

A verdict and judgment in replevin, are conclusive only as between the parties and their privies. The defendant in replevin may plead property in a third person, but such person is not bound by the verdict, unless connected with the party who filed the plea. *Edwards et al. v. McCurdy et al.*, 13 Ill. 496.

In a suit on a replevin bond, the defendant, who wishes to plead, under the statute, that the merits of the case were not determined on the trial of the action in which the bond was given, must set forth enough of the proceedings in the former action to enable the court to decide whether the right of property was determined. When the right of property is put in issue by a defendant, and the verdict is in his favor, the writ of *retorno habendo* is awarded, of course. *King et al. v. Ramsay*, 13 Ill. 619.

The plea of *non detinet* admits the right of property in the plaintiff, and only puts in issue the detention. The authority of a person making a demand of property withheld, may be questioned; and when one refuses to deliver property, because he doubts the authority of the person demanding, he should distinctly assign that as his reason for refusal. *Ingalls v. Bulkeley*, 15 Ill. 224.

In replevin, the jury may find a part of the property in the plaintiff and a part in the defendant. *O'Keefe v. Kellogg*, 15 Ill. 347.

When there is a judgment of *retorno habendo* for costs, and a writ of inquiry of damages for a detention, either the court or jury may assess the damages. *Butler v. Mehring*, 15 Ill. 488.

## CHAPTER LXXXIX.

### REVENUE.

#### SECTION

- All property real and personal, to be taxed.
- What considered "real property."
- What considered "personal property."
- What property exempt from taxation.
- Lands reserved by Indian treaty taxable from date of treaty.
- Stock or exchange brokers to obtain license from county commissioners' court; penalty for failing to obtain license before first of May.
- Hawkers and peddlers to be licensed, and by whom; tax therefor; penalty for peddling without license, and how recovered; who exempt from penalty imposed herein.
- County tax of not exceeding four mills on the dollar may be levied by county commissioners' courts at their March terms; county tax to be lien on property taxed.
- What kind of funds receivable for revenue.
- Minimum value of lands to be three dollars per acre.

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- Auditor to obtain from United States land offices, abstracts of lands sold, containing descriptions, &c., with maps.
- To transmit to county clerks, lists of such lands, annually.
- County treasurer to be assessor, *ex officio*; to be sworn; form of oath; if treasurer do not qualify, his office deemed vacant, and filled as in other cases; treasurer to keep his office at county seat; if he do not, his office to be vacant.
- Clerk to deliver to assessor a list of taxable lands and town lots, &c.; shall add thereto, auditor's list of lands becoming taxable for that year; also, list of delinquent lands sold to State.
- Assessor to make out lists of taxable property; form of list; lands belonging to State not included.
- Assessor to take value of property; may require from owner, statement of property under oath; manner of entering assessment in book; unimproved lands assessed in blocks.

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17. If owner of land cannot be found, it may be assessed in name of patentee.
18. Penalty for giving false list of property.
19. Non-resident lands, once listed, need not be re-listed unless divided.
20. Real property omitted by mistake, may be subsequently listed for the whole time, charged with arrears and costs; clerk of county court may also list lands, and have them charged accordingly.
21. Assessment to be completed by first Monday of August, and returns, &c., made to county clerk.
22. Clerk to return lists of forfeited lands and town lots to the auditor, and to collector, by the second Monday of September.
23. Assessor to add up the total valuation and tax.
24. Clerk to return amount of State tax to the auditor, who shall charge it to the collector.
25. Shall also return list of aggregate State and county taxes levied in his county, stating rate of taxation.
26. If valuation of assessor be too high, court, on application of aggrieved party, may reduce it.
27. Sheriff to be *ex officio* collector: if he fail to qualify as such, his office to be vacated.
28. Collector shall give bond; form thereof; shall be sworn, &c.
29. Bond to be recorded, and transmitted to office of Secretary of State; record thereof to be evidence.
30. Auditor may prosecute bonds of delinquent collectors.
31. Lists of taxable property to be delivered to collectors.
32. Collectors, on receiving lists, shall proceed to collect.
33. When lien for taxes shall attach; its effect; sale of property not to divest lien.
34. If owner of property be not at home, collector may leave notice.
35. If tax remain unpaid ten days after demand, collector may levy on and sell property; personal property to be first sold.
36. Collector to sell after giving ten days' notice.
37. Sale to be by public auction.
38. Fees of collectors.
39. General power of collectors, and of county commissioners' courts, to collect delinquent taxes.
40. If taxes be twice paid, duty of officers.
41. When tax is paid, collector to make entry and give receipt.
42. Funds, what kind receivable for State revenue.
43. Revenue to be paid into State treasury by first Monday of March.
44. County revenue to be paid in monthly; final settlement to be by first day of June; county orders and jury certificates to be paid in and cancelled.
45. At June term collector shall return sworn statement of taxes not collectable, which shall be examined by the county commissioners' court; collector to be credited with the amount of such uncollectable taxes.
46. If personal property cannot be found out of which to collect tax, real estate may be returned to circuit court; form of such return.
47. Collector to advertise previous to such application; publication, how made; what it shall contain; shall fix day of sale; advertisement to be deemed sufficient notice; *proviso* as to publication.
48. Collector not to be credited with uncollected taxes, unless he hath used proper diligence.
49. Printer to transmit copies of paper containing advertisement to certain officers.
50. Collector to sell such lands on the day advertised for.
51. Person bidding tax for least quantity of land, to be the purchaser.
52. Sale continued until such lands are sold.
53. Purchaser refusing to pay, land to be re-sold.
54. Delinquent list to be filed five days before term of circuit court.
55. When no costs paid.
56. Advertisement, with proof of due publication, to be filed in circuit court.
57. Report and certificate to be recorded in circuit court; report to be docketed; form of entry thereof.
58. If no defense be interposed, court may render judgment and order sale; form of order of sale.

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59. Form to be pursued, &c.
60. Clerk to deliver copy of report, with the order of court to collector, which shall be deemed process for sale of the lands; sale of lands and return thereof.
61. Tax may be paid at any time before sale; collector to make report of such payment.
62. In description of lands, letters and figures may be used.
63. County commissioners' clerk to attend sale and keep record thereof; unsold lands stricken off to the State.
64. Certified record and list of forfeited lands, to be forwarded to auditor.
65. Penalty, if clerk fail to attend sale of lands.
66. Collectors to make payment into State treasury in thirty days; into county treasury in ten days; county orders, when paid in.
67. Purchaser of lands to receive certificate, &c.
68. Certificate assignable.
69. Real estate, how may be redeemed; rights of infants, &c., saved.
70. Collectors and clerks prohibited from purchasing at tax sales.
71. Collectors' deeds, when to be made; one deed may include several tracts of land.
72. Deed to be acknowledged and recorded.
73. Deed, what to be evidence of; what to be proved in order to defeat title under such deed; claimant against deed must show title.
74. Successor of collector making sale, may make deed for him; vacancy, how filled.
75. Sale to be valid, notwithstanding error in name of owner.
76. Records of county court, and copies thereof, what to be evidence of.
77. Lands stricken off to State to be absolutely forfeited; other titles barred.
78. May, however, be redeemed; how redeemed; rights of minors, &c., saved.
79. Clerk to make return, semi-annually to the auditor, of lands so redeemed; shall also make payment.
80. When land forfeited to the State, and not redeemed, shall be sold; by whom sold; clerk's fees.
81. Auditor to furnish clerks with lists of forfeited lands, biennially.
82. Publication of notice of sale of forfeited lands, how made.
83. Lands not to be sold for less than all taxes, interest and costs due.
84. Time and manner of sale; continuance thereof.
85. If payment not made forthwith, land may be re-sold.
86. Certificate to be given to purchaser.
87. Auditor, on presentation of such certificate, to make deed; his fee therefor.
88. Forfeited lands not sold at auction, to be sold at private sale.
89. Auditor's deeds, where to be recorded.
90. Officer selling, the State or county not to be liable to purchaser for money paid in error.
91. Proof of erroneous sales, how made; entry thereof.
92. Clerks to pay over redemption money; failure, to vacate office; vacancy, how filled.
93. Lands sold by State to be taxed; lands forfeited to State not to be taxed.
94. Canal lands to be forfeited and sold for non-payment of taxes.
95. Purchaser receiving redemption money, releases his claim to land.
96. Costs on advertised lands to be paid.
97. Purchaser suffering second sale, to lose benefit of the first.
98. Sheriff not to be treasurer; treasurer not to be sheriff or collector.
99. Collector refusing to sell, responsible for taxes.
100. Penalty, if clerk or collector fail to make payment.
101. If collector fail to pay, treasurer to notify him of motion to next circuit court, for judgment, &c.; court to try case, compel production of books, &c.; notice, now served.
102. If collector or clerk fail to pay over, auditor may proceed by motion in supreme court.
103. Collector, for improperly returning lands as delinquent, how punished.

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104. Penalty against treasurer for refusing to act as assessor; vacancies in his office, how filled.
105. Collectors forbidden to speculate in auditor's warrants.
106. How punished therefor.
107. Collectors to pay school moneys to commissioners; auditor to give them credit therefor.
108. Fees of officers concerned in assessing and collection of revenue, how ascertained, collected and paid.
109. Laws repealed.
110. Taxes already levied, how collected.
111. Erroneous sales, how corrected; auditor to credit collector with amount of error.
112. Fees of clerks for making out abstracts of lands, &c.
113. Deeds of sheriff or collector not to be conclusive, but only *prima facie* evidence of certain facts.
114. Assessment of new assessor in Moultrie county, legalized.
115. Assessment ordered by county commissioners' court, legal.
116. When act to take effect.
117. Act repealed.
118. When act shall be in force.
119. Collectors of revenue allowed five years to collect.
120. May enforce payment, and sell land, &c.; *proviso*.
121. Collector advancing taxes, not to sell real estate in certain cases; *proviso*.
122. When act to take effect.
123. Duty of auditor on person applying to redeem land sold for taxes.
124. Auditor to transmit to clerk of county court a list of redeemed lands.
125. Tax levied for 1845 and 1846.
126. Certain portion set apart to pay interest on State debt.
127. Governor to make semi-annual payments.
128. Additional duty of assessor.
129. Duty of clerk of county commissioners' court; *proviso*.
130. Penalty for his neglect.
131. When act shall take effect.
132. Hawkers' and peddlers' license limited.
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134. Twelfth section of former law repealed; auditor's duty.
135. Assessor may employ deputy; *proviso*.
136. When transcript shall be delivered.
137. Auditor to furnish blank forms for assessors' books.
138. Certain sections of former law repealed; assessor's duty; *proviso*.
139. Clerk to compare list; *proviso*: pay of clerk.
140. Persons aggrieved by assessment, relief of; *proviso*.
141. Collector's bonds to be transmitted to auditor.
142. Assessor not to purchase land sold for taxes.
143. Clerk to deliver list to collector; *proviso*; his compensation.
144. Certain sections of former act repealed; duty of collectors.
145. Section repealed; former sales by clerks valid; further duty of clerks.
146. Pay of assessors; of treasurers; clerk of county court; clerk of circuit court; collector; printer; *proviso*.
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152. List of forfeited lots to be prepared by clerk of county court.
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156. Assessments of 1843 valid.
157. Duty of assessors for 1849.
158. Duty of collector.
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161. Purchasers at tax sales, to comply with certain conditions before obtaining deed.
162. Auditor to obtain abstracts from land officers.
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165. Collector to file list of delinquent lands with clerk.
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166. If taxes on delinquent lands are paid, collector to report to clerk. Form of oath of collector.
167. Judgment of court. Form of order of court.
168. Order to be signed by judge. Persons aggrieved, may appeal.
169. Clerk of county court to perform duties required of clerk of circuit court, by certain act.
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177. Treasurer *ex officio* assessor. Form of his oath. By whom administered.
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179. To lay vouchers before governor. Repealing clause.
180. If lands taxed before taxable, duty of auditor.
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182. Auditor to furnish forms.
183. And copy of this law.
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[Approved March 3, 1845. Rev. Stat. 1845, p. 435.]

(1.) SECTION I. All property, real and personal, within this State, shall be liable to taxation, subject to the exceptions hereinafter stated.

(2.) SEC. II. The term "real property," with respect to the assessment and collection of the revenue, shall be construed to include all lands within this State, and all buildings and other things erected on or affixed to the same; and the terms "lands" and "lots," whenever they occur in this chapter, shall be construed as having the same meaning as "real property."

(3.) SEC. III. The term "personal property" shall be construed to include all household furniture, goods and chattels, all ships and vessels, whether at home or abroad, all moneys on hand and moneys loaned, whether within or without this State, all public stocks, stocks in turnpikes, bridges, insurance companies and moneyed corporations; also all commissions, and every species of property not included in the description of real estate.

(4.) SEC. IV. The following property shall be exempt from taxation: First, the real and personal property of the United States and of this State. Second, all lands sold by the United States, until the term of five years from the sale thereof, shall have expired: *Provided*, That if Congress shall pass a law, expressing the consent of the federal government that such lands may be taxed as soon as sold, then they shall be subject to taxation in accordance with the provisions of such law: *Provided, further*, That this exemption shall not extend to lands acquired by the United States by purchase of individuals on the re-sale of such lands by the United States. Third, all lands belonging to the school fund of any township in this State, and every school-house, court-house, jail, and the land whereon such buildings are situated, all property which is, or may be exempt from taxation by special law, and all county lands and buildings set apart for county purposes, not to exceed five acres. Fourth, every building erected for religious worship, the pews and furniture within the same, and the land whereon such

building is situated, not exceeding ten acres; also, every burial ground not exceeding ten acres, or such quantity as in any case may have heretofore been exempted by law: *Provided*, That such personal or real property shall not be exempt from taxation longer than the same is so used. Fifth, every building erected for the use of any literary, religious, benevolent, charitable or scientific institution, and the tract of land on which the same is situated, not exceeding ten acres; also, the personal property belonging to any such institution, and connected with and set apart for the use thereof.

(5.) SEC. V. Lands reserved to or for any individual, by any treaty between the United States and any Indian tribe or nation, shall be liable to taxation from the date of the confirmation of such treaty.

(6.) SEC. VI. Every person exercising the business of a stock or exchange broker, in buying or selling stocks, bank notes, gold or silver money, or bills of exchange, or lottery tickets, shall be required to obtain a license therefor from the clerk of the county commissioners' court of the county in which he resides, which shall authorize him to carry on such business for one year from the date thereof; for which license he shall pay to the said clerk, for the use of the State, the sum of one hundred dollars. Any broker failing to obtain such license, on or before the first day of May in each year, shall forfeit and pay to the State the sum of five hundred dollars, to be recovered by action of debt in the name of the State of Illinois, in any court having jurisdiction of the amount.

(7.) SEC. VII. Every hawker or peddler who may desire to hawk or peddle any goods, wares, merchandise or clocks, throughout the State, shall, on the payment of fifty dollars for the use of said State, to the secretary of State, be entitled to receive a license authorizing him to pursue such occupation in every county of the State; and any hawker or peddler may procure a license for a single county, on the payment to the county commissioners' clerk of said county, for the use of the county, the sum of ten dollars. Any person pursuing the occupation of a hawker or peddler within this State, or any of the counties thereof, without license, shall forfeit and pay, one-half for the use of the person complaining thereof, and the other half for the use of the State, the sum of one hundred dollars, to be recovered by action of debt in the name of the State of Illinois, before any justice of the peace, or probate justice of the peace, subject to appeal to the circuit court as in other cases: *Provided*, That this section shall not apply to persons whose ordinary occupation is not that of a peddler, nor to those engaged in vending articles manufactured in this State.

(8.) SEC. VIII. The county commissioners' court shall have the power to levy a tax in their respective counties for county purposes, but they shall in no case exceed the amount of four mills on each dollar's worth of property, unless specially authorized by law; and said county tax shall be levied at the March term of said courts, and collected with the State revenue. The same lien created to secure the State revenue, shall also exist in favor of the county revenue.

(9.) SEC. IX. The county revenue shall be collected in gold and silver coin, county orders and jury certificates issued by the county, and in no other currency.

(10.) SEC. X. The minimum value of all lands in this State for the purpose of taxation, shall be three dollars per acre.

(11.) SEC. XI. It shall be the duty of the auditor of public accounts, in cases where such abstracts have not already been obtained, and as the same may become necessary, to obtain from the several land offices of the United States at which lands within this State are sold, abstracts, containing a description of all lands sold at each office, the dates of sale, and the names of purchasers; also, maps of the several land districts, where such abstracts and maps have not already been procured.

(12.) SEC. XII. The auditor shall annually transmit to the said clerks, on or before the first day of February, a list of all lands in their respective counties which may have become subject to taxation within the preceding year.

(13.) SEC. XIII. The treasurer of each county shall be *ex officio* the assessor. Before he enters upon the discharge of the duties of his office of assessor, he shall take and subscribe the following oath or affirmation:

"I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will faithfully, diligently and impartially perform all the duties required of me by law, as the assessor of taxable property in the county of \_\_\_\_\_, and that I will in no instance value any lands as low as at three dollars per acre, which I believe to be worth more."

A refusal or neglect of the treasurer to qualify and act as assessor, shall vacate his office as treasurer, and the county commissioners' court shall thereupon appoint some suitable person to fill such vacancy, who shall hold his office until his successor is duly elected and qualified. The treasurer shall keep his office at the county seat, and his neglect to do so shall vacate his office which may be filled as aforesaid.

(14.) SEC. XIV. Every clerk shall, on or before the first Monday of March in each year, cause to be delivered to the assessor of his county, in a well-bound book, a transcript containing a list and description of all taxable lands and town lots lying within his county, except such as have been sold to the State, and remain unredeemed, with the names of purchasers of lands from the United States and from this State, together with the names of the present owners in a separate column, when the same are known; and the said transcript when returned by the assessor, shall be kept by the said clerk in his office for the use of future assessors. He shall, annually, before delivering said transcript to the said assessor, add thereto the auditor's list of lands in his county, which may have become taxable during the preceding year. He shall also specify in a separate and distinct list, and deliver the same to the assessor as aforesaid, all delinquent lands and town lots lying within his county, which may have been previous to that time forfeited to the State for taxes, and are unredeemed from such forfeiture; and each year, before delivering the same to the assessor, he shall add thereto the unredeemed lands and town lots which may have been forfeited to the State subsequent to the previous assessment, and said lists of lands and town lots shall be made out in numerical order: *Provided*, That where such transcripts and lists have heretofore been made, the said transcripts and lists shall be furnished by the clerks to the assessor, with such additions as are herein specified.

(15.) SEC. XV. The assessor of each county shall, upon the receipt of such transcript, proceed to make out lists of all taxable property within his county, the said lists being of tabular form, with separate columns for the names of owners of property, the kind of property, the value of each kind, and the total value of each person's taxable property, and such other

columns as may be deemed necessary, as near as convenient in the following form:

Names of Persons chargeable with tax.	
Town Lots.	
Acres of Land.	
Description of Land.	
Value of Land per acre.	
Total Value of Lands.	
Value of Personal Property not enumerated.	
Stud Horses.	
Asses.	
Jennies.	
Horses and Mares.	
Cattle.	
Servants of color.	
Clocks.	
Watches.	
Carriages.	
Wagons.	
Carts.	
Wholesale Stores.	
Retail Stores.	
Money loaned.	
Money on hand.	
Ships and Vessels.	
Stocks in Companies.	
Value of Stocks.	
Value of taxable Property, except Lands.	
Persons for whom Tax is paid, and date of payment.	

The assessor shall in no case include in such list any delinquent lands or town lots belonging to the State.

(16.) SEC. XVI. Each assessor shall, without delay, on being provided with the lists aforesaid, proceed to take a list of the taxable property in his county, and assess the value thereof, by going to the place of residence of each owner of taxable property in his county. He may, if he shall deem it necessary, require every owner of taxable property to give in, under oath, either by himself or agent, a list and description of all his taxable lands, by townships, ranges, quarter-sections, tracts, lots or parts thereof, and the number of acres in each tract, with the improvements thereon, all town lots with the improvements thereon, all pleasure carriages, whether with two or four wheels, all horses, mares, jacks, jennies, mules, indentured servants, neat cattle, ships and vessels, stocks, money on hand and at interest, household furniture, and every other description of personal property, all capital employed each year in merchandising, adopting as a criterion the value of the greatest amount of goods on hand at any time in the year; and he shall, in the presence of such person, enter the same in his book, and value each tract or lot separately, and each species of personal property separately, placing the description and value in figures opposite the name of the person owning or listing the same: *Provided*, That unimproved town lots may be listed and assessed in blocks.

(17.) SEC. XVII. If any assessor shall be unable to find the owner of any lands or lots contained in his list, he shall value the same according to the best information he can procure, and enter the same on his list in the name of the patentee or present owner, if known.

(18.) SEC. XVIII. If any person shall give a false or fraudulent list, or refuse to deliver to the assessor, when called on for that purpose, a list of his or her taxable property, as required by law, the said assessor, as a



penalty therefor, shall assess the property of such person at double its value.

(19.) SEC. XIX. Lands and town lots owned by non-residents of the county, when once correctly listed for taxation by their owners, shall not be required to be listed again by them till a sub-division or change of ownership takes place.

(20.) SEC. XX. If any real or personal property shall be omitted in the assessment of any year, or number of years, the same, when discovered, shall be assessed by the assessor for the time being, and placed upon the assessment list with the arrearages of tax which might have been assessed, with six per cent. interest thereon, from the time the same ought to have been paid; the clerk of the county commissioners' court shall also have power to list any property omitted for a previous year or years, and add the same to the collector's list, and report the same to the county commissioners' court at their next term; and said court is required to enter the same of record, and charge the collector with the same, and the clerk to certify said charges to the auditor at the time of certifying the allowances made to collectors.

(21.) SEC. XXI. Every assessor shall complete the assessment of property in his county on or before the first Monday of August in each year, and return to the county commissioners' clerk the abstract of lands furnished him by said clerk; also the list of delinquent real estate forfeited to the State and still owned by the same, with the valuation thereof, and his list and description of all taxable property within the county, with the names of owners, when known, and valuation.

(22.) SEC. XXII. The clerk shall make out copies of the said lists, and on or before the second Monday of September in each year, transmit a copy of the list of forfeited lands and lots, with the valuation thereof, to the auditor, and deliver a copy of the other to the collector of his county, for the purpose of collection; and the county commissioners' court shall be required to make all necessary corrections in the same.

(23.) SEC. XXIII. The assessor shall add up his own figures in the columns expressing the total valuation of real estate, the total valuation of personal property, and the total amount of State tax, county tax and road tax.

(24.) SEC. XXIV. Every clerk shall, immediately after the September term of the county commissioners' court, transmit by mail to the auditor, a statement of the aggregate amount of State tax assessed in his county, and the auditor shall charge the same to the collector.

(25.) SEC. XXV. The clerk of the county commissioners' court shall, at the same time as aforesaid, transmit to the auditor a statement showing the aggregate amount of taxes on real estate, in his county, for State and county purposes respectively; also a statement of the amount of taxes on personal property for State and county purposes respectively, together with a statement of the rate of taxation levied for county purposes in his county.

(26.) SEC. XXVI. Any person feeling aggrieved by the assessment of his property, may, at the September term of the county commissioners' court, immediately succeeding such assessment, and not afterwards, apply to said court for a reduction of said assessment, which may, in the discretion of the

court, be made, on proof that the valuation of the assessor was too high, which correction shall be made of record and a list certified by the clerk to the collector.

(27.) SEC. XXVII. The sheriff of each county shall be, *ex officio*, the collector of taxes, and his refusal to act shall vacate his office of sheriff, which shall be filled as in other cases of vacancy.

(28.) SEC. XXVIII. Said collector, before he enters upon the duties of his office, shall execute a bond in a penalty of at least double the amount of the tax to be by him collected, and with such securities as the county commissioners shall deem sufficient; which bond shall be substantially in the following form, to wit:

"KNOW ALL MEN BY THESE PRESENTS, That we, A. B., 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

The condition of the above bond is such, that if the above bounden A. B. shall perform all the duties required to be performed by him as collector 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 or to the State, and appertaining to his said office, then the above bond to be void, otherwise to remain in full force.

Signed, sealed and delivered in  
presence of G. H." }

A. B. [L. s.]  
C. D. [L. s.]  
E. F. [L. s.]

He shall also take and subscribe an oath before some person authorized to administer oaths, that he will faithfully, diligently and impartially, and to the best of his skill, judgment and ability, perform all the duties required of him by law, as collector.

(29.) SEC. XXIX. When approved by the county commissioners' courts, said bond shall be entered upon their records, and immediately transmitted by their clerk to the office of secretary of State; certified copies thereof, under the seal of State, shall be evidence in all the courts of this State; and the entry thereof in the records of the said courts, shall be evidence within the county.

(30.) SEC. XXX. The auditor shall direct the commencement of suits on the bonds of collectors for the use of the State, whenever he shall deem it for the public interest, for any breach of said bonds, until the whole penalty if necessary is recovered; and it shall in all cases be his duty to cause suits to be commenced against delinquent collectors and their securities, whenever said collectors have failed to make their final settlements, for the space of two months after the time fixed upon by law for that purpose.

(31.) SEC. XXXI. On the second Monday of September, annually, or as soon as the collectors are qualified, every county commissioners' clerk shall deliver to the collector of his county, a copy of the list of taxable property returned by the assessor, and take duplicate receipts therefor, in which shall be specified the taxes on real and personal property respectively, one of which shall be filed in the clerk's office, and the other filed in the office of the county treasurer.

(32.) SEC. XXXII. Every collector, on receiving the assessment list from the clerk as aforesaid, and giving receipt for the same, shall proceed to collect the taxes charged in said list, by calling upon each person residing in his county, at his or her usual place of residence, and requiring payment thereof.

(33.) SEC. XXXIII. The lien created by this chapter, for State and county purposes, on personal property, shall attach from and after the assessment list is received by the collector, and no sale or transfer of the same shall affect the claim of the State or counties, but the said property may be seized by the collector wherever found, and removed, if necessary, and sold to discharge the taxes of the person owing the same at the time of such assessment, together with the costs and charges of collection.

(34.) SEC. XXXIV. In case any person shall be absent from home at the time of the call of the collector for his or her taxes, the said collector shall leave a written or printed notice with some member of the family, above the age of ten years, requiring payment of the same within ten days from the date thereof, and such notice shall be considered a sufficient demand for the taxes of such person, and the said collector shall be a competent witness to prove the service of said notice.

(35.) SEC. XXXV. In case any person shall refuse or neglect to pay his or her taxes when demanded, or within ten days thereafter, it shall be the duty of the collector to levy the same, together with the costs and charges that may accrue, by distress and sale of the personal property of such person as ought to pay the same, wherever the same may be found in the county. No real estate of any person shall be sold for taxes while personal property of such person can be found by the collector.

(36.) SEC. XXXVI. The collector shall give public notice of the time and place of sale, the property to be sold, and the name of the delinquent, at least ten days previous to the day of sale, by advertisements to be posted up in at least three public places in the precinct where such sale is to be made.

(37.) SEC. XXXVII. Such sale shall be by public auction, and if practicable, no more property shall be sold than sufficient to pay the tax, costs and charges due; the same shall, if convenient, be sold in parcels, and if sold for more than the amount necessary, the surplus shall be returned to the owner of such property.

(38.) SEC. XXXVIII. The collector shall be allowed the same fees and charges for making distress and sale of goods and chattels for the payment of taxes, as may be allowed by law to constables for making levy and sale of property on execution: *Provided*, The provisions of this chapter shall apply to the collection of all delinquent taxes due in any county in this State.

(39.) SEC. XXXIX. The power to levy and collect shall continue in the collector after his return and final settlement with the auditor, until the taxes shall be paid; if personal property of the person having failed to pay taxes, be found within his county, the county commissioners' court shall have power to issue process to any sheriff or constable for the collection of delinquencies, for which credit has been given to the collector.

(40.) SEC. XL. Whenever the taxes on the same property shall be paid more than once, for the same year, by different claimants, the collector shall make a return to the clerk of the county commissioners' court, of all such surplus taxes so received by him, together with the names of the several claimants thus paying; and the clerk shall make a record of all such cases, and transmit a copy thereof to the auditor of public accounts, who shall charge such collector with the portion of such surplus taxes belonging to the State.

(41.) SEC. XLI. Whenever any tax is paid, the collector shall enter such payment in his list, and give the person paying the same a receipt, specifying the name of the person for whom paid, the amount paid, what year paid for, and the property on which the same was assessed, according to its description on the assessment list.

(42.) SEC. XLII. The collectors of this State shall collect the revenue for State purposes in gold and silver coin; auditor's warrants, and in no other currency whatever.

(43.) SEC. XLIII. The collectors of the several counties shall pay annually into the State treasury, on or before the first Monday in March, all the taxes of the preceding year, for State purposes, except such delinquencies as may exist, deducting therefrom their commissions for collections.

(44.) SEC. XLIV. Every collector shall pay into the treasury of his county, at the end of every month, all taxes collected for the use of such county in his hands, except county orders and jury certificates, and on the first Monday of June, annually, he shall make a final settlement, and account for and pay over the whole amount of revenue due the county, deducting therefrom the amount of taxes he may have been unable to collect by reason of the insolvency, removal or non-residence of persons charged with taxes. All county orders and jury certificates collected by him, shall be paid into the county commissioners' court at the said term, and cancelled.

(45.) SEC. XLV. Every collector of revenue shall present to the county commissioners' court of his county, at the June term thereof, a list, upon oath, of the names of all persons charged with taxes on personal property, from whom no collection of said taxes have been made on account of the insolvency, removal or non-residence of such persons; said list shall be copied from the assessment list, and shall contain the valuation of the property, and the amount of tax shall be noted opposite the name of each person, whether he be insolvent, a non-resident or has removed, if removed, to what place, if a non-resident, his place of residence, if known. The collector shall certify that such list contains the names of all persons, and a description of all personal property, charged with taxes which have not been collected, and that the notes and remarks made opposite to the names of persons charged with taxes are correct and true, according to his best information and knowledge. The said list shall be examined by the county commissioners' court, and errors and mistakes therein corrected; after which an order shall be made, allowing the collectors credit for the amount of taxes due or payable to the county on the same. The said list shall be filed in the office of the clerk of said court, and thereupon the said clerk shall certify under the seal of the court, to the auditor, the whole amount of taxes assessed upon real and upon personal property, and the amount of taxes on personal property for which the collector has been allowed credit on account of insolvency, non-residence or removal of the persons charged therewith; and upon a settlement with the auditor, the collector shall file with him the said certificate, and shall be allowed a credit for the amount certified therein.

(46.) SEC. XLVI. When any person owning lands in any county in this State, shall fail to pay taxes assessed thereon, and the collector shall be unable to find any personal property of such person in his county whereon

to levy, of value sufficient to pay said taxes and costs, it shall be the duty of the collector to make report thereof to the circuit court of his county, at the first term in each year, for the preceding year or years, which report shall be in the following form:

List of lands, and other real estate, situated in the county of \_\_\_\_\_, and State of Illinois, on which taxes remain due and unpaid for the year herein set forth:

Name of present Owner.	Town Lots.	In whose Name patented.	Cost.	Amount of Tax.	Years for which Tax is due.	Valuation.	Description.	County.

(47.) SEC. XLVII. Before making the application to the circuit court provided for in the preceding section, the collector shall publish an advertisement in some newspaper printed in his said county, if any such there be, and if there be no such paper printed in his county, then in the nearest newspaper in this State, which advertisement shall be once published, at least six weeks previous to the said term of the said circuit court; and the said advertisement shall contain a list of the delinquent lands and town lots to be reported to the said court, the names of the owners, if known, the amount of tax, interest and costs due thereon, and the year or years for which the same are due; shall give notice of the intended application to the court for judgment against said lands and town lots for said taxes, interest and costs thereon, and for an order to sell the said lands for the satisfaction thereof; and shall also give notice that on the fourth Tuesday next succeeding the day fixed by law for the commencement of the said term of the said circuit court, all the lands against which judgment shall be pronounced, and for the sale of which such order shall be made, will be exposed to public sale at the court-house of the said county, for the amount of said taxes, interest and costs due thereon; and the advertisement published according to the provisions of this section, shall be deemed and taken to be sufficient and legal notice, both of the aforesaid intended application by the collector to the circuit court for judgment, and also of the sale of said lands, under the order of the said court: *Provided*, That if the publisher of such newspaper shall be unable or unwilling to publish said list and notice accurately and properly, the collector shall select some other news-

paper having the means and ability of making such publication in a satisfactory manner, having due regard to the circulation of such paper.

(48.) SEC. XLVIII. The county commissioners' courts shall not allow credit to collectors for any taxes uncollected, unless they are satisfied that such taxes could not have been collected by reasonable and proper diligence, and that such diligence has been used without success.

(49.) SEC. XLIX. The printer publishing such notice and list shall be required to transmit, by mail, two numbers of each paper containing said list and notice, to the auditor of public accounts, two to the treasurer of State, and two to the clerk of the county commissioners' court of the county in which the lands and lots advertised lie; and the said papers shall be filed, and kept in the offices to which they are sent.

(50.) SEC. L. The collector shall attend at the court-house, in his county, on the day specified in the notice aforesaid, and then and there, at the hour of ten o'clock in the forenoon, proceed to offer for sale, separately, each tract of land and town lot in the said list, on which the taxes and costs have not been paid.

(51.) SEC. LI. The person at such sale, offering to pay the taxes and costs charged on each tract or lot, for the least quantity thereof, shall be the purchaser of such quantity, which shall be taken from the east side of such tract or lot.

(52.) SEC. LII. The collector shall continue such sale from day to day, until each tract of land or town lot contained in the delinquent list, on which the taxes and costs remain unpaid, shall be sold or offered for sale.

(53.) SEC. LIII. The person purchasing any tract of land or town lot, or any part thereof, shall forthwith pay to the collector the amount of taxes and costs charged on said tract or lot, and on a failure to do so, the said land or lot shall be again offered for sale, in the same manner as if no such sale had been made, at the commencement of the sale on the following day.

(54.) SEC. LIV. The collector shall file the list of delinquent lands with the clerk of the circuit court, at least five days before the commencement of the term at which application for judgment is to be made.

(55.) SEC. LV. No costs shall be charged by the clerk of the circuit court when the taxes are paid five days previous to the term of the said court.

(56.) SEC. LVI. The collector shall obtain a copy of said advertisement, together with a certificate of the due publication thereof, from the printer or publisher of the newspaper in which the same shall have been published, and shall file the same with the clerk of the said circuit court, at the said term thereof, together with the said report, provided for in the forty-sixth section of this chapter.

(57.) SEC. LVII. The clerk of the circuit court, upon the filing of such report and certificate of publication by the collector, shall receive and record the same in a book to be kept for that purpose, in which he shall enter all judgments, orders and other proceedings of the court in relation thereto, and shall keep and preserve the same as a part of the records of his office; and the said clerk shall place the said report and certificate of said collector at the head of the common law docket for said term, in the following form, to wit:

"STATE OF ILLINOIS }  
 vs. } *Suit for taxes.*  
 JOHN DOE, and others. }

(58.) SEC. LVIII. It shall be the duty of the said court, upon calling the common law docket of said term, if any defense be offered by any of the owners of said lands so reported, or by any person having a claim or interest therein, to hear and determine the same in a summary way, without pleadings; and if no defense be made, the said court shall pronounce judgment against the said lands, and shall thereupon direct the clerk of said court to make out and issue an order for the sale of the same, which shall be in the following form, to wit:

"STATE OF ILLINOIS, }  
 County. } sct. Whereas A. B., collector of said county, returned to the circuit court of said county, on the \_\_\_\_ day of \_\_\_\_, 18\_\_\_\_, the following tracts and parts of tracts of land as having been assessed for taxes, by the assessor of said county of \_\_\_\_, for the year 18\_\_\_\_, and that the taxes thereon remained due and unpaid, on the day of the date of the said collector's return, and that the respective owner or owners have no goods and chattels within his county, on which the collector can levy for the taxes, interest and costs due and unpaid, on the following described lands, to wit:

And whereas due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defense or show cause why judgment should not be entered against the said lands for the taxes, interest and costs due and unpaid thereon, for the year o. years herein set forth: Therefore, it is considered by the court, that judgment be and it is hereby entered against the aforesaid tract or tracts of land, or parts of tracts, (*as the case may be,*) in the name of the State of Illinois, for the sum annexed to each tract or parcel of land, being the amount of taxes, interest and costs due severally thereon; and it is ordered by the court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes, interest and costs annexed to them severally, be sold, as the law directs."

(59.) SEC. LIX. The form as hereinbefore set forth shall be pursued, as near as the nature of the case will permit.

(60.) SEC. LX. It shall be the duty of the clerk, within five days after the adjournment of said court, to make out, under the seal of said court, a copy of the collector's report, together with the order of the court thereon, which shall hereafter constitute the process on which all lands shall be sold for taxes, and deliver the same to the collector of his county; and the collector shall thereupon cause the said lands to be sold, on the day specified in the notice given by the collector for sale of the same, and make return thereof to the said clerk, within twenty days after the day of sale.

(61.) SEC. LXI. Any person or persons owning or claiming lands advertised for sale as aforesaid, may pay the taxes, interest and costs due thereon, to the collector of the county in which the same are situated, at any time before the sale thereof: *Provided*, That such collector shall be required to make a report to the court, before judgment is rendered, of all lands upon which the taxes may have been paid, subsequent to making his first report to the circuit court.

(62.) SEC. LXII. In all advertisements for the sale of lands for taxes, and in entries required to be made by the clerk of the court, letters and figures may be used, as they have heretofore been, to denote townships, ranges, sections, parts of sections, the year for which taxes are due, and the amount of taxes, interest and costs.

(63.) SEC. LXIII. The clerk of the county commissioners' court shall attend all such sales of lands for taxes, made by the collector, and make a record thereof, in a book to be kept for that purpose, therein describing the several tracts of land and town lots, as they are described in the recorded

list, stating, in separate columns, the State and county tax, with the costs thereon, and how much of each tract or lot was sold, and to whom sold; and all such tracts or lots as shall remain unsold, for want of bidders, shall be entered as sold to the State.

(64.) SEC. LXIV. The said clerk, immediately after such sale, shall transmit to the auditor of public accounts, a copy of such record, certified under the seal of the court, together with a separate list of lands and lots forfeited to the State, as aforesaid.

(65.) SEC. LXV. If any clerk shall fail to attend any sale of lands, as required by this chapter, either in proper person or by a competent deputy, he shall forfeit and pay the sum of one hundred dollars, and shall be liable to indictment for such failure, and upon conviction, shall be removed from office.

(66.) SEC. LXVI. Within thirty days after any sale, the collector shall pay into the State treasury, the amount of taxes due the State upon lands advertised and sold as aforesaid, and make a final settlement with the auditor; he shall also, within ten days after such sale, pay into the county treasury, the amount of taxes due the county upon the same: *Provided*, That county orders received by him shall be paid into the county commissioners' court, at the next session thereafter.

(67.) SEC. LXVII. The clerk shall make out and deliver to the purchaser of any lands or lots, sold for the payment of taxes as aforesaid, a certificate of purchase, to be countersigned by the collector, describing the land or lot sold, as the same was described in the delinquent list, the amount of taxes and costs for which the same was sold, and that payment has been made therefor. If any person shall become the purchaser of more than one tract of land or lot, he may have the whole included in one certificate.

(68.) SEC. LXVIII. Such certificate of purchase shall be assignable by indorsement, and an assignment thereof shall vest in the assignee, or his legal representatives, all the right and title of the original purchaser.

(69.) SEC. LXIX. Real estate, sold under the provisions of this chapter, may be redeemed, at any time before the expiration of two years from the date of sale, by the payment in specie, to the clerk of the county commissioners' court of the proper county, of double the amount for which the same was sold, and all taxes accruing after such sale, unless such subsequent taxes have been paid to the collector, as may be shown by the collector's receipt, by the person redeeming, with six per cent. interest thereon, from the first day of May, in each year, up to the time of payment: *Provided*, That if the real estate of any infant, *feme covert* or lunatic, be sold for taxes, the same may be redeemed at any time within one year after such disability be removed, upon the terms specified in this section.

(70.) SEC. LXX. No collector or clerk of any county commissioners' court, shall be, either directly or indirectly, concerned in the purchase of any tract of land or town lot sold for the payment of taxes, under the penalty of one hundred dollars, to be recovered by action of debt.

(71.) SEC. LXXI. At any time after the expiration of two years from the sale of any real estate for taxes, if the same shall not have been redeemed, the collector, on request, and on the production of the certificate of purchase, shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the real estate described in such certificate. When

any person shall hold more than one certificate of purchase, of the same sale, the collector shall, on the request of such person, include as many tracts or lots described therein, in the said deed of conveyance, as such person may desire.

(72.) SEC. LXXII. The deed so made by the collector, shall be acknowledged and recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs or assigns, the title of the property therein described.

(73.) SEC. LXXIII. Deeds executed by the collector as aforesaid, shall be *prima facie* evidence in all controversies and suits in relation to the right of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts: First, That the land conveyed was subject to taxation at the time the same was advertised for sale, and had been listed and assessed in the time and manner required by law. Second, That the taxes were not paid at any time before the sale. Third, That the lands conveyed had not been redeemed from the sale, at the date of the deed. Fourth, That the land was advertised for sale in the manner and for the length of time required by law. Fifth, That the land was sold for taxes, as stated in the deed. Sixth, That the grantee in the deed was the purchaser. Seventh, That the sale was conducted in the manner required by law. And all in controversies and suits involving the title to land claimed and held under, and by virtue of, a deed executed by the collector as aforesaid, the person claiming title adverse to the title conveyed by such deed, shall be required to prove, in order to defeat the said title, either that the said land was not subject to taxation at the date of the sale, that the taxes had been paid, that the land had never been listed and assessed for taxation, or that the same had been redeemed, according to the provisions of this chapter, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of the State; but no person shall be permitted to question the title acquired by a collector's deed, without first showing that he or she, or the person under whom he or she claims title, had title to the land, at the time of the sale, or that the title was obtained from the United States or this State, after the sale, and that all taxes due upon the land have been paid by such person, or by their agent, or the person under whom he claims title as aforesaid.

(74.) SEC. LXXIV. If any collector shall die, resign or be removed from office, or his term of service expire, after selling any real estate for taxes, and before executing a conveyance for the same, his successor, being then in office, shall execute such conveyance in the same manner as the officer making such sale might have done: *Provided*, That in case the collector shall die, or be removed from office, before the taxes are collected, the county commissioners' court shall appoint a successor, to remain in office until an election is had.

(75.) SEC. LXXV. No sale of real estate for taxes shall be considered invalid, on account of the same having been charged in the assessment list in any other name than that of the rightful owner, if the said real estate be in other respects sufficiently described, and the taxes thereon were unpaid at the time of such sale.

(76.) SEC. LXXVI. The books and records belonging to the office of the clerks of the county commissioners' courts, or copies thereof, certified

by said clerks, shall be deemed sufficient evidence to prove the sale of any land for taxes, the redemption of the same, or payment of taxes thereon.

(77.) SEC. LXXVII. Every tract of land or town lot offered for sale by any collector, as hereinbefore provided, and not sold for want of bidders, shall be and the same is hereby declared to be forfeited to the State of Illinois, and thenceforth all right, title and claim of the former owner or owners, shall be considered as transferred to and vested in the State.

(78.) SEC. LXXVIII. Lands and town lots forfeited to the State for taxes, may be redeemed at any time within two years from the time of the sale at which they were forfeited, by paying to the clerk of the county commissioners' court of the county in which said lands or lots are situated, double the amount for which such real estate was forfeited, and all taxes accruing thereon to the time of redemption, with interest on each year's tax, at the rate of six per cent., from the first Monday of May in each year, to the time of redemption: *Provided*, That any lands or town lots of any infant, *feme covert* or lunatic, so struck off and forfeited to the State, may be redeemed, as provided in this section, at any time within one year after such disability be removed.

(79.) SEC. LXXIX. On the first Monday in March, and semi-annually thereafter, it shall be the duty of the several clerks of the county commissioners' courts, to transmit to the auditor a list, with a full description of all the lands and town lots forfeited to the State, which have been redeemed during the preceding six months, which list shall be carefully noted in the books of the auditor; he shall also pay, at the same time, into the State treasury, the proportion of the redemption money belonging to the State, and monthly, into the county treasury, the proportion of such county.

(80.) LXXX. On the first Monday of September, one thousand eight hundred and forty-five, and every two years thereafter, all lands and town lots which have been forfeited to the State, and are unredeemed, shall be exposed for sale, and sold at public auction, at the county seats of the respective counties in which they are situated, by or under the direction of the clerks of the county commissioners' courts; and the clerk of the county commissioners' court and the collector, for services rendered under this section, shall be entitled to the same compensation as they are allowed for like services by this chapter.

(81.) SEC. LXXXI. It shall be the duty of the auditor, on or before the first Monday of July next, and biennially thereafter, to furnish to the said clerks lists of lands and lots forfeited to the State, and unredeemed, lying within their respective counties.

(82.) SEC. LXXXII. The said clerks, on the receipt of such lists, shall, at least four weeks before the first Monday of September, publish a notice, in the newspaper having the greatest circulation in their respective counties, setting forth that all lands and lots forfeited to the State for taxes, and unredeemed, will, on the first Monday of September next, be offered for sale at public auction, at the court-house, and that a list of the same is kept at the clerk's office, subject to the inspection of any person who may desire to examine the same.

(83.) SEC. LXXXIII. Such lands and town lots shall not be sold for a less sum than the amount of State and county taxes, with the costs and interest thereon, from the forfeiture up to the time of sale.

(84.) SEC. LXXXIV. The clerk of each county, assisted by the sheriff, shall, on the first Monday of September aforesaid, at the hour of ten o'clock in the forenoon, proceed to offer for sale, separately, each tract of land or town lot contained in such list, which shall have been forfeited to the State as aforesaid, and he may continue such sale from day to day until each tract or town lot in said list shall be sold or offered for sale.

(85.) SEC. LXXXV. Every person purchasing lands or town lots at such sale, shall forthwith pay to the clerk the amount for which the same may have been sold, and on failure so to do, the said lands or lots shall again be offered for sale, as if no sale had been made.

(86.) SEC. LXXXVI. The said clerks shall, immediately after such sale, execute and deliver to each person purchasing lands or lots at such sale, a certificate of purchase, and shall include in such certificate all the lands and lots purchased by such person, if the same is desired.

(87.) SEC. LXXXVII. Upon the presentation of such certificate to the auditor, the legal holder thereof shall be entitled to a deed, conveying all the right, title, interest and claim of the State to the tracts or lots described in said certificate; and for every deed of conveyance made as aforesaid, the auditor shall be entitled to receive the sum of twenty-five cents.

(88.) SEC. LXXXVIII. At any time after the close of any such sale as aforesaid, the clerks may sell any of the lands and town lots offered for sale which were not sold for want of bidders, to any person wishing to purchase the same, who shall pay the State and county tax, together with the costs and interest due thereon.

(89.) SEC. LXXXIX. All deeds made by the auditor of public accounts under the provisions of this chapter, shall be recorded in the county where the lands or lots conveyed are situated.

(90.) SEC. XC. No money shall, in any case, be refunded out of the State or county treasury, to any purchaser of lands or lots sold for taxes on account of such lands or lots being erroneously sold, but the collector or other officer making such error, shall be liable to pay double the amount of the same, and on failure to make such payment, the said purchaser may recover the said money of the said collector or other officer, by action of debt before any justice of the peace or court having jurisdiction thereof: *Provided*, That if said lands were not taxable at the time they were assessed, or the taxes had been paid before the land was sold, then, in that case, the State and county shall refund the taxes paid, upon the presentation of a certificate of the clerk of the county commissioners' court, under seal of said court.

(91.) SEC. XCI. Whenever it shall be made to appear to the satisfaction of the clerk of the county commissioners' court, before the execution of a deed for lands or lots sold for taxes, that any tract or lot was sold which was not subject to be taxed, or upon which taxes had been paid previous to the sale, he shall make an entry opposite to such tracts or lots on the list of sales, that the same was erroneously sold, and such entry shall be evidence of the fact therein stated.

(92.) SEC. XCII. The clerks of the county commissioners' courts shall be liable for all redemption money of lands and lots which may come into their hands as such, and shall pay over the same, on demand being made by a proper person, and in case of failure or refusal so to do when demanded as

aforesaid, then their office shall be considered vacated; and thereupon the county commissioners' court shall appoint some suitable persons to fill such vacancy until the same be filled in the manner now prescribed by law.

(93.) SEC. XCIII. Lands sold by the State, though not granted or conveyed, shall be assessed in the same manner as if conveyed, but such lands, when forfeited to the State for the non-payment of taxes thereon, shall not, in any case, be sold for such non-payment as other lands, and shall not afterwards be subject to taxation until again sold by the State.

(94.) SEC. XCIV. Whenever any purchaser of canal lands or lots, shall fail to pay the taxes assessed thereon, as required by the terms of sale provided by law, it shall be the duty of the collector forthwith to report such failure to the acting commissioner of the Illinois and Michigan canal, who shall enter the said lands or lots as forfeited to the State, and thenceforth all right, interest and title of the said purchaser shall cease; the said lands shall not in any case be sold for the non-payment of taxes, and any such sale, if made, shall be void.

(95.) SEC. XCV. The receipt of the redemption money of any tract of land or lot by any purchaser, shall operate as a release of all claim to such tract or lot, under or by virtue of the purchase.

(96.) SEC. XCVI. Persons paying taxes on lands advertised for sale for the taxes due thereon, previous to the sale, shall be required to pay the costs of advertising, and all other costs which may have accrued up to the time of such payment.

(97.) SEC. XCVII. If any purchaser of lands sold for taxes, shall suffer the same to be again sold for taxes before the expiration of two years from the date of his or her purchase, such purchaser shall not be entitled to a deed for the land, until the expiration of two years from the date of the second sale; during which time the land shall be subject to redemption upon the terms and conditions prescribed in this chapter, except that the person redeeming shall only be required to pay, for the use of such purchaser, the amount paid for the land, and double the amount paid by the second purchaser.

(98.) SEC. XCVIII. No sheriff or deputy sheriff shall be eligible to the office of county treasurer, nor shall any county treasurer hold the office of sheriff or collector.

(99.) SEC. XCIX. If any collector, by himself or deputy, shall fail to attend any sale of lands advertised according to the provisions of this chapter, and make sale thereof as required by law, he shall be liable to pay into the State and county treasury, the amount of taxes and costs due upon the lands and lots so advertised, in the same manner as if they had been sold.

(100.) SEC. C. If any collector or clerk shall fail to pay into the State treasury the amount of taxes or revenue due the State at the times and in the manner herein required, he shall be liable to pay ten per cent. per month upon the amount which he shall fail to pay as aforesaid, and for a failure to pay to the county, he shall be subject to the same penalty.

(101.) SEC. CI. If any collector shall fail to pay to his county the revenue due the same at the time and in the manner required by law, it shall be the duty of the county treasurer, to deliver or cause to be delivered to such collector and his securities, a notice in writing, informing them that at the next term of the circuit court of the county, a motion will be made for



judgment against such collector for all sums due from him to the county at the time of making such motion, together with the damages allowed by law for default in not paying the same into the county treasury; and the circuit court of the several counties are hereby vested with jurisdiction to hear and determine all such motions, and to inquire into the amounts due from collectors, and give judgment for the same, together with the damages allowed by law; the said courts may compel the production of all books, papers, with vouchers in the possession of the collector, and pertaining to his office, to be used as evidence, if it shall appear to the court that any such books, papers or vouchers are, or may be, material evidence in the cause. The notice required by this section shall be served by any constable of the county, or coroner, at least five days before the motion is to be made.

(102.) SEC. CII. Upon the failure of any collector or clerk to pay money into the State treasury as required by law, it shall be the duty of the auditor to proceed against such collector by motion in the supreme court; a written notice of which shall be served on the collector and his securities at least twenty days before the motion is to be made; such notice shall state that a motion will be made for judgment against the collector for the amount due from him to the State at the time such motion is heard, and all damages allowed by law for default in the payment of the same, which notice may be served by any sheriff or coroner in the State, or by any person employed by the auditor for that purpose. The supreme court is hereby vested with full power and jurisdiction to hear and determine all such motions, and to give judgments and award executions.

(103.) SEC. CIII. If any collector shall receive the taxes upon any land or real estate, and shall knowingly include the same land or real estate in the list of lands returned by him on which taxes have not been collected, and the said lands shall be sold for the taxes thereon, he shall be deemed guilty of a misdemeanor, and on indictment and conviction thereof, shall be removed from office, and shall, moreover, be liable to the party injured for all damages.

(104.) SEC. CIV. Any treasurer who shall fail to perform the duties required of him as assessor, (except in cases of sickness, when he may appoint a deputy for whose conduct he shall be responsible,) shall forfeit and pay three hundred dollars to the use of the county, to be recovered by action of debt in the name of such county, and shall, moreover, be liable to pay to the county and State all damages sustained by either county or State, by reason of such failure, to be recovered by action on the case before any court having jurisdiction thereof; and if any assessor shall die or resign, the county commissioners' court shall appoint one, who shall perform the duties of assessor until an assessor is elected according to law.

(105.) SEC. CV. No collector shall, either directly or indirectly, be permitted to take, buy, shave or receive, by himself or agent, any auditor's warrant or warrants, at less than the full sum due thereon to the holder of such warrant or warrants.

(106.) SEC. CVI. Any collector who shall violate the provisions of the foregoing section, shall be liable to pay double the amount made by purchasing or shaving said warrants at less than their face, in an action of debt, before any court of the proper county; one-half the amount so recovered shall go to the person complaining, and the other half shall be paid into the State treasury, and his office shall be vacated.

(107.) SEC. CVII. Hereafter, the interest on the school fund belonging to the several counties of this State, shall not be required to be paid into the State treasury; but the auditor shall, as now required by law, ascertain the amount payable to each county, and certify the same to the collector, who shall thereupon pay over to the school commissioner of his county, such amount, and take his receipt therefor; and on settlement with the auditor, the said collector shall be credited with the amount specified in such receipt, in the same manner as if it had been paid into the treasury.

(108.) SEC. CVIII. The following fees and compensation shall be hereafter allowed to the following officers and persons herein named, for services rendered under the provisions of this chapter: To each assessor, a sum not exceeding one dollar and a half per day for every day necessarily employed in the performance of his duty as such assessor, to be verified to the county commissioners' court; one-half to be paid out of the State treasury, and the other half out of the county treasury. To each collector, for collecting and paying over taxes, five per cent. on the first thousand dollars, and three per cent. on all additional sums paid over that amount; the same to be paid by the State and county, in proportion to the amount paid over to each. The collectors of the several counties shall hereafter be allowed two dollars for every forty miles necessary travel in going to and returning from the seat of government, for the purpose of paying over the State revenue, which sum shall be paid out of the State treasury. To each clerk of the county commissioners' court, for making transcript of lands listed for taxation, and of delinquent lands and town lots sold to the State for taxes, and unredeemed, and for transmitting the list of lands sold for taxes, and the list of lands unredeemed from sale to the State, to the auditor of public accounts, one cent for each lot or tract included in each list; one-half of the same to be paid by the State, and the other half by the county. For assisting the collector in selling lands for taxes, ten cents for each lot, tract or parcel of land sold, for which a certificate is given, to be charged and collected as other costs: *Provided*, That no certificates shall be issued for lands or lots forfeited to the State. For adding to the transcript for assessors, the auditor's list of lands which may have become taxable during the preceding year, one cent for each lot or parcel of land so added, to be paid out of the county treasury. To collectors, for each tract of land or town lot sold for taxes, five cents, to be collected as costs, but no costs shall be paid to collectors on lands sold to the State, until the same are redeemed. For each collector's deed, twenty-five cents, and when more than one tract or lot is included therein, five cents for each additional tract or lot, to be paid to the collector by the person receiving such deed. To each printer, for publishing advertisement of the sale of lands for taxes, four cents for each lot or parcel of land advertised, to be paid out of the State treasury, and afterwards taxed and collected as costs: *Provided*, No fees shall be paid on the delinquent list until collected by the State.

(109.) SEC. CIX. The following acts are hereby repealed, viz.: "An act concerning the public revenue," approved February twenty-sixth, one thousand eight hundred and thirty-nine; "An act supplementary thereto," approved March first, one thousand eight hundred and thirty-nine; and "An act to amend an act entitled 'An act concerning the public revenue,'" approved February 26, 1839, and "An act supplemental to said act," approved

March 1, 1839; approved March sixth, one thousand eight hundred and forty-three.

(110.) SEC. CX. Taxes already levied, shall be collected under the provisions of the act hereby repealed; liabilities existing or hereafter to exist on the part of sheriffs, collectors, clerks or other persons, under the provisions of said acts, shall be enforced in accordance with said provisions; and also, the rights acquired by individuals under any of the aforesaid laws.

(111.) SEC. CXI. In all cases of erroneous sales of any tract or tracts of land for taxes, in any of the counties of this State, it shall be the duty of the clerk of the county commissioners' court, under the direction of said court, to correct said error or errors upon the books in his office, and to grant a certificate under the seal of said court, certifying that such tract of land was erroneously sold, which certificate being presented to the auditor of public accounts, it shall be the duty of the auditor to credit the collector of said county with the amount of said erroneous sale. The provisions of this chapter shall apply to all erroneous sales heretofore made in any of the counties of this State.

(112.) SEC. CXII. The clerk of the circuit court in each of the counties of this State, shall have, for each tract of land against which judgment is prayed for delinquent taxes, the sum of three cents, and the clerk of the county commissioners' court, for making out abstracts and delivering the same to the clerk of the circuit court, the sum of two cents a tract: *Provided also*, That the clerk of the county commissioners' court shall be allowed one cent a tract for all other abstracts made out under the provisions of this chapter, one-half to be paid by the State and one-half by the county.

(113.) SEC. CXIII. So much of any act or acts, as makes the deed of the collector or sheriff, for lands sold for taxes, conclusive evidence that the land was advertised for the time and in the manner required by law, or of any other fact or proceeding, shall be and the same is hereby repealed, and said deed shall only be *prima facie* evidence of such fact.

An Act to legalize the Acts of certain Assessors in this State.

[Approved Jan. 15, 1845. Laws, 1845, p. 178.]

(114.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the assessment made by the appointment of a new assessor in the county of Moultrie, by the county commissioners of said county, be and the same is hereby made legal, and the clerk is hereby compelled and authorized to make out all books and papers of every description, as the law now directs, and the collector is authorized to collect the taxes so assessed, under the law now in force, and and make just returns as all other collectors in this State.

(115.) SEC. II. In all cases where there has been a failure to assess the taxable property in this State, within the time limited by law, for the year 1844, or where such assessment has been ordered by the county commissioners' court since the time limited as aforesaid, such assessment shall be legal to all intents and purposes, and said assessments so made shall be returned to the clerk of the county commissioners' court, and the said clerk, together with the collector, shall respectively perform their respective duties as now required by law, anything in any law to the contrary notwithstanding.

(116.) SEC. III. This act to take effect and be in force from and after its passage.

An Act concerning the Revenue.

[Approved Feb. 11, 1845. App. Rev. Stat. 1845, p. 588.]

(117.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the thirty-second section of an act, approved March sixth, one thousand eight hundred and forty-three, entitled "An act to amend an act entitled 'An act concerning the public revenue,'" approved Feb. 26, 1839, and "An act supplemental to said act," approved March first, 1839, be and the same are hereby repealed; and hereafter, all lands lying within the corporate limits of any town or city, shall be subject to taxation, under the ordinance of said towns and cities respectively, whether the same be laid out into town lots and the plats thereof recorded, or not, anything in the above recited section to the contrary notwithstanding.

(118.) SEC. II. This act shall be in force from the time of its passage.

An Act to enable former and late Collectors of the Revenue in the several Counties of this State to collect any Taxes remaining due and unpaid.

[Approved Feb. 10, 1845. App. Rev. Stat. 1845, p. 588.]

(119.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all former or late collectors of the revenue in the several counties of this State, who shall have failed to close their collections in accordance with the provisions of the several statutes in such case made and provided, whether said revenue shall have been advanced and paid over to the county and State, or not, are hereby authorized and empowered, at any time within five years from and after the time provided by law for making final settlement, to collect all taxes and assessments remaining due and unpaid on any lands, town lots or personal property in their several counties.

(120.) SEC. II. The said collectors, in order to collect said taxes and assessments, are hereby empowered to do whatsoever they might lawfully have done to enforce the payment of the same, had the ordinary time for making such collections not transpired; and may sell at any regular time for selling lands for taxes in and for their several counties, all lands and town lots on which taxes remain due and unpaid, and all rights accruing under such sales are hereby protected, and may be perfected as under ordinary sales for taxes: *Provided*, Public notice of the time and place of sale shall be given, and proceedings conducted in all respects as is now or may hereafter be required by law, in ordinary sales of lands for taxes.

(121.) SEC. III. That no late or former collector, who has advanced the State or county taxes upon any real estate, shall be authorized to sell such real estate to reimburse such taxes to himself, in any case where such real estate has changed owners since the expiration of the period in which such taxes should have been collected: *Provided*, That this act shall not be so construed as to extend the time provided by law for collectors making final settlement, or to release them or their securities from any penalties or liabilities incurred.

(122.)-SEC. IV. This act to take effect and be in force from and after its passage.

An Act to save a Portion of the Revenue from being lost.

[Approved March 1, 1845. App. Rev. Stat. 1845, p. 559.]

(123.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That after the first day of January, in each and every year, it shall be the duty of the auditor of public accounts, when any person applies to redeem a tract or lot of land which had been previously sold to the State for taxes, to charge said person, in connection with former assessments, the same amount of tax for the year in which the same is redeemed, as was assessed against the said tract or lot the preceding year; and no tract or lot of land, which has been sold to the State for taxes, or which may be hereafter sold, shall be considered as redeemed from the State, unless the tax for the year in which the same is redeemed, has been paid, as well as all former taxes from the time of sale, to the State.

(124.) SEC. II. The auditor of public accounts shall, on the passage of this act, or as soon thereafter as convenient, make out and transmit to the clerks of the county commissioners' courts of each county in which lands may be situated, that have been redeemed since the first day of January, 1845, a list of all such lands so redeemed; whereupon it shall be the duty of said clerks to make out certified lists of said lands, so returned, and hand the same to the assessors of their counties, whose duty it shall be to value the said lands, within fifteen days from the receipt of said lists, and return the same to the clerks from whom they received the same. The clerks shall then deliver the said lists to the collectors of their county, who shall give their receipt for the same, and be accountable, upon their official bond, for the amount due upon said lists, and collect the same as other taxes are.

An Act to provide for Paying a Portion of the Interest on the State Debt.

[Approved March 1, 1845. App. Rev. Stat. 1845, p. 599.]

(125.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That there shall be levied for the year one thousand eight hundred and forty-five, one mill upon each dollar's valuation of property, transferred from the county to the State tax, so that there shall be assessed and collected for the year one thousand eight hundred and forty-five, three mills on each dollar's valuation of property; and for the year one thousand eight hundred and forty-six, there shall be assessed and collected three and one-half mills on each dollar's valuation of property; and that shall be the permanent rate of taxation, until otherwise provided by law: and the county commissioners' courts shall not hereafter assess for county purposes, any higher tax than four mills on the dollar, except in cases where they are or may be specially authorized to do so by law.

(126.) SEC. II. The proceeds of one mill of the tax for the year one thousand eight hundred and forty-five, and one and one-half mills for one thousand eight hundred and forty-six, and forever thereafter, until otherwise provided by law, (together with all surplus money in the treasury, after paying the expenses of the government,) shall be set apart and sacredly held for the payment of the interest on the State debt, and shall be called the "Interest Fund."

(127.) SEC. III. The governor is hereby directed, out of the proceeds of one mill, and one and a half mills, and surplus money, if any there should be, to make semi-annual payments of interest, commencing on the first day

of July, one thousand eight hundred and forty-six, and semi-annually thereafter, on the first days of July and January of each year, *pro rata*, on all the canal bonds, and the internal improvement bonds, except the bonds heretofore hypothecated to McAllister and Stebbins; and the additional tax of one mill for the year one thousand eight hundred and forty-five, and one and one-half mills thereafter, shall be collected by the several collectors, and paid into the treasury, in gold and silver; and a separate account thereof shall be kept in the office of the auditor and treasurer; and auditor's warrants shall not be received therefor; and if the treasurer or any other public officer shall appropriate the same, or knowingly suffer the same to be appropriated or drawn from the treasury for any other purpose than that provided by this act, he or they shall be deemed guilty of embezzlement, and shall be indicted and punished accordingly; and on conviction shall be removed from office.

An Act to amend the Present Revenue Law.

[Approved Feb. 28, 1847. Laws, 1847, p. 78.]

(128.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the assessor, in addition to the list of property to be taken by him under the fifteenth section of the revenue law, to state in such list whether the owner of such real estate is a resident of the county.

(129.) SEC. II. It shall be the duty of the clerk of the county commissioners' court, to give a written notice to any resident of his county whose lands, lying in said county, have been sold for State, county or road taxes, within one year from and after the sale of such lands; which notice shall contain a description of the lands sold, and the amount of tax and costs thereon. For making out and delivering such notice, the clerk shall be entitled to receive from the owner of such lands the sum of twenty-five cents, to be paid upon the redemption of such lands: *Provided*, No one person shall be charged but twenty-five cents for such notice, whether such notice contains one or more tracts or town lots.

(130.) SEC. III. If any clerk shall fail or neglect to give the notice as provided by this act, he shall forfeit and pay to the owner of such lands the full amount of the tax and costs due upon said lands, with one hundred per cent. thereon; and upon application of the owner of any such lands, so sold as aforesaid, and who has neglected to be notified as aforesaid, by said clerk to the county commissioners' court of said county, within two years after the day of sale, it shall be the duty of the county commissioners' court to order said clerk to redeem said lands from sale, and to grant to the owner a certificate of redemption for the same; and for a failure to comply with such order, the clerk's office shall be vacated, and filled as other vacancies are, any law to the contrary notwithstanding. The forfeitures incurred in the third section of this act, shall be recoverable before any justice of the peace of the proper county.

(131.) SEC. IV. This act to take effect and be in force from and after its passage.

An Act to amend Chapter LXXXIX of the Revised Laws, entitled "Revenue."

[Approved Feb. 27, 1847. Laws, 1847, p. 79.]

(132.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the license procured by or issued to any hawker or peddler, by virtue of the seventh section of the chapter to which this is an amendment, shall authorize such hawker or peddler to pursue his occupation for the term of one year from the date of his said license, and no longer.

(133.) SEC. II. So much of the eighth section of the chapter to which this is an amendment, as requires county commissioners' courts to levy the tax for county purposes, at the March term of said courts, is hereby modified so that when such tax shall not be levied at the March term, said courts respectively may levy the same at the June term next ensuing.

(134.) SEC. III. The twelfth section of the chapter to which this is an amendment, is hereby repealed, and hereafter the auditor shall annually transmit to the clerks of the several county commissioners' courts, on or before the first day of December, a list of all lands in their respective counties which may have or shall become subject to taxation within that year.

(135.) SEC. IV. Hereafter, when any assessor shall be unable to discharge his duties and complete his assessment within the time limited by law, on account of sickness, or on account of the extent of his county, such assessor may appoint and employ deputies to aid and assist him in the discharge of his duties: *Provided,* That before such deputy shall act, he shall take and subscribe an oath or affirmation similar to that of his principal, and the assessor shall be liable for all the acts of his deputy: *And provided further,* That said appointment shall not be made without the consent of the county commissioners' court of said county.

(136.) SEC. V. Hereafter the transcript which is required by the fourteenth section of the chapter to which this is an amendment, to be delivered by the clerk to the assessor of his county, shall be so delivered by such clerk, on or before the first day of January, instead of the first Monday of March; and such clerk shall also, at the same time, deliver to the assessor suitable blank books, properly headed, wherein to assess the property in his county.

(137.) SEC. VI. The auditor of public accounts shall hereafter furnish the clerks of the several county commissioners' courts with blank forms for assessor's books, sale books and sale lists, and all other lists and certificates necessary to establish a uniform practice in the collection of the State revenue.

(138.) SEC. VII. Sections twenty-one, twenty-two, twenty-three, twenty-four and twenty-five of the chapter to which this is an amendment, are hereby repealed; and hereafter the assessor shall complete the assessment of property on or before the second Monday in July in each year, and return to the clerk of the county commissioners' court the abstract of lands furnished him by said clerk, and his list and description of all taxable property within the county, with the valuation; and the assessor shall add up his own figures in the columns exhibiting the total valuation of real estate, and the total valuation of personal property: *Provided,* If any assessor, after having assessed any real estate, shall re-assess and raise the

value thereof, it shall be his duty to give notice in writing to the owner of such real estate of the change thus made.

(139.) SEC. VIII. The clerk, assisted by the assessor, or other competent person, shall carefully compare the assessment list of real estate with the list furnished the assessor, correcting all errors in said list, and shall set down the valuation of each tract of land and town lot opposite the same, in columns provided for that purpose; and the said clerk shall calculate the amount of State, county and special tax due on each tract and lot, placing the same opposite such tract or lot, also on each person's personal property, and shall add up his own figures in the columns showing the State tax, county tax and special tax: *Provided,* That where any tract or lot shall have been forfeited to the State for the taxes of any former year, and remains unredeemed, the amount for which the same was forfeited, together with the interest thereon, shall be added to the amount due for the current year; for which service he shall be allowed a sum not exceeding one cent for each tract, lot or parcel contained in said assessment list, to be paid out of the county treasury.

(140.) SEC. IX. Any person feeling aggrieved by the assessment of his property, who shall apply to the county commissioners' court for a reduction thereof, as provided in the twenty-sixth section of the chapter to which this is an amendment, and who shall be dissatisfied with the decision of said county commissioners' court thereon, may appeal from such decision to the circuit court, and such reduction may be made by said circuit court, on proof that the valuation of the assessor was too high, which correction shall be made of record, and a list certified by the clerk of the circuit court to the collector: *Provided,* That on such appeal no costs shall be taxed against the State or county.

(141.) SEC. X. Hereafter collector's bonds shall be transmitted to the auditor of public accounts, instead of the office of secretary of State, and the said secretary shall deliver over to the auditor all the collector's bonds now on file in his office; certified copies of such bonds under the official seal of the auditor, shall be evidence in all the courts of this State.

(142.) SEC. XI. Hereafter no assessor shall be, either directly or indirectly, concerned in the purchase of any tract of land or town lot sold for the payment of taxes, under the penalty of one hundred dollars, to be recovered by action of debt.

(143.) SEC. XII. On or before the second Monday in September in each year, or as soon thereafter as the collector shall be qualified, the clerk shall deliver the assessment list to said collector, and shall transmit by mail to the auditor a statement of the aggregate value of real estate, the aggregate value of personal property, and the aggregate amount of State tax, county tax and special tax: *Provided,* That when the county commissioners' court of any county shall think it necessary, they shall require their clerk to make out new transcripts for the assessor, and copies of the assessor's books for the collector; for said services the clerk shall be allowed a sum not exceeding two cents for each tract or lot included in each list, to be paid out of the county treasury.

(144.) SEC. XIII. Sections forty-three and one hundred of the chapter to which this is an amendment, are hereby repealed; and hereafter the collectors of the several counties shall pay to the school commissioner, on or

before the first Monday of March in each year, the amount of the interest on the school, college and seminary fund due from the State to his county, and shall, within sixty days after the time fixed by law for holding the first term of the circuit court of his county in each year, make a final settlement with the auditor, and pay into the State treasury the full amount of revenue due the State; and any collector failing to comply with the provisions of this section, shall pay ten per cent. per annum upon the amount he shall fail to pay, and said collector may charge ten per cent. per annum upon the taxes remaining due and unpaid on the first day of the term of the court aforesaid.

(145.) SEC. XIV. The eighty-first section of the chapter to which this is an amendment, is hereby repealed, and hereafter the clerks of the county commissioners' courts of the several counties shall sell, from the records of sales on file in their offices; and all sales of forfeited lands and town lots heretofore made by said clerks, as required by section eighty of the chapter to which this is an amendment, are hereby declared as good, valid and effectual as if the lists had been furnished by the auditor, as required by section eighty-one of the chapter aforesaid; and where the lists have not already been furnished, said clerks shall transmit to the auditor a list of all the lands and lots which have been or shall hereafter be sold, and shall pay into the State treasury the amount received by them for forfeited lands or lots sold, except the amount of county tax, and the interest thereon, which shall be paid into the county treasury.

(146.) SEC. XV. Hereafter assessors shall be allowed a sum not exceeding two dollars per day for every day necessarily employed in the performance of their duty as such assessors, to be paid out of the county treasury; the treasurer of each county shall be allowed two per cent. upon all moneys paid out of the county treasury; the clerk of the county commissioners' court of each county shall be allowed, for assisting the collector in selling lands for taxes, twenty-five cents for each tract of land, and ten cents for each town lot sold, for which a certificate is given, and for making a record of the sales, two cents for each tract of land, and one cent for each town lot, to be charged and collected as other costs; the clerk of the circuit court in each county shall be allowed six cents for each tract of land, and three cents for each town lot against which judgment is prayed for delinquent taxes, to be collected as other costs; the collector shall be allowed ten cents for each tract of land, and three cents for each town lot sold, and for making the delinquent list for publication, two cents for each tract of land and one cent for each town lot, to be collected as other costs; each printer shall be allowed for publishing advertisements of delinquent lands and town lots for sale, ten cents for each tract of land, and three cents for each town lot, to be collected as other costs; *Provided*, That no fees shall be paid on lands or town lots forfeited to the State.

(147.) SEC. XVI. All the sections or parts of sections of the chapter to which this is an amendment, conflicting with this act, are hereby repealed. This act to be in force from and after its passage.

An Act to amend the Seventh Section of a Law concerning Revenue, approved March 3, 1845.

[Approved Feb. 16, 1847. Laws, 1847, p. 82.]

(148.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in all cases where hawkers and

peddlers shall take out licenses, authorizing them to pursue their occupation, either throughout the whole State, or in a single county in the State, as provided in section seven of an act concerning revenue, approved March third, one thousand eight hundred and forty-five, said licenses shall extend only to the term of one year from the time of their issue; and any person or persons who shall pursue said occupation of hawker or peddler after the time of expiration of his or their license, shall be liable to the same penalty set forth in said seventh section, for the punishment of persons who shall pursue said occupation within this State, or any of the counties thereof, without license.

(149.) SEC. II. This act to take effect from and after the first day of May next.

An Act to increase the Revenue of the State of Illinois.

[Approved Feb. 19, 1847. Laws, 1847, p. 83.]

WHEREAS, It has been enacted by the senate and house of representatives of the United States, in Congress assembled, as follows: That the assent of Congress is hereby given to the several States, admitted into the Union prior to the twenty-fourth day of April, A. D. one thousand eight hundred and twenty, to impose a tax or taxes upon all lands hereafter sold by the United States in said States from and after the day of such sale; therefore,

(150.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter all lands sold by the United States, being and lying in the State of Illinois, shall, as soon as they have been thus sold, be subject to taxation in like manner with all other lands in said State.

(151.) SEC. II. That all that part of section four of the revenue law, approved March third, one thousand eight hundred and forty-five, which may conflict with the provisions of this act, be and the same is hereby repealed.

An Act to amend chapter LXXXIX of the Revised Statutes.

[Approved Feb. 25, 1847. Laws, 1847, p. 83.]

(152.) SEC. I. *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 clerk of the county commissioners' court of each county in this State, to prepare the lists and make the necessary computations, which are now required by law to be prepared by the auditor of public accounts, of lands and lots forfeited to the State for taxes, preparatory to the sale of the same, as now required by law.

(153.) SEC. II. The said clerk shall advertise the same by inserting in the nearest newspaper, as now required, a notice of the time and place fixed for the sale of the same; and for services in attending to the sale of lands for taxes, the said clerks shall be allowed the sum of fifteen cents for each tract or parcel of land sold, to be taxed and collected as costs, in lieu of the ten cents now allowed by law.

(154.) SEC. III. The auditor of public accounts is hereby authorized and required to draw his warrant on the State treasurer in favor of the clerk of the county commissioners' court of each county in this State, in payment for services rendered by him in making abstracts and computations for all the different years for which taxes were due upon the lands and lots forfeited

to the State for taxes, and which were offered for sale, by said clerks, at the sale of first Monday of September, 1845, at the rate of ten cents for each tract contained in the list of said forfeited lands and lots, and also reasonable pay for advertising.

(155.) SEC. IV. The compensation provided for in the third section of this act, shall not apply to those clerks of the county commissioners' courts who neglected to comply with all the provisions of the law relative to said sales, or who refused or neglected to comply with the instructions of the auditor, upon the subject of preparing said lists and making computations for said sale. This act to be in force from and after its passage.

An Act to amend the several Acts concerning the Public Revenue.

[Approved Feb. 8, 1849. Laws, 1849, p. 121.]

(156.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all assessments of property for taxation made in the year 1848 and prior years, and which were not completed within the time required by law, be and the same are hereby declared to be as good, valid and effectual as if they had been made and returned in strict conformity to law, and the auditor shall have power to remit the interest, when it shall appear that the collector did not receive the books within the time required by law.

(157.) SEC. II. Assessors for the current year (1849) and hereafter, shall complete the assessment of the property and make returns thereof as is now required by law, on or before the first Monday in September; and for a failure to do so, they shall forfeit the amount allowed them for said service. The clerks shall perform the duties required of them, and deliver the books to the collectors on or before the first Monday in November thereafter. Every Clerk failing or neglecting to comply with the provisions of this section, shall forfeit the amount allowed him for said service, unless he shall have been prevented from performing the same by the failure of the assessor.

(158.) SEC. III. The collector, as now provided for by law, shall present his bond to the county court, at the September term thereof, and when approved by said court, it shall be recorded; and the clerk shall indorse thereon his certificate of the facts, under the seal of the court, and shall transmit it by mail to the auditor, within three days after the adjournment of the said court. If any collector's bond shall not be received within thirty days after the commencement of said court, it shall be his duty to advise the county treasurer, by letter, of the fact, and said treasurer shall demand the bond and forward it without delay.

(159.) SEC. IV. The county courts of the several counties of this State shall have the same jurisdiction of suits brought by collectors, for the taxes on delinquent lands and town lots, as the circuit courts of this State now have or may hereafter have by the laws of this State.

(160.) SEC. V. When any person, owning lands or town lots in any county in this State, shall fail to pay the taxes assessed thereon, and the collector shall be unable to find any personal property of such person in his county whereon to levy, of value sufficient to pay said taxes and costs, or shall be unable to sell personal property, as is required by law, it shall be the duty of the collector to publish an advertisement in some newspaper

published in his county, having the greatest circulation in said county, if any such there be, and if there be no such paper printed in his county, then in the nearest newspaper in this State; which advertisement shall be once published at least four weeks previous to the June term of the county court; and the said advertisement shall contain a list of the delinquent lands and town lots upon which the taxes remain due and unpaid, the names of owners if known, the amount of tax, interest and costs due thereon, and the year or years for which the same are due; shall give notice that he will apply to the county court at the June term thereof, for judgment against said lands and town lots for said taxes, interest and costs, and for an order to sell said lands and town lots for the satisfaction thereof, and shall also give notice that on the third Monday next succeeding the day fixed by law for the commencement of the said term of the said county court, all the lands and town lots for the sale of which an order shall be made, will be exposed to public sale at the place of holding court in said county, for the amount of said taxes, interest and costs due thereon; and the advertisement published according to the provisions of this section, shall be deemed and taken to be sufficient and legal notice, both of the intended application of the collector to the county court for judgment, and also of the sale of lands and lots under the order of said court: *Provided,* That if the publisher of such paper shall be unable or unwilling to publish said list and notice accurately and properly, the collector shall select some other newspaper, having due regard to the circulation of such paper: *And provided further,* That nothing in this section shall be so construed as to prevent the collector from applying at any succeeding term of said court for judgment against delinquent lands and lots, and selling the same, if from any cause he shall be unable to obtain judgment at the June term thereof.

(161.) SEC. VI. Hereafter no purchaser of any land or town lot, at any sale of lands or town lots for taxes due either to this State or any county, or incorporated town or city within the same, or at any sale for taxes or levies authorized by the laws of this State, shall be entitled to a deed for the lands or town lots so purchased until he or she shall have complied with the following conditions, to wit: Such purchaser shall serve, or cause to be served, a written notice of such purchase on every person in possession of such land or town lot, three months before the expiration of the time of redemption on such sale; in which notice he shall state when he purchased the land or town lot, the description of the land or lot he has purchased, and when the time of redemption will expire. In like manner he shall serve on the person or persons in whose name or names such land or lot is taxed, a similar written notice, if such person or persons shall reside in the county where such land or lot shall be situated; and in the event that the person or persons, in whose name or names the land or lot is taxed, do not reside in the county, such purchaser shall publish such notice in some newspaper printed in such county, having the greatest circulation; and if no newspaper is printed in the county, then in the nearest newspaper that is published in this State to the county in which such lot or land is situated; which notice shall be inserted three times, the last time not less than three months before the time of redemption shall expire. Every such purchaser, by himself or agent, shall, before he shall be entitled to a deed, make an affidavit of his having complied with the conditions of this section, stating particularly the



facts relied on as such compliance; which affidavit shall be delivered to the person authorized by law to execute such tax deed, and which shall by him be filed with the officer having custody of the records of lands and lots sold for taxes and entries of redemption, in the county where such land or lot shall lie, to be by such officer entered on the records of his office, and carefully preserved among the files of his office, and which record or affidavit shall be *prima facie* evidence that such notice has been given. Any person swearing falsely in such affidavit, shall be deemed guilty of perjury, and punished accordingly. In case any person shall be compelled under this section to publish a notice in a newspaper, then before any person who may have a right to redeem such land or lot from tax sale shall be permitted to redeem, he or she shall pay the officer or person who by law is authorized to receive such redemption money, the printer's fee for publishing such notice, and the expenses of swearing or affirming to the affidavit and filing the same: *Provided*, That this notice shall not be required to be given on sales made for taxes assessed prior to the adoption of the amended constitution in 1848. Sections two and three of an act entitled "An act to amend the present revenue law," requiring a clerk of the county court to give notice to owners, &c., approved February 27, 1847, shall be and the same are hereby repealed.

(162.) SEC. VII. The auditor of public accounts shall obtain, on the first day of October annually, or as soon thereafter as practicable, from the several land offices of the United States, at which lands within this State are sold, abstracts containing a description of all lands sold at each office, the dates of sale and the names of purchasers, for which he shall pay not exceeding four cents per tract, and shall certify the amount to the governor, whose duty shall be, if said account appears reasonable and right, to approve the same; which shall be sufficient authority for the auditor to issue his warrant on the treasury for the said amount.

(163.) SEC. VIII. The auditor shall annually transmit to the clerks of the several county courts, on or before the first day of January, a list of all lands in their respective counties, which may have or shall become taxable during the year preceding the said first day of January, and not previously reported; and the list required to be delivered by the clerk to the assessor shall be so delivered on or before the first day of February instead of the first day of January in each year.

(164.) SEC. IX. Section ten of chapter eighty-nine of the Revised Statutes, and all other laws establishing a minimum value of lands in this State for taxation, shall be and the same are hereby repealed. Hereafter it shall not be lawful for the clerks of the county commissioners' courts to make full lists of the lands and lots taxable in their counties, unless the county commissioners' court, at their September term, shall order a full list to be made; but the said clerks shall annually add to the old lists the lands described in the yearly report of the auditor, for which they shall be paid as may be directed by law. The assessor shall return to the said clerks the lists of lands furnished him by the clerks, which shall be preserved for future use.

(165.) SEC. X. The collector shall file the list of delinquent lands and lots, which shall be made out in numerical order, and contain all the information necessary to be recorded, with the clerk of the county court, at least five days before the commencement of the term at which application for judgment is to be made, and said clerk shall receive and record the same in

a book to be kept for that purpose; which said book shall be ruled and headed, as near as may be, in the following form:

*A List of Lands and Town Lots reported by —, Collector of the revenue for the year 18—, upon which he has been unable to collect the Taxes due thereon; and now, on this — day of —, 18—, files this, his petition, for a judgment and order of sale against said Lands and Lots, at the — term, 18—, of the County Court.*

Owners' Names.	Part of Section.	Section.	Township.	Range.	Acres.	Valuation.	State Revenue Tax.	State Special Tax.	County Tax.	County Special Tax.	Total Amount Due.	Remarks.

(166.) SEC. XI. On the first day of the term at which judgment on delinquent lands and town lots is prayed, it shall be the duty of the collector to report to the clerk a list of all the lands and town lots upon which the taxes have been paid, if any, from the filing of the list mentioned in the tenth section of this act up to that time; and the clerk shall note the fact opposite each tract upon which the taxes have been so paid. The collector, assisted by the clerk, shall compare and correct said list, and shall make and subscribe an affidavit, which shall be, as near as may be, in the following form:

"I, —, collector for the county of —, do solemnly swear (or affirm, as the case may be,) that the foregoing is a true and correct record of the delinquent lands and town lots within the county of —, upon which I have been unable to collect the taxes as required by law, for the year or years herein set forth; that said taxes now remain due and unpaid, and that due notice of application for judgment and of sale has been given as required by law."

Said affidavit shall be entered on the record at the bottom of the list, and signed by the collector; the oath may be administered by the judge, clerk or any justice of the peace, who shall attest the same.

(167.) SEC. XII. The court shall examine said list, and if defense or objection be offered by any persons interested in any of said lands, to the entry of judgment against the same, the court shall hear and determine the same in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be, and shall direct the clerk to make out and enter an order for the sale of said lands, which shall be substantially in the following form:

"Whereas due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defense or show cause why judgment should not be entered against the said lands for the taxes, interest and costs due and unpaid thereon, for the year or years herein set forth; therefore, it is considered by the court that judgment be and it is hereby entered against the aforesaid tract or tracts of land, or parts of tracts, (as the case may be,) in the name of the State of Illinois, for the sum annexed to each tract or parcel of land, being the amount of taxes, interest and costs due severally thereon; and it is ordered by the court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes, interest and costs annexed to them severally, be sold as the law directs."

(168.) SEC. XIII. Said order shall be signed by the judge, and shall have the same effect as judgments and orders made by the circuit court,

under the laws to which this is an amendment. Persons aggrieved by any decision of the county court in such cases, shall have the right of appeal to the circuit court, under such rules and restrictions as may be established by law.

(169.) SEC. XIV. All duties required to be performed by the clerk of the circuit court, by the law to which this is amendatory, and which are not in this act dispensed with, shall devolve upon and be performed by the clerk of the said county court, and his compensation for said services shall be the same as allowed by said law to which this is amendatory to the clerk of the said circuit court.

(170.) SEC. XV. The clerk of said court shall, within ten days after any sale for taxes, make out and transmit to the auditor a transcript of sales, which shall be written on foolscap paper, made up, stitched and paged in book form, suitable for binding; said form to be substantially as follows:

*A Transcript of Lands and Town Lots sold for Taxes on the — day of —, 18—, in the County of —.*

Acres offered.	Part of Section.	Section.	Town.	Range.	Acres sold.	Amount of Sale.	Name of Purchaser.

*Lands and Lots forfeited to the State on the — day of —, 18—.*

Part of Section.	Section.	Town.	Range.	Acres.	State Revenue Tax.	State Special Tax.	County Tax.	Total.

(171.) SEC. XVI. Said clerk, for failing to forward to the auditor the said transcript, within the time prescribed in the preceding section, shall forfeit and pay into the treasury of the State the sum of one hundred dollars, to be recovered in an action of debt in any court of competent jurisdiction; and it shall be the duty of the prosecuting attorney for the circuit in which the county of said clerk may be, to prosecute and recover the same, on being required by the auditor so to do.

(172.) SEC. XVII. Suits for the sale of delinquent lands for taxes of 1848, and prior years, may be brought and prosecuted either in the circuit courts or in the county courts; but for the taxes of subsequent years, original jurisdiction of such suits shall be exclusively in the county courts.

(173.) SEC. XVIII. Assessments and collections of taxes for the year 1849, and subsequent years, shall be made conformably to the provisions of this act, and the laws to which it is amendatory.

(174.) SEC. XIX. The collector of each county, upon receiving the assessment list from the clerk of the county commissioners' court of his county, and giving a receipt for the same, shall proceed to collect the taxes charged upon said list, by causing a printed notice to be posted in three different places in each election precinct, and in three different places at the county seat, one of which shall be on the door of the court-house, if any, and shall cause the same to be inserted in any newspaper published in such county having the greatest circulation, if any be published therein, for the space of three successive weeks; stating in each notice upon what day or successive days the collector will, by himself or agent, attend in such precincts, at the place of holding elections, or at some equally public and convenient place, for the purpose of receiving taxes; and the said collector, or his agent, shall attend for the purpose aforesaid, on the day and at the place named in such notice, and shall also attend, by himself or agent, at his office at the county seat, during the month of January, for the same purpose: *Provided, however,* That the said notice shall be considered a demand for the taxes sufficient to create the lien specified in the act to which this is an amendment; and said notice shall be posted up and advertised, as aforesaid, at least three weeks prior to the time specified for meeting in the precinct.

(175.) SEC. XX. If any person shall fail to pay the taxes charged against him, on or before the first day of February next, after the publication of said notices, the collector may distrain his personal property, and proceed to sell the same as already prescribed by law.

(176.) SEC. XXI. There shall be annually assessed and collected, in the same manner as other State revenue may be assessed and collected, a tax of two mills upon each dollar's worth of taxable property, in addition to all other taxes, to be applied as follows, to wit: The fund so created shall be kept separate, and shall annually, on the first day of January, be apportioned and paid over *pro rata* upon all such State indebtedness, other than the canal and school indebtedness, as may for that purpose be presented by the holders of the same, to be entered as credits upon, and to that extent, in extinguishment of the principal of said indebtedness.

(177.) SEC. XXII. The treasurer of each county shall be *ex officio* assessor. Before he enters on the duties of his office as assessor, he shall take and subscribe the following oath (or affirmation), to wit:

"I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will faithfully, diligently and impartially perform all the duties required of me by law, as assessor and treasurer of the county of —; and especially that I will value and assess for taxation all property, real and personal, which is subject to taxation in said county, at its true value, in accordance with the provisions of the constitution."

Which oath may be administered by the clerk of the county court, or any justice of the peace, and indorsed on or attached to the book of said assessor, and returned, with said assessor's book, to the clerk's office. A refusal or neglect of the treasurer to qualify and act as assessor, shall vacate his office as treasurer, and the county court shall thereupon appoint some suitable person to fill such vacancy, who shall hold his office until his successor is duly elected and qualified. The treasurer shall keep his office at the county seat; and his neglect to do so shall vacate his office, which may be filled as aforesaid.

(178.) SEC. XXIII. The auditor of public accounts shall be and he is

hereby required to have the land records in his office carefully compared with the records in the several land offices in this State, and corrected, so as to show the correct description of all the lands sold and subject to taxation in this State, the name of the purchaser, and the date of sale; and he shall enter up in said records, from the annual lists of lands obtained from the several land offices, a correct record of the land sold at said land offices, in numerical order, correcting all errors in said transcripts or records. To defray the expenses of the work required to be performed in making the comparison and entries aforesaid, he shall be allowed two cents per tract for each tract corrected and transcribed.

(179.) SEC. XXIV. It shall be the duty of the auditor to have the records mentioned in the first section of this act corrected as soon as practicable; and as the said work progresses, he may lay proper vouchers before the governor, which shall show the number of tracts actually compared or entered; and if the governor shall be satisfied that said vouchers are correct, he shall approve the same, which shall authorize the auditor to issue his warrant on the treasurer for the amount due, to be paid out of any moneys not otherwise appropriated; and the amount that may be approved as aforesaid is hereby appropriated. All laws and parts of laws authorizing John B. Weber to correct said records, are hereby repealed.

(180.) SEC. XXV. If any tract or tracts of land shall have been, or may hereafter be, taxed before the same became taxable under the laws of this State, the auditor of public accounts, upon application of the owner of said lands, shall give him a certificate, under the seal of his office, showing when the same became taxable under the rules heretofore observed in his said office, in making the reports of taxable lands to the several counties, and said certificate shall be evidence of the facts therein contained.

(181.) SEC. XXVI. The assessor shall, at the time of making the entry in his book, as required by the sixteenth section of the eighty-ninth chapter of the Revised Laws, give to the person so assessed a certificate of the entry so made of the value of the real and personal property so assessed; and the assessor shall not make any change or alteration in said entry after having given such certificate, without giving to the person assessed an additional certificate, showing such increased assessment.

(182.) SEC. XXVII. The auditor is hereby required to furnish to the clerks of the county courts of the several counties, forms of books for property to be assessed, and they are required to conform to said plan; said plan to be furnished to the clerks by the first day of April next.

(183.) SEC. XXVIII. The auditor is hereby required to furnish to each of the county clerks and assessors, a copy of this law as soon as practicable.

(184.) SEC. XXIX. It shall be the duty of each assessor, whenever any person shall refuse to furnish a list of his taxable property, of every description whatever, and swear or affirm to the same, if required so to do, to bring suit for the penalty provided by law; and if the said assessor should fail or neglect so to do, he shall be liable to a like penalty, to be recovered at the suit of any person who may sue for the same.

(185.) SEC. XXX. Whenever any assessor shall be required by any tax payer of his county to swear any other person in regard to his assessment, he shall administer the oath required by law at his earliest convenience,

and on failure so to, do shall be subject to a penalty of fifty dollars, to be recovered as other penalties under this act.

(186.) SEC. XXXI. All acts and parts of acts conflicting with this act are hereby repealed.

(187.) SEC. XXXII. This act to take effect and be in force from and after its passage.

An Act to provide for the Collection of the Revenue on forfeited Property.  
[Approved Feb. 12, 1849. Laws, 1849, p. 128.]

(188.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the clerk of the county commissioners' court of each of the several counties in this State, be and he is hereby required to make out and transmit to the auditor of public accounts, correct statements of all the forfeited lands and town lots redeemed or sold at his office prior to the first day of June, 1849, and which had not previously been reported, and shall, at the same time, make out and transmit to the auditor a correct statement of the aggregate amount of State tax, interest fund tax, insane hospital tax, and costs received at his office for the sale and redemption of forfeited property, annually, since the year 1844.

(189.) SEC. II. It shall be the duty of the auditor to make out correct statements of the several sums which may be reported as required in the foregoing section, and transmit the same to the sheriff of each of the respective counties, whose duty it shall be to lay the same before the county court, at the first term thereof after he shall have received said statement; and the said court shall examine the accounts and books, and enter an order upon the records, showing the correct amounts received by the clerk prior to the first day of June, 1849.

(190.) SEC. III. The statements of forfeited lands and lots sold, and of lands and lots redeemed, mentioned in the first section of this act, shall be made out separately; the statement of sales shall contain a description of the property sold, quantity of land or part of lots sold, the year or years tax for which forfeited, the amount of revenue, tax and interest, the amount of interest fund, tax and interest, and the amount of insane hospital tax and interest, the amount due the county, the total amount of sale, the name of the purchaser, and date of sale, in separate columns, ruled and headed for that purpose. A blank form of said list shall be forwarded, together with a copy of this act, by the auditor to the clerk of the county court of each county. The statement of lands and lots redeemed shall be made out in the same manner as the statement of sales, with the names of the persons redeeming, instead of those of the purchasers. Said statements shall be certified by the clerk, under the seal of his office, and forwarded to the auditor by mail, on or before the 10th day of June, 1849, and a certified copy of the order mentioned in the second section of this act, shall be forwarded within three days after the adjournment of the court; and the auditor shall charge the amount that may appear to be due to the State from the said clerk, and shall collect and pay the same into the State treasury: *Provided*, That if the auditor shall be satisfied that the amount set forth in the order is incorrect, he may return the same for correction.

(191.) SEC. IV. If the clerk of the county commissioners' court shall neglect or refuse to comply with the provisions of this act, or shall neglect

to pay over the amount due by him, he shall be liable to pay the whole amount of State tax, interest and costs, on all the lands and lots which may have been forfeited to the State in his county; and the auditor shall ascertain the amount due from the sale lists on file in his office, and proceed against the said clerk in the same manner as is provided for proceeding against delinquent collectors. And the said clerk may be removed from office on failure to pay as aforesaid.

(192.) SEC. V. Lands and lots heretofore forfeited to the State may be assessed to the original owners, if listed by them; if not listed, they shall be forfeited to the State; and the clerk of the county court shall compute the amount of back taxes, interest and costs due thereon, and note the amount opposite each tract or lot. The collector shall proceed to collect said amounts, by sale or otherwise, the same as other revenue, and his receipt for the said amount, including the taxes for the current year, shall be evidence of redemption of said tract or lot from all claims for the taxes of the years specified in said receipt. All deeds made by the auditor of public accounts, under the provisions of chapter eighty-nine, Revised Statutes, shall have the same force and effect as tax deeds executed by sheriffs under said law. All auditor's deeds given under said act shall be *prima facie* evidence that all the prerequisites of the law were complied with before sale; and when it shall be made to appear to the satisfaction of the county court, that any tract or lot sold or redeemed under the provisions of said chapter, was not taxable at the time of sale to the State, or was assessed twice for the taxes of that year, the said court shall cause said sale to be cancelled, and shall enter an order showing the amount paid to the county, and the amount paid to the State on said erroneous sale. The court shall refund to the purchaser, or his legal representative, the amount paid to the county; and the auditor shall issue his warrant on the treasurer for the amount paid to the State, upon the presentation of a certified copy of said order and the return of the deed, if a deed has been issued for said tract or lot. But if it shall appear that the taxes had been properly paid to the collector, and through his neglect the lands or lots were sold, or forfeited to the State, then the purchaser shall have his remedy against the collector, and may proceed against him by action of debt in any court having competent jurisdiction: *Provided*, That if the clerk shall not have paid the redemption or sale money into the treasury, as required by law, he shall refund the amount to the purchaser or the person redeeming, as the case may be; and if said clerk shall refuse or neglect to pay the same, the person entitled to receive said amount shall have his remedy against said clerk, and may proceed against him by action of debt in any court having competent jurisdiction.

(193.) SEC. VI. The clerks of the county commissioners' courts of the several counties shall make out and deliver to the assessor, on or before the first day of July next, a list of all the forfeited lands and town lots remaining unsold or unredeemed on the first day of June, 1849, and it shall be the duty of the assessor to assess said lands and lots, and make return thereof, as is required by law for the assessing of other property. The clerk shall make out and deliver to the collector, at the same time that he delivers the assessment books for the current year, a correct list of said property, showing the value, amount of tax, amount of back taxes and interest, (including the taxes for which forfeited,) the amount of costs, and the year or years

for which said back taxes are charged; and the said collector shall proceed to collect the amounts due thereon, by sale or otherwise, as is or may be provided by law for the collection of the taxes on other lands and town lots: *Provided*, That if any such lands or town lots shall again be forfeited to the State at said sale, for want of bidders, the collector shall sell them on the last day of sale, to the highest bidder, without regard to the amount due thereon, and the clerk shall deliver to the purchaser a certificate of purchase, which shall entitle him to a deed from the auditor, as is now provided for by law: *Provided, further*, That the owner or owners of any such lands or lots may redeem the same at any time within one year from the time that said lands or lots were sold, by paying to the clerk of the county court double the amount for which said lands or lots were sold, and the subsequent taxes, with interest thereon; and if any such lands and town lots were sold for a less sum than the amount due thereon, he shall pay the whole amount due, with interest thereon.

(194.) SEC. VII. This act to take effect and be in force from and after its passage.

An Act to amend the several Acts concerning the Public Revenue.

[Approved Nov. 6, 1849. Laws, 1849, p. 38.]

(195.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter the clerk of the county court shall, on or before the first day of March in each year, cause to be delivered to the assessor of his county, in a well-bound book, a correct transcript of all the real estate subject to taxation, made out in numerical order, together with the names of the original purchasers, or present owners; and shall, at the same time, deliver to said assessor a blank book or books, ruled and headed suitable for his use in making the assessment. Said books to be in the form now required by law.

(196.) SEC. II. The assessor shall assess the property as now required by law, and make return thereof on or before the first day of October thereafter.

(197.) SEC. III. The clerk shall deliver the tax books to the collector on the first Monday in December, or so soon thereafter as he may be qualified: *Provided*, That this section shall not affect the revenue of the year 1849.

(198.) SEC. IV. At the December term of the county court, in each year, and before receiving the tax books, the collector shall file a good and sufficient bond, as is now provided for by law, to be approved by said court, which shall be recorded and forwarded to the auditor of public accounts, together with a certificate of the facts, within three days after the adjournment of said court: *Provided*, That this section shall not apply to bonds for the collection of the taxes of 1849.

(199.) SEC. V. The notice of the time of attending at the precincts for the purpose of receiving the taxes, required by law, shall be advertised and posted up at least two weeks prior to the time specified for meeting in the precincts. So much of the law as requires three weeks' notice, is hereby repealed:

(200.) SEC. VI. The collector, by himself or agent, shall attend at his office, during the month of February, for the purpose of receiving the taxes, instead of the month of January, as now required by law, and said collector shall not distrain or sell personal property for taxes before the first day of

March, and not until he has attended the precincts for the purpose of receiving said taxes.

(201.) SEC. VII. The advertisement of the list of delinquent lands and town lots, required by law to be published before the rendition of judgment and sale of real estate for taxes, shall be so published on or before the seventh day of May, and the sale shall be made on the second Monday in June annually: *Provided*, That said sale may be continued from day to day, until all the property is sold. So much of the 5th section of an act entitled, "An act to amend the several acts concerning the public revenue," approved February 8, 1849, as requires the advertisement mentioned in said section to be published four weeks previous to the June term of the county court, and the sale to be made on the third Monday next succeeding the term of the court, is hereby repealed.

(202.) SEC. VIII. The collector shall present to the court, at the June term thereof, his list of abatements, and shall make a final settlement with the county at said term, except for the amount of taxes due on the delinquent real estate, which he shall account for and pay over to the treasurer within five days after the sale.

(203.) SEC. IX. The clerk shall make out a correct transcript of the sales, in form as required by law, and a certified statement, showing the value of the property, and the amount of State and county tax abated by the court, and within five days after the sale shall deliver the same to the collector, securely enveloped, sealed and directed to the auditor; and it shall be the duty of the collector to deliver said sale list and certificate to the auditor, and make a final settlement, and pay into the State treasury the full amount due from him to the State, on or before the first day of July.

(204.) SEC. X. Upon the final settlement of any account, the auditor shall give the collector a certificate, under seal of his office, setting forth that said collector has settled and paid into the State treasury the full amount due from him on said account; and it shall be the duty of the collector to file said certificate in the office of the clerk of the county court, on or before the first day of August next, after receiving the tax books. If any collector shall neglect or refuse to file said certificate, as above required, the clerk shall leave a written notice at the office of said collector, requiring him to appear before the county court at the September term thereof, and show cause why he has not filed the certificate aforesaid; and if the collector shall not show that he has paid over the full amount due from him, and made a final settlement with the State and county, or that he has a just and reasonable excuse for failing to do so, his office of sheriff shall be declared vacant.

(205.) SEC. XI. In case of the death of any collector during the time that the tax books are in his hands, and before the time specified in this act for selling the delinquent real estate, the clerk of the county court shall demand and take charge of the tax books, and thereupon shall forthwith notify the judge of said court of the fact, and said judge shall appoint one or more competent persons to examine said tax books, and it shall be the duty of the person or persons so appointed, to ascertain the amount remaining uncollected, and make out a correct abstract of the same: *Provided*, That should there be but a small portion of the taxes collected at the time of the death of the collector, then the amount actually collected shall be ascertained, and the same books used in completing the collections.

(206.) SEC. XII. In case of the vacancy, as mentioned in the foregoing section, the county court may appoint a suitable person to complete the collections, who shall execute a bond, collect and pay over the taxes in the same manner, and his acts shall be as binding and effectual, as the collector's would have been had he completed the collections; and the court may, if the circumstances of the case require it, allow the said collector further time to complete the collections and make settlement, which shall not be for a longer time than three months over and above the time allowed to collectors by this act. And the collector so appointed may obtain judgment at the September term of the county court, and sell delinquent lands and lots in like manner as collectors are authorized to do at the June term: *Provided*, That if the collector had attended in the precincts for the purpose of collecting the taxes, or had advertised the delinquent land list before his death, it shall not be necessary for his successor, or the person appointed to complete the collections, to attend in said precincts, or re-advertise, but he shall proceed to finish the collections in the same manner as the collector would have been authorized to do if he had lived: *Provided, further*, That if the circumstances of the case will permit of the necessary delay, or the court shall be unable to find a suitable person willing to complete the collections aforesaid, the sheriff elected to fill the vacancy shall complete the collections and make the settlement as specified in this section.

(207.) SEC. XIII. If any collector shall be unable to obtain judgment on the delinquent land list, at the June term of the county court, from any cause whatever, he may obtain judgment at any subsequent term of said court by giving notice of the intended application and sale; which notice shall contain all the facts required by law, and shall be once published, at least four weeks previous to the first day of the term at which the judgment will be prayed, and the sale shall be on the Monday next following the first day of said term: *Provided*, That the statute allowing the redemption from tax sale of the lands of infants, *feme covert*s and lunatics, shall be so construed as to authorize such redemption by their guardians or legal representatives, from and after the day of sale to the time now limited by the statutes for such redemption.

(208.) SEC. XIV. If any collector shall, by his own neglect, fail to obtain judgment at the June term of the court, or shall fail to present his list of delinquencies on personal property, or of errors in assessment at said term, he shall lose the benefit thereof, and shall pay to the State and county the full amount charged against him, after deducting his fees for collecting: *Provided*, That if, for any cause, the court do not sit at the June term, the collector shall be allowed further time to pay over the amount due on the delinquent list.

(209.) SEC. XV. All suits or applications for judgment and order of sale for the taxes on delinquent lands and town lots, shall be made at the terms of the county court sitting for the transaction of county business: *Provided*, That if, for any cause, the court shall not be holden at the term at which judgment is prayed, the cause shall be continued, and it shall not be necessary to re-advertise the list or notice required by law to be advertised before judgment and sale: *Provided, further*, That the term of the court at which the collector shall obtain judgment on the delinquent land

list, shall not be continued for a longer time than six days from its commencement.

(210.) SEC. XVI. The printer publishing the list of delinquent lands and town lots, shall transmit by mail, or other safe conveyance, to the collector, four copies of the paper containing said list. Upon the receipt of said papers, the collector shall pay to the printer the amount of the fees allowed by law for publishing said list and notice; and it shall be his duty to file one copy of said paper in his office, and deliver one copy to the clerk of the county court, one copy to the auditor of public accounts, and one copy to the State treasurer, who shall file and safely preserve them in their respective offices: *Provided*, That if said publication is not made in accordance with the requirements of the law, or the papers above mentioned are not furnished the collector before the first day of the term of the court at which the judgment is prayed, the collector shall not pay said fees until they are collected by him.

(211.) SEC. XVII. If any collector shall neglect or refuse to pay the amount due the printer, as required by the act, it shall be competent for the printer to forward two copies of the paper containing the advertisement, with a statement of his account, and of the facts in the case, to the auditor of public accounts, and if the auditor be satisfied that the amount ought to be paid, he shall issue his warrant on the treasurer for the amount due, and charge the same to the collector: *Provided*, That said papers and statement be presented to the auditor on or before the day of sale. Any printer who shall so demand payment from the auditor, after he has received pay from the collector, or shall receive payment from the collector after he has forwarded the demand on the auditor, shall forfeit and pay to the State double the amount of said account, to be recovered in any court having jurisdiction of the amount.

(212.) SEC. XVIII. The auditor shall credit the collector with the amount of the printer's fees on the property forfeited to the State, and the clerk shall annually add to the taxes of the year following the amount for which the tract or lot was forfeited, including the printer's fees, and six per cent. interest for one year from the date of the last sale; the amount of said fees to be paid into the State treasury, when collected, and the additions to be continued from year to year, until the whole amount due on said tract or lot is collected. All laws authorizing the clerks of the county courts to receive the redemption money on property forfeited to the State, are hereby repealed.

(213.) SEC. XIX. If, upon the final settlement of any account, it is ascertained that the collector has paid into the State treasury a greater sum than is justly due from him to the State, the auditor shall refund the same, by issuing his warrant on the treasury for the amount so overpaid.

(214.) SEC. XX. Every justice of the peace, or other officer, who may have collected any fine imposed by virtue of the seventh section of chapter eighty-nine of the Revised Statutes, shall, within three months from and after the passage of this act, pay the amount so collected and due the State, to the sheriff of his county, and take duplicate receipts therefor, one of which he shall forward by mail to the auditor of public accounts; and hereafter it shall be the duty of the officer collecting any such fine, to report the same to the clerk of the county court within three days thereafter, and pay

the amount so collected over to the sheriff; and the clerk shall file said report in his office, and forward a certified copy thereof to the auditor. And it shall be the duty of the sheriff of the several counties to demand and receive the amount of any such fine, and pay the same into the State treasury. Every officer neglecting or refusing to comply with the requirements of this section, shall forfeit and pay to the State double the amount received by him, and shall be removed from his office.

(215.) SEC. XXI. Any person desiring to obtain a license from the State, as provided for in the seventh section of chapter eighty-nine of the Revised Statutes, shall apply to the auditor of public accounts, who shall issue his order to the treasurer, directing him to receive from said person the amount required by law for said license; and upon the presentation of the treasurer's receipt, the auditor shall issue a license, under the seal of his office, which shall be countersigned by the treasurer, and shall have the same force and effect as the licenses heretofore issued by the secretary of State. So much of the above recited chapter as authorizes the secretary of the State to grant licenses, is hereby repealed.

(216.) SEC. XXII. If the time of holding the circuit court in any county in this State has been so changed by law, as to prevent the collector from obtaining judgment on the delinquent land list, or the court did not sit at its regular term, in consequence of which the fees for advertising said delinquent list were not collected and paid to the printer, the auditor of public accounts is hereby authorized and required to draw his warrant on the treasurer in favor of any such printer for the amount of fees allowed by law.

(217.) SEC. XXIII. All acts and parts of acts conflicting with this act are hereby repealed; and the auditor shall furnish the revenue officers of the several counties with a copy of this act.

(218.) SEC. XXIV. This act to take effect and be in force from and after its passage.

An Act to enable the Auditor of Public Accounts to collect the Revenue.

[Approved Feb. 17, 1851. Laws, 1851, p. 139.]

(219.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That when real estate shall be levied upon to satisfy any judgment in favor of the State, it shall be the duty of the officer making such levy, to transmit by mail, to the auditor, at least twenty days before the day of sale, a correct statement, showing the description and value of said property, in cash; the truth of said statement shall be attested by the oath of said officer. And the auditor is hereby authorized and required to purchase, in the name and for the use of the State of Illinois, at a price not exceeding two-thirds of said value, so much of said property as may be required to pay the amount of the judgment and costs aforesaid; and it shall be the duty of the officer making such sale, to forward to the auditor a certificate of purchase, and make his return, as required in other cases of sales on execution. Any person desiring to redeem said property from such sale, shall pay the amount of redemption money into the State treasury; and, thereupon, the auditor shall indorse such payment on the back of the certificate of purchase aforesaid, and deliver it to the person so paying; which shall have the same effect as redemp-



tions have in other cases; but no real estate purchased as aforesaid shall be considered redeemed from such sale until the redemption money is paid into the State treasury.

(220.) SEC. II. All moneys received by any sheriff, or other officer, for the redemption of any real estate sold to the State, on execution, shall be paid by such officer into the State treasury, or to the collector of his county, as may be directed by the auditor, within twenty days after demand is made by said auditor, and shall be paid into the State treasury, by such collector, when he makes settlement for the State revenue: *Provided*, That the demand aforesaid may be made by any person authorized by the auditor to make such demand.

(221.) SEC. III. If any real estate, purchased by the State on execution, shall not have been redeemed, or may not hereafter be redeemed, within the time required by law, it shall be the duty of the auditor to obtain a deed or deeds therefor; which he shall cause to be recorded in a book kept for that purpose, in his office, and shall take such steps as he shall deem necessary to protect the timber, or other fixtures thereon, from being lost or destroyed.

(222.) SEC. IV. The auditor of public accounts is hereby authorized and empowered to sell, transfer and convey, by deed, any and all real estate that may have been heretofore, or may be hereafter purchased, to satisfy, or in payment of any judgment, or any execution in favor of the State, by this State, or by any officer of this State, for the benefit and use of the State, to any person or persons who may pay into the State treasury the full amount paid by the State for said property, and six per cent. interest thereon, from the date of said sale to the time of such payment: *Provided*, That such amount shall be equal to the amount due the State on the judgment or decree on which the sale was made; or if not, the sale may be made at such price, not less than the price paid for the property as aforesaid, as the judge of the county court and the sheriff of the county in which the estate is situated, shall certify the same to be worth.

(223.) SEC. V. State's attorneys, in addition to the duties now required by law, shall prosecute all suits in favor of the State when required by the auditor; and where there is no other fee allowed by law for such service, they shall be allowed and paid out of the State treasury the sum of five dollars, for commencing and prosecuting suits as aforesaid, to be paid on the certificate of the auditor, and approved by the governor.

(224.) SEC. VI. If the back taxes on any forfeited property have not been collected, or the property sold as provided for by an act entitled "An act to provide for the collection of the revenue on forfeited property," approved February twelfth, eighteen hundred and forty-nine, said taxes, with the interest and costs due thereon, shall be added to and collected with the tax of the current year: *Provided*, That where such taxes have not been added to the list for the current year, the clerk shall add them to the taxes of the year A. D. one thousand eight hundred and fifty-one. Said property shall be advertised and sold in the same manner as required by the act aforesaid.

(225.) SEC. VII. Deeds on sales made in pursuance of this act, or of the foregoing recited act, shall be made by the sheriff or collector, as provided for in other cases of sales for taxes.

(226.) SEC. VIII. In all cases where the collectors of the tax of the year A. D. one thousand eight hundred and forty-nine, did not receive the tax books within the time required by law, or where any of the collectors aforesaid failed to obtain judgment on the delinquent list, at the time required by law, the auditor is hereby required to remit the interest on the accounts of such collectors; and in all cases where such interest has been paid into the treasury, the auditor shall cause the same to be refunded by drawing his warrant on the treasurer for the amount so paid.

(227.) SEC. IX. Sheriffs and collectors of the revenue for the year one thousand eight hundred and fifty-one, and subsequent years, shall be allowed a commission upon all moneys paid into the State and county treasuries, of five per cent. on the first eight thousand dollars, three per cent. on the next ten thousand dollars, and two per cent on all additional sums, instead of the commission now allowed by law; which allowance shall be apportioned between the county and State, in proportion to the amounts collected and paid over.

(228.) SEC. X. This act to take effect and be in force from and after its passage.

An Act to amend the Revenue Law.

[In force Aug. 23, 1852. Laws, 1852, p. 205.]

(229.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all the provisions of section three of chapter eighty-nine of the Revised Statutes, entitled "REVENUE," shall be held to apply to deeds made by the auditor of public accounts, as provided by the eighty-seventh section of the same chapter.

(230.) SEC. II. Deeds made by the auditor, in pursuance of the provisions of said section eighty-seven, shall be conclusive evidence that the grantee therein named is vested with all the title of the State to the lands therein described, to the extent of the purport of such deed.

(231.) SEC. III. The auditor shall, upon the production of the certificate of the clerk of the county court, execute deeds to the purchaser or his assigns, for all forfeited lands heretofore sold, which deeds shall be effectual to vest in the grantee in said deed all of the title of the State at the time of such sale.

An Act to amend the Revenue Laws, and provide for the Collection of the State Taxes in the City of Quincy.

[Approved June 23, 1852. Laws, 1852, p. 236.]

(232.) SEC. I. *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 Adams county to assess the property, real and personal, taxable within the limits of the city of Quincy for State purposes, and in the discharge of such duty, he shall be governed by and conform to the requirements of the general revenue laws of this State.

(233.) SEC. II. The treasurer aforesaid shall qualify as assessor, make the assessment and the return thereof in like manner as assessors in counties not adopting the act entitled "An act to provide for township organization," are required to do, and shall receive like compensation for his services as such assessor, to be paid by the county of Adams, in the same manner that

the county treasurers of other counties are paid for such services. The first and second sections of this act shall apply to the assessment for the year A. D. one thousand eight hundred and fifty-three, and subsequent years.

(234.) SEC. III. The sheriff of Adams county shall be *ex officio* collector, and as such collector, shall collect the taxes for State purposes within the limits of the city of Quincy, for the year one thousand eight hundred and fifty-two, and subsequent years. Said collector shall qualify, give bond, and perform the duties required by this act, be subject to the same liabilities and penalties, and receive like compensation as collectors acting under the general revenue laws of this State, in counties not adopting the township organization law: *Provided*, That if the city marshal of the said city of Quincy neglects or refuses to give bond and collect the tax for the year 1851, as now required by law, then and in that case it shall be the duty of the sheriff of the said county of Adams, when required so to do by the auditor of public accounts, to qualify as collector, and collect and pay over said taxes.

(235.) SEC. IV. For the purposes of assessing the property and collecting the taxes for State purposes within the limits of the city of Quincy, the several acts relating to the revenue, except the "Act to provide for township organization" now in force, or which may hereafter be passed, shall be and have the same force and effect, for the purposes aforesaid, as they would have had if the "Act to provide for township organization" had never been adopted in the county of Adams, anything in said act to the contrary notwithstanding.

(236.) SEC. V. If the treasurer and sheriff of Adams county shall neglect or refuse to qualify and perform the duties required by this act, they or either of them so neglecting or refusing, shall be removed from office, and the vacancy caused by such removal shall be filled in like manner as in other similar cases under the revenue laws of this State.

(237.) SEC. VI. The services performed by the city assessor of the city of Quincy, and the clerk of the county court, under "An act to provide for the assessment of property in the city of Quincy for State taxes, and for the collection of taxes therein, for the year one thousand eight hundred and fifty, and for subsequent years, and for exempting the city of Quincy from the operation of the law authorizing township organization," approved February fifteenth, eighteen hundred and fifty-one, shall be paid for by the county of Adams, in the same manner as county assessors and county clerks are paid for similar services.

(238.) SEC. VII. The collector of taxes for the year one thousand eighteen [eight] hundred and fifty-one, in the city of Quincy, may obtain judgment on the non-resident delinquent list at the October term of the county court, and shall pay over to the State treasurer, and make final settlement with the auditor for the taxes of said year, on or before the first day of November next. Bonds given in pursuance of this act shall be approved by the judge of the county court, anything in the revenue laws to the contrary notwithstanding.

(239.) SEC. VIII. It is hereby declared that the true intention and meaning of this act is, that the State taxes on the property taxable within the city of Quincy shall be assessed, collected and paid over in the same manner that State taxes are collected and paid over in counties that have

not adopted the act to provide for township organization, and that the revenue laws of this State, except the act aforesaid, shall be and remain in full force and effect for the purpose aforesaid, and that the fees and compensation allowed for services rendered under the general revenue laws of this State, shall be allowed and paid in the same manner as such fees and compensation are allowed and paid for in counties acting under the general revenue laws of this State.

(240.) SEC. IX. If the city marshal of the said city of Quincy shall have executed bond for the collection of taxes for the year one thousand eight hundred and fifty-one, at any time prior to the passage of this act, he and his securities shall file, with the clerk of the county court of Adams county, their written acceptance of the provisions of this act, which shall make them, and each of them, as fully bound for the payment of said bond as they would have been had such bond been executed after the passage of this act.

(241.) SEC. X. The city council of the city of Quincy shall pay, on the first Monday of September next, and annually thereafter, to the county of Adams, the sum of three hundred dollars, for the purpose of reimbursing said county the moneys advanced by her under the provisions of this act, and on account of court expenses, &c.

(242.) SEC. XI. This act to take effect and be in force from and after its passage.

An Act for the Assessment of Property.

[Approved Feb. 12, 1853. Laws, 1853, p. 85.]

(243.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all property, whether real or personal, in this State; all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of persons residing in this State, or used or controlled by persons residing in this State; the property of corporations now existing or hereafter created, and the property of all banks or banking companies now existing, or hereafter created, and of all bankers and brokers, except such property as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, or the value thereof, shall be entered on the list of taxable property, for that purpose, in the manner prescribed in this act.

(244.) SEC. II. The terms "real property" and "land," wherever used in this act, shall be held to mean and include not only the land itself, whether laid out in town lots or otherwise, with all things contained therein, but, also, all buildings, structures and improvements, and other fixtures, of whatsoever kind, thereon, and all rights and privileges belonging or in anywise pertaining thereto. The term "investments in bonds," wherever used in this act, shall be held to mean and include all moneys invested in bonds, of whatsoever kind, whether issued by incorporated or unincorporated companies, towns, cities, counties, States or other corporations, or by the United States, held or controlled by persons residing in this State, whether for themselves or as guardians, trustees or agents, on which the holder thereof is receiving or is entitled to receive interest. The term "investments in stocks," wherever used in this act, shall be held to mean and include all

moneys invested in the public stocks of this or any other State, or of the United States, or in any association, corporation, joint-stock company, or otherwise, the stock or capital of which is or may be divided into shares, which are transferable by the owner, without the consent of the other partners or stockholders, for the taxation of which no special provision is made by this act, held by persons residing in this State, either for themselves or as guardians, trustees or agents. The term "oath," wherever used in this act, shall be held to mean oath or affirmation. Every word in this act importing the masculine gender, may extend and be applied to females as well as males. The term "personal property," wherever used in this act, shall be held to mean and include every tangible thing, being the subject of ownership, whether animate or inanimate, other than money, and not forming part of any parcel of real property, as hereinbefore defined. The capital stock, undivided profits, and all other means, not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits or means, by whatsoever name they may be designated, inclusive of every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat, of whatsoever name or description, used or designed to be used, either exclusively or partially, in navigating any of the waters within or bordering on this State, whether such ship, vessel or boat, shall be within the jurisdiction of this State, or elsewhere, and whether the same shall have been enrolled, registered or licensed at any collector's office, or within any county or collector's district in this State or not. The term "money" or "moneys," wherever used in this act, shall be held to mean gold and silver coin, and bank notes in actual possession, and every deposit which the person owning, holding in trust or having the beneficial interest therein, is entitled to withdraw in money on demand. The term "credits," wherever used in this act, shall be held to mean and include every claim or demand for money, labor or other valuable thing, due or to become due, or every annuity or sum of money receivable at stated periods, and all money invested in property of any kind which is secured by deed, mortgage, or otherwise, which the person holding such deed or mortgage, or evidence of claim, is bound by any lease, contract or agreement, to reconvey, release or assign, upon the payment of any specific sum or sums: *Provided*, That pensions receivable from the United States, or from any State, salaries or payments expected to be received for labor or services to be performed or rendered, shall not be held to be annuities within the meaning of this act. The term "property," wherever used in this act, shall be held to mean and include every tangible thing being the subject of ownership, whether animate or inanimate, real or personal.

(245.) SEC. III. All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:

First. All lands donated for school purposes, and not sold or leased. All public school-houses, and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such building necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit. All colleges, academies; all endowments made for their support; all buildings connected with the same, and all lands connected with institutions of learning, not used with a view to profit. This provision shall not extend to leasehold estates of

real property, held under the authority of any college or university of learning.

Second. All lands used exclusively as grave yards, or grounds for burying the dead.

Third. All government lands belonging to the United States, and all property, whether real or personal, belonging to this State, and all swamp and overflowed lands belonging to the several counties of this State, so long as the same may remain unsold by such counties.

Fourth. All buildings belonging to counties used for holding courts, for jails, or for county offices, with the ground on which such buildings are erected, not exceeding, in any county, ten acres.

Fifth. All lands, houses and other buildings belonging to any county, town or city, used exclusively for the accommodation or the support of the poor.

Sixth. All buildings, with the furniture appertaining thereto, belonging to institutions of purely public charity, together with the lands actually occupied by such institutions, not leased or otherwise used with a view to profit; and all moneys and credits appropriated solely to sustaining, and belonging exclusively to, such institutions.

Seventh. All fire engines, and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe-keeping thereof, and for the meetings of fire companies, whether belonging to any town or to any fire company organized therein.

Eighth. All market-houses, public squares or other public grounds, used exclusively for public purposes; and all works, machinery and fixtures belonging exclusively to any town or city, and used exclusively for conveying water to such town or city.

Ninth. No person shall be required to list a greater portion of any credits than he believes will be received or can be collected; nor any greater portion of any obligation given to secure the payment of rent, than the amount that shall have accrued on the lease, and shall remain unpaid at the time of such listing. No person shall be required to include in his statement, as a part of the personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, which he is required to list, any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation in this State, nor shall any partner be required to list or return any property, liability or supposed balance of said partnership due him, the property, effects and credits of said partnership being listed by any other partner.

(246.) SEC. IV. Every person of full age and sound mind, not a married woman, shall list the real property of which he is the owner, situate in the town or district in which he resides, the personal property of which he is the owner, all moneys in his possession, money loaned or invested, and all other property of which he is the owner; and he shall also list all moneys invested, loaned or otherwise controlled by him, as the agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited, subject to his order, check or draft, and credits due from or owing by any person or persons, body corporate or politic, whether in or out of such county. The property

of every ward shall be listed by his guardian; of every minor child, idiot or lunatic, having no other guardian, by his father, if living, if not, by his mother, if living, and if neither father nor mother be living, by the person having such property in charge; of every wife, by her husband, if of sound mind, if not, by herself; of every person for whose benefit property is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator; of corporations, whose assets are in the hands of receivers, by such receivers; of every company, firm, body politic or corporate, by the president or principal accounting officer, partner or agent thereof. Every person required to list property on behalf of others, by the provisions of this act, shall list it in the same county, town or district in which he would be required to list it if such property were his own; but he shall list it separately from his own, specifying in each case the name of the person, estate, company or corporation to whom it belongs. Real property shall be listed in the county, town or district where it belongs; personal property, moneys and credits, except such as is required to be listed otherwise, shall be listed in the county, town or district where the owner resides; the property of banks or bankers, brokers, stock jobbers, insurance or other companies, merchants and manufacturers, shall be listed in the county, town or district where their business is usually done: *Provided*, That in the counties of the military tract, owners of real estate shall not be compelled to return the same, if they desire it to go to sale, and so inform the assessor.

(247.) SEC. V. Property held under a lease for a term exceeding ten years, belonging to the State, or to any religious, scientific or benevolent society or institution, whether incorporated or unincorporated, and school and ministerial lands, shall be considered, for all purposes of taxation, as the property of the person so holding the same, and shall be listed as such, by such person, or his agent, as in other cases.

(248.) SEC. VI. Each person required to list property, shall make out, sign and deliver to the assessor, when required, a certified statement of all the personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, in his possession, or under the control of such person, which he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. Personal property shall be listed with reference to the quantity on hand and owned on the first day of May in the year for which the property is required to be listed, including the property purchased on that day.

(249.) SEC. VII. Such statement shall truly and distinctly set forth:

- First. The number of horses, and the value thereof.
- Second. The number of neat cattle, and the value thereof.
- Third. The number of mules and asses, and the value thereof.
- Fourth. The number of sheep, and the value thereof.
- Fifth. The number of hogs, and the value thereof.
- Sixth. Every carriage and wagon, of whatsoever kind, and the value thereof.
- Seventh. Every watch and clock, and the value thereof.
- Eighth. Every piano forte, and the value thereof.
- Ninth. The value of the goods and merchandise which such person is required to list as a merchant.

Tenth. The value of the property which such person is required to list as a banker, broker or stock-jobber.

Eleventh. The value of materials and manufactured articles which such person is required to list as a manufacturer.

Twelfth. The value of moneys and credits required to be listed.

Thirteenth. The value of moneys invested in bonds, stocks, joint-stock companies, or otherwise, which such person is required to list.

Fourteenth. The total value of all other personal property, including household furniture: *Provided*, That the value of such property shall be determined by the assessor.

(250.) SEC. VIII. If any person shall give a false and fraudulent list, or shall refuse to deliver to the assessor, when called on for that purpose, a list of his or her taxable property, as required by law, the said assessor, as a penalty therefor, shall assess the property of such person at double its value; and if said assessor shall neglect or refuse so to do, he shall be liable in each case to a penalty of fifty dollars, to be recovered at the suit of any person who may sue for the same.

(251.) SEC. IX. If the assessor believes that any property has been valued at less than its true value, in accordance with the rules and customs of valuing property for taxation, he shall value and charge such property at its true value, and shall notify the person listing such property of such increased valuation.

(252.) SEC. X. Each separate parcel of real property shall be valued at its true value in money, excluding the value of crops growing thereon; but the price for which such real property would sell at a forced sale shall not be taken as the criterion of such value. Each tract or lot of real property belonging to this State, or to any county, city, town, or charitable institution, whether incorporated or unincorporated, and school or ministerial lands, held under lease for a term exceeding ten years, shall be valued at such price as the assessor believes could be obtained at private sale for such leasehold estate. Personal property of every description shall be valued at the usual selling price of similar property at the time of listing, and in the county where the same may then be; and if there be no usual selling price known to the person whose duty it shall be to fix a value thereon, then at such price as it is believed could be obtained therefor in money at such time and place. Investments in bonds, stocks, joint-stock companies, or otherwise, shall be valued at the true value thereof in money. Money, whether in possession or on deposit, shall be entered in the statement at the full amount thereof: *Provided*, That depreciated bank notes shall be entered at their current value. Every credit for a sum certain, payable either in money or property of any kind, shall be valued at the full price of the sum so payable; if for a specific article, or for a specified number or quantity of any article or articles of property, or for a certain amount of labor done, or for services of any kind rendered, it shall be valued at the current price of such property, or of such labor or service, at the place payable. Annuities, or moneys receivable at stated periods, shall be valued at the price which the person listing the same believes them to worth in money.

(253.) SEC. XI. In making up the amount of moneys and credits which any person is required to list for himself, or any other person, company or corporation, he shall be entitled to deduct from the gross amount of moneys

and credits, the amount of all *bona fide* debts owing by such person, company or corporation, to any other person, company or corporation, for a consideration received; but no acknowledgment of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others, shall be deducted as the person making out the statement believes the surety is legally and equitably bound to pay, and so much only as he believes such surety will be compelled to pay on account of the inability or insolvency of the principal debtor; and if there are other sureties who are able to contribute, then only so much as the surety in whose behalf the statement is made, will be bound to contribute: *Provided*, That nothing in this section shall be so construed as to apply to any bank, company or corporation exercising banking powers or privileges.

(254.) SEC. XII. No person, company or corporation, shall be entitled to any deduction on account of any bond, note or obligation of any kind, given to any mutual insurance company, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society; nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated.

(255.) SEC. XIII. Every person that shall own or have in his possession, or subject to his control, any personal property within this State, with authority to sell the same, which shall have been purchased in or out of this State, with a view to being sold at an advanced price or profit, or which shall have been consigned to him from any place out of this State, for the purpose of being sold at any place within this State, shall be held to be a merchant; and when he shall be by this act required to make out and deliver to the assessor a statement of his other personal property, he shall state the value of such property appertaining to his business as a merchant; and in estimating the value thereof, he shall take, as the criterion, the average value of all such articles of personal property which he shall have had from time to time in his possession, or under his control, during the year next previous to the time of making such statement, if he shall have been so long engaged in business, and if not, then during such time as he shall have been so engaged; and the average shall be made up by taking the amount in value on hand, as nearly as may be, in each month of the next preceding year in which the person making such statement shall have been in business, adding together such amount, and dividing the aggregate amount thereof by the number of months that the person making the statement may have been in business during the preceding year: *Provided*, That no consignee shall be required to list for taxation the value of any property, the product of this State, which shall have been consigned to him for sale, or otherwise, from any place within the State, nor the value of any property consigned to him from any other place for the sole purpose of being stored or forwarded: *Provided*, He shall in either case have no interest in such property, or any profit to be derived from its sale; and the word *person*, as used in this and the succeeding sections, shall be held to mean and include firm, company and incorporation.

(256.) SEC. XIV. Every person who shall purchase, receive or hold personal property of any description, for the purpose of adding to the value

thereof, by any process of manufacturing, refining, rectifying, or by the combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer; and he shall, when he is required to make out and deliver to the assessor a statement of the amount of his other personal property subject to taxation, also include in his statement the average value, estimated as provided in the preceding section, of all articles purchased or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining, which from time to time he shall have had on hand during the year next previous to the time of making such statement, if he shall have been so long engaged in such manufacturing business, and if not, then during the time he shall have been so engaged: *Provided*, That from the value of property, being the product of this State, the merchant or manufacturer listing the same shall be entitled to deduct the amount owing by him for such property, or for moneys invested therein: *And provided further*, That from the value of property, being the product or stock of this State, the farmer or dealer listing the same shall be entitled to deduct the amount owing by him for such property, or for moneys invested therein.

(257.) SEC. XV. Every person owning a manufacturing establishment of any kind, and every manufacturer, shall list, as a part of his manufacturer's stock, the value of all engines and machinery of every description, used or designed to be used in any process of refining or manufacturing, (except such fixtures as shall have been considered as part of any parcel or parcels of real property,) including all tools and implements of every kind, used or designed to be used for the aforesaid purposes.

(258.) SEC. XVI. Every person who shall have money employed in the business of dealing in coin, notes or bills of exchange, or in the business of dealing in, or buying or selling any kind of bills of exchange, checks, drafts, bank notes, promissory notes, bonds, or other writing obligatory, or stocks of any kind or description whatsoever, shall be held to be a banker, broker, or stock-jobber; and he shall, when he is required to make out and deliver to the assessor a statement of the amount or value of his other personal property subject to taxation, also include in his statement the average value, estimated as provided in the thirteenth section of this act, of all moneys, notes, bills of exchange, bonds, stocks, or other property, appertaining to his business as a banker, broker or stock-jobber, which he shall have had from time to time in his possession, or under his control, during the year next previous to the time of making such statement, if he shall have been so long engaged in such business, and if not, then during the time he shall have been so engaged.

(259.) SEC. XVII. That when any person shall commence merchandising in any county after the first of May in any year, the average value of whose personal property employed in merchandising shall not have been previously entered on the assessor's list for taxation in said county, said person shall report to the clerk of the county, who shall enter the same upon the tax list, the probable average value of the personal property by him intended to be employed in merchandising until the first of May thereafter, and shall pay to the collector of such county a sum which shall bear the same proportion to the levy for all purposes, on the average value so employed, as the time from the day on which he shall commence merchan-

dising as aforesaid, to the first of May next succeeding, shall bear to one year: *Provided*, That if the person so listing his merchant's capital, shall present a *bona fide* receipt from the collector of any county in which such merchant's capital had been previously listed and taxed for the amount of the taxes assessed, and by him paid on the same capital for the same year, then and in that case it shall be a receipt from paying taxes again on such capital: *Provided further*, That if the tax list had been delivered to the collector before the receipt of such report, it shall be the duty of the clerk, within ten days after receiving any such report, to charge the same to the collector, and to notify such collector of the amount so charged, who shall collect and pay over said amount in like manner, as near as may be, as if it had been regularly entered on the tax list.

(260.) SEC. XVIII. That when any person shall commence or engage in the business of dealing in stocks of any description, or in buying or selling any kind of bills of exchange, checks, drafts, bank notes, promissory notes, or other kind of writing obligatory, as mentioned in the sixteenth section of this act, after the first day of May, in any year, the average value of whose personal property employed in such business shall not have been previously entered on the assessor's list for taxation in said county, such person shall report to the county clerk of the county the probable average value of the property by him intended to be employed in such business, until the first day of May thereafter; which amount shall be entered on the tax list, and the taxes collected as in other cases.

(261.) SEC. XIX. That if any person shall commence or engage in the business of merchandising, banking, brokerage or stock-jobbing aforesaid, and shall not, within one month thereafter, list his property as before required, he shall forfeit and pay, in addition to the taxes authorized by law, a tax of two per cent. on the value of the personal property by him so employed, for the use of the county, to be charged and collected in like manner as other taxes; said value to be ascertained, as near as may be, by the assessor, or if he has made return of the assessment list, then by the clerk.

(262.) SEC. XX. It shall be the duty of the president and cashier of every bank or banking company that shall have been or may be hereafter incorporated by the laws of this State, and having the right to issue bills for circulation as money, to make out and return to the bank commissioners, in the month of May annually, a written statement, containing the average amount of notes and bills discounted or purchased by such bank or banking company, which amount shall include all the loans or discounts of such bank or banking company, whether originally made or renewed during the year next preceding the first of May aforesaid, or at any time previous, whether made on bills of exchange, notes, bonds, mortgages or any other evidence of indebtedness, at their actual value in money, whether due previous to, during or after the period aforesaid, and on which such bank or banking company has, at any time, reserved or received, or is entitled to receive, any profit or other consideration whatever, either in the shape of interest, discount, exchange or otherwise. Stocks deposited with the State treasurer shall be valued at the rate at which they are deposited. The bank commissioner shall proceed to ascertain the amount of the property valued in accordance with the provisions of this act, and make return

thereof to the auditor, who shall report the same to the clerk of the proper county, and said clerk shall enter the same on the tax list for taxation.

(263.) SEC. XXI. To ascertain the amount of the notes and bills discounted and purchased, and all other effects or dues, of every description, belonging to such bank or banking company, and liable to taxation, there shall be taken, as a criterion, the average amount of the aforesaid items for each month during the year next previous to the time of making such statement, if such bank or banking company shall have been so long engaged in business, and if not, then during such time as such bank or banking company shall have been engaged in business; and the average shall be made by adding together the amount so found belonging to such bank or banking company in each month said bank or banking company was so engaged in business, and dividing the same by the number of months said bank or banking company was thus engaged in business.

(264.) SEC. XXII. The president, secretary or principal accounting officer of every railroad company, turnpike or plank road company, insurance company, telegraph company or other joint stock company, except corporations whose taxation is specifically provided for by law, for whatever purpose they may have been created, whether incorporated by any law of this State or not, shall list for taxation, at its actual value, its real and personal property, moneys and credits, within this State, in the manner following:

In all cases return shall be made to the assessor of each of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each county, town, city or ward therein.

The value of all movable property shall be added to the stationary and fixed property and real estates, and apportioned to such wards, towns, cities, and counties, *pro rata*, in proportion to the value of the real estate and fixed property in said ward, town, city or county. The capital stock of bridge companies shall be assessed in the town where their principal office is located.

If the county assessor to whom returns are made, is of opinion that false or incorrect valuations have been made, or that the property of the corporation or association has not been listed at its full value, or that it has not been listed in the location where it properly belongs, or in cases where no return has been made to the county assessor, he is hereby required to proceed to have the same valued and assessed in the same manner as is prescribed in the several sections of this act regulating the duties of county assessors in cases of refusal or neglect to list property: *Provided*, That every agency of an insurance company, incorporated by the authority of any other State or government, shall return to the assessor of the county in which the office or agency of such company may be kept, in the month of May, annually, the amount of the gross receipts of such agency, which shall be entered on the tax list of the proper county, and subject to the same rate of taxation for all purposes that other personal property is subject to at the place where located.

(265.) SEC. XXIII. All property, except real property, shall be assessed annually; real property shall be assessed, as provided for by this act, in the year 1853, and every two years thereafter, until otherwise provided for by law.



(266.) SEC. XXIV. The treasurer of each county shall be *ex officio* the assessor. He shall, at the December term of the county court next succeeding his election, or so soon thereafter as practicable, execute and file with the clerk of the county court a good and sufficient bond, in addition to his bond as treasurer, in the penal sum of one thousand dollars, with security, to be approved by the county court, and conditioned for the faithful performance of all the duties required of him by law as such assessor. And every deputy assessor, or person appointed to the office of assessor to fill a vacancy, shall, before he enters upon the discharge of the duties of such assessor or deputy assessor, execute bond, and qualify in like manner as the assessor, and shall be entitled to the same compensation, and be subject to the same liabilities and penalties.

(267.) SEC. XXV. Every assessor, before he enters upon the duties of his office, shall take and subscribe an oath that he will, according to the best of his judgment, skill and ability, diligently, faithfully and impartially, perform all the duties enjoined on him as such assessor.

(268.) SEC. XXVI. If any person elected to the office of treasurer shall fail to give bond, or shall neglect or refuse to take an oath as required by this act, his office shall be considered vacant, and the county court shall fill such vacancy by the appointment of some suitable person, who shall qualify and discharge the duties of such treasurer and assessor, in like manner as if he had been regularly elected to said office, until one is elected and qualified.

(269.) SEC. XXVII. If any assessor, for any cause whatever, shall be unable to perform the duties required of him within the time required by law, he may, by and with the advice and consent of the county court, appoint one or more suitable persons to act as deputies, and assist him in making such assessment: *Provided*, That in all such cases, the assessor shall designate the district or portion of the county bounded by township or section lines, which such deputy or deputies are authorized to assess, and each assessor and deputy assessor shall assess all the property required to be assessed within his district; and when real property is to be assessed, he shall list all such real property as residents within his district are required to list for taxation in such county, but he shall enter each tract or parcel of real property so listed and lying out of his district in a separate list, to the end that it may be easily compared, and the value corrected by the lists of other assessors in the same county; and when return is made to the principal assessor, he shall correct the lists, so as to prevent double assessments, and that the property may be listed at its true value: *Provided, further*, That it shall be the duty of assessors to advise with and instruct their deputies as to the basis and rule of valuing property, so that the valuation of the property in the several districts will bear a just and equitable proportion to each other.

(270.) SEC. XXVIII. The assessor shall, without delay, after being furnished with the necessary blanks, proceed to take a list of the taxable property in his town, and assess the value thereof, in the manner following, to wit:

He shall call at the office, place of doing business, or residence of each person required by this act to list property, and shall require such person to make a correct statement of his taxable property, in accordance with the

provisions of this act; and the assessor, or the person listing the property, shall enter a true and correct statement of such property, and the value thereof, in a printed or written blank prepared for that purpose; which statement, after being filled out, shall be signed by the person listing the property, and delivered to the assessor.

(271.) SEC. XXIX. If any person, required by this act to list property, shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office, usual place of residence or business of such person, a written or printed notice, requiring such person to make out and leave at the usual place of collecting taxes in that precinct, or at the office of said assessor, on or before some convenient day named therein, a statement of the property which he is required to list, and shall leave with such notice a printed or written blank for the statement required of such person. The date of leaving such notice, and the name of the person required to list the property, shall be carefully noted by the assessor in a book to be kept for that purpose; and if any such person shall neglect or refuse to deliver the statement, properly made out and signed as required, the assessor shall make the assessment as required by this act.

(272.) SEC. XXX. Assessors and deputy assessors, justices of the peace and clerks of the county courts, are authorized and empowered to administer any oath relating to the assessment of property required by this act.

(273.) SEC. XXXI. In every case where any person shall refuse to make out and deliver to the assessor a statement of the personal property, moneys and credits which he is required to list, as provided by this act, the assessor shall, in every such case, proceed to ascertain the number of each description of the several articles of personal property subject to taxation enumerated in this act, the value thereof, the value of the personal property subject to taxation, other than enumerated articles, and the value of the moneys and credits of which a statement shall have been withheld as aforesaid, as the case may require; and to enable him so to do, he is hereby authorized to examine on oath any person whom he may suppose to have knowledge of the amount or value of the personal property, moneys or credits, which the person so refusing was required to list.

(274.) SEC. XXXII. If any person who shall be required by the assessor to give evidence, as provided in the preceding section, shall refuse to be sworn by the assessor, or having been sworn, if he shall refuse to answer such questions as the assessor shall put to him, touching the subject of inquiry, any justice of the peace of the town or district, to whom the assessor may make application therefor, shall summon such person to appear before him at such time as the assessor shall designate, and answer on oath all pertinent questions which may be put to him by the assessor or his order, touching the amount and value of the personal property, moneys and credits which the person required to list the same on oath has refused to list; and every constable and witness shall be subject to the same penalties for refusal or neglect to obey the process of such justice, as they are by law subject to for refusing to obey the process of justices of the peace in civil cases, and shall receive the same fees allowed for like services in civil cases; and such justice of the peace shall immediately proceed to enter judgment for all such fees and for his own costs in favor of the State of Illinois, against the person who shall have refused to make and deliver to the assessor a statement of the property

which, by this act, he was required to list, and proceed to collect and pay over the same, as in civil cases.

(275.) SEC. XXXIII. Each county assessor shall, on or before the first day of September, annually, make out and deliver to the clerk of his county, in tabular form and alphabetical order, the names of the several persons, companies or corporations, in whose names any personal property, moneys or credits shall have been listed in his county, and separately, in appropriate columns, opposite each name, the number and value of all articles of personal property enumerated in this act, the value of all non-enumerated articles of personal property, other than the stock of merchants and manufacturers, the value of merchants' and manufacturers' stock, and the value of the moneys and credits listed by said persons.

(276.) SEC. XXXIV. Any person feeling himself aggrieved by the assessment of his property, or of property which he is required to list, may, at the September term of the county court, or if the assessment lists are not returned at said term, then at the next term of said court after such assessment lists are returned to the clerk, apply to said court for a reduction of such assessment; and if the court shall be satisfied that the valuation of the property was too high, such deduction shall be made as the right of the case may require; but the court shall require the person making such application to prove the facts in the case by his own oath, or the oath of some credible witness. And if any person is assessed on property which he believes is not properly and legally liable to taxation, he may make application as aforesaid, and the court may hear and determine the matter as in cases of over-assessment; but if the court shall decide that any such property is not liable to taxation, and the question as to the liability of such property to taxation has not been previously settled, the decision of said court shall not be final, unless approved by the auditor of public accounts; and it shall be the duty of the county clerk, in all such cases, to make out and forward to the auditor a full and complete statement of all the facts in the case. If the auditor is satisfied that such property is not legally liable to taxation, he shall notify the clerk of his approval of the decision of the court, and the said clerk shall correct the assessment accordingly. But if the auditor believes that the court has erred in deciding that such property was not liable to taxation at the time of making the assessment, he shall advise the clerk of his objection to the decision of the court, and give notice to said clerk that he will apply to the supreme court, at the next term thereafter, for an order to set aside and reverse the decision of the county court. Upon the receipt of such notice, the clerk shall notify the person making application therefor. And it shall be the duty of the auditor to file in the supreme court a certified statement of the facts certified by the clerk, as aforesaid, together with his objections thereto, and the court shall hear and determine the matter, as the right of the case may be.

(277.) SEC. XXXV. In all cases where property is not listed by the owner, the assessor shall note opposite the name the words "by assessor."

(278.) SEC. XXXVI. Each county assessor shall, at the time he is required by this act to make his return of taxable property to the county clerk, also deliver to him all the statements of property which he shall have received from persons required to list the same, arranged in alphabetical order, and the clerk shall carefully file and preserve the same for one year thereafter.

(279.) SEC. XXXVII. Each county assessor shall take and subscribe an oath, which shall be certified by the magistrate or clerk administering the same, and attached to the return which he is required to make to the county clerk, in the following form, as near as may be:

"I, \_\_\_\_\_, assessor in the county of \_\_\_\_\_, do solemnly swear that the value of all personal property, moneys and credits required to be listed for taxation by me, is truly returned and set forth in the annexed list, and that in every case I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value of all taxable property, moneys and credits; and that, as I verily believe, the full value thereof, estimated by the rules prescribed by said act, is set forth in the list aforesaid; that in no case have I knowingly omitted to assess any property which by law I am required to assess, nor have I in any way connived at any violation or evasion of any of the requirements of the law in relation to the listing or valuation of property, moneys or credits of any kind, for taxation."

(280.) SEC. XXXVIII. In all cases in which county assessors are required, in consequence of the sickness or absence of the person whose duty it is to make out a statement of personal property, moneys and credits, or in consequence of his neglect or refusal to make out and deliver such statement, to ascertain the amount and value of such personal property, moneys and credits, if the assessor shall be unable to obtain positive evidence of the amount and value of such property, moneys and credits, he shall return such amount and value as from general reputation and his own knowledge of facts and circumstances, he believes to be the full amount and value of such property, moneys and credits.

(281.) SEC. XXXIX. The assessor, or some suitable person employed by him for that purpose, shall add up the several columns containing the number and value of each article of property enumerated, the value of unenumerated articles, the value of each of the other items of property enumerated in the seventh section of this act, and the total value thereof, and note the aggregate of each column at the bottom thereof, and shall make out and deliver to the clerk, with the assessment list, an abstract of the several footings on each page, showing separately the aggregate number and value of each enumerated article of property, and the value of each kind of all other property assessed. The correctness of such abstract shall be verified by the oath of the assessor or person who shall have made such additions.

(282.) SEC. XL. It shall be the duty of each assessor, upon being furnished with the list and blanks provided for by this act, from actual view, or from the best sources of information that can be obtained, to determine, as nearly as practicable, the true value of each separate parcel of real property in his district or county, according to the rules prescribed by this act for valuing real property, and such value shall be noted opposite each parcel of real property, in a column provided for that purpose.

(283.) SEC. XLI. The assessor shall add up the valuation of the real property, and shall set down in figures on each page the total value of the property listed thereon, and shall make out a statement showing the aggregate value of the lands, and the aggregate value of town lots. The assessor shall complete the assessment and make return thereof to the clerk of the county court, on or before the first Monday in September, annually.

(284.) SEC. XLII. Each assessor shall take and subscribe an oath, which shall be certified by the clerk or magistrate administering the same, and attached to the return which he is required to make to the county clerk, as near as may be, in the following form:

"I, A. B., assessor of the county of \_\_\_\_\_, do solemnly swear that the return to which this is attached, contains a correct description of each parcel of real property subject to taxation within said county, (or district,) so far as I have been able to ascertain the same, and that the value attached to each parcel in said return is, as I verily believe, the full value thereof, estimated agreeably to the rules prescribed therefor in the act for the assessment of property, and the aggregate value, as set forth in the statement returned herewith, is true and correct, as I verily believe."

(285.) SEC. XLIII. Assessors shall make out their accounts in detail, giving the date of each day which they shall have been employed; which account they shall verify under oath; and the county court, if they shall find such account to be correct, shall grant an order on the treasurer for the same; but in no case shall the assessor be entitled to compensation until he shall have filed his lists of assessments, the statements, and the books furnished him, in the office of the clerk; the lists to be accurately made out and added up; nor shall he be entitled to pay, unless he performed the labor and made return in strict compliance with the law: *Provided*, That in cases of sickness, or for other causes not the fault of the assessor, to be determined by the court on the affidavit of the assessor or other respectable person, a failure to complete the assessment within the time required by law shall not bar the assessor from receiving compensation, when the work is completed.

(286.) SEC. XLIV. No assessment of property, or charge for taxes thereon, shall be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessments not being made or completed within the time required by law.

(287.) SEC. XLV. Every county clerk, and every assessor who shall in any case refuse or knowingly neglect to perform any duty enjoined on him by this act, or who shall consent to or connive at any evasions of its provisions, whereby any proceeding required by this act shall be prevented or hindered, or whereby any property required to be listed for taxation shall be unlawfully exempted, or the valuation be entered upon the tax list at less than its true value, shall, for every such neglect or refusal, be liable, individually, and on his official bond, for double the amount of the loss or damage caused by such neglect or refusal, to be recovered in an action of debt, in any court having jurisdiction of the amount thereof, and may be removed from office, at the discretion of the county court.

(288.) SEC. XLVI. In all cases where any person, company or corporation, has or may hereafter divide any tract of land into parcels less than the one-sixteenth part of a section, or otherwise, in such manner that such parcels cannot be described in the usual manner of describing lands in accordance with the surveys made by the general government, with a view to sell said lands in such parcels, it shall be lawful for such person, company or corporation, to cause such lands to be surveyed, and a plat thereof made by the surveyor of the county where such lands are situated; which plat shall particularly describe and set forth the lots or parcels of land surveyed, as aforesaid; the lots shall be numbered in progressive numbers, and the plat shall show the number and location of each lot, and the description of the tract of land of which such land is a part, and also the quantity of land in each lot. Said plat shall be certified to by the surveyor, and recorded in like manner as the plats of towns are required to be certified to and recorded. Lands described in any deed or conveyance, or for the purpose of taxation, in accordance with the number and description set forth in the plat aforesaid,

shall be deemed a good and valid description of the lot or parcel of land so described.

(289.) SEC. XLVII. When lands heretofore have been or may hereafter be subdivided into parcels less than one-sixteenth part of a section, or in such manner that they cannot be easily and properly described, without noting the metes and bounds of such tracts, it shall be the duty of the owner or owners thereof, when required so to do by the assessor, to cause the same to be surveyed, and the plat thereof recorded in like manner as is required in the foregoing section; and if such owner or owners shall refuse or neglect to cause such survey to be made within a reasonable time after being notified by the assessor, it shall be the duty of the assessor to cause such survey to be made and recorded; and the expense thereof to be returned by the assessor to the clerk, who shall add the same, together with the commissions for collecting, &c., to the tax assessed on such real property, and it shall be collected with and in like manner as the said tax; and when collected, shall be paid on demand to the persons to whom it is due: *Provided*, That the collector shall either file a receipt for the payment thereof with the treasurer, or shall pay the same into the county treasury, when he makes settlement for the county revenue, to be paid to the proper persons when called for.

(290.) SEC. XLVIII. In all cases where the boundary lines of any county or counties cannot be correctly ascertained from the plats or maps of the original surveys, and such boundary lines not having been surveyed, it shall be the duty of the county court of the counties bounded by any such lines, jointly to cause the same to be surveyed and located in accordance with the laws establishing such lines. They shall cause a plat or map to be made, showing the correct location of the line on each legal subdivision or tract of land through which such line may run; which plat, together with the field notes of such survey, shall be certified to by the surveyor making the survey, under oath, and forwarded to the auditor of public accounts, who shall cause the same to be filed and recorded in his office, and a correct copy thereof forwarded to the clerk of the county court of each of the counties bounded by such line. And said clerk shall cause such copy to be filed in his office, and recorded in a suitable record book, and the line thus surveyed shall be the true division line: *Provided*, That if the county court of any county bounded, in part or in whole, as aforesaid, shall neglect or refuse to comply with the requirements of this section within a reasonable time after being requested so to do by the auditor of public accounts, it shall be the duty of said auditor to cause the said survey to be made, if in his opinion the public interest requires it. And the expenses of making any such survey, whether under the direction of the county authorities or the auditor, shall be paid by the counties bounded by such line—one-half by each county.

(291.) SEC. XLIX. For the purpose of taxation, all tracts or parcels of land, not exceeding one-sixteenth part of a section, shall be assessed in the county where the greater part of said tract is situated; and the collector of said county shall have the same power and authority to collect the taxes due thereon as he would if the whole of said tract were within the limits of said county. And in all cases where any such tract or tracts shall be equally divided between two counties, and the owner thereof be a resident

of either county, said land shall be assessed in the county in which the owner resides; but if the owner be not a resident of either county, then the auditor shall determine in which county the land shall be assessed: *Provided*, That if there be several tracts similarly situated, the auditor shall apportion them equally between the counties, as near as practicable: *Provided, furthermore*, That when a tract of land containing a half-quarter section, or more, is so divided by the county line that by subdividing it into quarter-quarter section lots, each county will be entitled to the taxes on one or more of said lots, then the tract shall be so divided.

(292.) SEC. L. Government lands entered or located prior to the first day of May, A. D. 1853, shall be taxable for the year 1853; lands entered or located prior to the first day of May, A. D. 1854, shall be taxable for the year 1854, and so on annually thereafter. Land sold by the trustees of the Illinois and Michigan canal, shall be taxable from and after the time that full payment therefor is made. School, seminary and saline lands sold shall be taxable in like manner as the lands sold by the general government. Internal improvement lands sold prior to the first day of May, A. D. 1848, shall be taxable for the year 1853, and annually thereafter.

(293.) SEC. LI. On the first day of May in each year, or as soon thereafter as practicable, the auditor shall obtain from the several land offices in this State, abstracts of the lands entered and located, and not previously obtained, and shall, when necessary, obtain from the canal office, abstracts of the canal lands sold. Upon the receipt of said abstracts, the auditor shall cause them to be transcribed into the tract books in his office, and shall, without delay, cause abstracts of the lands in each county to be made out and forwarded by mail to the county clerks of the several counties; and said clerks shall cause such abstracts to be transcribed into the tract book, and filed in their office.

(294.) SEC. LII. On the first Monday of May, A. D. 1853, and every two years thereafter, the clerk of the county court shall cause to be delivered to the assessor, a book or books, properly ruled and headed, containing a list of the real estate in numerical order, with such blank columns as may be necessary, for the use of the assessor. The clerk, in making out said lists, shall take as his guide the assessment list of the previous year, and the list of subsequent conveyances: *Provided*, That the list of lands reported in the annual abstract shall be furnished to the assessor within five days from and after the time such abstract is received from the auditor's office.

(295.) SEC. LIII. Every person owning or holding real property on the first day of May, including all such property purchased on that day, shall be liable for the taxes thereon for that year; and if any person shall sell and convey any real property on or prior to the first day of May next after the listing of such real property, he shall, when he lists his personal property for the year next after the listing of said real property, deliver to the assessor a statement setting forth the description of the property sold and conveyed, and the name of the purchaser, and he shall list all real property purchased by him during the said time; and the assessor shall make return thereof to the county clerk, who shall make the proper changes in the tax books. Real property shall in all cases be liable for the taxes thereon.

(296.) SEC. LIV. The clerk of the county court shall annually, on the first Monday in May, furnish the assessor with a book or books, properly

ruled and headed, for the abstract of the assessment of personal property, and shall, at the proper time, furnish such assessor with a list of the real estate that may have become taxable subsequent to the regular assessment of real estate; all property, except real property, shall be assessed annually; real property shall be assessed biennially: *Provided*, That real property becoming taxable after the regular assessment of real property, or that may have been omitted, shall be assessed for the current year at the same time that the personal property is assessed in the year that the real property is not regularly assessed, and such property shall be re-assessed the next succeeding year with the regular assessment of real property.

(297.) SEC. LV. It shall be the duty of the auditor of public accounts to make out and forward to the clerk of the county court of the several counties, for the use of such clerks and other officers, suitable forms and instructions for carrying this act into effect; and all such instructions shall be strictly complied with by the officers in the performance of their respective duties, as required by this act. He shall give his opinion and advice on all questions of doubt as to the true intent and meaning of the provisions of this act.

(298.) SEC. LVI. If the assessor should discover any real property subject to taxation, which has not been returned to him by the clerk, he shall assess such property, and enter the same on the assessment list. And if, upon the return of such list to the clerk, it shall appear that any such real property has not been returned by the auditor, it shall be the duty of the clerk to advise the auditor of the facts, describing the property so returned by the assessor, and the auditor shall ascertain the true condition of such real property, and advise the said clerk thereof, who shall correct the records of his office, in accordance with the facts in the case.

(299.) SEC. LVII. It shall be the duty of the clerk, before delivering the list of real property to the assessor, to cause such list to be carefully compared with the lists of taxable real property on file in his office, and if it shall appear that any such property was omitted in the former assessment list, he shall correct the list designed for the assessor, so that said list may contain a full and complete abstract of all the taxable real property in the county.

(300.) SEC. LVIII. Assessors shall be allowed two dollars and fifty cents per day, for the time necessarily employed in making the assessment, including expenses and horse hire, to be paid out of the county treasury: *Provided*, That the county court may allow for any discount or loss, on account of a depreciation in the value of county orders, if, in their opinion, justice requires such allowance. And if said court shall be satisfied that any assessor has charged for time not actually and necessarily employed in the discharge of the duties of his office, or has consumed more time than was necessary, with a view to increase his compensation thereby, said court shall make such deduction from the amount charged as may be reasonable and right. The clerk of the county court shall be allowed and paid out of the county treasury two cents per tract, and one cent. per lot, for making out and comparing the abstract of lands and lots for the use of the assessor: *Provided*, That where a whole section, half section, quarter section or half-quarter section, is listed as the property of one person, company or corporation, the clerk shall so return it, and shall only be allowed pay for one

tract; although such tract may have been purchased by such owner in several parcels, and at different times; and when all the town lots in any block shall be listed as the property of one person, company or corporation, it shall not be necessary to describe each lot, but such property shall be listed and assessed as blocks; and the clerk shall only be allowed the same pay for such blocks as he is allowed for town lots.

(301.) SEC. LIX. This act shall apply to and be in force in all counties not adopting the act to provide for township organization, and shall be in force from and after its passage.

An Act for the Assessment of Property, and the Collection of Taxes, in Counties adopting the Township Organization Law.

[Approved Feb. 12, 1853: Laws, 1853, p. 3.]

(302.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all property, whether real or personal, in this State; all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of persons residing in this State, or used or controlled by persons residing in this State; the property of corporations now existing or hereafter created, and the property of all banks or banking companies now existing, or hereafter created, and of all bankers and brokers, except such property as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, or the value thereof, shall be entered on the list of taxable property, for that purpose, in the manner prescribed in this act.

(303.) SEC. II. The terms "real property" and "land," wherever used in this act, shall be held to mean and include not only the land itself, whether laid out in town lots or otherwise, with all things contained therein, but, also, all buildings, structures and improvements, and other fixtures, of whatsoever kind, thereon, and all rights and privileges belonging or in anywise pertaining thereto. The term "investments in bonds," wherever used in this act, shall be held to mean and include all moneys invested in bonds, of whatsoever kind, whether issued by incorporated or unincorporated companies, towns, cities, counties, States or other corporations, or by the United States, held or controlled by persons residing in this State, whether for themselves or as guardians, trustees or agents, on which the holder thereof is receiving or is entitled to receive interest. The term "investments in stocks," wherever used in this act, shall be held to mean and include all moneys invested in the public stocks of this or any other State, or of the United States, or in any association, corporation, joint-stock company, or otherwise, the stock or capital of which is or may be divided into shares, which are transferable by the owner, without the consent of the other partners or stockholders, for the taxation of which no special provision is made by this act, held by persons residing in this State, either for themselves or as guardians, trustees or agents. The term "oath," wherever used in this act, shall be held to mean oath or affirmation. Every word in this act importing the masculine gender, may extend and be applied to females as well as males. The term "personal property," wherever used in this act, shall be held to mean and include every tangible thing, being the subject of ownership, whether animate or inanimate, other than money, and not forming

part of any parcel of real property, as hereinbefore defined. The capital stock, undivided profits, and all other means, not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits or means, by whatsoever name they may be designated, inclusive of every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat, of whatsoever name or description, used or designed to be used, either exclusively or partially, in navigating any of the waters within or bordering on this State, whether such ship, vessel or boat, shall be within the jurisdiction of this State, or elsewhere, and whether the same shall have been enrolled, registered or licensed at any collector's office, or within any county or collector's district in this State or not. The term "money" or "moneys," wherever used in this act, shall be held to mean gold and silver coin, and bank notes in actual possession, and every deposit which the person owning, holding in trust or having the beneficial interest therein, is entitled to withdraw in money on demand. The term "credits," wherever used in this act, shall be held to mean and include every claim or demand for money, labor or other valuable thing, due or to become due, or every annuity or sum of money receivable at stated periods, and all money invested in property of any kind which is secured by deed, mortgage, or otherwise, which the person holding such deed or mortgage, or evidence of claim, is bound by any lease, contract or agreement, to reconvey, release or assign, upon the payment of any specific sum or sums: *Provided*, That pensions receivable from the United States, or from any State, salaries or payments expected to be received for labor or services to be performed or rendered, shall not be held to be annuities within the meaning of this act. The term "property," wherever used in this act, shall be held to mean and include every tangible thing being the subject of ownership, whether animate or inanimate, real or personal.

(304.) SEC. III. All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:

First. All lands donated for school purposes, and not sold or leased. All public school-houses, and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such building necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit. All colleges, academies; all endowments made for their support; all buildings connected with the same, and all lands connected with institutions of learning, not used with a view to profit. This provision shall not extend to leasehold estates of real property, held under the authority of any college or university of learning.

Second. All lands used exclusively as grave yards, or grounds for burying the dead.

Third. All government lands belonging to the United States, and all property, whether real or personal, belonging to this State, and all swamp and overflowed lands belonging to the several counties of this State, so long as the same may remain unsold by such counties.

Fourth. All buildings belonging to counties used for holding courts, for jails, or for county offices, with the ground on which such buildings are erected, not exceeding, in any county, ten acres.

Fifth. All lands, houses and other buildings belonging to any county,



town or city, used exclusively for the accommodation or the support of the poor.

Sixth. All buildings, with the furniture appertaining thereto, belonging to institutions of purely public charity, together with the lands actually occupied by such institutions, not leased or otherwise used with a view to profit; and all moneys and credits appropriated solely to sustaining, and belonging exclusively to, such institutions.

Seventh. All fire engines, and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe-keeping thereof, and for the meetings of fire companies, whether belonging to any town or to any fire company organized therein.

Eighth. All market-houses, public squares or other public grounds, used exclusively for public purposes; and all works, machinery and fixtures belonging exclusively to any town or city, and used exclusively for conveying water to such town or city.

Ninth. No person shall be required to list a greater portion of any credits than he believes will be received or can be collected; nor any greater portion of any obligation given to secure the payment of rent, than the amount that shall have accrued on the lease, and shall remain unpaid at the time of such listing. No person shall be required to include in his statement, as a part of the personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, which he is required to list, any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation in this State, nor shall any partner be required to list or return any property, liability or supposed balance of said partnership due him, the property, effects and credits of said partnership being listed by any other partner.

(305.) SEC. IV. Every person of full age and sound mind, not a married woman, shall list the real property of which he is the owner, situate in the town or district in which he resides, the personal property of which he is the owner, all moneys in his possession, money loaned or invested, and all other property of which he is the owner; and he shall also list all moneys invested, loaned or otherwise controlled by him, as the agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited, subject to his order, check or draft, and credits due from or owing by any person or persons, body corporate or politic, whether in or out of such county. The property of every ward shall be listed by his guardian; of every minor child, idiot or lunatic, having no other guardian, by his father, if living, if not, by his mother, if living, and if neither father nor mother be living, by the person having such property in charge; of every wife, by her husband, if of sound mind, if not, by herself; of every person for whose benefit property is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator; of corporations, whose assets are in the hands of receivers, by such receivers; of every company, firm, body politic or corporate, by the president or principal accounting officer, partner or agent thereof. Every person required to list property on behalf of others, by the provisions of this act, shall list it in the same county, town or district in which he would be required to list it if such property were

his own; but he shall list it separately from his own, specifying in each case the name of the person, estate, company or corporation to whom it belongs. Real property shall be listed in the county, town or district where it belongs; personal property, moneys and credits, except such as is required to be listed otherwise, shall be listed in the county, town or district where the owner resides; the property of banks or bankers, brokers, stock-jobbers, insurance or other companies, merchants and manufacturers, shall be listed in the county, town or district where their business is usually done; *Provided*, That in the counties of the military tract, owners of real estate shall not be compelled to return the same, if they desire it to go to sale, and so inform the assessor.

(306.) SEC. V. Property held under a lease for a term exceeding ten years, belonging to the State, or to any religious, scientific or benevolent society or institution, whether incorporated or unincorporated, and school and ministerial lands, shall be considered, for all purposes of taxation, as the property of the person so holding the same, and shall be listed as such, by such person, or his agent, as in other cases.

(307.) SEC. VI. Each person required to list property, shall make out, sign and deliver to the assessor, when required, a certified statement of all the personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, in his possession, or under the control of such person, which he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. Personal property shall be listed with reference to the quantity on hand and owned on the first day of May in the year for which the property is required to be listed, including the property purchased on that day.

(308.) SEC. VII. Such statement shall truly and distinctly set forth:

- First. The number of horses, and the value thereof.
- Second. The number of neat cattle, and the value thereof.
- Third. The number of mules and asses, and the value thereof.
- Fourth. The number of sheep, and the value thereof.
- Fifth. The number of hogs, and the value thereof.
- Sixth. Every carriage and wagon, of whatsoever kind, and the value thereof.

Seventh. Every watch and clock, and the value thereof.

Eighth. Every piano forte, and the value thereof.

Ninth. The value of the goods and merchandise which such person is required to list as a merchant.

Tenth. The value of the property which such person is required to list as a banker, broker or stock-jobber.

Eleventh. The value of materials and manufactured articles which such person is required to list as a manufacturer.

Twelfth. The value of moneys and credits required to be listed.

Thirteenth. The value of moneys invested in bonds, stocks, joint-stock companies, or otherwise, which such person is required to list.

Fourteenth. The total value of all other personal property, including household furniture: *Provided*, That the value of such property shall be determined by the assessor.

(309.) SEC. VIII. If any person shall give a false and fraudulent list,



or shall refuse to deliver to the assessor, when called on for that purpose, a list of his or her taxable property, as required by law, the said assessor, as a penalty therefor, shall assess the property of such person at double its value; and if said assessor shall neglect or refuse so to do, he shall be liable in each case to a penalty of fifty dollars, to be recovered at the suit of any person who may sue for the same.

(310.) SEC. IX. If the assessor believes that any property has been valued at less than its true value, in accordance with the rules and customs of valuing property for taxation, he shall value and charge such property at its true value, and shall notify the person listing such property of such increased valuation.

(311.) SEC. X. Each separate parcel of real property shall be valued at its true value in money, excluding the value of crops growing thereon; but the price for which such real property would sell at a forced sale shall not be taken as the criterion of such value. Each tract or lot of real property belonging to this State, or to any county, city, town, or charitable institution, whether incorporated or unincorporated, and school or ministerial lands, held under lease for a term exceeding ten years, shall be valued at such price as the assessor believes could be obtained at private sale for such leasehold estate. Personal property of every description shall be valued at the usual selling price of similar property at the time of listing, and in the county where the same may then be; and if there be no usual selling price known to the person whose duty it shall be to fix a value thereon, then at such price as it is believed could be obtained therefor in money at such time and place. Investments in bonds, stocks, joint-stock companies, or otherwise, shall be valued at the true value thereof in money. Money, whether in possession or on deposit, shall be entered in the statement at the full amount thereof: *Provided*, That depreciated bank notes shall be entered at their current value. Every credit for a sum certain, payable either in money or property of any kind, shall be valued at the full price of the sum so payable; if for a specific article, or for a specified number or quantity of any article or articles of property, or for a certain amount of labor done, or for services of any kind rendered, it shall be valued at the current price of such property, or of such labor or service, at the place payable. Annuities, or moneys receivable at stated periods, shall be valued at the price which the person listing the same believes them to worth in money.

(312.) SEC. XI. In making up the amount of moneys and credits which any person is required to list for himself, or any other person, company or corporation, he shall be entitled to deduct from the gross amount of moneys and credits, the amount of all *bona fide* debts owing by such person, company or corporation, to any other person, company or corporation, for a consideration received; but no acknowledgment of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others, shall be deducted as the person making out the statement believes the surety is legally and equitably bound to pay, and so much only as he believes such surety will be compelled to pay on account of the inability or insolvency of the

principal debtor; and if there are other sureties who are able to contribute, then only so much as the surety in whose behalf the statement is made, will be bound to contribute: *Provided*, That nothing in this section shall be so construed as to apply to any bank, company or corporation exercising banking powers or privileges.

(313.) SEC. XII. No person, company or corporation, shall be entitled to any deduction on account of any bond, note or obligation of any kind, given to any mutual insurance company, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society; nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated.

(314.) SEC. XIII. Every person that shall own or have in his possession, or subject to his control, any personal property within this State, with authority to sell the same, which shall have been purchased in or out of this State, with a view to being sold at an advanced price or profit, or which shall have been consigned to him from any place out of this State, for the purpose of being sold at any place within this State, shall be held to be a merchant; and when he shall be by this act required to make out and deliver to the assessor a statement of his other personal property, he shall state the value of such property appertaining to his business as a merchant; and in estimating the value thereof, he shall take, as the criterion, the average value of all such articles of personal property which he shall have had from time to time in his possession, or under his control, during the year next previous to the time of making such statement, if he shall have been so long engaged in business, and if not, then during such time as he shall have been so engaged; and the average shall be made up by taking the amount in value on hand, as nearly as may be, in each month of the next preceding year in which the person making such statement shall have been in business, adding together such amount, and dividing the aggregate amount thereof by the number of months that the person making the statement may have been in business during the preceding year: *Provided*, That no consignee shall be required to list for taxation the value of any property, the product of this State, which shall have been consigned to him for sale, or otherwise, from any place within the State, nor the value of any property consigned to him from any other place for the sole purpose of being stored or forwarded: *Provided*, He shall in either case have no interest in such property, or any profit to be derived from its sale; and the word *person*, as used in this and the succeeding sections, shall be held to mean and include firm, company and incorporation.

(315.) SEC. XIV. Every person who shall purchase, receive or hold personal property of any description, for the purpose of adding to the value thereof, by any process of manufacturing, refining, rectifying, or by the combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer; and he shall, when he is required to make out and deliver to the assessor a statement of the amount of his other personal property subject to taxation, also include in his statement the average value, estimated as provided in the preceding section, of all articles purchased or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining, which from time to time he shall have had on hand during the year next previous to the time of making such statement, if he shall have been

so long engaged in such manufacturing business, and if not, then during the time he shall have been so engaged: *Provided*, That from the value of property, being the product of this State, the merchant or manufacturer listing the same shall be entitled to deduct the amount owing by him for such property, or for moneys invested therein: *And provided further*, That from the value of property, being the product or stock of this State, the farmer or dealer listing the same shall be entitled to deduct the amount owing by him for such property, or for moneys invested therein.

(316.) SEC. XV. Every person owning a manufacturing establishment of any kind, and every manufacturer, shall list, as a part of his manufacturer's stock, the value of all engines and machinery of every description, used or designed to be used in any process of refining or manufacturing, (except such fixtures as shall have been considered as part of any parcel or parcels of real property,) including all tools and implements of every kind, used or designed to be used for the aforesaid purposes.

(317.) SEC. XVI. Every person who shall have money employed in the business of dealing in coin, notes or bills of exchange, or in the business of dealing in, or buying or selling any kind of bills of exchange, checks, drafts, bank notes, promissory notes, bonds, or other writing obligatory, or stocks of any kind or description whatsoever, shall be held to be a banker, broker, or stock-jobber; and he shall, when he is required to make out and deliver to the assessor a statement of the amount or value of his other personal property subject to taxation, also include in his statement the average value, estimated as provided in the thirteenth section of this act, of all moneys, notes, bills of exchange, bonds, stocks, or other property, appertaining to his business as a banker, broker or stock-jobber, which he shall have had from time to time in his possession, or under his control, during the year next previous to the time of making such statement, if he shall have been so long engaged in such business, and if not, then during the time he shall have been so engaged.

(318.) SEC. XVII. That when any person shall commence merchandising in any county after the first day of May in any year, the average value of whose personal property employed in merchandising shall not have been previously entered on the assessor's list for taxation in said county, said person shall report to the clerk of the county, who shall enter the same upon the tax list, the probable average value of the personal property by him intended to be employed in merchandising until the first of May thereafter, and shall pay to the collector of such county a sum which shall bear the same proportion to the levy for all purposes, on the average value so employed, as the time from the day on which he shall commence merchandising as aforesaid, to the first of May next succeeding, shall bear to one year: *Provided*, That if the person so listing his merchant's capital, shall present a *bona fide* receipt from the collector of any county in which such merchant's capital had been previously listed and taxed for the amount of the taxes assessed, and by him paid on the same capital for the same year, then and in that case it shall be a receipt from paying taxes again on such capital: *Provided further*, That if the tax list had been delivered to the collector before the receipt of such report, it shall be the duty of the clerk, within ten days after receiving any such report, to charge the same to the collector, and to notify such collector of the amount so charged, who shall

collect and pay over said amount in like manner, as near as may be, as if it had been regularly entered on the tax list.

(319.) SEC. XVIII. That when any person shall commence or engage in the business of dealing in stocks of any description, or in buying or selling any kind of bills of exchange, checks, drafts, bank notes, promissory notes, or other kind of writing obligatory, as mentioned in the sixteenth section of this act, after the first day of May, in any year, the average value of whose personal property employed in such business shall not have been previously entered on the assessor's list for taxation in said county, such person shall report to the county clerk of the county the probable average value of the property by him intended to be employed in such business, until the first day of May thereafter; which amount shall be entered on the tax list, and the taxes collected as in other cases.

(320.) SEC. XIX. That if any person shall commence or engage in the business of merchandising, banking, brokerage or stock-jobbing aforesaid, and shall not, within one month thereafter, list his property as before required, he shall forfeit and pay, in addition to the taxes authorized by law, a tax of two per cent. on the value of the personal property by him so employed, for the use of the county, to be charged and collected in like manner as other taxes; said value to be ascertained, as near as may be, by the assessor, or if he has made return of the assessment list, then by the clerk.

(321.) SEC. XX. It shall be the duty of the president and cashier of every bank or banking company that shall have been or may be hereafter incorporated by the laws of this State, and having the right to issue bills for circulation as money, to make out and return to the bank commissioners, in the month of May annually, a written statement, containing the average amount of notes and bills discounted or purchased by such bank or banking company, which amount shall include all the loans or discounts of such bank or banking company, whether originally made or renewed during the year next preceding the first of May aforesaid, or at any time previous, whether made on bills of exchange, notes, bonds, mortgages or any other evidence of indebtedness, at their actual value in money, whether due previous to, during or after the period aforesaid, and on which such bank or banking company has, at any time, reserved or received, or is entitled to receive, any profit or other consideration whatever, either in the shape of interest, discount, exchange or otherwise. Stocks deposited with the State treasurer shall be valued at the rate at which they are deposited. The bank commissioner shall proceed to ascertain the amount of the property valued in accordance with the provisions of this act, and make return thereof to the auditor, who shall report the same to the clerk of the proper county, and said clerk shall enter the same on the tax list for taxation.

(322.) SEC. XXI. To ascertain the amount of the notes and bills discounted and purchased, and all other effects or dues, of every description, belonging to such bank or banking company, and liable to taxation, there shall be taken, as a criterion, the average amount of the aforesaid items for each month during the year next previous to the time of making such statement, if such bank or banking company shall have been so long engaged in business, and if not, then during such time as such bank or banking

company shall have been engaged in business; and the average shall be made by adding together the amount so found belonging to such bank or banking company in each month said bank or banking company was so engaged in business, and dividing the same by the number of months said bank or banking company was thus engaged in business.

(323.) SEC. XXII. The president, secretary or principal accounting officer of every railroad company, turnpike or plank road company, insurance company, telegraph company or other joint stock company, except corporations whose taxation is specifically provided for by law, for whatever purpose they may have been created, whether incorporated by any law of this State or not, shall list for taxation, at its actual value, its real and personal property, moneys and credits, within this State, in the manner following:

In all cases return shall be made to the assessor of each of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each county, town, city or ward therein.

The value of all movable property shall be added to the stationary and fixed property and real estates, and apportioned to such wards, towns, cities, and counties, *pro rata*, in proportion to the value of the real estate and fixed property in said ward, town, city or county: The capital stock of bridge companies shall be assessed in the town where their principal office is located.

If the county assessor to whom returns are made, is of opinion that false or incorrect valuations have been made, or that the property of the corporation or association has not been listed at its true value, or that it has not been listed in the location where it properly belongs, or in cases where no return has been made to the county assessor, he is hereby required to proceed to have the same valued and assessed in the same manner as is prescribed in the several sections of this act regulating the duties of county assessors in cases of refusal or neglect to list property: *Provided*, That every agency of an insurance company, incorporated by the authority of any other State or government, shall return to the assessor of the county in which the office or agency of such company may be kept, in the month of May, annually, the amount of the gross receipts of such agency, which shall be entered on the tax list of the proper county, and subject to the same rate of taxation for all purposes that other personal property is subject to at the place where located.

(324.) SEC. XXIII. All property, except real property, shall be assessed annually; real property shall be assessed, as provided for by this act, in the year 1853, and every two years thereafter, until otherwise provided for by law.

(325.) SEC. XXIV. All lands and town lots owned by any person, and not situated in the town where such owner may reside, shall be taxed as non-resident, and assessed in the town where the same shall lie.

(326.) SEC. XXV. Every assessor, before he enters upon the duties of his office, shall take and subscribe an oath, that he will, according to the best of his judgment, skill and ability, diligently, faithfully and impartially, perform all the duties enjoined on him as such assessor.

(327.) XXVI. If any person elected to the office of county treasurer shall fail to give bond as collector, or shall neglect or refuse to take an oath

as required by this act, his office shall be considered vacant, and the board of supervisors shall be immediately called together by the county clerk, and shall forthwith fill such vacancy by the appointment of some suitable person, who shall qualify and discharge the duties of such treasurer and collector, in like manner as if he had been regularly elected to said office, until one is elected and qualified.

(328.) SEC. XXVII. The assessor shall, between the first days of May and July, and after being furnished with the necessary blanks, proceed to take a list of the taxable property in his town, and assess the value thereof, in the manner following, to wit:

He shall call at the office, place of doing business or residence of each person required by this act to list property, and shall require such person to make a correct statement of his taxable property, in accordance with the provisions of this act, and the assessor, or the person listing the property, shall enter a true and correct statement of such property and the value thereof, in a printed or written blank prepared for that purpose; which statement, after being filled out, shall be signed by the person listing the property, and delivered to the assessor.

(329.) SEC. XXVIII. If any person required by this act to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office, usual place of residence or business of such person, a written or printed notice, requiring such person to make out and leave at the usual place of collecting taxes in that precinct, or at the office of said assessor, on or before some convenient day named therein, a statement of the property which he is required to list, and shall leave with such notice a printed or written blank for the statement required of such person. The date of leaving such notice, and the name of the person required to list the property, shall be carefully noted by the assessor in a book to be kept for that purpose; and if any such person shall neglect or refuse to deliver the statement, properly made out and signed as required, the assessor shall make the assessment as required by this act.

(330.) SEC. XXIX. Assessors and deputy assessors, justices of the peace and clerks of the county courts, are authorized and empowered to administer any oath relating to the assessment of property required by this act.

(331.) SEC. XXX. In every case where any person shall refuse to make out and deliver to the assessor a statement of the personal property, moneys and credits which he is required to list, as provided by this act, the assessor shall, in every such case, proceed to ascertain the number of each description of the several articles of personal property subject to taxation enumerated in this act, the value thereof, the value of the personal property subject to taxation, other than enumerated articles, and the value of the moneys and credits of which a statement shall have been withheld as aforesaid, as the case may require; and to enable him so to do, he is hereby authorized to examine on oath any person whom he may suppose to have knowledge of the amount or value of the personal property, moneys or credits, which the person so refusing was required to list.

(332.) SEC. XXXI. If any person who shall be required by the assessor to give evidence, as provided in the preceding section, shall refuse to be sworn by the assessor, or having been sworn, if he shall refuse to answer such questions as the assessor shall put to him touching the subject of inquiry,

any justice of the peace of the town or district, to whom the assessor may make application therefor, shall summon such person to appear before him at such time as the assessor shall designate, and answer on oath, all pertinent questions which may be put to him by the assessor or his order, touching the amount and value of the personal property, moneys and credits which the person required to list the same on oath has refused to list; and every constable and witness shall be subject to the same penalties for refusal or neglect to obey the process of such justice, as they are by law subject to for refusing to obey the process of justices of the peace in civil cases, and shall receive the same fees allowed for like services in civil cases; and such justice of the peace shall immediately proceed to enter judgment for all such fees, and for his own costs in favor of the State of Illinois, against the person who shall have refused to make and deliver to the assessor, a statement of the property which, by this act, he was required to list, and proceed to collect and pay over the same, as in civil cases.

(333.) SEC. XXXII. On the last Saturday in June, the assessor, town clerk and supervisor shall attend at the office of the town clerk, for the purpose of reviewing the assessment list, and on the application of any person, conceiving himself aggrieved, they shall review the assessment, and when the person objecting thereto shall make an affidavit that the value of his personal estate does not exceed a certain sum specified in such affidavit, the assessor shall reduce the assessment to the sum specified in such affidavit, and if he, or any other one, objects to the valuation put upon any of their real estate, the board shall hear the objections, and may reduce the same, if a majority of the board think it advisable, and in such case the assessor shall correct his list.

(334.) SEC. XXXIII. Each town assessor shall, on or before the first day of July, annually, make out and deliver to the clerk of his county, in tabular form and alphabetical order, the names of the several persons, companies or corporations, in whose names any personal property, moneys or credits shall have been listed in his county, and separately, in appropriate columns, opposite each name, the number and value of all articles of personal property enumerated in this act, the value of all non-enumerated articles of personal property, other than the stock of merchants and manufacturers, the value of merchants' and manufacturers' stock, and the value of the moneys and credits listed by said persons. If any person is assessed on property which he believes is not properly and legally liable to taxation, he may apply to the board of supervisors, at their annual meeting, for an abatement of such assessment, and the said board shall hear and determine the matter; but if said board shall decide that any such property is not liable to taxation, and the question as to the liability of such property to taxation has not been previously settled, the decision of said board shall not be final, unless approved by the auditor of public accounts, and it shall be the duty of the clerk of said board, in all such cases, to make out and forward to the auditor a full and complete statement of all the facts in the case. If the auditor is satisfied that such property is not legally liable to taxation, he shall notify the clerk of his approval of the decision of the board, and the said clerk shall correct the assessment accordingly. But if the auditor believe that the board has erred in deciding that such property was not liable to taxation at the time

of making the assessment, he shall advise the clerk of his objections to the decision of the board, and give notice to said clerk that he will apply to the supreme court, at the next term thereof, for an order to set aside and reverse the decision of the board of supervisors. Upon the receipt of such notice, the clerk shall notify the person making application therefor. And it shall be the duty of the auditor to file, in the supreme court, a certified statement of the facts certified by the clerk as aforesaid, together with his objections thereto, and the court shall hear and determine the matter, as the right of the case may be.

(335.) SEC. XXXIV. In all cases where property is not listed by the owner, the assessor shall note opposite the name the words "by assessor."

(336.) SEC. XXXV. Each town assessor shall, at the time he is required by this act to make his return of taxable property to the county clerk, also deliver to him all the statements of property which he shall have received from persons required to list the same, arranged in alphabetical order, and the clerk shall carefully file and preserve the same for one year thereafter.

(337.) SEC. XXXVI. Each town assessor shall take and subscribe an oath, which shall be certified by the magistrate or clerk administering the same, and attached to the return which he is required to make to the county clerk, in the following form, as near as may be:

"I, \_\_\_\_\_, assessor in the town of \_\_\_\_\_, do solemnly swear that the value of all personal property, moneys and credits required to be listed for taxation by me, is truly returned and set forth in the annexed list, and that in every case I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value of all taxable property, moneys and credits; and that, as I verily believe, the full value thereof, estimated by the rules prescribed by said act, is set forth in the list aforesaid; that in no case have I knowingly omitted to assess any property which by law I am required to assess, nor have I in any way connived at any violation or evasion of any of the requirements of the law in relation to the listing or valuation of property, moneys or credits of any kind, for taxation."

(338.) SEC. XXXVII. In all cases in which town assessors are required, in consequence of the sickness or absence of the person whose duty it is to make out a statement of personal property, moneys and credits, or in consequence of his neglect or refusal to make out and deliver such statement, to ascertain the amount and value of such personal property, moneys and credits, if the assessor shall be unable to obtain positive evidence of the amount and value of such property, moneys and credits, he shall return such amount and value as from general reputation and his own knowledge of facts and circumstances, he believes to be the full amount and value of such property, moneys and credits.

(339.) SEC. XXXVIII. The assessor, or some suitable person employed by him for that purpose, shall add up the several columns containing the the number and value of each article of property enumerated, the value of unenumerated articles, the value of each of the other items of property enumerated in the seventh section of this act, and the total value thereof, and note the aggregate of each column at the bottom thereof, and shall make out and deliver to the clerk, with the assessment list, an abstract of the several footings on each page, showing separately the aggregate number and value of each enumerated article of property, and the value of each kind of all other property assessed. The correctness of such abstract shall be verified by the oath of the assessor or person who shall have made such additions.

(340.) SEC. XXXIX. It shall be the duty of each assessor, upon being furnished with the list and blanks provided for by this act, from actual view, or from the best sources of information that can be obtained, to determine, as nearly as practicable, the true value of each separate parcel of real property in his town, according to the rules prescribed by this act for valuing real property, and such value shall be noted opposite each parcel of real property, in a column provided for that purpose; and he shall note opposite each tract not listed by a resident of the town, the letter "N," denoting non-resident.

(341.) SEC. XL. The assessor shall add up the valuation of the real property, and shall set down in figures on each page the total value of the property listed thereon, and shall make out a statement showing the aggregate value of the lands, and the aggregate value of town lots. The assessor shall complete the assessment and make return thereof to the clerk of the county court, on or before the first Monday in July, annually.

(342.) SEC. XLI. Each assessor shall take and subscribe an oath, which shall be certified by the magistrate or clerk administering the same, and attached to the return which he is required to make to the county clerk, as near as may be, in the following form:

"I, A. B., assessor of the town of ———, do solemnly swear that the return to which this is attached, contains a correct description of each parcel of real property subject to taxation within said town, so far as I have been able to ascertain the same, and that the value attached to each parcel in said return is, as I verily believe, the full value thereof, estimated agreeably to the rules prescribed therefor in the act for the assessment of property and the collection of taxes, and that the aggregate value, as set forth in the statement returned herewith, is true and correct, as I verily believe."

The clerk, upon the receipt of the several assessment rolls, shall carefully compare the same with the list of taxable land on file in his office, correcting all errors which he may discover, and add to the roll of the proper town the name of the purchaser, and the description of all such lands as have been omitted by the assessor which are liable to taxation. He shall then make a fair copy of the several assessment rolls; which copy, together with the original, shall be laid before the board of supervisors at their annual meeting in each year; for which service said clerk shall be allowed a sum not exceeding two cents for each tract of land, and one cent on each town lot contained in said rolls, and where the real estate and personal property are separate, one half cent for each person's name and valuation of personal property contained in said rolls.

(343.) SEC. XLII. If any assessor shall willfully refuse or neglect to perform any of the duties required of him by this act, he shall forfeit to the people of this State the sum of fifty dollars, and be liable for all damages sustained by any such refusal or neglect.

(344.) SEC. XLIII. The board of supervisors of each county in this State, at their annual meeting, shall examine the assessment rolls of the several towns in their county, for the purpose of ascertaining the aggregate valuation of property in each town, and they shall assess the value of all such lands and lots as have been omitted by the assessor, and listed by the clerk, and cause the same to be placed opposite the description of said lands, in a column prepared for that purpose.

(345.) SEC. XLIV. They shall, at their annual meeting, fix a certain rate upon the hundred dollars to be levied upon the taxable property, both real and personal, in their respective counties, for county purposes, which

they shall cause to be entered upon their record, and they shall, at the same time, also enter upon their record the amount to be collected in each town for town purposes. The clerk of the county court shall carefully compare the copy made by him with the original assessment roll, [and when so compared and corrected he shall cause the taxes to be extended on said copy, and shall also cause to be indorsed on the original assessment roll] the amount per cent. levied on each one hundred dollars worth of property, as taxes thereon, which original roll shall remain in the county clerk's office until the month of March next thereafter. The town clerks shall call on the county clerk during the month of March in each year, for the original assessment rolls of the previous year, of their respective towns, which rolls they shall file in their respective offices, for the use of the town.

(346.) SEC. XLV. The county clerk shall cause to be estimated and set down in a separate column, to be prepared for that purpose, in the copied assessment roll, opposite the several sums set down as the valuation of real and personal estate, the respective sums in dollars and cents, respecting the fractions of a cent, to be paid as tax thereon.

(347.) SEC. XLVI. The county clerk shall cause the copied and corrected assessment roll of each town or district in their respective counties, with the taxes extended thereon, to be delivered to the collector of such town or district, on or before the fifteenth day of November in each year.

(348.) SEC. XLVII. To each assessment roll a warrant, under the hand of the county clerk and seal of the county court, shall be annexed, commanding such collector to collect from the several persons named in the assessment roll, the several sums mentioned in the last column of such roll, opposite their respective names. The warrant shall direct the collector, out of the moneys to be collected, after deducting the compensation to which he may be legally entitled, to pay over to the commissioners of highways the amount of tax collected for the support of highways and bridges, and to the supervisor of the town all other moneys which shall have been collected therein, to defray any other town expenses; to the township treasurers the school fund tax, and to the county treasurer the State and county tax collected by him. The county treasurer shall pay over to the proper officers the amount of the tax collected by him on the delinquent real estate.

(349.) SEC. XLVIII. In all cases the warrant shall authorize the collector, in case any person named in such assessment roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods and chattels of such person; and it shall require all payments therein specified to be made by such collector on or before the fifteenth day of February next ensuing.

(350.) SEC. XLIX. Before the delivery of the tax books to the collectors, the clerk shall notify the county treasurer that said books are completed, and shall furnish such treasurer with a statement, setting forth the name of each collector, the amount of money to be collected and paid over for each purpose for which the tax is levied in each of the several towns. The treasurer shall compare said statement with the footings on the tax books.

(351.) SEC. L. On the last Saturday in April, in each year, the assessors of the several towns shall meet at the office of the county clerk,



for the purpose of instruction and advice relative to their duties as assessors. They then and there shall agree upon a basis upon which the property in the several towns shall be assessed. The county clerk shall consult with and advise said assessors as to the true basis of valuing property; he shall furnish them with such blank circulars, &c., as they shall be entitled to, and shall give such instructions and advice as may be necessary to enable them to make their assessments and returns correctly.

(352.) SEC. LI. No assessment of property, or charge for taxes thereon, shall be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessments not being made or completed within the time required by law.

(353.) SEC. LIII. Every county clerk, assessor, collector or other officer, who shall in any case refuse or knowingly neglect to perform any duty enjoined on him by this act, or who shall consent to or connive at any evasions of its provisions, whereby any proceeding required by this act shall be prevented or hindered, or whereby any property required to be listed for taxation shall be unlawfully exempted, or the value thereof be entered upon the tax list at less than its true valuation, shall, for every such neglect or refusal, be liable, individually, and on his official bond, for double the amount of the loss or damage caused by such neglect or refusal, to be recovered in an action of debt in any court having jurisdiction of the amount thereof, and may be removed from his office, at the discretion of the court before whom any such judgment shall be rendered.

(354.) SEC. LIIII. In all cases where any person, company or corporation, has or may hereafter divide any tract of land into parcels less than the one-sixteenth part of a section, or otherwise, in such manner that such parcels cannot be described in the usual manner of describing lands in accordance with the surveys made by the general government, with a view to sell said lands in such parcels, it shall be lawful for such person, company or corporation, to cause such lands to be surveyed, and a plat thereof made by the surveyor of the county where such lands are situated; which plat shall particularly describe and set forth the lots or parcels of land surveyed, as aforesaid; the lots shall be numbered in progressive numbers, and the plat shall show the number and location of each lot, and the description of the tract of land of which such land is a part, and also the quantity of land in each lot. Said plat shall be certified to by the surveyor, and recorded in like manner as the plats of towns are required to be certified to and recorded. Lands described in any deed or conveyance, or for the purpose of taxation, in accordance with the number and description set forth in the plat aforesaid, shall be deemed a good and valid description of the lot or parcel of land so described.

(355.) SEC. LIV. When lands heretofore have been, or may hereafter be subdivided into parcels less than one-sixteenth part of a section, or in such manner that they cannot be easily and properly described, without noting the metes and bounds of such tracts, it shall be the duty of the owner or owners thereof, when required so to do by the assessor, to cause the same to be surveyed, and the plat thereof recorded in like manner as is required in the foregoing section; and if such owner or owners shall refuse or neglect to cause such survey to be made within a reasonable time after being notified by the assessor, it shall be the duty of the assessor to cause such survey

to be made and recorded; and the expense thereof to be returned by the assessor to the clerk, who shall add the same, together with the commissions for collecting, &c., to the tax assessed on such real property, and it shall be collected with and in like manner as the said tax; and when collected, shall be paid on demand to the persons to whom it is due: *Provided*, That the collector shall either file a receipt for the payment thereof with the treasurer, or shall pay the same into the county treasury, when he makes settlement for the county revenue, to be paid to the proper persons when called for.

(356.) SEC. LV. In all cases where the boundary lines of any county or counties cannot be correctly ascertained from the plats or maps of the original surveys, and such boundary lines not having been surveyed, it shall be the duty of the board of supervisors of the counties bounded by any such lines, jointly, to cause the same to be surveyed and located in accordance with the laws establishing such lines. They shall cause a plat or map to be made, showing the correct location of the line on each legal subdivision or tract of land through which such line may run; which plat, together with the field notes of such survey, shall be certified to by the surveyor making the survey, under oath, and forwarded to the auditor of public accounts, who shall cause the same to be filed and recorded in his office, and a correct copy thereof forwarded to the clerk of the county court of each of the counties bounded by such line. And said clerk shall cause such copy to be filed in his office, and recorded in a suitable record book, and the line thus surveyed shall be the true division line: *Provided*, That if the board of supervisors of any county bounded, in part or in whole, as aforesaid, shall neglect or refuse to comply with the requirements of this section within a reasonable time after being requested so to do by the auditor of public accounts, it shall be the duty of said auditor to cause the said survey to be made, if in his opinion the public interest requires it. And the expenses of making any such survey, whether under the direction of the county authorities or the auditor, shall be paid by the counties bounded by such line—one-half by each county.

(357.) SEC. LVI. For the purpose of taxation, all tracts or parcels of land, not exceeding one-sixteenth part of a section, shall be assessed in the county where the greater part of said tract is situated; and the collector of the proper town in said county shall have the same power and authority to collect the taxes due thereon as he would if the whole of said tract were within the limits of said county. And in all cases where any such tract or tracts shall be equally divided between two counties, and the owner thereof be a resident of either county, said land shall be assessed in the county in which the owner resides; but if the owner be not a resident of either county, then the auditor shall determine in which county the land shall be assessed: *Provided*, That if there be several tracts similarly situated, the auditor shall apportion them equally between the counties, as near as practicable: *Provided, furthermore*, That when a tract of land containing a half-quarter section, or more, is so divided by the county line that by subdividing it into quarter-quarter section lots, each county will be entitled to the taxes on one or more of said lots, then the tract shall be so divided. The provisions of this section regulating the assessment of land divided by county lines, shall apply to and regulate the assessment of land divided by town lines.



(358.) SEC. LVII. Government lands entered or located prior to the first day of May, A. D. 1853, shall be taxable for the year 1853; lands entered or located prior to the first day of May, A. D. 1854, shall be taxable for the year 1854, and so on annually thereafter. Land sold by the trustees of the Illinois and Michigan canal, shall be taxable from and after the time that full payment therefor is made. School, seminary and saline lands sold shall be taxable in like manner as the lands sold by the general government. Internal improvement lands sold prior to the first day of June, A. D. 1848, shall be taxable for the year 1853, and annually thereafter.

(359.) SEC. LVIII. On the first day of May in each year, or as soon thereafter as practicable, the auditor shall obtain from the several land offices in this State, abstracts of the lands entered and located, and not previously obtained, and shall, when necessary, obtain from the canal office, abstracts of the canal lands sold. Upon the receipt of said abstracts, the auditor shall cause them to be transcribed into the tract books in his office, and shall, without delay, cause abstracts of the lands in each county to be made out and forwarded by mail to the county clerks of the several counties; and said clerks shall cause such abstracts to be transcribed into the tract book, and filed in their office.

(360.) SEC. LIX. On the last Saturday in April, A. D. 1853, and every two years thereafter, the clerk of the county court shall cause to be delivered to the assessor of each town, a book, properly ruled and headed, containing a list of the real estate in numerical order, with such blank columns as may be necessary, for the use of the assessor. The clerk, in making out said lists, shall take as his guide the assessment list of the previous year, and the list of subsequent conveyances: *Provided*, That the list of lands reported in the annual abstract shall be furnished to the assessor within five days from and after the time such abstract is received from the auditor's office.

(361.) SEC. LX. Every person owning or holding real property on the first day of May, including all such property purchased on that day, shall be liable for the taxes thereon for that year; and if any person shall sell and convey any real property on or prior to the first day of May next after the listing of such real property, he shall, when he lists his personal property for the year next after the listing of said real property, deliver to the assessor a statement setting forth the description of the property sold and conveyed, and the name of the purchaser, and he shall list all real property purchased by him during the said time; and the assessor shall make return thereof to the county clerk, who shall make the proper changes in the tax books. Real property shall in all cases be liable for the taxes thereon.

(362.) SEC. LXI. The clerk of the county court shall annually, on the last Saturday in April, furnish the assessor of each town with a book or books, properly ruled and headed, for the abstract of the assessment of personal property, and shall, at the proper time, furnish such assessor with a list of the real estate that may have become taxable subsequent to the regular assessment of real estate; all property, except real property, shall be assessed annually; real property shall be assessed biennially: *Provided*, That real property becoming taxable after the regular assessment of real property, or that may have been omitted, shall be assessed for the current year at the same time that the personal property is assessed in the year that

the real property is not regularly assessed, and such property shall be re-assessed the next succeeding year with the regular assessment of real property.

(363.) SEC. LXII. It shall be the duty of the auditor of public accounts to make out and forward to the clerk of the county court of the several counties, for the use of such clerks and other officers, suitable forms and instructions for carrying this act into effect; and all such instructions shall be strictly complied with by the officers in the performance of their respective duties, as required by this act. He shall give his opinion and advice on all questions of doubt as to the true intent and meaning of the provisions of this act.

(364.) SEC. LXIII. If the assessor should discover any real property subject to taxation, which has not been returned to him by the clerk, he shall assess such property, and enter the same on the assessment list. And if, upon the return of such list to the clerk, it shall appear that any such real property has not been returned by the auditor, it shall be the duty of the clerk to advise the auditor of the facts, describing the property so returned by the assessor, and the auditor shall ascertain the true condition of such real property, and advise the said clerk thereof, who shall correct the records of his office, in accordance with the facts in the case.

(365.) SEC. LXIV. It shall be the duty of the clerk, before delivering the list of real property to the assessor, to cause such list to be carefully compared with the lists of taxable real property on file in his office, and if it shall appear that any such property was omitted in the former assessment list, he shall correct the list designed for the assessor, so that said list may contain a full and complete abstract of all the taxable real property in the several towns.

(366.) SEC. LXV. Every collector, upon receiving the tax list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call at least once on the person taxed, or at his or her place of residence, if in the town or district for which such collector has been chosen, and shall demand payment of the taxes charged to him on his property.

(367.) SEC. LXVI. In case any person shall refuse or neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same.

(368.) SEC. LXVII. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisement, to be posted up in at least three public places in the town where such sale is to be made. The sale shall be by public auction.

(369.) SEC. LXVIII. If the property distrained shall be sold for more than the amount of the taxes, the surplus shall be returned to the person in whose possession such property was when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner.

(370.) SEC. LXIX. In case any person upon whom any tax shall be assessed, under the provisions of this act, in any city or town of this

State, shall have removed out of such city or town after such assessment, and before such tax, which now is or hereafter may be assessed in any district of any city or in any town, upon the estate of such person, situated out of the city or town where he may reside, and within the county, it shall be lawful, in either of those cases, for the collector of said city or town to levy and collect such tax of the goods and chattels of the person assessed, in any district within said city, or within any town within said county, to which such person shall have removed, or in which he shall reside.

(371.) SEC. LXX. Every collector shall pay over, within one week after the time mentioned in his warrant for paying the moneys directed to be paid to the town officers of his town and to the county treasurer, the sums required in such warrant to be paid to them respectively, first retaining the compensation to which he may be legally entitled. The town officers to whom any such moneys shall be paid, shall deliver to the collector duplicate receipts therefor, one of which shall be filed by the collector with the county treasurer, for the amount therein stated to have been received, and no other evidence of such payment shall be received by the county treasurer.

(372.) SEC. LXXI. Whenever any greater amount of taxes shall be assessed in any town than the town charges thereof, and its proportion of the tax and county charges, the surplus shall be paid by the collector to the supervisor of the town, who shall hold the same until wanted by the town to pay any town expenses.

(373.) SEC. LXXII. The collector shall receive the tax on a part of any lot, piece or parcel of land charged with taxes: *Provided*, The persons paying such tax shall furnish a particular specification of the part, and if the tax on the remainder of such lot or parcel of land shall remain unpaid, the collector shall enter such specification in his return to the county treasurer, to the end that the part on which the tax remains unpaid may be clearly known.

(374.) SEC. LXXIII. If any part on which the tax shall be so paid be an undivided share, then the person paying the same shall state to the collector who is the owner of such share, that it may be excepted in case of a sale for the tax on the remainder; and the collector shall enter the name of such owner on his account of arrears of taxes.

(375.) SEC. LXXIV. If the town collector shall be unable to collect any tax charged in the tax list, by reason of the removal or insolvency of the person to whom such tax shall be charged, or on account of any error in the tax list, he shall deliver to the county treasurer his tax books, and shall make out and file with the said treasurer, at the time of his settlement, a statement in writing, setting forth the name of the person charged with such tax, the value of the property, and the amount of tax so charged, and the cause of delinquency, and shall make oath before the county treasurer, or some justice of the peace, that the facts stated in such statement are true and correct, that the sums mentioned therein remain unpaid, and that he has used due diligence to collect the same; which oath or affidavit shall be signed by the town collector. And upon the filing of said statement, the county treasurer shall allow the town collector credit for the amount of taxes therein stated, and shall apportion and credit the same on the several funds

for which said tax was charged; and when he makes settlement with the board of supervisors, such statement shall be sufficient voucher to entitle him to credit for the amount therein stated; but in no case shall any town collector or county treasurer be entitled to abatements on the resident tax list, until the statement and affidavit aforesaid is filed, as required by this act.

(376.) SEC. LXXV. If any person, chosen or appointed to the office of collector of any town, district or city in this State, shall refuse to serve, or shall die, resign, or remove out of the town, district or city, or the office becomes vacated in any other way, before he shall have entered upon or completed the duties of his office, or shall in any way be disabled from completing the same, the supervisor and justices of such town or district, or any two of them, shall forthwith appoint a collector for the remainder of the year, who shall give the like security, and be subject to the like penalties, and have the same powers and compensation as the collector in whose place he was appointed, and the supervisor or town clerk shall forthwith give notice of such appointment to the county treasurer. But such appointment shall not exonerate the former collector or his sureties from any liability incurred by him or them.

(377.) SEC. LXXVI. If a warrant shall have been issued as by law provided, prior to any appointment under the last section, the original warrant, if the same can be obtained, shall be delivered to the collector so appointed, and shall be considered as giving him the same powers as if originally issued to him. But if such warrant cannot be obtained, a new one shall be made out by the clerk of the board of supervisors of the county, and shall be signed by the chairman of the board of supervisors, in the same way and manner as the original was, which shall be directed to the collector so appointed, and upon every such appointment, the supervisor of the town or district, if he shall think it necessary, may extend the time limited for the collection of taxes, for a period not exceeding thirty days; of which extension he shall forthwith give notice to the county treasurer. The collector so appointed, shall keep an account of all collections made by the former collector, so far as he can ascertain the same, and when any one shall present a receipt for taxes paid to the former collector, he shall mark against the amount of taxes so paid, to whom paid, and the time when paid.

(378.) SEC. LXXVII. If any collector shall refuse or neglect to pay to the several town officers of his town, or to the county treasurer, the sums required by his warrant to be paid to them respectively, or either of them, or to account for the same as unpaid, the county treasurer shall, within twenty days after the time when such payments ought to have been made, issue a warrant, under his hand and seal, directed to the sheriff of the county, commanding him to levy such sums as shall remain unpaid and unaccounted for by such collector, of the goods and chattels, lands and tenements of such collector, and to pay the same to the county treasurer, and to return such warrant within forty days after the date thereof; which warrant the county treasurer shall immediately deliver to the sheriff of the county. But no such warrant shall be issued by the county treasurer, for the collection of moneys payable to town officers, of the refusal or neglect of the collector to pay the same, or account therefor, as above provided.

(379.) SEC. LXXVIII. The sheriff to whom such warrant is directed, shall immediately cause the same to be executed, and shall make return

thereof to the county treasurer, within the time specified, and shall pay to him the money received by virtue thereof, deducting from his fees the same compensation that the collector would have been entitled to retain. Such part of the moneys, if any, as ought to have been paid by the collector to the town officers, shall be paid by the county treasurer to the officers to whom the collector was directed to pay the same; but if the whole amount of moneys due from the collector, shall not be collected in such warrant, the county treasurer shall first retain the amount which ought to have been paid him, before making any payment to the town officers.

(380.) SEC. LXXIX. If the whole sum due from the said collector shall be collected, the sheriff shall so state in his return; but if part only, or if no part of such sum shall be collected, the sheriff shall note in his return the fact, and the amount collected, and shall also certify that such collector has no goods or chattels, lands or tenements in his county from which the money or residue thereof, as the case may be, could be levied; and in either case, the county treasurer shall forthwith give notice to the supervisor of the town or district, of the amount due from such collector.

(381.) SEC. LXXX. The supervisor shall forthwith cause the bond of such collector to be put in suit, and shall be entitled to recover thereon the sum due from such collector, with costs of suit, and the monies recovered shall be applied and paid in the same manner in which it was the duty of the collector to have applied and paid the same.

(382.) SEC. LXXXI. If any sheriff shall neglect to return any such warrant, or to pay the money levied thereon, within the time limited for the return of said warrant, or shall make any other return than such as is above mentioned, the county treasurer shall forthwith proceed to collect the whole sum directed to be levied by such warrant, and he may proceed in the first instance by a writ of attachment against the goods and chattels, lands and tenements, rights and credits, of such sheriff, and the same proceeding may be had thereon, in the proper court, as is now provided by law in ordinary cases of attachment.

(383.) SEC. LXXXII. In case the county treasurer shall fail to collect such moneys by attachment or suit, as is provided for in the next preceding section hereof, he shall prosecute suit on the official bond of such sheriff for the amount aforesaid.

(384.) SEC. LXXXIII. The town collectors shall be entitled to three per cent. on all moneys collected by them, as their compensation.

(385.) SEC. LXXXIV. This act shall apply to and be in force in counties adopting the act to provide for township organization, and take effect from and after its passage.

An Act regulating the Collection of the Revenue in Counties adopting the Township Organization Law.

[Approved Feb. 12, 1853. Laws, 1853, p. 67.]

(386.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county revenue shall be collected in gold and silver coin, county orders and jury certificates, and in no other currency; the revenue for State purposes shall be collected in gold and silver coin, and auditor's warrants, and in no other currency; and State taxes, levied for any special purpose, other than to defray the ordinary

expenses of the State government, shall be collected in gold and silver coin, and in no other currency.

(387.) SEC. II. The treasurer of each county shall be the county collector, and his refusal to qualify and act as such, shall vacate his office of treasurer, which shall be filled as in other cases of vacancy.

(388.) SEC. III. Said collector shall, at the September meeting of the board of supervisors, annually, and before he enters upon the duties of his office as collector, execute a bond, in addition to his bond as treasurer, in a penalty of at least double the amount of the State taxes to be collected in the year next thereafter, with two or more securities, who shall be residents of the said county, and owners of real estate equal in value to the amount specified in the bond; which amount shall be determined, and which bond shall be approved by the board of supervisors, and shall be witnessed by at least one witness who can write his name, and be substantially in the following form, to wit:

"KNOW ALL MEN BY THESE PRESENTS, That we, A. B., collector, 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, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

The condition of the foregoing bond is such, that if the above bound A. B. shall perform all the duties required to be performed by him as collector of the taxes for the year 18—, 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 or to the State, and appertaining to his said office, then the foregoing bond to be void, otherwise to remain in full force.

Signed, sealed and delivered in  
presence of me, G. H."

A. B.	[L. s.]
C. D.	[L. s.]
E. F.	[L. s.]

He shall also take and subscribe an oath, to be indorsed on the back of the bond, before some person authorized to administer oaths, that he will faithfully, diligently and impartially, to the best of his judgment and ability, perform all the duties required of him by law, as such collector.

(389.) SEC. IV. Bonds given in pursuance of this act, shall not be considered void, nor shall any security be released from any liability thereon, in consequence of any informality in the assessment, or in making out the assessment lists, nor of any change or alteration in the law made by the General Assembly, although the same may be made after the execution of said bond.

(390.) SEC. V. The collector's bond shall be approved by the board of supervisors, and shall be correctly copied and entered on the records of said board, and forthwith mailed to the auditor of public accounts, with the certificate of the clerk, under the seal of his office, showing that said bond has been duly approved and recorded. Said bond, when approved and recorded, shall be a lien against the real estate of such collector, until he shall have complied with the conditions thereof.

(391.) SEC. VI. On the first Monday of November, annually, or as soon thereafter as the collector shall be qualified, the clerk shall deliver the tax lists or books containing the non-resident tax list to said collector, and shall take from him duplicate receipts, setting forth the amount of State, county and special tax, charged for said year, one of which shall be forwarded to and filed in the office of the auditor of public accounts, and the other in the office of the county clerk. All taxes shall be considered due

from and after the time that the tax books are required to be delivered to the collector.

(392.) SEC. VII. The clerk shall compute the amount of taxes due on each tract or parcel of land, on each town lot or block, and on each person's personal property, placing the amount of such tax in the proper columns opposite the value thereof, in all cases rejecting the fractions of cents, and shall add up the figures showing the amount of such tax, in the proper columns, and the aggregate amount in each column shall be noted on each page. Said clerk shall test the accuracy of such additions, by computing the amount of tax on the aggregate value of property on each page, that he may be certain that the tax has been correctly extended and added.

(393.) SEC. VIII. In all cases when any real property has heretofore been, or may hereafter be forfeited to the State for taxes, it shall be the duty of the clerk, when he is making up the amount of tax due on such real property for the current year, to add the amount of back tax and fees remaining due on such real property, with ten per cent. interest thereon, to the tax of the current year, and the aggregate amount so added together shall be collected in like manner as the tax on other real property for that year may be collected.

(394.) SEC. IX. The clerk shall annually make out for the use of the town collector correct lists of the property assessed to residents, which lists shall set forth, in alphabetical order, the names of the persons owing tax on personal property in each collector's district, the aggregate value of such property assessed to each person, and the amount of tax due thereon, and such other facts as may be required by the forms and instructions provided for by this act; he shall make out the abstracts of real property in numerical order, which shall show the name of the person to whom each tract or lot is assessed, the value of each tract or lot, and the amount of taxes thereon; which list shall be made out in strict conformity with the forms and instructions furnished by the auditor. He shall also make out in like manner, for the use of the county collector, abstracts of the real property listed as non-resident property.

(395.) SEC. X. When the books or lists for the collector are completed, the clerk shall make out a complete abstract, showing the aggregate number and value of each kind of personal property enumerated in the assessment list; the value of unenumerated articles; the value of goods and merchandise; the value of property listed by bankers, brokers and stock jobbers; the value of property listed by manufacturers; the value of moneys and credits; the value of moneys invested in bonds, stocks, joint stock companies, &c.; the value of property listed by banks; the value of lands, and the value of town and city lots; the amount of State tax due thereon, and the rate of taxation for county and other special purposes. The value of the property assessed to non-residents, and the amount of tax thereon, shall be stated separately from the non-resident tax. The correctness of said abstract shall be certified to by the clerk, with the seal of his office attached, and forwarded to the auditor's office by mail. A true copy of said abstract shall be entered on the records of said court. If any clerk shall knowingly make a false or incorrect abstract of the value of taxable property, he shall be deemed guilty of perjury, and punished accordingly.

(396.) SEC. XI. The collector of each county, upon receiving the assess-

ment list of the non-resident property from the clerk of the county court, and giving a receipt for the same, shall collect the taxes charged upon said list, from the persons owing the same, and he shall give such persons receipts therefor.

(397.) SEC. XII. On or before the third Monday of April annually, the collector shall make out and file with the county clerk a statement in writing, setting forth the value of property and the amount of tax thereon in each town that has been returned to him by the town collectors as delinquent; and also a list of the errors in the non-resident list, showing a description of the property and the amount of tax charged in error, and the cause of error; the truth of said statement and list shall be verified by the oath of such collector. At the April meeting of the board of supervisors, he shall settle with and allow the collector credit for such abatements as he may be legally entitled to, and the clerk shall certify the value of the property upon which the taxes are so abated, and the amount of the State tax charged thereon, to the auditor of public accounts, who shall allow the collector credit for the amount so certified: *Provided*, That if the auditor shall have reason to believe that the amount stated in said certificate is not correct, or that the allowance was illegally made, he shall return the same for correction. If there be no meeting in April, the clerk shall certify the value of property and the amount of the State tax charged on the list of abatements filed by the collector, to the auditor, who shall allow the collector credit for the same, subject to the further action of the board, and said board shall examine and act upon the said list at their first term thereafter, and their action shall be certified by the clerk to the auditor, who shall adjust the account of the collector, as provided for in this act.

(398.) SEC. XIII. The county courts of the several counties in this State shall have original jurisdiction of suits for taxes due on real property whether such courts be sitting for the transaction of county or probate business.

(399.) SEC. XIV. Personal property shall be liable for taxes levied on real property, and real property shall be liable for taxes levied on personal property; but the tax on personal property shall not be charged against real property, except in cases of removals, or where said tax cannot be made out of the personal property.

(400.) SEC. XV. If the taxes on any town or city lot or lots shall remain unpaid on the third Monday in April next after said taxes become due, the collector shall advertise, obtain judgment and sell such lots in like manner as is provided for by this act for advertising, obtaining judgment and selling non-resident delinquent lands. And if any such lots be forfeited to the State, as is provided for in the case of delinquent lands, the clerk shall certify to the auditor the amount of State tax charged on the lots so forfeited, and the auditor shall allow the collector credit therefor, and charge the same to the collector for the following year. The board of supervisors shall allow the collector credit for the amount of taxes charged for county, town, and other special purposes, on the lots forfeited to the State, including the printer's fee thereon. Town and city lots shall be sold annually, in the month of May next after the taxes become due, or as soon thereafter as practicable.

(401.) SEC. XVI. If the taxes on any tract or parcel of land, other

than town or city lots, shall remain unpaid on the first day of May next after such taxes become due, said collector shall make out and file with the clerk of the county court a true and correct list of said lands, setting forth the name of the owner, or person in whose name the said property is taxed, a description of the property, the value of each tract or parcel, and the amount of taxes charged thereon, together with the aggregate value and amount of tax due on such list; and he shall attach to and file with said list an affidavit, which shall be in the following form, to wit:

"I, A. B., collector in and for the county of \_\_\_\_\_, do solemnly swear that the list to which this affidavit is attached, is true and correct, and that the taxes thereon, as set forth in said list, are unpaid, and that I have used due diligence to collect said taxes, and that the aggregate amount therein stated remains due and unpaid, as I verily believe."

Said list shall be examined by the county clerk, and all errors therein corrected; and the collector shall be allowed credit in his settlement for the amount of county tax, including road, school, and other special county tax due thereon. The clerk of the county court shall, within ten days after the filing of said list, make out a true and correct copy thereof, in manner and form as may be required by the auditor of public accounts, and shall forward the same to said auditor, to be filed in his office.

(402.) SEC. XVII. The clerk of the county court shall make out and deliver to the collector, on or before the fifteenth day of May annually, the statements, certificates and lists appertaining to the settlement of the accounts of such collector; which statement, certificates and lists shall be made out in proper form, under seal of said court, securely enveloped and sealed. The collector shall deliver the package received from the clerk as aforesaid, at the office of the auditor, and make a final settlement of his accounts, and pay the amount due the State into the State treasury, on or before the first day of June next after receiving the tax books. At the time of making the settlement, the clerk shall deliver to the collector a memorandum showing the net amount collected, as per said settlement; and if any clerk shall neglect or refuse to make out and deliver the statements, certificates and lists as required by this act, on demand of the collector, he shall be liable for all damages sustained by such collector, or his securities, by reason of such neglect or refusal.

(403.) SEC. XVIII. If any collector shall refuse, fail or neglect to make settlement and pay the full amount due from him to the State into the State treasury, as is or may hereafter be required by law, it shall be the duty of the auditor of public accounts, and he is hereby authorized and required, to issue a warrant, under his hand and seal of office, directed to the sheriff of the proper county, (if there be no sheriff, then to the coroner, and if there be no sheriff or coroner, then to some suitable person, appointed by said auditor as especial agent for that purpose,) commanding him to levy and collect such sums as shall remain due from such collector, and pay the same into the State treasury, as required by law. Said auditor shall attach to every such warrant a correct statement of the account of such collector, as charged on the books in his said office. The warrant aforesaid shall have the same force and effect as executions issued by the circuit courts.

(404.) SEC. XIX. The officer or agent to whom such warrant shall be directed, shall immediately cause the same to be executed, and the money collected out of the goods and chattels, lands and tenements of such collector,

and make return of such warrant to the said auditor, and pay the amount collected, after deducting his commissions and fees, into the State treasury, within forty days from the issuing of such warrant: *Provided*, That if any warrant issued by the auditor shall be lost or destroyed, the auditor shall issue a duplicate warrant, bearing date at the time of issuing the same. The officer or agent collecting money on any warrant issued as aforesaid, shall be allowed the same commissions and mileage that would have been allowed to the collector, had he paid over the funds as is required by law, and such fees as is allowed by law to sheriffs for serving executions, advertising property, &c.; which fees shall be charged and collected in like manner as fees on executions are charged and collected.

(405.) SEC. XX. The coroner or agent to whom any warrant shall be issued in pursuance of this act, shall indorse thereon the facts in the case, and if it shall appear that the whole or any part of the sum due remains unpaid, and that the collector has no goods and chattels, land or tenements in his county, out of which to make the amount remaining due, or any part thereof, the auditor shall cause suit to be commenced on the bond of such collector, at the first term of the supreme court held at the seat of government, or of the Sangamon county circuit court, thereafter.

(406.) SEC. XXI. In all cases where special agents are appointed, as provided for in the foregoing sections, the auditor shall require such agents to file, with the clerk of the county court of the proper county, a bond, with one or more securities, to be approved by the county judge, in a penal sum of at least double the amount to be collected, and made payable to the people of the State of Illinois, and conditioned for the faithful performance of the duties required of him by this act. And if any sheriff or coroner shall neglect or refuse to comply with the requirements of this act, he shall be liable, on his official bond, for all damages caused by such refusal or neglect; and if any sheriff or coroner shall knowingly make a false return on any warrant issued by the auditor as aforesaid, he shall be deemed guilty of perjury, and shall be punished accordingly. Agents appointed to execute any warrant issued by the auditor as provided for by this act, who may file bond and accept such appointment, shall be entitled to like compensation, and shall be liable to like penalties, as the sheriff or coroner. And if any sheriff, coroner or agent shall collect moneys due the State, and fail or neglect to pay the same into the State treasury as required by law, he shall pay, for the use of the State, ten per cent. per month damages, from the time he should have paid over said money, until paid: *Provided*, That in case of sickness, or other reasonable excuse, to be verified by the oath of the person so failing to pay, and the payment being made within a reasonable time, the auditor may remit such damages. But if such coroner or agent shall apply or use any funds collected by him and belonging to the State for his own benefit, or the benefit of any other person, or in any other way or manner than is provided for by law, such coroner or agent shall be deemed guilty of embezzlement, and on conviction thereof shall be punished accordingly.

(407.) SEC. XXII. The auditor of public accounts shall file the list of delinquent lands upon which the taxes remain due and unpaid, and shall add to the amount of tax charged on each tract, ten cents, to be collected and paid into the State treasury. Any person desiring to pay the taxes

due on said lands, may pay the same into the State treasury at any time before the first day of August next, after the said taxes become due. If the taxes on any such lands shall remain due and unpaid after the first day of August aforesaid, the auditor shall add fifty per cent. on the amount of taxes due on each tract to said taxes, and the aggregate thereof shall be charged and collected. Any person may redeem said lands by paying the amount charged as aforesaid into the State treasury, at any time before the first day of November thereafter.

(408.) SEC. XXIII. On the first day of November, annually, or as soon thereafter as practicable, the auditor of public accounts shall make out and transmit by mail to the clerk of the county court, to be filed in the office of said clerk, a correct list of all the lands which had been returned to him as delinquent, and upon which the taxes remained unpaid on the first day of November.

(409.) SEC. XXIV. The assessor shall add fifty per cent., on the taxes remaining due at the time of filing the list with the clerk, and (for which he may be allowed credit,) to the tax charged on each tract of land, and the aggregate thereof shall be collected and paid over to the State and county, according to the rate of taxation for that year. Any person desiring to redeem or pay the taxes on such lands in the county after the first day of May, may do so by paying the amount, charged as above set forth, to the collector, at any time before the first day of December thereafter. When said collector shall receive the tax on any tract of land or town lot, subsequent to the first day of May aforesaid, he shall set forth the amount so received opposite the tract or lot so redeemed, in a column provided for that purpose, and shall note the date of such payment opposite such tract or lot on the list of delinquent lands and lots aforesaid, and shall file said lists with the clerk, on or before the first day of December aforesaid.

(410.) SEC. XXV. The clerk shall carefully compare the delinquent list returned by the auditor with the list returned by the collector, and if there be any lands or lots upon which the taxes have not been paid, he shall add the amount due thereon to the tax due on such lands and lots for the next succeeding year, and shall make out a true and correct list of such lands and lots, which shall be delivered to the collector with the tax books of the current year, or as soon thereafter as practicable; and the said collector shall collect the taxes thereon by sale or otherwise.

(411.) SEC. XXVI. When any person, owning lands or town lots in any county in this State, shall fail to pay the taxes assessed thereon, as provided for in the foregoing sections, it shall be the duty of the collector to publish an advertisement in some newspaper published in his county, if any such there be, and if there be no such paper printed in his county, then in the nearest newspaper in this State, which advertisement shall be once published at least four weeks previous to the term of the county court at which judgment is prayed; and said advertisement shall contain a list of the delinquent lands upon which the taxes remain due and unpaid, the names of owners, if known, the amount due thereon, and the years for which the same are due; and shall give notice that he will apply to the county court, at the — term thereof, for judgment against said lands for said taxes, interest and costs, and for an order to sell said lands for the

satisfaction thereof; and shall also give notice that, on the first Monday next succeeding the day fixed by law for the commencement of the said county court, all the lands for sale of which an order shall be made, will be exposed to public sale at the place of holding court in said county, for the amount of taxes, interest and costs due thereon; and the advertisement published according to the provisions of this section, shall be deemed and taken to be sufficient and legal notice both of the intended application of the collector to the county court for judgment, and also for the sale of lands under the order of said court: *Provided*, That if the publisher of such paper shall be unable or unwilling to publish said list and notice accurately and properly, the collector shall select some other newspaper, having due regard to the circulation of such paper.

(412.) SEC. XXVII. Hereafter, no purchaser of any land or town lot at any sale of lands or town lots for taxes, due either to the State or any county or incorporated town or city within the same, or at any sale for taxes or levies authorized by the laws of this State, shall be entitled to a deed for the lands or town lots so purchased, until he or she shall have complied with the following conditions, to wit: Such purchaser shall serve, or cause to be served, a written notice of such purchase, on every person in possession of such land or town lot, at least three months before the expiration of the time of redemption on such sale; in which notice he shall state when he purchased the land or town lot, the description of the land or lot he has purchased, and when the time of redemption will expire. In like manner he shall serve on the person or persons in whose name or names such land or lot is taxed, a similar written notice, if such person or persons shall reside in the county where such land or lot shall be situated; and in the event that the person or persons in whose name or names the land or lot is taxed, do not reside in the county, such purchaser shall publish such notice in some newspaper printed in such county, and if no newspaper is printed in the county, then in the nearest newspaper that is published in this State to the county in which such lot or land is situated; which notice shall be inserted three times, the last time not less than three months before the time of redemption shall expire. Every such purchaser, by himself or agent, shall, before he shall be entitled to a deed, make an affidavit of his having complied with the conditions of this section, stating particularly the facts relied on as such compliance; which affidavit shall be delivered to the person authorized by law to execute such tax deed, and which shall by him be filed with the officer having custody of the record of the lands and lots sold for taxes and entries of redemption in the county where such lands or lots shall lie, to be by such officer entered on the records of his office, and carefully preserved among the files of his office, and which record or affidavit shall be *prima facie* evidence that such notice has been given. Any person swearing falsely in such affidavit, shall be deemed guilty of perjury, and punished accordingly. In case any person shall be compelled under this section to publish a notice in a newspaper, then, before any person who may have a right to redeem such lands or lots from such tax sale, shall be permitted to redeem, he or she shall pay the officer or person who by law is authorized to receive such redemption money, the printer's fee for publishing such notice, and the expenses of making and filing the affidavit: *Provided*, That the fee for such publication, where the notice does not include more



than four tracts or lots, shall not exceed one dollar; and when the notice contains more than four tracts or lots, then the printer shall be allowed twenty cents for each additional tract, and five cents for each additional town lot contained in such notice.

(413.) SEC. XXVIII. In case of the death of any collector during the time the tax books are in his hands, and before the time specified in this act for making settlement, the clerk of the county court shall demand and take charge of the tax books, and shall appoint one or more competent persons to examine said tax books, and it shall be the duty of the persons so appointed, to ascertain the amount remaining uncollected, and make out a correct abstract of the same: *Provided*, That should there be but a small portion of the taxes collected at the time of the death of the collector, then the amount actually collected shall be ascertained, and the same books used in completing the collections.

(414.) SEC. XXIX. In case of a vacancy, as mentioned in the foregoing section, the board of supervisors may appoint a suitable person to complete the collections, who shall execute a bond, collect and pay over the taxes in the same manner, and his acts shall be as binding and effectual as the collector's would have been, had he completed the collections; and the collector so appointed may obtain judgment at any regular term of the court, and sell delinquent lands and lots in like manner as the collector would have been authorized to do had he completed such collections: *Provided*, That if the collector had advertised the delinquent land list before his death, it shall not be necessary for his successor, or the person appointed to complete the collections, to re-advertise, but he shall proceed to finish the collections in the same manner as the collector would have been authorized to do if he had lived.

(415.) SEC. XXX. All suits or applications for judgment, and order of sale for taxes on delinquent lands and town lots, shall be made at regular terms of the county court, and the sale shall be made at the time specified in the notice, whether the court remain in session or not. If for any cause the court shall not be holden at the term at which judgment is prayed, the cause shall stand continued; and it shall not be necessary to re-advertise the list or notice required by law to be advertised before judgment and sale, but at the next regular term thereafter, the court shall hear and determine the matter, and if judgment is rendered, the sale shall be made at the same time and in like manner as it would have been made if the suit had been commenced at that term.

(416.) SEC. XXXI. The printer publishing the list of delinquent lands and town lots, shall transmit by mail or other safe conveyance to the collector, four copies of the paper containing said list. Upon the receipt of said paper, and on demand being made, the collector shall pay to the printer the amount of the fees allowed by law for publishing said lists and notice; and it shall be his duty to file one copy of said paper in his office and deliver one copy to the clerk of the county court, one copy to the auditor of public accounts, and one copy to the State treasurer, who shall file and safely preserve them in their respective offices: *Provided*, That if said publication is not made in accordance with the requirements of the law, or the papers above mentioned are not furnished the collector before the first day of the term of the court at which judgment is prayed, the collector shall not pay said fees until they are collected by him

(417.) SEC. XXXII. If any collector shall refuse or neglect to pay the amount due the printer as required by this act, it shall be competent for the printer to collect the same in an action of debt against such collector.

(418.) SEC. XXXIII. The collector shall file the list of delinquent lands and town lots, which shall be made out in numerical order, and contain all the information necessary to be recorded, with the clerk of the county court, at least five days before the commencement of the term at which application for judgment is to be made, and said clerk shall receive and record the same in a book to be kept for that purpose; which said book shall be ruled and headed, as near as may be, in the following form:

*A List of Lands and Town Lots reported by ———, Collector of the Revenue for the year 18—, upon which he has been unable to collect the taxes due thereon, and now on this ——— day of ——— 18—, files this his petition for a judgment and order of sale against said Lands and Lots at the ——— term, 18—, of the County Court.*

Owners' Names.	Part of Section.	Section.	Township.	Range.	Acres.	Valuation.	State Tax.	County Tax.	Costs.	Total Amount due.

The clerk of the county court shall, before the day of sale, make a correct record of the lands and town lots against which judgment is rendered in any suit, for taxes due thereon, and which shall set forth the name of the owner, if known, the description of the property, and the amount due on each tract or lot, in the same order as said property may be set forth in the judgment-book, and shall attach thereto a correct copy of the order of the court, and his certificate of the truth of such record; which record, so attested, shall hereafter constitute the process on which all real property shall be sold for taxes, as well as the sales of such property. When any tract of land or town lot shall be sold, it shall be the duty of the clerk to enter on the record aforesaid the quantity sold and the name of the purchaser opposite such tract or lot, in the blank columns provided for that purpose, and when any such property shall be redeemed from sale, the clerk shall enter the name of the person redeeming, the date and amount of redemption, in the proper columns. Said book shall be so ruled that there shall be suitable blank columns for entering the quantity or portion of each tract or lot that may be sold, the name of the purchaser, and such other columns as may be deemed necessary.

(419.) SEC. XXXIV. On the first day of the term at which judgment on delinquent lands and town lots is prayed, it shall be the duty of the collector to report to the clerk a list of all the lands or town lots, as the case may be, upon which taxes have been paid, if any, from the filing of the list mentioned in the foregoing section up to that time; and the clerk shall note the fact opposite each tract upon which taxes have been paid. The collector,

assisted by the clerk, shall compare and correct said list, and shall make and subscribe an affidavit, which shall be as near as may be in the following form :

"I, \_\_\_\_\_, collector of the county of \_\_\_\_\_, do solemnly swear, (or affirm, as the case may be,) that the foregoing is a true and correct record of the delinquent lands and town lots within the county of \_\_\_\_\_, upon which I have been unable to collect the taxes as required by law for the year or years therein set forth; that said taxes now remain due and unpaid, as I verily believe."

Said affidavit shall be entered on the record at the bottom of the list, and signed by the collector; the oath may be administered by the judge, clerk, or any justice of the peace, who shall attest the same.

(420.) SEC. XXXV. The court shall examine said list, and if defense or objection be offered by any person interested in any of said lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be, and shall direct the clerk to make out and enter an order for the sale of such real property, which shall be substantially in the following form :

"WHEREAS, due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defense or show cause why judgment should not be entered against the said lands for taxes, interest and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts of land, or parts of tracts (as the case may be,) in favor of the State of Illinois, for the sum annexed to each tract or parcel of land, being the amount of taxes, interest and costs due severally thereon; and it is ordered by the court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes, interest and costs annexed to them severally, be sold as the law directs."

(421.) SEC. XXXVI. Said order shall be signed by the judge, and shall have the same effect as judgments and orders made by the circuit court. Persons aggrieved by any decisions of the county court in such cases, shall have the right of appeal to the circuit court, by giving bond and security, payable to the people of the State of Illinois, as required in cases of appeals.

(422.) SEC. XXXVII. The clerk of said court shall, within five days after any sale for taxes, make out and deliver to the collector a transcript of sales for taxes, which shall be written on foolscap paper, made up and stitched in book form, suitable for binding. Said collector shall deliver said transcript to the auditor at the time that he is required to make settlement for the State tax.

(423.) SEC. XXXVIII. Every tract of land or town lot offered at public sale for the taxes due thereon, and not sold for want of bidders, shall be and the same is hereby declared to be forfeited to the State of Illinois.

(424.) SEC. XXXIX. If any lands or town lots shall be forfeited to the State for taxes, it shall be the duty of the clerk of the county court to certify to the auditor of public accounts the assessed value thereof, and the amount of State tax charged thereon; and the auditor shall credit the collector with the amount of State tax due on said property, and the board of supervisors shall allow him credit for the printer's fees and county tax thereon.

(425.) SEC. XL. If any person shall desire to redeem any tract of land or town lot forfeited to the State, he shall apply to the clerk of the county court, who shall issue his order to the collector, directing him to receive from such person the amount due on said tract or lot, particularly describing the property and setting forth the amount due, including the printer's fee; and upon presentation of said order to the collector, he shall receive said amount and give the person duplicate receipts therefor, setting forth a

proper description of the property and the amount received; one of which shall be countersigned by the clerk, and when so countersigned shall be evidence of the redemption of the property therein described, but no such receipt shall be valid until it is countersigned by the clerk; the other receipt shall be filed by the clerk in his office, and said clerk shall cancel the sale of the property so redeemed on the books in his office, and charge the amount of the redemption money to the collector.

(426.) SEC. XLI. It shall be the duty of the clerk of the county court, annually, when he makes return of the amount of taxes levied, to report the amount due the State on such forfeited property to the auditor of public accounts, who shall charge the same to the collector: *Provided*, That if the collector who received said redemption money shall be succeeded in office, he shall pay the amount in his hands over to his successor, who shall pay said amount into the State treasury when he settles for the taxes of the current year.

(427.) SEC. XLII. The amount due on lands and lots, and remaining unpaid on the first day of November, shall be added to the tax of the current year, and the amount thereof shall be reported against the collector, with the amount of the assessment for said year; said collector shall collect and pay over the said amount in like manner as other taxes, and he is hereby authorized to advertise and sell said property in the same manner as if said property had been forfeited to the State. Said additions and sales shall be continued from year to year until the taxes on said property are paid, by sale or otherwise: *Provided*, That at the regular sale in the year 1855, and every five years thereafter, all the property previously forfeited and remaining unredeemed, shall be sold to the highest bidder, but not for a greater sum than is due thereon, including costs, &c., and the former sales of such property as will not sell shall be canceled: *Provided*, That if any person shall offer to pay the taxes, interest and costs due on forfeited property for a less quantity than the whole tract or lot, then such property shall be sold to the person offering to pay the amount due thereon, for the least quantity or part thereof.

(428.) SEC. XLIII. Real property sold under the provisions of this act may be redeemed at any time before the expiration of two years from the date of sale, by the payment in specie, to the clerk of the county court of the proper county, of double the amount for which the same was sold, and all taxes accruing after such sale, with ten per cent. interest thereon from the day of sale, unless such subsequent tax has been paid by the person for whose benefit the redemption is made; which fact may be shown by the collector's receipt: *Provided*, That if the real property of any minor heir, *feme covert* or lunatic, be sold for taxes, the same may be redeemed at any time within one year after such disability be removed, upon the terms specified in this section; which redemption may be made by their guardians or legal representatives.

(429.) SEC. XLIV. The securities on any bond given in pursuance of this act, or either of them, may at any time after the execution of said bond, if they, or either of them, have good reason to believe that the officer in said bond is about to fail to comply with the conditions thereof, file with the clerk of the county court, a notice in writing, verified by the person asking to be discharged, setting forth the facts in the case, and asking to be released

from any further liability on said bond; whereupon the clerk with whom such notice shall be filed, shall notify the said officer to give additional security, equal to the security about to be released, to be approved by the board of supervisors, which notice may be served by the said board or clerk, or by any person appointed by them, or either of them. If the officer so notified shall not appear and give additional security within two days from the time he may be so notified, the board of supervisors may remove him from office; and in all such cases, said board shall appoint some suitable person to fill the vacancy occasioned by such removal, who shall execute bond, qualify and perform the duties required of such officer: *Provided*, That if the securities on any collector's bond, or either of them, shall be satisfied that such collector is making improper use of the funds collected by him, or has absconded, or is about to abscond, from this State, whereby said securities may become liable to pay any sum or sums of money, it shall be lawful for said security to sue out a writ of attachment against the goods and chattels of such collector, in like manner as he would be authorized to do if said collector was personally indebted to such security; and the money collected on any such attachment shall be paid into the treasury by the officer collecting the same, in like manner as if paid over by the collector.

(430.) SEC. XLV. If any real property shall be double assessed, or assessed before it become taxable, and the taxes so erroneously assessed shall have been paid, the board of supervisors, on application of the person paying the same, or his agent, and being satisfied of the facts in the case, shall cause said taxes to be refunded *pro rata* by the State and county; and if any collector shall receive the taxes properly due on any real property, and shall afterwards sell such property for said taxes, he shall refund to the purchaser thereof, if application be made within two years from the date of said sale, double the amount of purchase money. Any collector neglecting or refusing to pay as required by this section, shall be liable to the county in an action of debt, in any court having jurisdiction of the amount of said debt: *Provided*, That the county and the State shall refund in case of erroneous sales heretofore made, as provided for by the laws in force at the time of such sales.

(431.) SEC. XLVI. If any collector shall have paid, or may hereafter pay into the State treasury, any greater sum or sums of money than is, or may be, legally and justly due from such collector, after deducting abatements and commissions, the auditor shall issue his warrant for the amount so overpaid, which shall be paid out of the fund or funds so overpaid, on the warrant of the auditor.

(432.) SEC. XLVII. The board of supervisors shall have power to levy a tax in their respective counties for county purposes, but shall, in no case, exceed the amount of four mills on each dollar's worth of taxable property, unless specially authorized by law; and said county tax shall be levied at the September meeting of said board, or as soon thereafter as practicable, and collected with the State revenue. The same lien created to secure the State tax, and the provisions made for the collection thereof, shall also exist and apply to the county revenue.

(433.) SEC. XLVIII. Suits commenced by the auditor, as provided for in this act, shall not abate for the want of service on one or more of the defendants, but judgment may be rendered against such of said defendants as

may have been legally notified: *Provided*, That suits may be prosecuted against the defendants not included in said judgment, at any subsequent term of said court: *Provided further*, That the provisions of this section shall not be so construed as to change the conditions of any bond executed prior to the passage of this act on suits in favor of the State, and against collectors or other persons indebted to the State. The State shall pay like fees as are or may be allowed by law in suits between individuals, and in all cases when the State is plaintiff, she shall advance and pay such fees, in like manner as individuals are required to advance and pay fees. And when the State becomes the purchaser of real property sold on execution for any debt due the said State, the officer selling such real estate shall be entitled to like commissions as he would have been entitled to had such property been purchased by individuals. Said fees and commissions to be paid on the warrant of the auditor, out of any money in the treasury not otherwise appropriated; and when such fees are collected, they shall be paid into the State treasury. So much of this section as relates to fees, shall apply to suits heretofore prosecuted, as well as to suits that may hereafter be commenced and prosecuted.

(434.) SEC. XLIX. The assessment shall be a lien on the personal property of all persons owing taxes from and after the time the assessment books are received by the collector, for the State and county tax due thereon, and no sale or transfer of such property shall affect the claim of the State or county, but the said property may be seized by the collector wherever found, and removed if necessary, and sold to discharge the taxes of the person owing the same at the time of such assessment, together with the costs and charges of collection.

(435.) SEC. L. Whenever the taxes on the same property shall have been paid more than once, for the same year, by different claimants, the collector shall make a return to the clerk of the county court of all such surplus taxes so received by him, together with the names of the several claimants thus paying; and the clerk shall make a record of all such cases, and transmit a copy thereof to the auditor of public accounts, who shall charge such collector with the portion of such surplus taxes belonging to the State; but such surplus tax shall in no case be refunded.

(436.) SEC. LI. Whenever any person shall pay the taxes charged against him, the collector shall enter such payment in his list, and give the person paying the same a receipt, specifying the name of the person for whom paid, the amount paid, what year paid for, and the property on which the same was assessed, according to its description on the assessment list.

(437.) SEC. LII. The collector shall attend at the court-house in his county, on the day specified in the notice for the sale of real estate for taxes, and then and there, between the hours of ten o'clock in the forenoon and six o'clock in the afternoon, proceed to offer for sale, separately, each tract of land or town lot in the said list on which the taxes and costs have not been paid.

(438.) SEC. LIII. The person at such sale offering to pay the taxes and costs charged on each tract or lot, for the least quantity thereof, shall be the purchaser of such quantity, which shall be taken from the east side of such tract or lot.

(439.) SEC. LIV. The collector shall continue such sale from day to day, until all the tracts of land or town lots contained in the delinquent list, on which taxes and costs remain unpaid, shall be sold or offered for sale.

(440.) SEC. LV. The person purchasing any tract of land or town lot, or any part thereof, shall forthwith pay to the collector the amount of taxes and costs charged on said tract or lot, and on failure so to do, the said land or lot shall be again offered for sale in the same manner as if no such sale had been made; and in no case shall the sale be closed until payment is made.

(441.) SEC. LVI. The collector shall obtain a copy of the advertisement of the delinquent lands and lots, together with a certificate of the due publication thereof, from the printer or publisher of the newspaper in which the same shall have been published, and shall file the same with the clerk of the county court, on or before the first day of the term at which judgment is prayed.

(442.) SEC. LVII. In all advertisements for the sale of lands for taxes, and in entries required to be made by the clerk of the court, or other officer, letters and figures may be used, as they have heretofore been used, to denote townships, ranges, sections, parts of sections, the year for which the taxes were due, and the amount of taxes, interest and costs.

(443.) SEC. LVIII. The clerk shall make out and deliver to the purchaser of any lands or lots sold for the payment of taxes as aforesaid, a certificate of purchase, to be countersigned by the collector, describing the land or the lot sold as the same was described in the delinquent list, the amount of taxes and costs for which the same was sold, and that payment has been made therefor. If any person shall become the purchaser of more than one tract of land or lot, he may have the whole included in one certificate.

(444.) SEC. LIX. Such certificate of purchase shall be assignable by indorsement, and an assignment thereof shall vest in the assignee or his legal representatives, all the right and title of the original purchaser.

(445.) SEC. LX. No sale of real estate for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner, if the said real estate be in other respects sufficiently described, and the taxes thereon were due and unpaid at the time of such sale.

(446.) SEC. LXI. The books and records belonging to the office of the clerk of the county court, or copies thereof, certified by said clerk, shall be deemed sufficient evidence to prove the sale of any land for taxes, the redemption of the same, or payment of taxes thereon.

(447.) SEC. LXII. Whenever it shall be made to appear to the satisfaction of the clerk of the county court, before the execution of a deed for lands or lots sold for taxes, or if the deed be returned by the purchaser, that any tract or lot was sold which was not subject to be taxed, or upon which taxes had been paid previous to the sale, he shall make an entry opposite to such tracts or lots on the list of sales, that the same was erroneously sold, and such entry shall be evidence of the fact therein stated.

(448.) SEC. LXIII. The receipt of the redemption money of any tract of land or lot, by any purchaser, shall operate as a release of all claim to such tract or lot, under or by virtue of the purchase.

(449.) SEC. LXIV. If any purchaser of lands sold for taxes shall suffer the same to be again sold for taxes before the expiration of two years from the date of his or her purchase, such purchaser shall not be entitled to a deed for the land until the expiration of two years from the date of the second sale; during which time the land shall be subject to redemption upon the terms and conditions prescribed in this act, but the person redeeming shall only be required to pay, for the use of such first purchaser, the amount paid by him, and double the amount paid by the second purchaser.

(450.) SEC. LXV. If any collector, by himself or deputy, shall fail to attend any sale of lands advertised according to the provisions of this act, and make sale thereof as required by law, he shall be liable to pay into the State and county treasury the amount of taxes and costs due upon the lands and lots so advertised, in the same manner as if they had been sold: *Provided*, That he may afterwards advertise and sell such delinquent property to reimburse himself for the amount advanced by him; but at no such sale shall there be any property forfeited to the State.

(451.) SEC. LXVI. No collector or treasurer shall, either directly or indirectly, be permitted to take, buy, shave or receive, by himself or agent, any auditor's warrant or warrants, or any county order or jury certificate, at less than the full amount due thereon.

(452.) SEC. LXVII. On the first day of January next after taking the census in the State, or as soon thereafter as the returns of said census may be made to the office of the secretary of State, it shall be the duty of said secretary to make out and deliver to the auditor, a correct statement of the number of white children in each county in this State, twenty years of age and under; the truth of said certificate shall be certified to by said secretary, and thereupon, under the supervision of the commissioners of the school fund, the auditor shall make a dividend to each county, of the interest due upon the school, college and seminary fund, in proportion to the number of persons in each, of the age aforesaid; and dividends shall be made according to the proportion ascertained to be due to each county annually thereafter, until another census shall have been taken, and then apportionments shall be made and continued as aforesaid, according to the last census.

(453.) SEC. LXVIII. The auditor shall, within five days after ascertaining the amount due, as required in the foregoing section, make out and forward by mail to the school commissioner of each county, an order on the collector for the amount due said county: *Provided*, That if the amount of interest due to any county shall exceed the amount of revenue, State tax, due from such county, then the auditor shall issue an order as aforesaid for the amount of revenue that he believes, from the returns of the assessment for that year, will be collected, and shall issue and forward with the order a warrant on the treasurer for the balance of interest that may be due to such county, which shall be paid out of any moneys not otherwise appropriated.

(454.) SEC. LXIX. On or before the first day of April, annually, or so soon thereafter as the school commissioner shall present the order of the auditor, the collector shall pay to said commissioner the amount due thereon: *Provided*, That if the said collector has not collected a sufficient amount of State revenue to pay said order, and shall make oath of that fact, then he shall pay the amount that he has collected, and shall pay the remainder on or before the fifteenth day of May next thereafter; but if any collector shall

refuse to pay the interest on the school fund as required by this section, and shall refuse to make oath as aforesaid, it shall be competent for the commissioner to proceed against such collector and his securities, in an action of debt in the county court, which court is hereby vested with full power and authority to hear and determine all such suits, render judgment and issue execution. Said collector shall be liable to pay the full amount stated in the order, notwithstanding he may not have collected that amount; and if any collector shall pay a portion of the amount due as aforesaid, and shall fail to pay the remainder as required by this section, the commissioner shall proceed against him as above provided for.

(455.) SEC. LXX. Upon ascertaining the amount due to the State from any collector, or other person, the auditor shall give such person a statement of the amount to be paid, and upon the presentation of such statement to the treasurer, and the payment of the sum stated to be due, the treasurer shall give duplicate receipts therefor, one of which shall be filed in the auditor's office and entered in a book to be kept for that purpose, and the other shall be countersigned by the auditor and delivered to the person making the payment; and no payment shall be considered as having been made until the treasurer's receipt shall be countersigned by the auditor as aforesaid. When the list of delinquent lands is returned by the auditor for sale, he shall certify to the clerk the amount of the county's proportion of the tax paid into the State treasury, and the amount so certified shall be paid into the county treasury, out of the tax due from the collector to the State.

(456.) SEC. LXXI. The auditor of public accounts shall, as soon as practicable after the passage of this act, prepare and transmit to the several county clerks all such forms and instructions as he shall deem necessary to carry into effect its provisions. Said auditor shall cause to be printed, with the forms and instructions required by this section, a true and correct copy of this act, and shall forward a sufficient number thereof, for the use of the several county officers, to the clerk of the county court of each county, who shall deliver the same to the proper officers. The expenses of the printing required by this section, shall be paid for as other printing ordered by this General Assembly is paid for.

(457.) SEC. LXXII. There shall be allowed and paid for services rendered in pursuance of this act, the following fees and compensation: To clerks of county courts, for making lists of delinquent lands for the auditor's office, three cents for each tract described in said list, to be paid for out of the State treasury, which shall be in full for comparing and correcting the collector's returns of said delinquent lands to his office, as well as for making the list aforesaid, and comparing and certifying to the list for the use of the collector. For making record of delinquent lands and town lots for judgment, including the order of court, three cents for each tract, and one cent for each town lot. For making transcript of judgment for sale, three cents for each tract, and one cent for each town lot. For assisting the collector in selling lands and lots, twenty-five cents for each tract and five cents for each town lot, for which a certificate is given, to be charged and collected as costs. For making transcript of taxable real property for the assessor, two cents for each tract of land, and one-half cent for each town lot, to be paid out of the State treasury; for comparing the assessor's return with

the original list of real property, extending the tax on each tract and lot, and adding up the aggregate amount of tax due thereon, two cents for each tract or sub-division, and one-half cent for each town lot; and for making copy of the assessment list for the collector, one cent for each tract and one-half cent for each town lot. For entering list of lands, furnished by the auditor, in the tract books, one cent for each tract. The same fees shall be allowed for computing the tax on each person's personal property, and for copying the same, as is allowed on town lots; all of which fees shall be paid out of the county treasury. The collector shall be allowed for making list of delinquent lands to be filed with the clerk, and adding up the amount of tax thereon, three cents for each tract, to be paid out of the State treasury. For selling lands and town lots, ten cents for each tract and three cents for each town lot sold, to be charged and collected as costs; but no costs except the printer's fees shall be charged or collected on any land or town lots forfeited to the State. Collectors shall be allowed a commission on all moneys collected, of five per cent. on the first eight thousand dollars, and three per cent. on all additional sums collected by them, to be paid by the State, and county in proportion to the amount of State and county tax collected; and the auditor shall allow said collector in his settlement, in addition to the commissions aforesaid, two dollars for every twenty miles necessary travel, in going to and returning from the seat of government, for the purpose of paying over the State tax. County treasurers shall be allowed a commission of one per cent. on all moneys, county orders and jury certificates received by them for county purposes, and one per cent. on all moneys paid out by them, but shall not be allowed any compensation for paying moneys over to a successor.

(458.) SEC. LXXIII. If any officer shall fail or neglect to perform any of the duties required of him by this act, upon being required so to do by any person interested in the matter, he shall be liable to a fine of not less than ten dollars, nor more than one hundred dollars, to be recovered in an action of debt in the circuit court of the proper county, and may be removed from office, if, in the opinion of the court before whom such suit may be tried, the circumstances require such removal; and any officer who shall knowingly violate any of the provisions of this act, shall be liable to a fine of not less than ten dollars nor more than one thousand dollars, to be recovered in an action of debt in any court having jurisdiction of the amount, and may be removed from office at the discretion of the court.

(459.) SEC. LXXIV. The rate of taxation for State purposes for the year A. D. 1853, and forever thereafter, until otherwise provided by law, shall be two mills on every dollar's worth of taxable property, for the payment of the State debt, one and one-half mills on every dollar's worth of taxable property for the payment of the interest on the State debt, and one mill on every dollar's worth of taxable property, for defraying the expenses of the government.

(460.) SEC. LXXV. This act shall apply to and be in force in the several counties adopting the act to provide for township organization, and shall be in force from and after its passage.



An Act regulating the Collection of the Revenue.

[Approved Feb. 12, 1853. Laws, 1853, p. 99.]

(461.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the county revenue shall be collected in gold and silver coin, county orders and jury certificates, and in no other currency; the revenue for State purposes shall be collected in gold and silver coin, and auditor's warrants, and in no other currency; and State taxes, levied for any special purpose, other than to defray the ordinary expenses of the State government, shall be collected in gold and silver coin, and in no other currency.

(462.) SEC. II. The sheriff of each county shall be the collector of taxes, and his refusal to qualify and act as such, shall vacate his office of sheriff, which shall be filled as in other cases of vacancy.

(463.) SEC. III. Said collector shall, at the December term of the county court, annually, and before he enters upon the duties of his office as sheriff, execute a bond, in addition to his bond as sheriff, in a penalty of at least double the amount of the taxes to be collected for that year, with two or more securities, who shall be residents of the said county, and owners of real estate equal in value to the amount specified in the bond; which amount shall be determined, and which bond shall be approved by the county court, and shall be witnessed by at least one witness who can write his name, and be substantially in the following form, to wit:

"KNOW ALL MEN BY THESE PRESENTS, That we, A. B., collector, 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, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

The condition of the foregoing bond is such, that if the above bound A. B. shall perform all the duties required to be performed by him as collector of the taxes for the year 18\_\_\_\_, 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 or to the State, and appertaining to his said office, then the foregoing bond to be void, otherwise to remain in full force.

Signed, sealed and delivered in presence of me, G. H." }

A. B.	[L. s.]
C. D.	[L. s.]
E. F.	[L. s.]

He shall also take and subscribe an oath, to be indorsed on the back of the bond, before some person authorized to administer oaths, that he will faithfully, diligently and impartially, to the best of his skill, judgment and ability, perform all the duties required of him by law, as such collector.

(464.) SEC. IV. Bonds given in pursuance of this act, shall not be considered void, nor shall any security be released from any liability thereon, in consequence of any informality in the assessment, or in making out the assessment lists, nor of any change or alteration in the law made by the General Assembly, although the same may be made after the execution of said bond.

(465.) SEC. V. The collector's bond shall be approved by the county court, and shall be correctly copied and entered on the records of said court, and forthwith mailed to the auditor of public accounts, with the certificate of the clerk, under the seal of his office, showing that said bond has been duly approved and recorded. Said bond, when approved and recorded, shall be a lien against the real estate of such collector, until he shall have complied with the conditions thereof.

(466.) SEC. VI. On the first Monday of December, annually, or as soon thereafter as the collector shall be qualified, the clerk shall deliver the tax lists or books to said collector, and shall take from him duplicate receipts, setting forth the amount of State, county and special tax, charged for said year, one of which shall be forwarded to and filed in the office of the county treasurer, and the other in the office of the county clerk.

(467.) SEC. VII. The clerk shall compute the amount of taxes due on each tract or parcel of land, on each town lot or block, and on each person's personal property, placing the amount of such tax in the proper columns opposite the value thereof, in all cases rejecting the fractions of cents, and shall add up the figures showing the amount of such tax, in the proper columns, and the aggregate amount in each column shall be noted on each page. Said clerk shall test the accuracy of such additions, by computing the amount of tax on the aggregate value of property on each page, that he may be certain that the tax has been correctly extended and added.

(468.) SEC. VIII. In all cases when any real property has heretofore been or may hereafter be forfeited to the State for taxes, it shall be the duty of the clerk, when he is making up the amount of tax due on such real property for the current year, to add the amount of back tax and fees remaining due on such real property, with six per cent. interest thereon, to the tax of the current year, and the aggregate amount so added together, shall be collected in like manner as the tax on other real property for that year may be collected.

(469.) SEC. IX. The clerk shall annually make out for the use of the collector, correct lists of the property assessed; which lists shall set forth, in alphabetical order, the names of the persons owing tax on personal property in each collector's district, the aggregate value of such property assessed to each person, and the amount of tax due thereon, and such other facts as may be required by the forms and instructions provided for by this act; he shall make out the abstracts of real property in numerical order, which shall show the name of the person to whom each tract or lot is assessed, the value of each tract or lot, and the amount of taxes thereon; which list shall be made out in strict conformity with the forms and instructions furnished by the auditor, as required by this act.

(470.) SEC. X. When the books or lists for the collector are completed, the clerk shall make out a complete abstract, showing the aggregate number and value of each kind of personal property enumerated in the assessment list; the value of unenumerated articles; the value of goods and merchandise; the value of property listed by bankers, brokers and stock jobbers; the value of property listed by manufacturers; the value of moneys and credits; the value of moneys invested in bonds, stocks, joint stock companies, &c.; the value of property listed by banks; the value of lands, and the value of town and city lots; the amount of State tax due thereon, and the rate of taxation for county and other special purposes. The correctness of said abstract shall be certified to by the clerk, with the seal of said court attached, and forwarded to the auditor's office by mail. A true copy of said abstract shall be entered on the records of said court. If any clerk shall knowingly make a false or incorrect abstract of the value of taxable property, he shall be deemed guilty of perjury, and punished accordingly.

(471.) SEC. XI. The collector of each county, upon receiving the assess-



ment list from the clerk of the county court, and giving a receipt for the same, shall proceed to collect the taxes charged upon said list, by causing a printed notice to be posted up in three different places in each election precinct, and in three different places at the county seat; one of which shall be the door of the court-house; and shall cause the same to be inserted in any newspaper published in said county, if any be published therein, for the space of three successive weeks, stating in such notice upon what day or successive days the collector will, by himself or agent, attend in such precincts, at the place of holding elections, or at some other equally public and convenient place named therein, for the purpose of receiving taxes; and the said collector or his agent shall attend for the purpose aforesaid, on the day and at the place named in such notice, and shall also attend, by himself or agent, at his office at the county seat, during the month of February, for the same purpose. The said notice shall be considered a demand for the taxes, and shall be a lien on the property of the person owing such taxes; which notice shall be posted up and advertised, as aforesaid, at least three weeks prior to the time specified for meeting in the precinct.

(472.) SEC. XII. If any person shall fail to pay the taxes charged against him, on or before the first day of March next, after the publication of said notices, the collector may distrain his personal property, and proceed to sell the same as prescribed by this act; *Provided*, That if there be danger of loss by the removal or insolvency of any person owing taxes, the collector may distrain and sell property at any time after receiving the tax books.

(473.) SEC. XIII. If any person owing taxes, and being a resident, shall fail or neglect to pay his taxes in the precinct at the time appointed by the collector, or at the office of said collector, before the first day of March, annually, he shall pay to the said collector a fee of fifty cents, in addition to the amount of his tax; and if any such person shall fail or neglect to pay the amount of his taxes and the fee aforesaid, the collector may levy upon, remove and sell a sufficient amount of the personal property of said person to pay the taxes and costs of sale, and all legal and proper charges for removing and taking care of the said property; and if said property shall sell for more than the amount of taxes and costs, the excess shall be paid, on demand, to the owner of the property: *Provided*, That the fee of fifty cents mentioned in this section, shall not be charged in any case until after the expiration of one month after the meeting in the precinct.

(474.) SEC. XIV. In levying on and selling property for taxes, the collector shall be governed by the same rules, and be entitled to the same fees, as constables are for like services on executions; but in no case shall any collector charge mileage unless he is compelled to distrain property.

(475.) SEC. XV. On or before the first day of June, annually, the collector shall make out and file with the clerk of the county court, a statement in writing, setting forth the name of the person or persons charged with taxes on personal property, which he has been unable to collect, by reason of the insolvency or removal of such person, or in consequence of an error or errors in the assessment, or in the list furnished him; the cause of error, whether insolvent or removed, and the value of the property assessed, and the amount of tax due by said person; which list shall be made out in the form and according to the instructions that may be furnished, and the truth thereof shall be verified by the oath of such collector. Said list shall

be laid before the county court at their June term, and if approved by said court, they shall make an order allowing said collector abatement therefor, and the clerk shall certify the value of the property upon which the taxes are so abated, and the amount of State tax charged thereon, to the auditor of public accounts, who shall allow the collector credit for the amount so certified: *Provided*, That if the auditor shall have reason to believe that the amount stated in the said certificate is not correct, or that the allowance was illegally made, he shall return the same for correction. If there be no court held at the June term, then the clerk shall certify the value of property and the amount of the State tax charged on the list of abatements filed by the collector, to the auditor, who shall allow the collector credit for the same, subject to the further action of the court, and said court shall examine and act upon the said list at their first term thereafter, and their action shall be certified by the clerk to the auditor, who shall adjust the account of the collector, as provided for in this act.

(476.) SEC. XVI. The county courts of the several counties in this State shall have original jurisdiction of suits for taxes due on real property whether such courts be sitting for the transaction of county or probate business.

(477.) SEC. XVII. Personal property shall be liable for taxes levied on real property, and real property shall be liable for taxes levied on personal property; but the tax on personal property shall not be charged against real property, except in cases of removals, or where said tax cannot be made out of the personal property; but the collector may in all cases sell personal property for taxes due on real property.

(478.) SEC. XVIII. If the taxes on any town or city lot or lots shall remain unpaid on the third Monday in April next after said taxes become due, the collector shall advertise, obtain judgment and sell such lots in like manner as is provided for by this act for advertising, obtaining judgment and selling delinquent lands. And if any such lots be forfeited to the State, as is provided for in the case of delinquent lands, the clerk shall certify to the auditor the amount of State tax charged on the lots so forfeited, and the auditor shall allow the collector credit therefor, and charge the same to the collector for the following year. The county court shall allow the collector credit for the county tax and printer's fees on the lots forfeited to the State. Town and city lots shall be sold annually, in the month of May next after the taxes become due, or as soon thereafter as practicable.

(479.) SEC. XIX. If the taxes on any tract or parcel of land, other than town or city lots, shall remain unpaid on the first day of May next after such taxes become due, said collector shall make out and file with the clerk of the county court a true and correct list of said lands, setting forth the name of the owner, or person in whose name the said property is taxed, a description of the property, the value of each tract or parcel, and the amount of taxes charged thereon, together with the aggregate value and amount of tax due on such list; and he shall attach to and file with said list an affidavit, which shall be in the following form, to wit:

"I, A. B., collector (or deputy collector, as the case may be,) in and for the county of \_\_\_\_\_, do solemnly swear that the list to which this affidavit is attached, is true and correct, and that the taxes thereon, as set forth in said list, are unpaid, and that I have used due diligence to collect said taxes, and that the aggregate amount therein stated remains due and unpaid, as I verily believe."

Said list shall be examined by the county clerk, and all errors therein corrected; and the collector shall be allowed credit in his settlement for the amount of county tax, including road, school, and other special county tax due thereon. The clerk of the county court shall, within ten days after the filing of said list, make out a true and correct copy thereof, in manner and form as may be required by the auditor of public accounts, and shall forward the same to said auditor, to be filed in his office.

(480.) SEC. XX. If there be no court held at the proper time for settling and adjusting the accounts of the collector, it shall be the duty of the collector to file the lists with the clerk of the county court, who shall examine said lists and correct the same, in like manner as the county court is required to do. He shall make an accurate computation of the value of the property and the amount of the delinquent tax returned, for which the collector should have credit, and he shall forward the lists and statements required by this act within ten days from the time fixed by law for the commencement of such term of the said court; and in all such cases the county court shall, at their first term thereafter, examine such settlement, and, if they find it to be correct, they shall enter an order to that effect; but if they find that any omission or error has been made, they shall cause the same to be corrected, and a correct statement of the facts in the case forwarded to the auditor, who shall correct and adjust the accounts accordingly: *Provided*, That the collector shall make out, for his own use, correct copies of the list of delinquent lands and delinquent town lots filed by him with the clerk, and shall return the tax books to the clerk at the time of making settlement, to be filed and preserved in the office of said clerk. Said copies or lists shall be carefully compared and corrected, in like manner as the lists made out for the auditor's office, the correctness of which shall be certified to by the clerk; which list, when certified to as aforesaid, shall be a sufficient authority for the collector to collect the taxes due thereon: *Provided*, That the collector shall file with the clerk, at the time of his settlement, a statement under oath, showing the amount of taxes collected by him on the delinquent land list during the month of May, and the clerk shall report the amount of State taxes so collected to the auditor, with the statement of settlement.

(481.) SEC. XXI. The clerk of the county court shall make out and deliver to the collector, on or before the fifteenth day of June, annually, the statements, certificates and lists appertaining to the settlement of the accounts of such collector; which statement, certificates and lists shall be made out in proper form, under seal of said court, securely enveloped and sealed. The collector shall deliver the package received from the clerk as aforesaid, at the office of the auditor, and make a final settlement of his accounts, and pay the amount due the State into the State treasury, on or before the first day of June next after receiving the tax books. At the time of making the settlement, the clerk shall deliver to the collector a memorandum showing the net amount collected, as per said settlement; and if any clerk shall neglect or refuse to make out and deliver the statements, certificates and lists as required by this act, on demand of the collector, he shall be liable for all damages sustained by such collector, or his securities, by reason of such neglect or refusal.

(482.) SEC. XXII. If any collector shall refuse, fail or neglect to

make settlement and pay the full amount due from him to the State into the State treasury, as is or may hereafter be required by law, it shall be the duty of the auditor of public accounts, and he is hereby authorized and required, to issue a warrant, under his hand and seal of office, directed to the coroner of the proper county, (if there be no coroner, then to some suitable person, appointed by said auditor as especial agent for that purpose,) commanding him to levy and collect such sums as shall remain due from such collector, and pay the same into the State treasury, as required by law. Said auditor shall attach to every such warrant a correct statement of the account of such collector, as charged on the books in his said office. The warrant aforesaid shall have the same force and effect as executions issued by the circuit courts.

(483.) SEC. XXIII. The coroner or agent to whom such warrant shall be directed, shall immediately cause the same to be executed, and the money collected out of the goods and chattels, lands and tenements of such collector, and make return of such warrant to the said auditor, and pay the amount collected, after deducting his commissions and fees, into the State treasury, within forty days from the issuing of such warrant: *Provided*, That if any warrant issued by the auditor shall be lost or destroyed, the auditor shall issue a duplicate warrant, bearing date at the time of issuing the same. The coroner or agent collecting money on any warrant issued as aforesaid, shall be allowed the same mileage that would have been allowed to the collector, had he paid over the funds as is required by law, and such fees as is allowed by law to sheriffs for serving executions, advertising property, &c.; which fees shall be charged and collected in like manner as fees on executions are charged and collected.

(484.) SEC. XXIV. The coroner or agent to whom any warrant shall be issued in pursuance of this act, shall indorse thereon the facts in the case, and if it shall appear that the whole or any part of the sum due remains unpaid, and that the collector has no goods and chattels, land or tenements in his county, out of which to make the amount remaining due, or any part thereof, the auditor shall cause suit to be commenced on the bond of such collector, at the first term of the supreme court held at the seat of government, or of the Sangamon county circuit court, thereafter.

(485.) SEC. XXV. In all cases where special agents are appointed, as provided for in the foregoing sections, the auditor shall require such agents to file, with the clerk of the county court of the proper county, a bond, with one or more securities, to be approved by the county judge, in a penal sum of at least double the amount to be collected, and made payable to the people of the State of Illinois, and conditioned for the faithful performance of the duties required of him by this act. And if any coroner shall neglect or refuse to comply with the requirements of this act, he shall be liable, on his official bond, for all damages caused by such refusal or neglect; and if any coroner shall knowingly make a false return on any warrant issued by the auditor as aforesaid, he shall be deemed guilty of perjury, and shall be punished accordingly. Agents appointed to execute any warrant issued by the auditor as provided for by this act, who may file bond and accept such appointment, shall be liable to like penalties as the coroner. And if any coroner or agent shall collect moneys due the State, and fail or neglect to pay the same into the State treasury as

required by law, he shall pay, for the use of the State, ten per cent. per month damages, from the time he should have paid over said money, until paid: *Provided*, That in case of sickness, or other reasonable excuse, to be verified by the oath of the person so failing to pay, and the payment being made within a reasonable time, the auditor may remit such damages. But if such coroner or agent shall apply or use any funds collected by him and belonging to the State for his own benefit, or the benefit of any other person, or in any other way or manner than is provided for by law, such coroner or agent shall be deemed guilty of embezzlement, and on conviction thereof shall be punished accordingly.

(486.) SEC. XXVI. The auditor of public accounts shall file the list of delinquent lands upon which the taxes remain due and unpaid, and shall add to the amount of tax charged on each tract, ten cents, to be collected and paid into the State treasury. Any person desiring to pay the taxes due on said lands, may pay the same into the State treasury at any time before the first day of August next, after the said taxes become due. If the taxes on any such lands shall remain due and unpaid after the first day of August aforesaid, the auditor shall add fifty per cent. on the amount of taxes due on each tract to said taxes, and the aggregate thereof shall be charged and collected. Any person may redeem said lands by paying the amount charged as aforesaid into the State treasury, at any time before the first day of November thereafter.

(487.) SEC. XXVII. On the first day of November, annually, or as soon thereafter as practicable, the auditor of public accounts shall make out and transmit by mail to the clerk of the county court, to be filed in the office of said clerk, a correct list of all the lands which had been returned to him as delinquent, and upon which the taxes remained unpaid on the first day of November.

(488.) SEC. XXVIII. The collector shall add fifty per cent., on the taxes remaining due on the first day of June, to the tax charged on each tract of land, and the aggregate thereof shall be collected and paid over to the State and county, according to the rate of taxation for that year. Any person desiring to redeem or pay the taxes on such lands in the county after the first day of June, may do so by paying the amount, charged as above set forth, to the collector, at any time before the first day of December thereafter. When said collector shall receive the tax on any tract of land or town lot, subsequent to the first day of May aforesaid, he shall set forth the amount so received opposite the tract or lot so redeemed, in a column provided for that purpose, and shall note the date of such payment opposite such tract or lot on the list of delinquent lands and lots aforesaid, and shall file said lists with the clerk, on or before the first day of December aforesaid.

(489.) SEC. XXIX. The clerk shall carefully compare the delinquent list returned by the auditor with the list returned by the collector, and if there be any lands or lots upon which the taxes have not been paid, he shall add the amount due thereon to the tax due on such lands and lots for the next succeeding year, and shall make out a true and correct list of such lands and lots, which shall be delivered to the collector with the tax books of the current year, or as soon thereafter as practicable; but in all cases such lists shall be delivered prior to the time of meeting in the precinct, and the said collector shall place said lists in some conspicuous

place at the house where he may be collecting, during the time he may remain at that precinct, so that each person may examine the same, and shall collect the taxes thereon by sale or otherwise.

(490.) SEC. XXX. When any person, owning lands in any county in this State, shall fail to pay the taxes assessed thereon, as provided for in the foregoing sections, on or before the first day of March next after the list is returned by the auditor, it shall be the duty of the collector to publish an advertisement in some newspaper published in his county, if any such there be, and if there be no such paper printed in his county, then in the nearest newspaper in this State, which advertisement shall be once published at least four weeks previous to the term of the county court at which judgment is prayed; and said advertisement shall contain a list of the delinquent lands upon which the taxes remain due and unpaid, the names of owners, if known, the amount due thereon, and the year or years for which the same are due; and shall give notice that he will apply to the county court, at the — term thereof, for judgment against said lands for said taxes, interest and costs, and for an order to sell said lands for the satisfaction thereof; and shall also give notice that, on the first Monday next succeeding the day fixed by law for the commencement of the said term of the said county court, all the lands for sale of which an order shall be made, will be exposed to public sale at the place of holding court in said county, for the amount of taxes, interest and costs due thereon; and the advertisement published according to the provisions of this section, shall be deemed and taken to be sufficient and legal notice both of the intended application of the collector to the county court for judgment, and also of the sale of lands under the order of said court: *Provided*, That if the publisher of such paper shall be unable or unwilling to publish said list and notice accurately and properly, the collector shall select some other newspaper, having due regard to the circulation of such paper.

(491.) SEC. XXXI. Hereafter, no purchaser of any land or town lot at any sale of lands or town lots for taxes, due either to the State or any county or incorporated town or city within the same, or at any sale for taxes or levies authorized by the laws of this State, shall be entitled to a deed for the lands or town lots so purchased, until he or she shall have complied with the following conditions, to wit: Such purchaser shall serve, or cause to be served, a written notice of such purchase, on every person in possession of such land or town lot, at least three months before the expiration of the time of redemption on such sale; in which notice he shall state when he purchased the land or town lot, the description of the land or lot he has purchased, and when the time of redemption will expire. In like manner he shall serve on the person or persons in whose name or names such land or lot is taxed, a similar written notice, if such person or persons shall reside in the county where such land or lot shall be situated; and in the event that the person or persons in whose name or names the land or lot is taxed, do not reside in the county, such purchaser shall publish such notice in some newspaper printed in such county, and if no newspaper is printed in the county, then in the nearest newspaper that is published in this State to the county in which such lot or land is situated; which notice shall be inserted three times, the last time not less than three months before the time of redemption shall expire. Every such purchaser, by himself or agent,



The clerk of the county court shall, before the day of sale, make a correct record of the lands and town lots against which judgment is rendered in any suit, for taxes due thereon, and which shall set forth the name of the owner, if known, the description of the property, and the amount due on each tract or lot, in the same order as said property may be set forth in the judgment-book, and shall attach thereto a correct copy of the order of the court, and his certificate of the truth of such record; which record, so attested, shall hereafter constitute the process on which all real property shall be sold for taxes, as well as the sales of such property. When any tract of land or town lot shall be sold, it shall be the duty of the clerk to enter on the record aforesaid the quantity sold and the name of the purchaser opposite such tract or lot, in the blank columns provided for that purpose, and when any such property shall be redeemed from sale, the clerk shall enter the name of the person redeeming, the date and amount of redemption, in the proper columns. Said book shall be so ruled that there shall be suitable blank columns for entering the quantity or portion of each tract or lot that may be sold, the name of the purchaser, and such other columns as may be deemed necessary.

(498.) SEC. XXXVIII. On the first day of the term at which judgment on delinquent lands and town lots is prayed, it shall be the duty of the collector to report to the clerk a list of all the lands and town lots upon which taxes have been paid, if any, from the filing of the list mentioned in the foregoing section up to that time; and the clerk shall note the fact opposite each tract upon which taxes have been paid. The collector, assisted by the clerk, shall compare and correct said list, and shall make and subscribe an affidavit, which shall be, as near as may be, in the following form:

"I, ———, collector of the county of ———, do solemnly swear, (or affirm, as the case may be,) that the foregoing is a true and correct record of the delinquent lands and town lots within the county of ———, upon which I have been unable to collect the taxes as required by law for the year or years therein set forth; that said taxes now remain due and unpaid, as I verily believe."

Said affidavit shall be entered on the record at the bottom of the list, and signed by the collector; the oath may be administered by the judge, clerk, or any justice of the peace, who shall attest the same.

(499.) SEC. XXXIX. The court shall examine said list, and if defense or objection be offered by any person interested in any of said lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be, and shall direct the clerk to make out and enter an order for the sale of such real property, which shall be substantially in the following form:

"WHEREAS, due notice has been given of the intended application for a judgment against said lands, and no owner hath appeared to make defense or show cause why judgment should not be entered against the said lands for taxes, interest and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts of land, or parts of tracts (as the case may be,) in favor of the State of Illinois, for the sum annexed to each tract or parcel of land, being the amount of taxes, interest and costs due severally thereon; and it is ordered by the court that the said several tracts of land, or so much thereof as shall be sufficient of each of them to satisfy the amount of taxes, interest and costs annexed to them severally, be sold as the law directs."

(500.) SEC. XL. Said order shall be signed by the judge, and shall have the same effect as judgments and orders made by the circuit court. Persons aggrieved by any decisions of the county court in such cases, shall

have the right of appeal to the circuit court, by giving bond and security, payable to the people of the State of Illinois, as required in cases of appeals from justices of the peace.

(501.) SEC. XLI. The clerk of said court shall, within five days after any sale for taxes, make out and deliver to the collector a transcript of sales for taxes, which shall be written on foolscap paper, made up and stitched in book form, suitable for binding. Said collector shall deliver said transcript to the auditor at the time that he is required to make settlement for the State tax.

(502.) SEC. XLII. Every tract of land or town lot offered at public sale for the taxes due thereon, and not sold for want of bidders, shall be and the same is hereby declared to be forfeited to the State of Illinois.

(503.) SEC. XLIII. If any lands or town lots shall be forfeited to the State for taxes, it shall be the duty of the clerk of the county court to certify to the auditor of public accounts the assessed value thereof, and the amount of State tax and the amount of county tax charged thereon; and the auditor shall credit the collector with the amount of State tax due on said property, and the court shall allow him credit for the printer's fees and county tax thereon.

(504.) SEC. XLIV. If any person shall desire to redeem any tract of land or town lot forfeited to the State, he shall apply to the clerk of the county court, who shall issue his order to the collector, directing him to receive from such person the amount due on said tract or lot, particularly describing the property and setting forth the amount due, including the printer's fee; and upon presentation of said order to the collector, he shall receive said amount and give the person duplicate receipts therefor, setting forth a proper description of the property and the amount received; one of which shall be countersigned by the clerk, and when so countersigned shall be evidence of the redemption of the property therein described, but no such receipt shall be valid until it is countersigned by the clerk; the other receipt shall be filed by the clerk in his office, and said clerk shall cancel the sale of the property so redeemed on the books in his office, and charge the amount of the redemption money to the collector.

(505.) SEC. XLV. At the December term of the county court, annually, it shall be the duty of said court to examine the account of the said collector, and cause the amount of State tax and interest collected on such forfeited property to be certified to the auditor of public accounts, who shall charge the same to the collector: *Provided*, That if the collector who received said redemption money shall be succeeded in office, he shall pay the amount in his hands over to his successor, who shall pay said amount into the State treasury when he settles for the taxes of the current year.

(506.) SEC. XLVI. The amount due on lands and lots, and remaining unpaid on the first day of November, shall be added to the tax of the current year, and the amount thereof shall be reported against the collector, with the amount of the assessment for said year; said collector shall collect and pay over the said amount in like manner as other taxes, and he is hereby authorized to advertise and sell said property in the same manner as if said property had been forfeited to the State. Said additions and sales shall be continued from year to year until the taxes on said property are paid, by sale or otherwise: *Provided*, That at the regular sale in the year 1855, and every

five years thereafter, all the property previously forfeited and remaining unredeemed, shall be sold to the highest bidder, but not for a greater sum than is due thereon, including costs, &c., and the former sales of such property as will not sell shall be canceled: *Provided*, That if any person shall offer to pay the taxes, interest and costs due on any tract or lot forfeited as aforesaid for a less quantity than the whole tract or lot, then such property shall be sold to the person offering to pay the amount due thereon, for the least quantity or part thereof.

(507.) SEC. XLVII. Real property sold under the provisions of this act may be redeemed at any time before the expiration of two years from the date of sale, by the payment in specie, to the clerk of the county court of the proper county, of double the amount for which the same was sold, and all taxes accruing after such sale, with ten per cent. interest thereon from the day of sale, unless such subsequent tax has been paid by the person for whose benefit the redemption is made; which fact may be shown by the collector's receipt: *Provided*, That if the real property of any minor heir, *feme covert* or lunatic, be sold for taxes, the same may be redeemed at any time within one year after such disability be removed, upon the terms specified in this section; which redemption may be made by their guardians or legal representatives.

(508.) SEC. XLVIII. The securities on any bond given in pursuance of this act, or either of them, may at any time after the execution of said bond, if they, or either of them, have good reason to believe that the officer in said bond is about to fail to comply with the conditions thereof, file with the clerk of the county court, a notice in writing, verified by the oath of the person filing such notice, setting forth the facts in the case, and asking to be released from any further liability on said bond; whereupon the clerk with whom such notice shall be filed, shall notify the said officer to appear before the court and give additional security, equal to the security about to be released, to be approved by the judge of the county court, which notice may be served by the said judge or clerk, or by any person appointed by them, or either of them. If the officer so notified shall not appear and give additional security within two days from the time he may be so notified, the county court may remove him from office; and in all such cases, said court shall appoint some suitable person to fill the vacancy occasioned by such removal, who shall execute bond, qualify and perform the duties required of such officer: *Provided*, That if the securities on any collector's bond, or either of them, shall be satisfied that such collector is making improper use of the funds collected by him, or has absconded, or is about to abscond, from this State, whereby said securities may become liable to pay any sum or sums of money, it shall be lawful for said security to sue out a writ of attachment against the goods and chattels of such collector, in like manner as he would be authorized to do if said collector was personally indebted to such security; and the money collected on any such attachment, shall be paid into the treasury by the officer collecting the same, in like manner as if paid over by the collector.

(509.) SEC. XLIX. If any real property shall be double assessed, or assessed before it become taxable, and the taxes so erroneously assessed shall have been paid, the county court, on application of the person paying the same, or his agent, and being satisfied of the facts in the case, shall

cause said taxes, together with the costs thereon, to be refunded *pro rata* by the State and county; and if any collector shall receive the taxes properly due on any real property, and shall afterwards sell such property for said taxes, he shall refund to the purchaser thereof, if application be made within two years from the date of said sale, double the amount of purchase money. Any officer neglecting or refusing to pay as required by this section, shall be liable to the county in an action of debt, in any court having jurisdiction of the amount of said debt: *Provided*, That the county and the State shall refund in case of erroneous sales heretofore made, as provided for by the laws in force at the time of such sales.

(510.) SEC. L. If any collector shall have paid, or may hereafter pay into the State treasury, any greater sum or sums of money than is or may be legally and justly due from such collector, after deducting abatements and commissions, the auditor shall issue his warrant for the amount so overpaid, which shall be paid out of the fund or funds so overpaid; and if any one of the funds shall have been or shall hereafter be overpaid, the auditor may issue his warrant for the amount so overpaid, and apply the same to the payment of any other fund due from such collector.

(511.) SEC. LI. The county courts shall have power to levy a tax in their respective counties for county purposes, but shall, in no case, exceed the amount of four mills on each dollar's worth of taxable property, unless specially authorized by law; and said county tax shall be levied at the September term of said court, or as soon thereafter as practicable, and collected with the State revenue. The same lien created to secure the State tax, and the provisions made for the collection thereof, shall also exist and apply to the county revenue.

(512.) SEC. LII. Suits commenced by the auditor, as provided for in this act, shall not abate for the want of service on one or more of the defendants, or in consequence of the death of one or more of said defendants, but judgment may be rendered against such of said defendants as may have been legally notified: *Provided*, That suits may be prosecuted against the defendants not included in said judgment, at any subsequent term of said court: *Provided further*, That the provisions of this section shall not be so construed as to change the conditions of any bond executed prior to the passage of this act on suits in favor of the State, and against collectors or other persons indebted to the State. The State shall pay like fees as are or may be allowed by law in suits between individuals, and in all cases when the State is plaintiff, she shall advance and pay such fees, in like manner as individuals are required to advance and pay fees. And when the State becomes the purchaser of real property sold on execution for any debt due the said State, the officer selling such real estate shall be entitled to like commissions as he would have been entitled to had such property been purchased by individuals. Said fees and commissions to be paid on the warrant of the auditor, out of any money in the treasury not otherwise appropriated; and when such fees are collected, they shall be paid into the State treasury. So much of this section as relates to fees, shall apply to suits heretofore prosecuted, as well as to suits that may hereafter be commenced and prosecuted.

(513.) SEC. LIII. The assessment shall be a lien on the personal property of all persons owing taxes from and after the time that the tax



books are received by the collector, for the State and county tax due thereon, and no sale or transfer of such property shall affect the claim of the State or county, but the said property may be seized by the collector wherever found, and removed, if necessary, and sold to discharge the taxes of the person owing the same at the time of such assessment, together with the costs and charges of collection.

(514.) SEC. LIV. In case any person shall refuse or neglect to pay his or her taxes when demanded, or within ten days thereafter, it shall be the duty of the collector to levy the same, together with the costs and charges that may accrue, by distress and sale of the personal property of such person, wherever the same may be found in the county.

(515.) SEC. LV. The collector shall give notice of the time and place of sale, the property to be sold, and the name of the delinquent, at least ten days previous to the day of sale, by advertisements to be posted up in at least three public places in the precinct where such sale is made.

(516.) SEC. LVI. Such sale shall be by public auction, and if practicable, no more property shall be sold than sufficient to pay the tax, costs and charges due; but if sold for more than the amount necessary to pay the debt, the surplus shall be returned to the owner of such property.

(517.) SEC. LVII. The power to levy and collect shall continue in the collector after his return and final settlement with the auditor, until the taxes shall be paid. If personal property of any person who may have been returned by the collector as being insolvent or removed, be afterwards found in the county, the clerk of the county court shall have power to issue process to any sheriff or constable, for the collection of the taxes due by such person, and when collected, such taxes shall be paid over to the State and county, in like manner as if collected by the collector.

(518.) SEC. LVIII. Whenever the taxes on the same property shall have been paid more than once, for the same year, by different claimants, the collector shall make a return to the clerk of the county court of all such surplus taxes so received by him, together with the names of the several claimants thus paying; and the clerk shall make a record of all such cases, and transmit a copy thereof to the auditor of public accounts, who shall charge such collector with the portion of such surplus taxes belonging to the State; but such surplus tax shall in no case be refunded.

(519.) SEC. LIX. Whenever any person shall pay the taxes charged against him, the collector shall enter such payment in his list, and give the person paying the same a receipt, specifying the name of the person for whom paid, the amount paid, what year paid for, and the property on which the same was assessed, according to its description on the assessment list.

(520.) SEC. LX. The collector shall, on the first Monday in every month, during the time of collecting the taxes, report to the county treasurer, in writing, the amount of county tax received by him during the preceding month, what amount of said tax was received in money and what amount in county orders and jury certificates, and shall pay the same over to said treasurer, who shall give him a receipt therefor. The treasurer shall cancel the orders and certificates returned as aforesaid, and at the next term of the county court thereafter, he shall present said reports, together with the orders and certificates; said court shall examine and see that the orders

and certificates have been properly canceled on the books, and cause them to be destroyed by burning.

(521.) SEC. LXI. The collector shall attend at the court-house in his county, on the day specified in the notice for the sale of real estate for taxes, and then and there, between the hours of ten o'clock in the forenoon and six o'clock in the afternoon, proceed to offer for sale, separately, each tract of land and town lot in the said list on which the taxes and costs have not been paid.

(522.) SEC. LXII. The person at such sale offering to pay the taxes and costs charged on each tract or lot, for the least quantity thereof, shall be the purchaser of such quantity, which shall be taken from the east side of such tract or lot.

(523.) SEC. LXIII. The collector shall continue such sale from day to day, until all the tracts of land or town lots contained in the delinquent list, on which taxes and costs remain unpaid, shall be sold or offered for sale.

(524.) SEC. LXIV. The person purchasing any tract of land or town lot, or any part thereof, shall forthwith pay to the collector the amount of taxes and costs charged on said tract or lot, and on failure so to do, the said land or lot shall be again offered for sale in the same manner as if no such sale had been made; and in no case shall the sale be closed until payment is made.

(525.) SEC. LXV. The collector shall obtain a copy of the advertisement of the delinquent lands and lots, together with a certificate of the due publication thereof, from the printer or publisher of the newspaper in which the same shall have been published, and shall file the same with the clerk of the county court, on or before the first day of the term at which judgment is prayed.

(526.) SEC. LXVI. In all advertisements for the sale of lands for taxes, and in entries required to be made by the clerk of the court, or other officer, letters and figures may be used, as they have heretofore been used, to denote townships, ranges, sections, parts of sections, the year for which the taxes were due, and the amount of taxes, interest and costs.

(527.) SEC. LXVII. The clerk shall make out and deliver to the purchaser of any lands or lots sold for the payment of taxes as aforesaid, a certificate of purchase, to be countersigned by the collector, describing the land or the lot sold as the same was described in the delinquent list, the amount of taxes and costs for which the same was sold, and that payment has been made therefor. If any person shall become the purchaser of more than one tract of land or lot, he may have the whole included in one certificate.

(528.) SEC. LXVIII. Such certificate of purchase shall be assignable by indorsement, and an assignment thereof shall vest in the assignee or his legal representatives, all the right and title of the original purchaser.

(529.) SEC. LXIX. No sale of real estate for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner, if the said real estate be in other respects sufficiently described, and the taxes thereon were due and unpaid at the time of such sale.

(530.) SEC. LXX. The books and records belonging to the office of the clerk of the county court, or copies thereof, certified by said clerk, shall be

deemed sufficient evidence to prove the sale of any land for taxes, the redemption of the same, or payment of taxes thereon.

(531.) SEC. LXXI. Whenever it shall be made to appear to the satisfaction of the clerk of the county court, before the execution of a deed for lands or lots sold for taxes, or if the deed be returned by the purchaser, that any tract or lot was sold which was not subject to be taxed, or upon which taxes had been paid previous to the sale, he shall make an entry opposite to such tracts or lots on the list of sales, that the same was erroneously sold, and such entry shall be evidence of the fact therein stated.

(532.) SEC. LXXII. The receipt of the redemption money of any tract of land or lot, by any purchaser, shall operate as a release of all claim to such tract or lot, under or by virtue of the purchase.

(533.) SEC. LXXIII. If any purchaser of lands sold for taxes shall suffer the same to be again sold for taxes before the expiration of three years from the date of his or her purchase, such purchaser shall not be entitled to a deed for the land until the expiration of two years from the date of the second sale; during which time the land shall be subject to redemption upon the terms and conditions prescribed in this act, but the person redeeming shall only be required to pay, for the use of such first purchaser, the amount paid by him, and double the amount paid by the second purchaser.

(534.) SEC. LXXIV. If any collector, by himself or deputy, shall fail to attend any sale of lands advertised according to the provisions of this act, and make sale thereof as required by law, he shall be liable to pay into the State and county treasury the amount of taxes and costs due upon the lands and lots so advertised, in the same manner as if they had been sold: *Provided*, That he may afterwards advertise and sell such delinquent property to reimburse himself for the amount advanced by him; but at no such sale shall there be any property forfeited to the State. If the county clerk shall fail to attend, either by himself or deputy, any sale of real estate for taxes, he shall advance and pay the taxes due on the delinquent list to the collector; and if he shall neglect or refuse to pay such tax on demand, the collector shall proceed against him on his official bond, in any court having jurisdiction of the amount due.

(535.) SEC. LXXV. If any county treasurer shall fail to make return, fail to make settlement, or fail to pay over all money with which he may stand charged as treasurer, the county court may remove him from office, and appoint a successor; and it shall be the duty of the clerk of the county court to prosecute suit against such treasurer and his securities, which may be done either in the county court or circuit court of the county in which such default is made. The said court may compel the production of all books, papers and vouchers pertaining to the office of such treasurer, to be used as evidence, if it shall appear to the court that any such books, papers or vouchers are or may be material evidence in the case.

(536.) SEC. LXXVI. No collector or treasurer shall, either directly or indirectly, be permitted to take, buy, shave or receive, by himself or agent, any auditor's warrant or warrants, or any county order or jury certificate, at less than the full amount due thereon.

(537.) SEC. LXXVII. On the first day of January next after taking the census in the State, or as soon thereafter as the returns of said census may be made to the office of the secretary of State, it shall be the duty of said

secretary to make out and deliver to the auditor, a correct statement of the number of white children in each county in this State, twenty years of age or under; the truth of said certificate shall be certified to by said secretary, and thereupon, under the supervision of the commissioners of the school fund, the auditor shall make a dividend to each county, of the interest due upon the school, college and seminary fund, in proportion to the number of persons in each, of the age aforesaid; and dividends shall be made according to the proportion ascertained to be due to each county annually thereafter, until another census shall have been taken, and then appointments shall be made and continued as aforesaid, according to the last census.

(538.) SEC. LXXVIII. The auditor shall, within five days after ascertaining the amount due, as required in the foregoing section, make out and forward by mail to the school commissioner of each county, an order on the collector for the amount due said county: *Provided*, That if the amount of interest due to any county shall exceed the amount of revenue, State tax, due from such county, then the auditor shall issue an order as aforesaid for the amount of revenue that he believes, from the returns of the assessment for that year, will be collected, and shall issue and forward with the order a warrant on the treasurer for the balance of interest that may be due to such county, which shall be paid out of any moneys not otherwise appropriated.

(539.) SEC. LXXIX. On or before the first day of April, annually, or so soon thereafter as the school commissioner shall present the order of the auditor, the collector shall pay to said commissioner the amount due thereon: *Provided*, That if the said collector has not collected a sufficient amount of State revenue to pay said order, and shall make oath of that fact, then he shall pay the amount that he has collected, and shall pay the remainder on or before the fifteenth day of June next thereafter; but if any collector shall refuse to pay the interest on the school fund as required by this section, and shall refuse to make oath as aforesaid, it shall be competent for the commissioner to proceed against such collector and his securities, in an action of debt in the county court; which court is hereby vested with full power and authority to hear and determine all such suits, render judgment and issue executions. Said collector shall be liable to pay the full amount stated in the order, notwithstanding he may not have collected that amount; and if any collector shall pay a portion of the amount due as aforesaid, and shall fail to pay the remainder as required by this section, the commissioner shall proceed against him as above provided for.

(540.) SEC. LXXX. Upon ascertaining the amount due to the State from any collector, or other person, the auditor shall give such person a statement of the amount to be paid, and upon the presentation of such statement to the treasurer, and the payment of the sum stated to be due, the treasurer shall give duplicate receipts therefor, one of which shall be filed in the auditor's office and entered in a book to be kept for that purpose, and the other shall be countersigned by the auditor and delivered to the person making the payment; and no payment shall be considered as having been made until the treasurer's receipt shall be countersigned by the auditor as aforesaid. When the list of delinquent lands is returned by the auditor for sale, he shall certify to the clerk the amount of the county's proportion of the tax paid into the State treasury, and the amount so certified shall be paid into the county treasury, out of the tax due from the collector to the State.

(541.) SEC. LXXXI. The auditor of public accounts shall, as soon as practicable after the passage of this act, prepare and transmit to the several county clerks all such forms and instructions as he shall deem necessary to carry into effect its provisions. Said auditor shall cause to be printed, with the forms and instructions required by this section, a true and correct copy of this act, and shall forward a sufficient number thereof, for the use of the several county officers, to the clerk of the county court of each county, who shall deliver the same to the proper officers. The expenses of the printing required by this section, shall be paid for as other printing ordered by this General Assembly is paid for.

(542.) SEC. LXXXII. There shall be allowed and paid for services rendered in pursuance of this act, the following fees and compensation: To clerks of county courts, for making lists of delinquent lands for the auditor's office, three cents for each tract described in said list, to be paid for out of the State treasury, which shall be in full for comparing and correcting the collector's returns of said delinquent lands to his office, as well as for making the list aforesaid, and comparing and certifying to the list for the use of the collector. For making record of delinquent lands and town lots for judgment, including the order of court, three cents for each tract, and one cent for each town lot. For making transcript of judgment for sale, three cents for each tract, and one cent for each town lot. For assisting the collector in selling lands and lots, twenty-five cents for each tract and five cents for each town lot, for which a certificate is given, to be charged and collected as costs. For making transcript of taxable real property for the assessor, two cents for each tract of land, and one-half cent for each town lot, to be paid out of the State treasury; for comparing the assessor's return with the original list of real property, extending the tax on each tract and lot, and adding up the aggregate amount of tax due thereon, two cents for each tract or subdivision, and one-half cent for each town lot; and for making copy of the assessment list for the collector, one cent for each tract and one-half cent for each town lot. For entering list of lands, furnished by the auditor, in the tract books, one cent for each tract. The same fees shall be allowed for computing the tax on each person's personal property, and for copying the same, as is allowed on town lots; all of which fees shall be paid out of the county treasury. The collector shall be allowed for making list of delinquent lands to be filed with the clerk, and adding up the amount of tax thereon, three cents for each tract, to be paid out of the State treasury. For selling lands and town lots, ten cents for each tract and three cents for each town lot sold, to be charged and collected as costs; but no costs except the printer's fees shall be charged or collected on any land or town lots forfeited to the State. Collectors shall be allowed a commission on all moneys collected, of five per cent. on the first eight thousand dollars, and three per cent. on all additional sums collected by them, to be paid by the State and county, in proportion to the amount of State and county tax collected; and the auditor shall allow said collector in his settlement, in addition to the commissions aforesaid, two dollars for every twenty miles necessary travel, in going to and returning from the seat of government, for the purpose of paying over the State tax. County treasurers shall be allowed a commission of one per cent. on all moneys, county orders and jury certificates received by them for county purposes, and one per cent. on

all moneys paid out by them, but shall not be allowed any compensation for paying moneys over to a successor.

(543.) SEC. LXXXIII. If any officer shall fail or neglect to perform any of the duties required of him by this act, upon being required so to do by any person interested in the matter, he shall be liable to a fine of not less than ten dollars nor more than one hundred dollars, to be recovered in an action of debt in the circuit court of the proper county, and may be removed from office, if, in the opinion of the court before whom such suit may be tried, the circumstances require such removal; and any officer who shall knowingly violate any of the provisions of this act, shall be liable to a fine of not less than — dollars nor more than one thousand dollars, to be recovered in an action of debt in any court having jurisdiction of the amount, and may be removed from office at the discretion of the court.

(544.) SEC. LXXXIV. The rate of taxation for State purposes for the year A. D. 1853, and forever thereafter, until otherwise provided by law, shall be two mills on every dollar's worth of taxable property, for the payment of the State debt, one and one-half mill on every dollar's worth of taxable property for the payment of the interest on the State debt, and one mill on every dollar's worth of taxable property, for defraying the expenses of the government.

(545.) SEC. LXXXV. This act shall apply to and be in force in the several counties not adopting the act to provide for township organization, and shall be in force from and after its passage.

An Act to amend the Revenue Laws of this State.

[Approved Feb. 12, 1853. Laws, 1853, p. 256.]

WHEREAS, doubts have arisen as to whether the sheriff or treasurer of counties that are organized under the township organization law, should execute deeds for lands sold for taxes in said counties: AND WHEREAS, deeds for lands sold for taxes in said counties have been executed sometimes by sheriff, and sometimes by county treasurer; therefore,

(546.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all deeds heretofore executed by any sheriff or county treasurer of the proper county for lands sold for taxes in counties that have adopted the township organization, shall be as valid and effectual to pass the title to such land as if the same had been made by the proper officer.

(547.) SEC. II. In all cases where lands have heretofore been or may hereafter be sold in counties organized under the township organization law, and deeds have not been made to the purchasers thereof, such deeds shall be made by the sheriff of the proper county at the time when by law such deeds should be made.

An Act to repeal Part of Section Thirteen of an Act regulating the Collection of the Revenue.

[Approved Feb. 15, 1855. Laws, 1855, p. 35.]

(548.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That so much of section thirteen of an act regulating the collection of the revenue, as authorizes the collectors to collect, in addition to all other taxes, fifty cents from each tax-payer, pro-

vided said payment is not made previous to the first day of March, annually, be and the same is hereby repealed.

(549.) SEC. II. This act to take effect and be in force from and after its passage.

An Act to amend the Assessment and Revenue Laws.

[Approved Feb. 14, 1855. Laws, 1855, p. 35.]

(550.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the act entitled "An act for the assessment of property and the collection of taxes in counties adopting the township organization law," approved February 12, 1853, be and the same is hereby so amended that wherever the word "assessor" or "assessors" occurs in said act, it shall be held to mean "town assessor," or "town assessors," as the case may be.

(551.) SEC. II. The return of the schedule or list of taxable property belonging to any railroad company or companies, required to be made by this act, shall be made to the county clerk, instead of the assessor; and the clerk shall lay the same before the board of supervisors when they meet to equalize the assessment of property. If a majority of said board are satisfied that such return is correct, they shall assess it accordingly: but if they believe that such schedule or list does not contain a full and fair statement of the property of such company, subject to taxation in said county, made out and valued in accordance with the requirements of law, said board shall assess such property, or cause it to be assessed, in accordance with the rules prescribed for assessing such property. The schedule or list referred to in this section, shall be delivered at the office of the county clerk of the proper county on or before the first day of May in the year in which such property is required to be assessed; and if such schedule or list be not so delivered within the time specified in this section, it shall be the duty of the county clerk to obtain, as near as practicable, a correct list of the property of such company, with the valuation thereof, in each town or district in his county; which list shall be laid before the board; and said board shall take action thereon in like manner as if the return had been made by the company, and shall allow the clerk such compensation as may be right and proper for his services and expenses in obtaining such list. All property, whether owned by individuals or corporations, shall be listed with reference to the quantity on hand and owned on the first day of April instead of May: *Provided,* That government or other lands not previously listed shall be returned, and be subject to taxation in accordance with the fifty-sixth section of the act mentioned in the first section, of this act.

(552.) SEC. III. Every company, required to make return as aforesaid, that shall refuse or neglect to deliver to the clerk of the proper county, or to his deputy, within the time specified in the foregoing section, a correct list of their taxable property in such county, made out in accordance with the requirements of the laws of this State, shall be liable to the penalty imposed by the eighth section of the act referred to in the first section of this act.

(553.) SEC. IV. The schedule or list of the taxable property of railroad companies, shall set forth a description of all the real property owned or occupied by the company in each county, town and city through which

such railroad may run; and the actual value of each lot or parcel of land, including the improvements thereon, except the track or superstructure of said road, shall be annexed to the description of such lot or parcel of land. Said list shall set forth the number of acres taken for right of way, stations or other purposes, from each tract of land through which said road may run, describing said land as near as practicable, in accordance with the surveys of the United States, giving the width of the strip or parcel of land, and its length through each tract; also the whole number of acres, and the aggregate value thereof, in said county, town and city. All of the property mentioned in this section, shall be denominated real property. The list aforesaid shall set forth the length of the main track, and the length of all side tracks and turn-outs in each county, city and town through which the road may run, with the actual value of the same, and the value of the improvements at each of the several stations, when said stations are not a part of city or town lots. The said stations and track shall be denominated "fixed and stationary personal property." The list shall contain an inventory of the rolling stock belonging to said company, with the value thereof; said rolling stock shall be denominated "personal property;" also a statement of the value of all other personal property owned by said company in each county, city and town. The length of the whole of the main track within this State, and the total value of the rolling stock, shall be set forth in said list. The rolling stock shall be listed and taxed in the several counties, towns and cities, *pro rata*, in proportion as the length of the main track in such county, town or city bears to the whole length of the road. All other property shall be listed and taxed in the county, town or city where the same is located or used. The description of all lands owned by any railroad company, for right of way or station purposes, other than those which are a part of a laid off town, city or village, shall be entered by the assessor on his books, as being a strip or tract of land extending on each side of the said railroad track, and embracing the same, commencing at the point where the said railroad track crosses the boundary line of said county, city or town, and extending to the point where the said track crosses the boundary line of said county, city or town, or to the point of its termination in the same, as the case may be, containing — acres, more or less, (inserting the name of the county, city or town, boundary line of the same, and number of acres,) and when advertised by any sheriff or collector to be sold for taxes, or when so sold, no other description shall be necessary. If any clerk or assessor as aforesaid, shall change the valuation of the property as aforesaid, or any of the same, that shall be returned by any railroad company, he shall give notice of such change, as provided for in section nine of "An act for the assessment of property and the collection of taxes in counties adopting the township organization law," approved February 12, 1853.

(554.) SEC. V. The county clerk shall furnish, at the expense of the county, suitable blanks for the use of the assessors, and he is hereby authorized and required to assess and enter on the list for taxation any and all property, whether real or personal, that may have been omitted in the regular assessment list; and if any such omissions be not discovered in time to be entered on the tax list of the proper year, he shall add the amount of tax due thereon to the tax of the following year. **The**

list of taxable real estate required to be furnished for the use of the assessors, shall be made out from the collector's book, instead of the assessment list, and the town collectors shall deposit the tax lists or books furnished them by the county clerk with the county treasurer, at the time of their settlement with said treasurer; and said treasurer shall, within two months thereafter, deliver said tax books to the county clerk, who shall deposit them in his office, to be kept as part of the records of said office.

(555.) SEC. VI. Each assessor shall, at the time of taking a list of personal property in the year or years in which the real property is not required to be listed, also take a list of all real property situate in his town that shall have become subject to taxation since the last previous listing of property therein, with the value thereof, and of all new buildings or other structures of any kind, the value of which shall not have been previously added to or included in the valuation of the real property on which such structures have been erected, and shall make return thereof to the county clerk at the same time he makes return of the personal property; in which return he shall set forth a description of the real property on which each of such structures shall have been erected, the kind of structures so erected, and the true value added to such parcel of real property by the erection thereof; and the additional sum which it is believed the land on which the structure is erected would sell for at private sale, in consequence thereof, shall be considered the value of such new structure; and in case of the destruction by fire, flood, or otherwise, of any building or structure of any kind, which shall have been erected previous to the last valuation of the land or lot on which the same shall have stood, or the value of which shall have been added to any former valuation of such land or lot, the assessor shall determine, as near as practicable, how much less such property would sell for at private sale, in consequence of such destruction, and make a return thereof to the county clerk, as in this section provided. In all such cases, the clerk shall add to the former valuation of such property the amount of the additional value, and deduct from the former valuation the amount of decreased value, in accordance with the return made as aforesaid: *Provided*, That the board of supervisors shall have power to equalize or correct any such returns. If any tract or parcel of land shall be subdivided into town or city lots or blocks, after the previous assessment thereof, it shall be the duty of the assessor, at the time of taking a list of the personal property as aforesaid, to assess and return the value of such lots or blocks in like manner as if the land had not been assessed; and the clerk shall correct the tax list accordingly. Section forty-nine of the act mentioned in the first section of this act, is hereby repealed, provided that the town assessors shall call at the clerk's office for the lists, blanks, &c.

(556.) SEC. VII. The act entitled "An act regulating the collection of the revenue in counties adopting the township organization law," approved February 12, 1853, be so amended that the judge of the county court, county clerk and chairman of the board of supervisors, shall have power to approve of the bond required by the third section of said act, in like manner as the board of supervisors have power to approve of such bonds; which bond shall be executed before the first day of December in each and every year:

*Provided*, That any such bond executed after the time specified in this section, shall not be void in consequence of not having been executed within the time aforesaid. But in no case shall the county treasurer act as collector, or receive any State revenue, until after he shall have executed and filed the bond required by the aforesaid third section.

(557.) SEC. VIII. The collector may advertise the list of delinquent lands and town or city lots, upon which any taxes remain due and unpaid on the second Monday in March, at any time thereafter.

(558.) SEC. IX. The lands and lots delinquent for taxes of the year 1854, or for any previous year or years, shall be sold on the second Monday in May, 1855: *Provided*, That if for any cause, judgment thereon shall not be obtained at the May term of the county court, judgment may be had at any regular term of the county court thereafter, and the sale shall be on the Monday next after the first day of the term at which judgment is obtained; which sale may be continued from day to day, as is now provided for by law.

(559.) SEC. X. All lands and town or city lots upon which the taxes shall remain unpaid on the second Monday of March next, after such taxes become due, shall be considered delinquent; and all such lands and lots shall be sold on the second Monday of May next after they become delinquent, or as soon thereafter as practicable. Sections fifteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five of the act mentioned in the seventh section of this act, and all other acts or parts of acts conflicting with this act, are hereby repealed: *Provided*, That so much of the aforesaid sections and laws as requires fifty per cent. and costs to be charged and collected on the tax of the year 1853, remaining unpaid, shall remain in full force.

(560.) SEC. XI. The fees allowed by law for making out the list of real estate for the use of the assessors, shall be paid out of the county treasury; and the board of supervisors shall allow the clerk such reasonable compensation as may be right and just, for his services in making out and recording the abstract required to be made out and recorded, by the tenth section of the act mentioned in the seventh section of this act, and for making list of delinquent lands and lots sold for taxes, for the auditor's office, and for making settlement with the county collector, and for making certified statement of said settlement for the use of the auditor's office; all of which shall be paid out of the county treasury.

(561.) SEC. XII. Sections two, three and four of this act shall apply to the listing of the taxable property of railroad companies, and be in force in all the counties in this State, whether such counties have adopted the "Act to provide for township organization" or not: *Provided*, That in counties that have not adopted township organization, the return shall be made to the assessor instead of the county clerk, and said assessor shall have power, and it shall be his duty to obtain a list of such property, if such list be not furnished by the company; or if he believe the list furnished be not correct, he shall correct the same.

(562.) SEC. XIII. The act entitled "An act for the assessment of property," approved February 12, 1853, be so amended that the county clerk shall furnish, at the expense of the county, on or before the first day of April in each year, suitable blanks, books, &c., for the use of the assessor,

and he is hereby authorized and required to assess and enter on the list for taxation any and all property, whether real or personal, that may have been omitted in the regular assessment list, and if any such omissions be not discovered in time to be entered on the tax list of the proper year, he shall add the amount of tax due thereon to the tax of the following year. All property, whether owned by individuals or corporations, shall be listed with reference to the quantity on hand and owned on the first day of April, instead of May: *Provided*, That government or other lands, not previously listed, shall be returned and be subject to taxation in accordance with the fiftieth section of the act mentioned in this section. The list of taxable real estate required to be furnished for the use of the assessors, shall be made out from the collector's book, instead of the assessment list, and shall be delivered to the assessor on or before the first day of April, in the year in which real estate is required to be listed; and the county clerk shall be paid for making said list in accordance with the provisions of section fifty-eight of the act mentioned in this section.

(563.) SEC. XIV. Each assessor shall, at the time of taking a list of the personal property, in the year or years in which the real property is not required to be listed, also take a list of all real property situate in his county, that shall have become subject to taxation since the last previous listing of property therein, with the value thereof, and of all new buildings, or other structures of any kind, the value of which shall not have been previously added to or included in the valuation of the real property on which such structures have been erected, and shall make return thereof to the county clerk, at the same time he makes return of the personal property; in which return he shall set forth a description of the real property on which each of such structures shall have been erected, the kind of structures so erected, and the true value added to such parcel of real property by the erection thereof, and the additional sum which it is believed the land on which the structure is erected would sell for at private sale, in consequence thereof, shall be considered the value of such new structure; and in case of the destruction by fire, flood or otherwise, of any building or structure of any kind which shall have been erected previous to the last valuation of the land or lot on which the same shall have stood, or the value which shall have been added to any former valuation of such land or lot, the assessor shall determine, as near as practicable, how much less such property would sell for at private sale in consequence of such destruction, and make return thereof to the county clerk, as in this section provided. In all such cases, the clerk shall add to the former valuation of such property the amount of the additional value, and deduct from the former valuation the amount of decreased value, in accordance with the return made as aforesaid. If any tract or parcel of land shall be subdivided into town or city lots or blocks, after the previous assessment thereof, it shall be the duty of the assessor, at the time of taking a list of the personal property, as aforesaid, to assess and return the value of such lots or blocks in like manner as if the land had not been assessed, and the clerk shall correct the tax lists accordingly.

(564.) SEC. XV. The act entitled "An act regulating the collection of the revenue," approved February 12, 1853, be so amended that the collector may advertise the list of delinquent lands and town or city lots at any time after the first day of April next, after the taxes thereon become due, and

may obtain judgment at the May term of the county court, or at any regular term of said court thereafter; and shall sell on the Monday next following the first day of the term at which judgment is obtained. All lands and town or city lots upon which the taxes shall remain unpaid on the first day of April next after such taxes become due, shall be considered delinquent. The lands and lots delinquent for taxes of the year 1854, or any previous year or years, shall be sold in the year 1855, for such taxes, together with the damages and costs chargeable thereon.

(565.) SEC. XVI. Section nineteen, so much of section twenty as requires the collector to make out for his own use, copies of the list of delinquent lands and lots, and to file with the clerk a statement of the taxes collected by him during the month of May, and all of sections twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine of the act mentioned in the fifteenth section of this act, and all other acts or parts of acts conflicting with this act, are hereby repealed: *Provided*, That so much of the aforesaid sections and laws as requires fifty per cent. and costs to be charged and collected on the tax of the year 1853, remaining unpaid, shall remain in full force.

(566.) SEC. XVII. The county court shall allow the clerk such reasonable compensation as may be right and just for his services in making out and recording the abstract required to be made and recorded by the tenth section of the act mentioned in the fifteenth section of this act, and for making list of delinquent lands and lots sold for taxes, for the auditor's office, and for making settlement with the county collector, and for making certified statement of said settlement for the use of the auditor's office; all of which shall be paid out of the county treasury.

(567.) SEC. XVIII. *And be it further enacted*, That so much of section one of an act entitled "An act to amend the act establishing the Illinois State hospital for the insane," approved February 15, 1851, and so much of an act to which it is an amendment, as authorizes the levying of any tax for the purpose of creating a "fund for the insane," and the twelfth section of an act entitled "An act to establish the Illinois Institution for the education of the blind," approved January 13, 1849, and the first section of an act entitled "An act creating a fund for the education of the deaf and dumb," approved February 15, 1851, and so much of any other act or acts as authorizes the levying of a special tax for the benefit of the institutions aforesaid, or either of them, be and the same is hereby repealed.

(568.) SEC. XIX. The taxes levied under the acts mentioned in the foregoing section for the year 1854 and prior years, when paid into the State treasury, and all such taxes now in the State treasury, shall be added to the tax levied for defraying the ordinary expenses of the State government; and the tax for defraying the expenses of the government, be and the same is hereby increased one-fifth of a mill, so that on the assessment of taxable property for the year 1855, and annually thereafter, the rate of taxation for said purpose, shall be one and one-fifth mill on each dollar's worth of taxable property; which tax, together with the taxes authorized to be levied for paying the State debt and interest thereon, shall annually hereafter be equal to forty-seven cents on every one hundred dollars' valuation of taxable property.

(569.) SEC. XX. So much of the several acts mentioned in this act, as requires a list of the non-resident property to be made separate from the



resident property for the use of county treasurer or county collector, be and the same is hereby repealed, and hereafter the clerk shall include all the taxable property, whether owned by residents or non-residents, in the tax lists furnished the town collectors. All real property returned by the town collectors to the county collector as delinquent, shall be considered non-resident property, and the county collector shall proceed to collect the taxes due thereon by sale or otherwise, as provided for by law. Town collectors shall make out and deliver to the county collector, at the time of their settlement, a list of all the delinquent property aforesaid, which list shall contain a true description of said property, the name of the person to whom listed, the amount of taxes charged on each parcel of property, and such other facts relative thereto as may be set forth in the list furnished him.

(570.) SEC. XXI. The auditor shall obtain from the secretary of State, a certified copy of this act, and shall cause a sufficient number thereof to be printed and forwarded to the county clerks of the several counties, for the use of the officers of said counties.

(571.) SEC. XXII. In counties that have adopted township organization, the tax on property owned by railroad companies shall not be charged on the tax books made for the use of the town collectors, but a certified statement of such tax and property shall be delivered to the county collector, and said collector shall collect the amount of tax due from such company or companies, and pay the same over to the State treasurer and other persons authorized to receive it, in like manner as taxes due on non-resident property are required to be collected and paid over by him. If any such company shall neglect or refuse to pay any tax due by them, as provided for by law, and the collector cannot find property in his county, belonging to such company, sufficient to make the amount of tax due as aforesaid, he may, and it shall be his duty to prosecute suit therefor in any court having jurisdiction thereof in this State. In cases where judgment has heretofore or may hereafter be rendered for taxes due on real estate, and from any cause whatever the collector has failed to offer the property for sale at the time required by law, said collector may offer said property, or so much thereof as may be necessary to pay taxes and costs remaining unpaid at the time of sale, at any subsequent time, by giving notice of the time and place of said sale, which notice shall be published in like manner, and for the length of time that notices for judgments and sale of such property are required to be published; and in cases of appeals in suits for delinquent taxes, when the judgment is affirmed, sale may be made at any time after the affirmation of such judgment, by giving notice as aforesaid. The fees for publishing notice as aforesaid, shall be charged and collected as other costs.

(572.) SEC. XXIII. This act shall take effect and be in force from and after its passage.

PRIOR LAWS. A law for raising county rates and levies; in force Oct. 1, 1795. R. E. S., (Real Estate Statutes,) p. 106.

A law for the purpose of including all unsettled and unimproved tracts or parcels of land, and subjecting them to taxation, adopted from an act of the State of Kentucky, by the governor and judges of the North-West Territory; in force May 1, 1789. R. E. S., p. 109.

An act levying a territorial tax on land; in force Dec. 19, 1799. R. E. S., p. 111.

An act supplementary to the act entitled "An act levying a territorial tax on land," and providing for a territorial tax for the year one thousand eight hundred and one; in force Dec. 9, 1800. R. E. S., p. 122.

An act levying a tax on land for the year one thousand eight hundred and two, and for other purposes; in force Jan. 23, 1802. R. E. S., p. 134.

An act for levying and collecting a tax on land, and for other purposes; in force Sept. 19, 1807. R. E. S., p. 142.

An act to alter and repeal certain parts of an act entitled "A law to regulate county levies;" in force Oct. 26, 1808. R. E. S., p. 150.

An act for levying and collecting a tax on land; in force Dec. 23, 1812. R. E. S., p. 151.

An act authorizing the appointment of county commissioners, and for other purposes; in force Dec. 25, 1812. R. E. S., p. 156.

An act for levying and collecting an additional revenue, and to amend the act for levying and collecting a tax on land; in force Dec. 11, 1813. R. E. S., p. 158.

An act to repeal part of an act entitled "An act for levying and collecting a tax on land;" in force Dec. 1, 1814. R. E. S., p. 158.

An act for the relief of those who forfeited lands, by failing to give a list to the commissioners; in force Dec. 8, 1814. R. E. S., p. 159.

An act to amend an act entitled "An act for levying and collecting a tax on land;" in force Dec. 24, 1814. R. E. S., p. 159.

An act supplemental to the several laws for levying and collecting a tax on land; in force Jan. 9, 1816. R. E. S., p. 161.

An act to amend an act entitled "An act to amend an act for levying and collecting a tax on land," passed Dec. 24, 1814; in force Jan. 11, 1816. R. E. S., p. 163. Repealed Dec. 27, 1817.

An act declaring to whom the redemption money for lands sold for taxes shall be paid; in force Jan. 11, 1816. R. E. S., p. 163.

An act to repeal an act entitled "An act to amend an act entitled 'An act to amend an act for levying and collecting a tax on land,'" passed Dec. 24, 1814; in force Dec. 27, 1817. R. E. S., p. 164.

An act altering the mode of taking in lists of taxable property; in force Jan. 11, 1817. R. E. S., p. 165.

An act providing for the valuation of lands and other property, and laying a tax thereon; in force March 27, 1819. R. E. S., p. 168.

An act for the relief of certain persons whose lands, bank stock, &c., have been sold for taxes, and for other purposes; in force Jan. 31, 1821. R. E. S., p. 177.

An act amending an act entitled "An act providing for the valuation of lands and other property, and laying a tax thereon;" in force Feb. 15, 1821. R. E. S., p. 181. Repealed Feb. 18, 1823.

An act for levying and collecting a tax on land and other property; in force Feb. 18, 1823. R. E. S., p. 183. Repealed Feb. 19, 1827.

An act to postpone the sale of lands now advertised for sale for taxes, by the auditor of public accounts; in force Jan. 3, 1825. R. E. S., p. 194.

An act for the relief of persons whose lands or other property have been sold to this State for taxes, and allowing further time for the redemption thereof; in force Jan. 14, 1825. R. E. S., p. 194.

An act to amend an act entitled "An act for levying and collecting a tax on land and other property," approved Feb. 18, 1823; in force Jan. 17, 1825. R. E. S., p. 196.

An act establishing the form of deeds to be executed by the auditor of public accounts, for the sale of land for taxes, and for other purposes; in force Jan. 26, 1826. R. E. S., p. 201. Repealed Feb. 19, 1827.

An act supplemental to "An act making appropriations for the years 1825 and 1826," approved Jan. 18, 1825; in force Jan. 28, 1826. R. E. S., p. 202. Repealed Feb. 19, 1827.

An act to provide for raising a revenue; in force March 1, 1827. R. E. S., p. 204. Repealed Dec. 6, 1836.

An act to complete the assessment and collection of the land tax of 1826, and for other purposes; in force Feb. 10, 1827. R. E. S., p. 220.

An act for the relief of persons whose lands have been sold for taxes; in force Feb. 13, 1827. R. E. S., p. 222.

An act supplemental to an act entitled "An act to provide for raising a revenue;" in force Jan. 19, 1829. R. E. S., p. 223.

An act to amend the several revenue laws of this State; in force Jan. 1, 1831. R. E. S., p. 228.

An act to amend the revenue laws of this State; in force Feb. 12, 1831. R. E. S., p. 349.

An act concerning the public revenue; in force Feb. 27, 1833. R. E. S., p. 351.

An act concerning public roads; in force Feb. 3, 1835. R. E. S., p. 230. Laws, 1835, p. 129.

An act declaratory of the law in relation to the road tax; in force Jan. 16, 1836. R. E. S., p. 233.

An act concerning public roads; in force Feb. 20, 1841. R. E. S., p. 234. Laws, 1841, p. 232.

An act to authorize county commissioners' courts to assess taxes for road purposes; in force March 4, 1843. R. E. S., p. 237.

An act concerning the redemption of lands sold for taxes; in force Jan. 13, 1836. R. E. S., p. 238.

An act concerning the public revenue; in force Feb. 26, 1839. R. E. S., p. 241.

An act authorizing the clerks of the county commissioners' courts to list certain lands; in force July 21, 1837. R. E. S., p. 239.

An act supplementary to "An act concerning the public revenue;" in force March 1, 1839. R. E. S., p. 267.

An act to amend "An act concerning the public revenue," approved Feb. 26, 1839; in force Feb. 1, 1840. R. E. S., p. 269.

An act in relation to incorporated towns and cities in this State; in force Feb. 23, 1841. R. E. S., p. 272.

An act concerning assessors; in force Feb. 26, 1841. R. E. S., p. 273.

An act to provide for the payment of interest on the public debt; in force Feb. 27, 1841. R. E. S., p. 275.

An act to authorize the appointment of assessors in certain cases; in force Feb. 27, 1841. R. E. S., p. 276.

An act in relation to the revenue of one thousand eight hundred and forty-two; in force Feb. 20, 1843. R. E. S., p. 276.

An act concerning the revenue; in force Feb. 25, 1843. R. E. S., p. 279.

An act to amend an act entitled "An act concerning the public revenue," approved Feb. 26, 1839, and an act supplemental to said act, approved March 1, 1839; in force March 6, 1843. R. E. S., p. 280.

An act to amend an act entitled "An act concerning the public revenue," approved Feb. 26, 1839, and to legalize the assessments of property in the county of La Salle, for the year 1841, and to provide a remedy where certificates of the purchaser of land for taxes have been lost; in force March 6, 1843. R. E. S., p. 290.

An act to save a portion of the revenue from being lost; in force Feb. 11, 1845. R. E. S., p. 292.

An act concerning the revenue; in force Feb. 11, 1845. R. E. S., p. 293.

**DECISIONS.** The act of March 27, 1819, makes no distinction between residents and non-residents. *Edwards v. Beard*, Breese, 41.

Indentured servants were taxable property under the territorial laws. *Nance v. Howard*, Breese, 183.

When property is to be taxed, the mode of levying the same is by valuation. But the legislature may, without violating the constitution, levy a poll tax, or a tax upon other objects and things than property. *Sawyer v. The City of Alton*, 3 S. 129; *Shaw v. Dennis*, 5 G. 405.

A town corporation has no power to make a collector's deed evidence of the legality of the sale, or of a compliance with the law. *Fitch et al. v. Pinckard et al.*, 4 S. 76.

A corporation, in selling lands for taxes, must pursue its authority strictly; those claiming under such sales, must prove that all things required by law to divest the title had been done. *Idem*.

It is not admissible to show that an advertisement of the sale of land for taxes, was dated at a period different from that which appears in the same. *Idem*.

A purchaser at a tax sale, before he can give his deed in evidence, must produce the judgment and order of sale, and the process must recite the rendition of the judgment. The 9th section of the act of 1840 merely dispenses with the insertion of the collector's report in the process. *Hinman v. Pope*, 1 G. 131; *Atkins v. Hinman*, 2 G. 437.

Under the revenue law of 1829, a deed executed by the auditor of public accounts is *prima facie* evidence of the regularity and legality of the sale. *Vance v. Schuyler*, 1 G. 160; *Messenger v. Germain*, 1 G. 631; *Job v. Tobbetts*, 5 G. 376; *Graves v. Bruen*, 11 Ill. 431; *Irving v. Brownell*, 11 Ill. 411; *Rhinehart v. Schuyler*, 2 G. 523; *Thompson v. Schuyler*, 2 G. 280.

The 9th section of the act of Jan. 19, 1829, requiring copies of the advertisement to be filed with the various officers therein named, is directory, and an omission to do so will not invalidate a sale. *Vance v. Schuyler*, 1 G. 160.

Where the revenue law authorizes the auditor to continue sales from day to day, and a sale is made subsequent to the day provided by law, the presumption, (in the absence of proof,) is, that such continuances were made by the auditor from day to day, till the day of sale. *Messenger v. Germain*, 1 G. 631.

When a deed upon a tax sale has been executed by the sheriff, the presumption is that the certificate had been previously delivered to him. *Silliman v. Frye*, 1 G. 664.

When several tracts are sold at the same sale to one purchaser, he may have them all included in one deed. *Idem*.

The collector is not required in his return to state, under the act of Feb. 26, 1839, that he is unable to collect the taxes by seizure and sale of personal property; this is presumed when the report is made in proper form. *Taylor v. The People*, 2 G. 349.

The revenue laws, from 1823 to 1839, inclusive, are constitutional. *Rhinehart v. Schuyler*, 2 G. 473.

Under the revenue law of 1839, either the officer making the sale or his successor, may make the deed. *Bestor v. Powell et al.*, 2 G. 119.

A sale under this act is properly made on the second Monday succeeding the first day of the term at which judgment was rendered. *Idem*.

To entitle a party to recover in ejectment, who claims under a tax sale, he must show a valid judgment, a valid precept authorizing the sale, and a proper conveyance from the officer making the sale. *Atkins v. Hinman*, 2 G. 437.

As to what is a sufficient precept. *Idem*.

The party who attempts to question the title derived under a tax sale, must first show that he, or the person under whom he claimed title, had title to the land at the time of the sale for taxes; or that the title was obtained from the United States or this State, subsequent to such sale. *Idem*.

A *feme covert* is not entitled to redeem lands sold during the life of her husband, and belonging to him, unless she shall do so within two years from the time of sale. *Finch v. Brown*, 3 G. 488.

Lands owned by her and sold for taxes, during her coverture, may be redeemed within one year after her disability ceases. *Idem*.

The revenue act of 1833, did not repeal the 25th section of the act of 1827; and a deed made by the auditor, subsequent to the passage of the law of 1833, for lands sold under the acts of 1827 and 1829, was held to be valid. *Bruce v. Schuyler*, 4 G. 221.

The deposition of the auditor, accompanied by extracts from the books in his office, is proper evidence upon the question, as to whether the law relating to the sale of lands for taxes has been complied with. *Job v. Tobbetts*, 5 G. 376.

Under the revenue law of 1839, the precept on which the sale is made need not contain a list of the lands sold. *Idem*.

A judgment, under the revenue law of 1839, is conclusive evidence of the fact that the taxes could not be collected out of personal property. Any defense of this sort must be made before judgment. *Idem*.

Under the 25th section, 8th chapter, Revised Statutes, if a collector makes a personal demand for taxes, which is refused, he may levy immediately; but if notice is given, as required by section 34, he must wait the ten days before he can distrain. *Shaw v. Dennis*, 5 G. 405.

Words, figures and abbreviations may be used to designate lands advertised for sale for taxes; but the description should be certain and definite so as to show its locality. *Olcott v. The State*, 5 G. 481.

A judgment against lands for taxes is several as to each tract. Any number of owners may jointly or severally prosecute a writ of error as to the judgment against their land; and the same may be reversed as to some and affirmed as to the residue. All persons joining in such writ, will be liable for costs. *Idem*.

Under the revenue laws of 1827, the auditor's deed is not evidence of title without proof that the law authorizing the sale has been complied with. *Irving v. Brownell*, 11 Ill. 411.

Under the act of March 2, 1839, entitled "An act to quiet possessions and confirm titles to land," "claim and color of title made in good faith," means, "a *prima facie* title,"—one which, on its face, would authorize a recovery in ejectment. An auditor's deed upon a sale made under the revenue act of 1827, is not such a title. *Idem*.

The payment of taxes for seven consecutive years must be made while the party is in possession; not part before and part after taking possession. *Idem*.

Suffering the land to be sold, and buying it in, is not a payment of taxes under this law; in such case, the land, and not the purchaser, pays the taxes. *Idem*.

Under the act of 1835, which gives to the actual resident, having a connected title in law or equity, and who has paid taxes for seven years, a title to the land thus occupied, the law is otherwise; such settler will not be required to prove that any of the prerequisites of the law have been complied with; such title, residence and payment of taxes, is superior to all others. *Idem*.

Process for the collection of taxes, under the revenue laws, need not run in the name of the people. *Scarritt v. Chapman*, 11 Ill. 443; *Curry v. Hinman*, 11 Ill. 420.

Under the revenue law of 1839, the party who claims title may attack the regularity of the proceedings under the tax sale, by showing that no taxes are due upon the land, no matter by whom paid, and that such party, or those under whom he claimed, had title to the land at the time of the sale. *Idem*, 420.

Possession and claim of ownership, is title, within the meaning of the law. *Idem*.

When the presumption arising from the auditor's deed, that land had been listed as required by the act of 1829, has been rebutted, the party claiming under such deed, must show affirmatively that the law in relation to such listing has been complied with. *Tobbetts v. Job et al.*, 11 Ill. 453; *Schuyler v. Hull*, 11 Ill. 462.

Under the act of 1829, a sale of lands without listing, was unauthorized, and no title passed by such sale. *Graves v. Bruen*, 11 Ill. 431.

A purchaser at a tax sale, who has an interest as heir in the lands sold, or one in whose name the land is listed for taxation, or one who is in possession, claiming title at the time of the sale, acquires no new title by his purchase. *Choteau v. Jones*, 11 Ill. 322; *Voris v. Thomas*, 12 Ill. 442.

A mortgagor, by purchasing the lands mortgaged by him, acquires no title. *Frye v. Bank of Illinois et al.*, 11 Ill. 367; *Voris v. Thomas*, 12 Ill. 442.

Listing lands in one class does not authorize the auditor to charge them in another. *Tobbetts v. Job*, 11 Ill. 453.

A judgment for taxes is good, if it contains the substance of the form required by the statute. *Chesnut v. Marsh*, 12 Ill. 173.

Such judgment cannot be impeached in a collateral proceeding for irregularity. *Idem.*

A judgment for taxes need not show the name of the patentee, the present owner, nor the county in which the land lies. *Spellman v. Curtenius*, 12 Ill. 409.

The south-west and south-east quarter of section 9, township 8 north, range 8 east, is only one tract of land. *Idem.*

In a collector's report, it is sufficient to state the amount of costs due on each tract, at the foot of the report, and in a collateral proceeding, the amount of costs need not be correctly stated in such report; it might be cause for reversing it on error or appeal. *Idem. Merritt et al. v. Thompson*, 13 Ill. 716.

An acre of land off the east side of the south-west and south-east quarters of section 9, 8 north, 8 east, is an acre off the east side of the south-east quarter, and not off from both tracts. *Spellman v. Curtenius*, 12 Ill. 409.

This acre must be cut off by a north and south line. *Idem.*

When land has been laid out into town or city lots, it is still necessary that the party contesting a tax deed must show that there are no taxes due upon the land. *Idem.*

A collector of taxes under a town ordinance must show affirmatively that his proceedings were regular. *Allen v. Scott*, 13 Ill. 80.

In ejectment under a tax title, a variance between the judgment and precept may be taken advantage of on trial. *Pitkin v. Yaw*, 13 Ill. 251.

Where the judgment is for ninety-nine cents, and the precept recites a judgment for one dollar and twenty-five cents, the variance is fatal. *Idem.*

An application to amend a precept during the trial of an action of ejectment, will not be entertained. *Pitkin v. Yaw*, 13 Ill. 251.

When a tax judgment is against eight lots, and the sheriff's deed, offered in evidence, recites a judgment against two lots, the deed will be excluded. *Idem.*

A sheriff's deed on a tax sale, executed after the commencement of an ejectment suit, is no evidence of title. *Idem.*

It does not necessarily follow that a tenant in possession is bound to pay taxes. *Blakeley v. Bestor*, 13 Ill. 708.

Descriptions in tax deeds are to be construed the same as in other deeds. *Idem.*

"Twenty feet on Main street, commencing forty feet from alley, undivided half lot six in block seven in the town of Peoria," means twenty feet wide, extending back from Main street the depth of the lot. *Idem.*

A sheriff's deed, founded on a valid judgment and precept upon a sale for the taxes of 1842, is a *prima facie* title, the presumption being that the requisitions of the statute were complied with; and the burden of proof is upon the party contesting the tax title. *Manly et al. v. Gibson*, 14 Ill. 136.

Under the revenue act of 1839, sales are void, if not made on the second Monday succeeding the commencement of the term of the court in which judgment is rendered. *Polk v. Hill et al.*, 15 Ill. 130; *Hope v. Sawyer*, 14 Ill. 254.

But this objection cannot be taken unless the party contesting the title shows first that the taxes are paid, and that he is the owner of the land. *Idem.*

One in possession of land under a contract which is listed in his name, is liable for the taxes. *Glancy v. Elliott*, 14 Ill. 456.

In a suit for taxes, a general judgment for costs may be entered, and the sale may be made for the amount of the tax and legal costs. If the collector sells for more costs than are due by law, the sale would be void for want of authority. *Merritt et al. v. Thompson*, 13 Ill. 716.

Where the law prescribes a definite period in which an assessment must be made and returned, if the same is returned after that time, a tax title acquired under it is void. And the defect cannot be cured by subsequent legislation. *Marsh v. Chesnut*, 14 Ill. 223; *Billings v. Detton*, 15 Ill. 218.

A precept under which land was sold under the law of 1839, contained a copy of the judgment on the report of the collector, which contained a description of the lands and lots ordered to be sold, with the taxes and costs due thereon; *Held*, that the sale was good although the sheriff was not furnished with a copy of the collector's report. *Manly et al. v. Gibson*, 14 Ill. 136.

A judgment for taxes rendered on a day prior to the time mentioned in the collector's notice, is void. *Pickett v. Hartsack*, 15 Ill. 279.

So also, when the collector does not substantially comply with the statute. *Idem.*

The constitution requires notice of sales to be given to owners of land by publication in the nearest newspaper to the county. This must be determined by comparing the distances between the places of publication and the county line. *Weer v. Hahn*, 15 Ill. 298.

Under the act of 1839, infants may redeem lands sold for taxes without filing any affidavit with the clerk, showing their right to redeem. *Chapin v. Curtenius*, 15 Ill. 427.

A collector may make his report before the sitting of the court to which it is to be made. *Jackson v. Cummings*, 15 Ill. 449.

A difference of a quarter of a cent between the description in the deed and judgment, or other proceedings on a tax sale, will not vitiate the sale. *Idem.*

If the name of the patentee or owner is not returned by the assessor, the court will presume it was unknown. *Idem.*

A certificate of publication of notice of tax sale, stating that "the foregoing was duly published in the Peoria Democratic Press," following the tax list, raises the presumption that the Peoria Democratic Press is a newspaper. *Idem.*

Tax titles will be sustained where in the proceedings such letters and characters as clearly convey their meaning, are used; as "S" for dollar, "Tx." for tax, &c. *Idem.*

County taxes are a lien on land, and take precedence of judgments. *Dennis et al. v. Maynard et al.*, 15 Ill. 477.

## CHAPTER XC.

## REVISED STATUTES.

SECTION	SECTION
1. Titles of chapters composing the Revised Statutes, to be published in one volume.	25. The term "court" defined.
2. List of laws repealed, with limitations, &c.	26. Acts not revived by repeal of repealing acts.
3. List of acts of present session incorporated in the Revised Statutes, and now repealed.	27. Words importing the singular or plural number, how to be taken and construed.
4. General repealing clause, with its limitations, &c.	28. Words importing the masculine gender, shall be deemed to include the feminine.
5. Laws of present session not made part of the Revised Statutes, to be bound therewith.	29. Signification of the word "person" or "persons" defined and enlarged.
6. Previous acts when necessary, to be also published.	30. "Heretofore" and "hereafter," how to be understood.
7. Ten thousand copies to be published.	31. "Insane person" &c., what included under style of.
8. Declaration of Independence, &c., to be published.	32. "Month" and "year," legal construction of.
9. Order and arrangement of publication.	33. "Oath" to include an affirmation, &c.
10. Superintendent of publication, appointed.	34. "States" to include the territories, and the District of Columbia.
11. Paper, type, size of volume, binding and lettering.	35. The term "laws now in force" defined.
12. Paper, how to be procured and paid for.	36. Rules of construction herein prescribed, to prevail, unless, &c.
13. Errors, &c., may be corrected in publication.	37. Revised Statutes, when to go into effect.
14. Chapters, secretary of State to copy; also, laws, &c.	38. No civil rights impaired by the repeal of acts herein enumerated.
15. Superintendent to furnish copy for printer.	39. Crimes, not hereby affected, save in mitigation of punishment.
16. Printer to deliver sheets, printed and pressed, to binder, within what time.	40. No suit or prosecution pending, to be affected or abated by such repeal.
17. Binder to bind and deliver work to secretary of State, within what time.	41. Laws for the limitation of actions, &c., not affected.
18. Penalty for failure on part of printer and binder.	42. School and revenue laws to be incorporated as chapters in the Revised Statutes.
19. Revised Statutes, how to be authenticated.	43. Chapters of Revised Statutes taken as one act; when to become law.
20. Printer and binder, how paid.	
21. Revised Statutes, how to be distributed.	
22. Law of present session to prevail, if conflicting with Revised Statutes.	
23. If chapters conflict, each to prevail as to its own subject matter.	
24. Last section to prevail, unless repugnant, &c.	

[Approved March 3, 1845. Rev. Stat. 1845, p. 454.]

(1.) SECTION I. The several chapters passed at the present session of the General Assembly, entitled as follows, to wit:

Abatement; Account; Advertisements; Aliens; Amendments and Jo-fails; Apprentices; Arbitrations and Awards; Attachments before Justices; Attachments in Circuit Courts; Attachments of Boats and Vessels; Attorneys and Counselors at Law; Attorney General and Circuit Attorneys; Auditor and Treasurer; Bail; Bank Notes; Bastardy; Births and Deaths; Castor Beans; Census; Chattel Mortgages; Chancery; Charitable Uses; Congress; Conveyances; Corporations; Costs; Counties and County Commissioners' Courts; County Treasurers and County Funds; Courts; Criminal Jurisprudence; Cumberland Road; Detinue; Divorces; Dower; Drivers; Ejectment; Elections; Escheats; Estrays; Evidence and Depositions; Fees and Salaries; Ferries and Toll Bridges; Forcible Entry and Detainer; Frauds and Perjuries; Fugitives from Justice; Gaming; Guardian and Ward; Habeas Corpus; Horses; Idiots and Lunatics; Inclosures and Fences; Insolvent Debtors; Inspections; Interest; Jails and Jailers; Joint

Rights and Obligations; Judgments and Executions; Jurors; Justices of the Peace and Constables; Landlord and Tenant; Lands; Laws; Library—State; Licenses; Licns; Limitations; Mandamus; Marks and Brands; Marriages; Militia; Mills and Millers; Ne Exeat and Injunctions; Negotiable Instruments; Negroes, Mulattoes, &c.; Notaries Public; Oaths and Affirmations; Officers; Official Bonds; Partitions; Paupers; Penitentiary; Petitions; Practice; Printing and Binding; Probate Court; Quo Warranto; Records and Recordors; Replevin; Revenue; Revised Statutes; Right of Property; Right of Way; Roads; Saltpetre Caves; Seat of Government; Secretary of State; Securities; Schools and School Lands; Sheriffs and Coroners; Shows and Jugglers; Slander; Steam Boats; Surveyors; Trespass; Venue; Warehouses; Warrants of Towns and Cities; Weights and Measures; Wills; Wolves; shall be published in one volume, to be denominated "THE REVISED STATUTES."

(2.) SEC. II. The following acts and parts of acts are hereby repealed, subject however to the restrictions, limitations and provisions of this chapter contained, that is to say:

An act relative to pleas in abatement, and the abatement of suits by the death of parties; approved December 30, 1826.

An act to regulate actions of account; approved January 11, 1827.

An act concerning the publication of advertisements; approved December 28, 1836.

An act concerning amendments and jeofails; approved January 11, 1827.

An act respecting apprentices; approved December 30, 1836.

An act to apportion the representation of the several counties in this State; approved January 14, 1836.

An act regulating arbitrators and referees; approved January 6, 1827.

An act to amend an act entitled "An act regulating arbitrators and referees;" approved March 1, 1833.

An act concerning attachments; approved February 12, 1833.

An act to authorize the seizure of boats and other vessels by attachment in certain cases; approved February 13, 1833.

An act to regulate proceedings by attachment before justices of the peace; approved February 27, 1837.

An act relating to the attorney general and State's attorneys; approved February 17, 1827.

An act to amend an act relative to the duties of the office of attorney general of this State; approved February 5, 1833.

An act to amend an act entitled "An act relating to the attorney general and State's attorneys;" became a law, February 7, 1835.

An act concerning attorneys and counselors at law; approved March 1, 1833.

An act to consolidate the acts relative to the auditor and treasurer, and election of attorney general; approved March 2, 1833.

An act in relation to bank collectors; approved February 7, 1835.

An act concerning special bail; approved January 26, 1827.

An act concerning bills of exchange; approved December 28, 1826.

An act to provide for the taking of the census or enumeration of the inhabitants of the State; approved January 13, 1829.

An act prescribing the mode of proceeding in chancery; approved February 13, 1833.

An act to provide for issuing writs of ne exeat and habeas corpus, and for other purposes; approved February 11, 1835.

An act to authorize clerks of the circuit and county commissioners' court to appoint deputies in certain cases; approved February 9, 1831.

An act to compensate clerks and other persons for services rendered in comparing poll books; approved February 25, 1833.

An act requiring clerks of courts to renew their official bonds periodically; approved February 26, 1833.

An act concerning conveyances of real property; approved January 31, 1827.

An act authorizing courts of chancery to decree conveyances in certain cases; approved December 17, 1824.

An act to amend the act concerning the conveyance of real property, approved January 31, 1827, and for other purposes; approved January 22, 1829.

An act concerning conveyances by county commissioners; approved January 7, 1835.

An act in relation to the title of school and canal lands; approved January 16, 1837.

An act concerning conveyances; approved July 21, 1837.

An act concerning the recording of conveyances; approved July 21, 1837.

An act simplifying the mode of acknowledgment of sheriffs' deeds; approved January 16, 1836.

An act to incorporate counties; approved January 3, 1827.

An act to compel the payment of certain moneys into the several county treasuries; approved January 11, 1823.

An act to authorize additional poll books to be opened at the county seats of the several counties in this State; approved February 9, 1831.

An act establishing the courts of county commissioners; approved March 22, 1819.

An act requiring the several clerks of this State to keep their respective offices at the county seat; approved January 11, 1823.

An act concerning public officers; approved February 12, 1835.

An act to amend an act entitled "An act establishing the courts of county commissioners;" approved March 22, 1819; approved March 1, 1837.

An act to increase the compensation of county commissioners; approved July 21, 1837.

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 January 5, 1829.

An act to amend an act concerning practice in courts of law, approved January 29, 1827; approved December 30, 1828.

An act relating to courts of probate; approved January 2, 1829.

An act establishing a circuit court north of the Illinois river; approved January 8, 1829.

An act regulating the supreme and circuit courts; approved January 19, 1829.

An act to provide for a suitable place for holding the supreme court; approved January 22, 1829.

An act supplemental to the act entitled "An act regulating the supreme and circuit courts," approved January 19, 1829; approved January 23, 1829.

An act regulating the office of the clerk of the supreme court; approved February 15, 1831.

An act supplemental to the several acts regulating the supreme and circuit courts in this State; approved February 16, 1831.

An act fixing the time of holding circuit courts in the counties of Madison and Calhoun; approved February 16, 1831.

An act regulating the terms of holding the circuit courts in this State; approved March 2, 1833.

An act to establish a uniform mode of holding circuit courts; approved January 7, 1835.

An act allowing appeals in certain cases; approved January 31, 1835.

An act dividing the State into judicial circuits; approved January 17, 1835.

An act regulating the times of holding the supreme and circuit courts, and fixing the salary of the circuit judges; approved February 13, 1835.

An act fixing the times of holding the circuit courts in the several counties therein named; approved January 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; approved January 12, 1836.

An act supplemental to the several acts relating to the circuit courts in this State; approved January 16, 1836.

An act supplemental to the several acts regulating the circuit courts in this State; approved January 16, 1836.

An act supplemental to an act changing the times of holding the circuit courts in the third judicial circuit, passed at the present session of the General Assembly; approved January 16, 1836.

An act concerning process; approved February 25, 1837.

An act to legalize certain process in the third and fifth judicial circuits; approved January 19, 1837.

An act fixing the times of holding circuit courts in the several counties in the fourth judicial circuit; approved March 1, 1837.

An act prescribing the time of holding the circuit court in the county of Washington; approved February 10, 1837.

An act fixing the terms of the courts in the first, sixth and seventh circuits; approved March 4, 1837.

An act forming an additional judicial circuit; approved February 4, 1837.

An act to legalize processes in the circuit courts of this State; approved July 20, 1837.

An act to amend an act concerning process, approved February 25, 1837, and for other purposes; approved July 21, 1837.

An act concerning costs; approved January 10, 1827.

An act relative to criminal jurisprudence; approved February 26, 1833.

An act to regulate the apprehension of offenders, and for other purposes; approved January 6, 1827.

An act to amend the act relative to criminal jurisprudence, approved January 30, 1827; approved January 19, 1829.

An act to amend an act to regulate the apprehension of offenders, and for other purposes, approved January 6, 1827; approved February 11, 1837.

An act to regulate the taking of delivery bonds; approved March 1, 1833.

An act regulating the mode of taking depositions, and to provide for the perpetuating of testimony; approved February 9, 1827.

An act concerning the action of detinue; approved January 6, 1827.

An act amending the law concerning divorces; approved January 12, 1827.

An act concerning divorces; approved January 31, 1827.

An act amending the law concerning divorces, approved January 31, 1827; became a law, December 4, 1833.

An act to lay out the State into districts for the purpose of electing representatives to the Congress of the United States; approved February 15, 1831.

An act for the speedy assignment of dower and partition of real estate; approved February 6, 1827.

An act authorizing suits against persons whose names are unknown, in certain cases; approved February 27, 1837.

An act confirming grants of property made for the encouragement of education, and for other purposes; approved February 1, 1831.

An act to simplify proceedings in the action of ejectment; approved January 13, 1836.

An act to amend the act regulating elections; approved February 9, 1827.

An act directing the mode of electing electors of president and vice president of the United States; approved January 11, 1827.

An act regulating elections; approved January 10, 1829.

An act to amend an act entitled "An act to regulate elections;" approved February 28, 1833.

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; approved February 6, 1835.

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.

An act to amend an act regulating elections; approved January 29, 1835.

An act making the clerks of the county commissioners' courts and county treasurers elective by the people; approved February 7, 1837.

An act to regulate the inclosing and cultivating of common fields; approved February 23, 1819.

An act regulating inclosures; approved February 20, 1819.

An act to amend an act regulating inclosures; approved February 27, 1835.

An act regulating escheats; approved March 1, 1833.

An act concerning estrays; approved February 9, 1835.

An act declaring what shall be evidence in certain cases; approved January 10, 1827.

An act regulating the salaries, fees and compensation of the several officers and persons therein mentioned; approved February 19, 1827.

An act in addition to an act regulating the salaries, fees and compensation of the several officers and persons therein mentioned; approved January 23, 1829.

An act to provide for the establishment of ferries, toll bridges and turnpike roads; approved February 12, 1827.

An act supplemental to an act entitled "An act to establish and regulate ferries," approved February 20, 1819; approved February 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; approved January 19, 1833.

An act for the incorporation of fire companies; approved February 12, 1835.

An act concerning forcible entry and detainer; approved February 2, 1827.

An act amending an act entitled "An act concerning forcible entry and detainer," approved February 2, 1827; approved February 28, 1837.

An act for the prevention of frauds and perjuries; approved February 16, 1827.

An act to prevent fraudulent devises, and for other purposes; approved February 28, 1833.

An act concerning fugitives from justice; approved January 6, 1827.

An act to restrain gaming; approved January 16, 1827.

An act regulating the proceeding on writs of *habeas corpus*; approved January 22, 1827.

An act for improving the breed of horses; approved January 3, 1829.

An act regulating the estates of idiots, lunatics and persons distracted, and for other purposes; approved February 12, 1823.

An act further to secure the property of idiots, lunatics and distracted persons; became a law, January 19, 1831.

An act to provide for the maintenance of illegitimate children; approved January 23, 1827.

An act to establish inspections within this State; approved March 23, 1819.

An act establishing and regulating the inspection of tobacco in this State; approved January 12, 1829.

An act to regulate the interest on money; approved February 28, 1833.

An act regulating the interest on money; approved March 2, 1819.

An act for the relief of insolvent debtors; approved January 12, 1829.

An act to incorporate such persons as may associate for the purpose of procuring and erecting public libraries in this State; in force January 31, 1823.

An act supplemental to an act to incorporate such persons as may associate for the purpose of procuring and erecting public libraries in this State, approved January 31, 1823; approved January 31, 1835.

An act to incorporate the inhabitants of such towns as may wish to be incorporated; approved February 12, 1831.

An act further defining the powers and duties of trustees of incorporated towns; approved January 31, 1835.

An act concerning jails and jailers; approved January 26, 1827.

An act concerning judgments and executions; approved January 17, 1825.

An act prescribing the mode of summoning grand and petit jurors, and defining their qualifications and duties; approved February 7, 1827.

An act to amend an act prescribing the mode of summoning grand and petit jurors, and defining their qualifications; approved February 7, 1827; 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; approved February 13, 1835.

An act to provide for the election of justices of the peace and constables; approved December 30, 1826.

An act concerning justices of the peace and constables; approved February 3, 1827.

An act supplemental to the act entitled "An act concerning justices of the peace and constables," passed February 3, 1827; approved February 12, 1827.

An act to extend the jurisdiction of justices of the peace; 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; approved January 13, 1829.

An act to amend an act concerning justices of the peace and constables, approved February 13, 1827; approved January 23, 1829.

An act concerning justices of the peace and constables, and concerning Coles county; approved January 7, 1831.

An act to amend the acts concerning justices of the peace and constables; approved March 1, 1833.

An act to extend the jurisdiction of justices of the peace in certain cases; approved March 2, 1833.

An act to extend the jurisdiction of justices of the peace in certain cases therein named; approved February 13, 1835.

An act to provide for the election of probate justices of the peace; approved March 4, 1837.

An act to amend an act entitled "An act to amend an act concerning justices of the peace and constables," approved February 13, 1827, approved January 23, 1829; approved July 21, 1837.

An act to amend an act to provide for the election of probate justices of the peace; approved July 21, 1837.

An act concerning occupying claimants of land; approved February 23, 1819.

An act to enable persons to remove fences made by mistake on the lands of other persons; approved February 23, 1819.

An act to provide for the collection of demands growing out of contracts for sales of improvements on public lands; approved February 15, 1831.

An act concerning landlords and tenants; approved February 13, 1827.

An act to amend an act entitled "An act concerning landlords and tenants;" became a law, January 4, 1831.

An act to define the extent of possession in cases of settlement on the public lands; approved February 27, 1837.

An act concerning the revival of statutes; 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; approved January 1, 1819.

An act regulating the publication and distribution of the laws and journals of the General Assembly; approved January 14, 1827.

An act declaring what laws are in force in this State; approved February 4, 1819.

An act to repeal certain laws; 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; approved March 2, 1833.

An act relative to printing certain acts, and for other purposes; approved February 27, 1823.

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 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; approved February 22, 1823.

An act requiring merchants, auctioneers, peddlers and others engaged in the sale of goods, wares and merchandise in this State, to procure a license for that purpose, under the penalty therein prescribed; approved February 16, 1831.

An act to amend an act entitled "An act requiring merchants, auctioneers, peddlers 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 named;" approved March 2, 1833.

An act for the limitation of actions, and for avoiding vexatious law suits; approved February 10, 1827.

An act to amend an act for the limitation of actions, and for avoiding vexatious law suits, approved February 10, 1827; approved January 17, 1835.

An act to amend an act entitled "An act for the limitation of actions, and for avoiding vexatious law suits;" approved February 11, 1837.

An act concerning marks and brands; approved February 6, 1835.

The fourteenth and fifteenth sections of an act respecting crimes and punishments; approved March 23, 1819.

An act to regulate proceedings on writs of mandamus; approved January 6, 1827.

An act concerning marriages; approved February 14, 1827.

An act for the benefit of mechanics; approved February 22, 1833.

An act regulating mills and millers; approved February 9, 1827.

An act concerning minors, orphans and guardians, approved February 4, 1827.

An act to amend an act concerning minors, orphans and guardians, approved February 4, 1827; approved February 7, 1831.

An act to amend an act entitled "An act concerning minors, orphans and guardians;" approved March 4, 1837.

An act for the organization and government of the militia of this State; approved March 2, 1833.

An act to amend an act entitled "An act for the organization and

government of the militia of this State," approved March 2, 1833; approved March 4, 1837.

An act encouraging volunteer companies; approved March 2, 1837.

An act respecting free negroes, mulattoes, servants and slaves; approved March 30, 1819.

An act to amend an act entitled "An act respecting free negroes, mulattoes, servants and slaves," approved January 17, 1829; approved February 1, 1831.

An act respecting free negroes, mulattoes, servants and slaves; approved January 17, 1829.

An act to amend an act entitled "An act respecting free negroes, mulattoes, servants and slaves," approved March 30, 1819; approved March 1, 1833.

An act regulating the issuing of writs of *ne exeat* and injunctions; approved January 22, 1827.

An act for the appointment of notaries public; approved December 30, 1828.

An act to amend an act entitled "An act for the appointment of notaries public," approved February 2, 1819; approved January 12, 1833.

An act in addition to the act concerning oaths and affirmations; approved February 9, 1831.

An act concerning oaths and affirmations; approved December 26, 1826.

An act concerning partitions and joint rights and obligations; approved January 13, 1821.

An act regulating the mode of granting license to clock peddlers; in force January 31, 1835.

An act to regulate the penitentiary; approved February 19, 1833.

An act to amend an act entitled "An act to regulate the penitentiary," approved February 19, 1833; approved February 9, 1835.

An act to amend the several acts in relation to the penitentiary; approved January 18, 1836.

An act in relation to the penitentiary; approved July 21, 1837.

An act requiring persons who petition the General Assembly, to give certain notices before such petitions are finally acted upon; approved December 26, 1826.

An act for the relief of the poor; approved March 1, 1833.

An act to amend an act entitled "An act for the relief of the poor," approved March 1, 1833; approved February 13, 1835.

An act relative to promissory notes, bonds, due-bills and other instruments in writing, and making them assignable; approved January 3, 1827.

An act regulating the practice in the supreme and circuit courts of this State, and for other purposes; approved March 22, 1819.

An act concerning practice in courts of law; approved January 29, 1827.

An act concerning practice; approved February 2, 1837.

An act to amend an act entitled "An act concerning practice in courts of law," approved January 29, 1827; approved March 1, 1833.

An act simplifying proceedings at law for the collection of debts; approved February 25, 1833.

An act to amend the practice act of 1827; approved February 7, 1835.

An act concerning appeals and writs of error; became a law, December 6, 1836.

- An act to amend the act entitled "An act concerning practice in courts of law," approved January 29, 1827; approved July 21, 1837.
- An act concerning public arms; approved March 1, 1833.
- An act concerning ancient books, papers and records; approved January 30, 1821.
- An act providing a summary mode to recover public records, papers, and other public property illegally withheld; approved February 15, 1831.
- An act requiring certain official reports to be made to the General Assembly; approved February 20, 1819.
- An act relative to several officers therein named; approved January 22, 1829.
- An act to provide for the preservation of the property of the State; approved February 15, 1827.
- An act concerning public records; approved February 9, 1835.
- An act to provide for transcribing certain records therein named; approved February 12, 1835.
- An act supplemental to an act entitled "An act concerning public records," approved February 9, 1835; approved January 18, 1836.
- An act defining the duties of public printer, and fixing the time and manner of performing the same; approved January 24, 1835.
- An act concerning the publication of the laws and journals; approved January 16, 1836.
- An act in relation to the public printer; approved March 4, 1837.
- An act to regulate proceedings upon information in the nature of a quo warranto; approved December 28, 1826.
- An act to regulate the action of replevin; approved January 29, 1827.
- An act relating to the office of recorder; approved January 8, 1829.
- An act to provide for the election of county recorders and surveyors; became a law, February 11, 1835.
- An act supplemental to an act to provide for the election of county recorders and surveyors; approved February 13, 1835.
- An act concerning religious societies; approved February 6, 1835.
- An act for the relief of certain persons whose lands have been sold for taxes; approved February 13, 1827.
- An act to provide for raising a revenue; approved February 19, 1827.
- An act supplemental to an act entitled "An act to provide for raising a revenue;" approved January 19, 1829.
- An act to amend the several revenue laws of this State; approved February 12, 1831.
- An act concerning the public revenue; approved February 27, 1833.
- An act in addition to an act supplemental to an act entitled "An act to provide for raising a revenue;" approved February 12, 1835.
- An act concerning the redemption of lands sold for taxes; approved January 13, 1836.
- An act concerning the public revenue; approved January 15, 1836.
- An act concerning the surplus revenue; approved March 4, 1837.
- An act concerning the public revenue of the county of Warren; approved March 2, 1837.
- An act supplementary to an act to amend an act to provide for raising a revenue; became a law, December 6, 1836.

- An act relative to the duty of county treasurers and sheriffs; approved July 22, 1837.
- An act authorizing the clerks of the county commissioners' courts to list certain lands; approved July 21, 1837.
- An act concerning the public revenue; approved July 21, 1837.
- An act concerning the right of way, and for other purposes; approved February 28, 1833.
- An act prescribing the mode of trying the right of property; approved January 29, 1827.
- An act to amend an act regulating the mode of trying the right of property; approved January 30, 1835.
- An act concerning public roads; became a law, February 12, 1827.
- An act to amend an act to provide for the establishment of ferries, toll-bridges and turnpike roads, approved February 12, 1827; approved January 22, 1829.
- An act concerning public roads; approved February 3, 1835.
- An act declaratory of the law in relation to the road tax; approved January 16, 1836.
- An act to amend an act concerning public roads; approved January 18, 1836.
- An act to amend an act entitled "An act to amend an act concerning public roads," approved January 18, 1836; approved March 3, 1837.
- An act concerning public roads; approved July 20, 1837.
- An act to provide for inclosing and guarding saltpetre caves in this State; approved February 6, 1835.
- An act providing for the establishment of free schools; approved January 15, 1825.
- An act amending the act providing for the establishment of free schools, approved January 15, 1825, and for other purposes; approved February 17, 1827.
- An act defining and regulating the duties and term of service of the secretary of State; approved February 14, 1831.
- An act to provide for all seals that may be necessary in the several official departments of the State of Illinois; approved February 19, 1819.
- An act to provide for the relief of securities in a summary way in certain cases; approved March 24, 1819.
- An act permanently to locate the seat of government of the State of Illinois; approved February 25, 1837.
- An act supplemental to an act to permanently locate the seat of government of Illinois; approved March 3, 1837.
- An act concerning sheriffs and coroners; approved February 12, 1827.
- An act to amend an act entitled "An act concerning sheriffs and coroners," approved February 12, 1827; approved February 7, 1831.
- An act concerning sheriffs and coroners; approved January 7, 1831.
- An act prescribing the duties of coroners; approved January 20, 1821.
- An act to prohibit shows of wax figures, tricks of jugglers, &c.; approved January 23, 1829.
- An act declaring certain words actionable; approved December 27, 1822.
- An act abolishing the office of State recorder; approved January 18, 1833.

An act concerning the payment of money out of the State treasury; approved February 12, 1833.

An act concerning the State treasurer; approved January 11, 1831.

An act providing stationery and firewood for the use of the General Assembly; approved January 6, 1825.

An act to prevent disasters on steamboats navigating the waters within the jurisdiction of Illinois; approved July 21, 1837.

An act for the protection of stock against castor beans; approved January 16, 1836.

An act regulating the appointment and duties of county surveyors; approved January 14, 1829.

An act directing the mode of bringing suits by or against the State; approved January 3, 1829.

An act to prevent the selling of spirituous liquors in this State, and for other purposes; approved February 14, 1823.

An act to license and regulate taverns; approved February 27, 1819.

An act to amend an act to license and regulate taverns; approved February 12, 1835.

An act to amend the act to license and regulate taverns; became a law, February 10, 1837.

An act to provide for the recording of town plats; approved February 27, 1833.

An act to prevent trespassing by cutting timber; approved February 27, 1819.

An act to amend an act to prevent trespassing by cutting timber, approved February 27, 1819; approved February 25, 1833.

An act to provide for changing the venue in civil and criminal cases; approved January 23, 1827.

An act relative to wills and testaments, executors and administrators, and the settlement of estates; approved January 23, 1829.

An act to amend an act entitled "An act relative to wills and testaments, executors and administrators, and the settlement of estates;" 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;" approved February 25, 1833.

An act supplementary to an act entitled "An act relative to wills and testaments, executors and administrators, and the settlement of estates;" approved January 23, 1829; approved March 1, 1833.

An act supplementary to an act relative to wills and testaments; approved January 27, 1835.

An act for increasing the penalty of the treasurer's bond; approved March 1, 1837.

An act to preserve good order in all worshipping congregations and societies in this State; approved March 1, 1833.

An act concerning the public revenue; approved February 26, 1839.

An act supplementary to an act concerning the public revenue; approved March 1, 1839.

An act legalizing process issued by judges and justices of probate; approved January 7, 1839.

An act to authorize committees of the General Assembly to swear witnesses; approved January 7, 1839.

An act for amending the act entitled "An act to provide for the election of justices of the peace and constables," approved December 30, 1836; approved January 12, 1839.

An act to amend an act entitled "An act to prevent trespasses by cutting timber," approved February 27, 1819; approved January 12, 1839.

An act to amend an act entitled "An act prescribing the mode of proceeding in chancery;" approved January 24, 1839.

An act to amend an act entitled "An act concerning judgments and executions," approved January 17, 1825; approved February 6, 1839.

An act regulating tavern and grocery licenses; approved March 2, 1839.

An act supplemental to an act entitled "An act to regulate the action or replevin," approved January 29, 1827; approved February 12, 1839.

An act to prohibit the circulation of bank notes of a less denomination than five dollars; became a law, December 4, 1838.

An act in relation to garnishees; approved February 12, 1839.

An act to amend an act concerning justice of the peace and constables; approved February 3, 1827; approved February 12, 1839.

An act regulating the salaries of the judges of the supreme court; approved February 12, 1839.

An act regulating the time of holding the circuit court in the second judicial circuit; approved February 15, 1839.

An act to amend an act entitled "An act regulating elections," in force June 1, 1829; approved February 15, 1839.

An act to prohibit betting on elections; approved February 15, 1839.

An act to amend an act concerning the right of way; approved February 12, 1839.

An act supplementary to the act entitled "An act to define the extent of possession in cases of settlement on the public lands," approved February 27, 1837; approved February 16, 1839.

An act to amend an act entitled "An act for the relief of the poor," approved March 1, 1833; approved February 21, 1839.

An act to provide for the appointment of notaries public; approved February 22, 1839.

An act dividing the State into judicial circuits; approved February 23, 1839.

An act relating to service of process against corporations; approved February 19, 1839.

An act to define the manner of proceeding in petitioning the General Assembly for locating or altering State roads; approved February 27, 1839.

An act to regulate public carriages and the law of the road; approved February 23, 1839.

An act supplementary to an act prescribing the mode of trying the right of property; approved February 27, 1839.

An act to amend an act entitled "An act declaring what shall be evidence in certain cases," approved January 10, 1827; approved February 27, 1839.

An act further to provide for the release and extinction of mortgages; approved February 27, 1839.

An act to amend the act entitled "An act to provide for changing the venue in civil and criminal cases," approved January 23, 1827; approved February 29, 1839.

An act to amend an act regulating the mode of trying the right of property; approved February 28, 1839.

An act fixing the salary of the governor, and requiring him to reside at the seat of government; approved March 1, 1839.

An act to amend the law in relation to sheriffs and coroners; approved March 1, 1839.

An act defining and regulating proceedings in the action of ejectment; approved March 2, 1839.

An act to protect the Cumberland road, and to prevent trespasses; approved March 2, 1839.

An act fixing the time of holding the supreme court, and the circuit courts in the first, sixth, seventh, eighth and ninth circuits; approved March 2, 1839.

An act to provide for the probate of wills in certain cases; approved March 2, 1839.

An act to quiet possessions and confirm titles to land; approved March 2, 1839.

An act relating to the duties of county commissioners; approved March 2, 1839.

An act to amend the several laws in relation to practice in courts of law, and for the benefit of A. McPhail and T. C. Kirkman; approved March 2, 1839.

An act to amend the act concerning marriages; approved March 2, 1839.

An act to fix the time of holding courts in the several counties composing the fifth judicial circuit; approved March 2, 1839.

An act in relation to the penitentiary; approved March 2, 1839.

An act to amend an act entitled "An act establishing and regulating the inspection of tobacco in this State," approved January 12, 1829; approved March 2, 1839.

An act to change the time of holding courts in the third judicial circuit in this State; approved March 2, 1839.

An act to amend the several laws in relation to appeal boards and the trial of appeals; approved March 2, 1839.

An act to amend an act concerning the public revenue, approved February 26, 1839; approved February 1, 1840.

An act fixing the time of holding the circuit courts in the eighth judicial circuit; approved February 1, 1840.

An act concerning attachments; approved January 31, 1840.

An act to amend an act concerning attachments, approved February 12, 1833; approved January 31, 1840.

An act providing for the binding of the laws and journals; approved January 31, 1840.

An act to amend the law in relation to change of venue; approved February 1, 1840.

An act to amend an act concerning justices of the peace and constables, approved February 3, 1827; approved February 1, 1840.

An act concerning assessors; approved February 26, 1841.

An act to amend an act regulating the publication and distribution of the laws and journals of the General Assembly; approved January 29, 1840.

An act in relation to the publication of the reports of the decisions of the supreme court of the State of Illinois; approved February 1, 1840.

An act concerning sheriffs, coroners, constables, justices of the peace and probate justices of the peace; approved February 1, 1840.

An act fixing the times of holding courts in the sixth judicial circuit; approved January 29, 1840.

An act to amend the several laws in relation to appeals; approved February 3, 1840.

An act regulating the time of holding the court in the counties of Clinton and Bond; approved February 3, 1840.

An act to provide for securing to mechanics and others, liens for the value of labor and materials; became a law, December 10, 1839.

An act authorizing administrators to settle estates in particular cases; approved February 17, 1841.

An act to authorize the appointment of assessors in certain cases; approved February 27, 1841.

An act further defining the duties of the attorney general, and for other purposes; approved February 26, 1841.

An act creating a board of auditors to settle the accounts of contractors on public works; approved February 26, 1841.

An act to prevent the unlawful driving away of cattle and other stock, by drovers and others; approved February 3, 1841.

An act to prevent collectors from speculating in auditor's warrants; approved February 19, 1841.

An act relating to the recording or registering of conveyances or other instruments in writing, executed out of this State and within the United States; approved February 26, 1841.

An act concerning county seats and county lines; approved February 27, 1841.

An act to change the time of holding courts in the second judicial circuit; approved February 7, 1841.

An act fixing the time of holding courts in the sixth judicial circuit; approved January 20, 1841.

An act fixing the time of holding the circuit courts in the first judicial circuit; approved February 3, 1841.

An act to establish circuit courts; approved February 23, 1841.

An act supplemental to an act to establish circuit courts, approved February 23, 1841; approved February 26, 1841.

An act to amend an act entitled "An act confirming grants of property made for the encouragement of education, and for other purposes," approved February 1, 1831; approved February 18, 1841.

An act to amend and explain the election law, approved January 10, 1821; approved February 20, 1841.

An act regulating evidence in certain cases; approved February 17, 1841.

An act to facilitate the collection of judgments by executors and administrators; approved February 19, 1841.

An act to amend an act concerning judgments and executions, approved January 17, 1825; approved February 19, 1841.

- An act to exempt certain articles from execution; approved February 26, 1841.
- An act re-organizing the judiciary of Illinois; became a law, February 10, 1841.
- An act to amend the several acts in relation to constables; approved February 26, 1841.
- An act to amend an act entitled "An act to regulate tavern and grocery licenses;" approved February 17, 1841.
- An act in relation to peddlers; approved February 27, 1841.
- An act supplemental to an act to amend an act entitled "An act to regulate taverns and groceries;" approved February 18, 1841.
- An act to enable purchasers of real estate to ascertain whether the same is free from incumbrances, and to prevent secret liens of attachment and executions; approved February 26, 1841.
- An act in relation to free negroes and mulattoes; approved February 19, 1841.
- An act in relation to paupers; approved February 21, 1841.
- An act to amend an act simplifying proceedings at law, for the collection of debts, approved February 25, 1833; approved February 23, 1841.
- An act supplemental to an act defining the duties of public printer, and fixing the time and manner of performing the same; approved February 23, 1841.
- An act concerning public roads; approved February 20, 1841.
- An act to incorporate academies and seminaries of learning; approved March 6, 1843.
- An act to fix the tenure of certain officers; approved February 21, 1843.
- An act amending the several acts relating to attachments; approved February 23, 1843.
- An act concerning attorneys and counselors at law; approved March 4, 1843.
- An act to amend an act entitled "An act to consolidate the acts relative to the auditor and treasurer, and the election of attorney general," approved March 2, 1833; approved March 4, 1843.
- An act in relation to official bonds; approved January 28, 1843.
- An act to prevent cities or towns from issuing warrants to circulate as money; approved March 4, 1843.
- An act to regulate the fees of the clerks of circuit courts, in case of naturalization of foreigners; approved February 24, 1843.
- An act in relation to clerks of circuit courts; approved March 6, 1843.
- An act to establish seven congressional districts; approved March 1, 1843.
- An act to extend the jurisdiction of the several counties bordering on the Mississippi and Wabash rivers; approved March 4, 1843.
- An act to authorize county commissioners' courts to assess taxes for road purposes; approved March 4, 1843.
- An act for the regulating of county treasuries and county funds; approved February 25, 1843.
- An act to authorize county commissioners to lease certain rooms; approved February 21, 1843.
- An act in relation to the supreme court; approved March 3, 1843.

- An act supplemental to an act concerning estrays, in force February 9, 1835; approved March 4, 1843.
- An act to amend an act concerning estrays, approved February 9, 1835; approved March 6, 1843.
- An act concerning evidence in certain cases; approved February 24, 1843.
- An act to exempt certain articles from execution; approved March 4, 1843.
- An act relating to docket fees; approved March 4, 1843.
- An act to amend an act to provide for the establishment of ferries, toll-bridges and turnpike roads, approved February 12, 1827; approved February 1, 1843.
- An act for the better security of State, county and township funds; approved February 28, 1843.
- An act to punish the crime of incest; approved February 7, 1843.
- An act to authorize and direct the secretary of State to receive and preserve geological specimens, and for other purposes; approved March 4, 1843.
- An act to repeal an act entitled "An act to regulate foreign insurance company agencies established in the State of Illinois, and for other purposes;" approved March 4, 1843.
- An act in relation to judgments and executions; approved February 25, 1843.
- An act to allow grand and petit jurors mileage; approved March 4, 1843.
- An act regulating the manner of selecting jurors in certain cases; approved February 1, 1843.
- An act in relation to the distribution of the laws and documents of the Congress of the United States; approved February 22, 1843.
- An act to amend an act entitled "An act providing for the binding of the laws and journals," approved January 31, 1840; approved February 23, 1843.
- An act to amend an act entitled "An act regulating mills and millers," approved February 7, 1827; approved March 3, 1843.
- An act in relation to the penitentiary; approved March 2, 1843.
- An act relative to probate justices of the peace; approved February 1, 1843.
- An act to amend the several laws in relation to the trial of the right of property before justices of the peace; approved February 2, 1843.
- An act supplemental to the several acts defining the duties of the public printer; approved March 4, 1843.
- An act to authorize the county commissioners' courts to erect fire-proof offices for the preservation of county records; approved February 24, 1843.
- An act to establish a mode to register births and deaths; approved March 3, 1843.
- An act for the relief of certain securities therein named; became a law, December 6, 1842.
- An act concerning the State library; approved December 15, 1842.
- An act to regulate weights and measures; approved March 4, 1843.
- An act to amend an act relative to wills and testaments, executors and administrators, and the settlement of estates, approved January 23, 1829; approved March 6, 1843.

An act authorizing counties to give a bounty on wolf scalps; approved February 15, 1843.

(3.) SEC. III. The following acts and parts of acts passed at the present session, the provisions thereof having been incorporated in and made part of the several chapters composing the Revised Statutes, are hereby repealed, subject to the restrictions, limitations and provisions in this chapter contained, that is to say:

An act to regulate mortgages on personal property; approved January 17, 1845.

An act to amend an act for the speedy assignment of dower and partition of real estate, approved February 6, 1827; approved January 21, 1845.

An act to amend an act directing the mode of electing electors of President and Vice-President of the United States, approved January 11, 1827; approved January 21, 1845.

An act to amend an act entitled "An act relative to criminal jurisprudence," approved February 26, 1833; became a law, December 2, 1844.

An act to amend an act exempting certain articles from execution; approved January 23, 1845.

An act requiring county orders to be countersigned by county treasurers; approved January 23, 1845.

(4.) SEC. IV. In addition to the several acts hereinbefore enumerated, all acts and parts of acts, passed previous to the present session of the General Assembly, the subjects whereof are revised and re-enacted in the Revised Statutes, as well as all other acts and parts of acts, the provisions of which are repugnant to the provisions therein contained, are hereby repealed; subject, however, to the provisions, limitations and restrictions in this chapter contained.

(5.) SEC. V. All laws of a general and public nature passed at the present session of the General Assembly, the subjects whereof are not revised or incorporated in the several chapters composing the Revised Statutes, shall be published and bound in the volume of Revised Statutes.

(6.) SEC. VI. Such acts and parts of acts of a general and public nature, passed previous to the present session of the General Assembly, as are neither repealed nor incorporated and made part of the Revised Statutes, and which are necessary to preserve the meaning of, and perfect the laws enacted, shall be published and bound in the volume of Revised Statutes.

(7.) SEC. VII. There shall be published in the manner hereinafter provided, an edition of ten thousand copies of the Revised Statutes.

(8.) SEC. VIII. The declaration of independence; the articles of confederation; the constitution of the United States, with its amendments; the constitution of this State; the ordinance of July 13, 1787; the ordinance of the convention of this State, adopted August 26, 1818, shall be published with the Revised Statutes.

(9.) SEC. IX. The chapters composing the Revised Statutes, shall be published in numerical order, alphabetically arranged, under proper heads and titles, with complete and full index to the whole; and at the head of each chapter, there shall be brief notes of the contents of each clause or section in numerical order.

(10.) SEC. X. The person heretofore appointed to revise the laws of this State, is hereby appointed and required to superintend the publication

of the Revised Statutes, arrange the order of publication, prepare the notes and index, examine and correct the proof sheets, and cause all clerical and typographical errors to be corrected, so far as he may discover the same.

(11.) SEC. XI. The edition of the Revised Statutes, hereby authorized to be published, shall be printed on paper equal in quality to that used in the fourth volume of Scammon's Reports; on new type of size and quality to be approved by the superintendent, and shall be published in one volume of royal octavo size, bound in full law binding, equal in style, finish and durability to the binding of the fourth volume of Scammon's Reports, and appropriately lettered on the back in gilt lettering, "REVISED STATUTES," "ILLINOIS," "1845."

(12.) SEC. XII. It shall be the duty of the superintendent to contract for the paper to be used in printing the Revised Statutes, of the quality in the preceding section specified, and at the lowest possible price; and on the delivery of such paper, he shall present his certificate, approved by the governor, to the auditor, who shall thereupon issue his warrant upon the treasurer, in favor of the proper person, for the amount.

(13.) SEC. XIII. In preparing the work for publication, errors which may have occurred in the numbering of the several chapters and sections, or in reference thereto, and which remain in the enrolled chapters, may be corrected and the proper numbers and references inserted; and words inserted or omitted by clerical mistake, may be omitted or supplied without brackets.

(14.) SEC. XIV. It shall be the duty of the secretary of State, to cause to be copied, the several chapters composing the Revised Statutes, and all other laws passed at the present session of the General Assembly, which are required to be published with the Revised Statutes, and to furnish the same to the superintendent in such order and at such times as he may require.

(15.) SEC. XV. It shall be the duty of the superintendent, to furnish the public printer, within ten days after the adjournment of the General Assembly, with copy sufficient for the commencement of the work, and continue to furnish such copy as rapidly as the same shall be needed.

(16.) SEC. XVI. The public printer shall, immediately on the receipt of such copy, proceed with the work, and as the forms are printed, deliver the sheets, well pressed and in good order, to the binder; the printing to be completed and the whole delivered to the binder before the first day of July next: *Provided*, That if there be delay in procuring the paper for said work, the time fixed for the completion of the printing, may be extended, not to exceed twenty days.

(17.) SEC. XVII. The binder shall bind the volumes as by law required, and deliver to the secretary of State, within twenty days after the sheets of the last form are delivered to him, one thousand copies; within twenty days, thereafter, one thousand copies; by the tenth of September next, two thousand copies; and the balance by the twenty-fifth day of December next: *Provided*, That if the printer shall fail to deliver the last form of printed sheets, at the time and in the manner required, the binder shall have additional time, equal to the time so lost, in which to deliver the work to the secretary of State.

(18.) SEC. XVIII. For any delay or failure on the part of the printer or binder, they shall be subject to the provisions and forfeitures prescribed in chapter eighty-four of the Revised Statutes.



(19.) SEC. XIX. The copies of the Revised Statutes and of the laws passed at the present session of the General Assembly, which are required to be furnished by the secretary of State to the superintendent, shall be certified by the secretary of State to be true copies of the originals; and the certificate of the superintendent, that the printed chapters and acts contained in the volume of Revised Statutes are correctly published from such certified copies, with the exception of such corrections of clerical errors and mistakes, as are authorized in this chapter to be made, shall be deemed in all courts and places a sufficient authentication of the several chapters and acts contained in the work so published.

(20.) SEC. XX. When the printer and binder shall have completed their respective portions of the work according to law, their accounts therefor shall be audited and paid as in other cases.

(21.) SEC. XXI. The Revised Statutes shall be distributed to the officers and persons entitled thereto, in the same manner as is provided by law for the distribution of the ordinary laws of the General Assembly.

(22.) SEC. XXII. Whenever the provisions of any law passed at the present session and published with the chapters composing the Revised Statutes, without being incorporated in the same, shall contravene, or be inconsistent with the provisions of such chapters, the provisions of such law shall prevail.

(23.) SEC. XXIII. If the provisions of different chapters of the Revised Statutes conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions growing out of the subject matter of such chapter.

(24.) SEC. XXIV. If conflicting provisions be found in different sections of the same chapter, the provisions of the section which is last in numerical order, shall prevail, unless such construction be inconsistent with the meaning of such chapter.

(25.) SEC. XXV. The term "court" as used in the Revised Statutes, shall, in all necessary cases, be deemed to refer as well to probate justices of the peace, justices of the peace, and tribunals established by law in cities or incorporated towns, as to courts of record.

(26.) SEC. XXVI. No act, or part of an act, repealed by another act of the General Assembly, shall be deemed to be revived by the repeal of such repealing act.

(27.) SEC. XXVII. Whenever, in the Revised Statutes or any other statute, words importing the singular number only, are used, such words shall be deemed to extend to several persons, matters or things, and words importing the plural number only, such words shall in like manner be deemed to extend to one person, matter or thing, as well as to several persons, matters or things.

(28.) SEC. XXVIII. When any party or person is described or referred to by words importing the masculine gender, females as well as males shall be deemed to be included.

(29.) SEC. XXIX. The word "person" or "persons," as well as all words referring to or importing persons, shall be deemed to extend to and include bodies politic and corporate, as well as individuals.

(30.) SEC. XXX. Whenever the term "heretofore," occurs in any chapter or statute, it shall be construed to mean any time previous to the day

on which such chapter or statute takes effect, and the term "hereafter" shall be construed to mean the time after the chapter or statute containing such term shall take effect.

(31.) SEC. XXXI. The words "insane person," or the words "inane," shall be construed to include every idiot, non-compos, lunatic or distracted person.

(32.) SEC. XXXII. The word "month" shall be construed to mean a calendar month, and the word "year" a calendar year unless otherwise expressed.

(33.) SEC. XXXIII. The word "oath" shall be deemed to include an affirmation, and the word "sworn" shall be construed to include the word "affirmed."

(34.) SEC. XXXIV. The word "State," when applied to different parts of the United States, may be construed to include the District of Columbia, and the several territories; and the words "United States" may be construed to include the said District and territories.

(35.) SEC. XXXV. The term "laws now in force," whenever it occurs in the Revised Statutes, shall be construed to mean, the statutes and laws in force immediately previous to the final passage of the chapter containing such term.

(36.) SEC. XXXVI. The rules of construction prescribed in the preceding sections, shall apply in all cases, unless it be otherwise specially provided, or unless there be something in the subject or context repugnant to such construction; and all general provisions, terms, phrases and expressions used in any statute, shall be liberally construed, in order that the true intent and meaning of the General Assembly may be fully carried out.

(37.) SEC. XXXVII. The Revised Statutes shall take effect and go into operation as laws, on the tenth day of September next, and not before; and all acts and parts of acts, consolidated or included in the Revised Statutes or therein repealed, shall continue and be in full force until said day, as fully and completely as though the Revised Statutes had not passed: *Provided*. That the provisions of this section shall not extend to or suspend the operation of section one, sections from five to twenty inclusive, sections thirty-five and forty of this chapter, but such sections shall take effect from and after the adjournment of the General Assembly.

(38.) SEC. XXXVIII. The repeal of any act or acts by the provisions of this chapter, shall not affect any act or thing done, nor any right accruing, accrued or established, or any suit or proceeding had in any civil case, prior to the time when the Revised Statutes shall go into effect; but the proceedings in every case, when necessary, shall be conformed to the Revised Statutes.

(39.) SEC. XXXIX. No crime or offense committed, and no penalty or forfeiture incurred, previous to the time when such repeal shall take effect, shall be affected by such repeal; except that when any punishment, penalty or forfeiture shall have been mitigated by the provisions of the Revised Statutes, such provisions may be extended to and applied to any judgment to be pronounced after such repeal.

(40.) SEC. XL. No suit or prosecution pending at the time of such repeal, for any offense committed, or for the recovery of any penalty or forfeiture incurred under any of the acts in this chapter repealed, shall be

affected by such repeal, except that the proceedings in such suit or prosecution shall be conformed, when necessary, to the Revised Statutes.

(41.) SEC. XLI. No law heretofore existing, and herein repealed, which provided for the limitation of actions and the prevention of vexatious suits; or for the barring of any right, remedy, suit, plaint, prosecution, recovery, redemption or other proceeding; or for the discharge of any penalty or forfeiture; or for the confirming of any rights to real estate or any interest thereon, or to any other property, matter, thing or right of action, by reason of the lapse of a time certain, in any such law expressed, shall be so construed as to hinder or obstruct the operation of such law in any case in which the same has begun to operate, but for the purpose of saving and continuing all rights and remedies, forfeitures and disabilities, the term of which has commenced to run, such laws shall be deemed in full force until the expiration of the time in such law limited.

(42.) SEC. XLII. The following acts, passed at the present session of the General Assembly, shall be published as chapters of the Revised Statutes, under their appropriate titles, omitting the enacting clause, title and signatures of the speakers of the two Houses, but retaining the date of their approval.

An act to establish and maintain common schools; approved February 26, 1845.

An act regulating the assessment and collection of the public revenue; approved March 3, 1845.

An Act in relation to the Revised Statutes.

[Approved Feb. 26, 1845. App. Rev. Stat. 1845, p. 591.]

(43.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the several chapters composing the Revised Statutes, to be furnished at the present session of the General Assembly, shall be deemed and taken as one act; and no part thereof shall become a law, until such time as shall be designated and provided for in the same; and no part thereof shall become a law or be published, until the whole is finished.

## CHAPTER XCI.

### RIGHT OF PROPERTY.

#### SECTION

1. When trial of right of property is demanded, sheriff, how to proceed.
2. Sheriff to notify parties, to swear jury and witnesses.
3. Duty of sheriff to subpoena witnesses.
4. May compel attendance of witnesses.
5. Fines for non-attendance, how collected.
6. Proceedings after verdict of jury.
7. Costs, how collected.

#### SECTION

8. Appeals to the circuit court allowed; bond to be given; costs to be paid; trial of appeal.
9. When property is taken on execution issued by a justice of the peace, how parties may be notified, &c.
10. Trial of right of property, how conducted; examination; judgment for costs; appeals allowed.
11. Duty of justice of the peace to try the right of property when applied to.

#### SECTION

12. Defendant in execution not to be a witness; when appeal must be demanded; writ of certiorari, when allowable; appeal to be superseded and stay proceedings.
13. If plaintiff be non-resident, need not be notified; when bound for costs.

#### SECTION

14. Verdict shall be authority to officer to retain property.
15. Number of jurors, how regulated.
16. If bond given on appeal in trial of right of property be informal, party not prejudiced; proviso.
17. When act shall take effect.

[Approved March 3, 1845. Rev. Stat. 1845, p. 474.]

(1.) SECTION I. 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 to proceed to inquire, by the oath of said jury, whether the right of such property be in such claimant or not.

(2.) SEC. II. 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.

(3.) SEC. III. In all cases of the trial of the right of property before any sheriff or coroner, it shall be the duty of such sheriff or coroner to subpoena such witnesses as shall be required by either party to such trial, to attend at the time and place at which such trial shall be held.

(4.) SEC. IV. In all cases where a witness shall be so subpoenaed and shall fail to attend at such trial conformably thereto, and in all cases where a juror shall fail to attend the same, when subpoenaed by such sheriff or coroner, such sheriff or coroner shall have power to compel their attendance, in the same manner as may be done in the trial of causes before justices of the peace, and in the circuit courts of this State.

(5.) SEC. V. And any fine which such sheriff or coroner may impose for such contempts, may be collected in the manner provided for the collection of costs by the seventh section of this chapter.

(6.) SEC. VI. 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.

(7.) SEC. VII. The sheriff or coroner shall make up a bill of all the costs accruing on such trial, according to the provisions of law, 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.

(8.) SEC. VIII. 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 chapter; 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.

(9.) SEC. IX. In all cases where any personal property shall be taken by virtue of an execution or attachment, issued by any justice of the peace, which shall be claimed by any person or persons other than the defendant in such execution or attachment, and such claimant shall give notice in writing of his or their claim and intention to prosecute the same, it shall be the duty of the constable to notify the plaintiff in execution or attachment of such claim, and the time and place of trial; and if the justice who issued such execution or attachment reside in another county, be absent from the county, or unable to attend to such trial, it shall be the duty of the constable serving such execution or attachment, to notify the plaintiff in execution that he will attend before some other justice of the peace of the county, (naming him,) and shall also designate some day and hour for the trial of the right of said property, of which time and place the claimant shall also have notice.

(10.) SEC. X. The same proceedings shall be had before the constable serving such execution or attachment, together with the justice before whom the trial of the right of property may be had, as are in this chapter provided for the trial of the right of property before sheriffs and coroners; but the justice shall issue all process necessary in such trials. He shall also administer the oaths to the jury and witnesses, and retain the papers relating to the proceedings; and in case the property shall appear to belong to the claimant, the justice shall enter judgment against the plaintiff in execution or attachment, for the costs that may have accrued on such suit; and on failure of the plaintiff to pay the same, the justice may issue execution therefor; but in all cases where it shall appear that the property claimed belongs to the defendant in execution, the justice shall enter judgment against the claimant of the property for the amount of costs that shall have accrued, and issue execution therefor, as in other cases, and in case of an appeal, shall take the bond and transmit the same, with the other papers, to the clerk as aforesaid.

(11.) SEC. XI. It shall be the duty of any justice of the peace, other than the one issuing the execution or attachment under which a levy has been made, when notified by any constable, of any person or persons claiming property levied upon as hereinbefore provided, 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.

(12.) SEC. XII. In no case of the trial of the right of property under this chapter, shall the defendant in execution be a competent witness, and all appeals from the judgment 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 in other trials before justices of the peace: *Provided*, That in all cases of said appeals, the praying thereof shall be a supersedeas, and stay all further proceedings until the expiration of five days.

(13.) SEC. XIII. 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 plaintiff 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.

(14.) SEC. XIV. The verdict of the jury in all cases under this chapter, 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.

(15.) SEC. XV. In trials of the right of property taken on execution, attachment or other process, by constables, the number of jurors shall be six instead of twelve, unless all the parties to the trial shall agree upon a larger number, not exceeding twelve; in which case, the number agreed on shall constitute the jury: *Provided*, That either party shall have the right to require twelve jurors, upon advancing the additional costs and fees accruing in consequence of increasing the number over six; such additional costs and fees not being in any event chargeable against the other party.

An Act to amend Chapter XCI. of the Revised Laws, entitled "Right of Property."

[Approved Feb. 13, 1847. Laws, 1847, p. 84.]

(16.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That upon the trial before the circuit court of any appeal from the trial of the right of property, if the bond required to be given shall be adjudged informal, or otherwise insufficient, on account of its having been taken or approved by an unauthorized person, or otherwise, the party who shall have executed such bond shall in nowise 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 a good and sufficient bond.

(17.) SEC. II. This act shall take effect and be in force from and after its passage.

PRIOR LAWS. An act prescribing the mode of trying the right of property in certain cases; in force Feb. 12, 1821. Laws, 1821, p. 148. Repealed Feb. 7, 1823.

An act prescribing the mode of trying the right of property in certain cases; in force Feb. 7, 1823. Laws, 1823, p. 114. Repealed June 1, 1827.

An act to amend "An act prescribing the mode of trying the right of property in certain cases," approved Feb. 7, 1823; in force Jan. 10, 1825. Laws, 1825, p. 68. Repealed June 1, 1827.

An act prescribing the mode of trying the right of property; in force June 1, 1827. Laws, 1827, p. 351; Rev. Laws, 1833, p. 537.

An act to amend "An act regulating the mode of trying the right of property;" in force Jan. 30, 1835. Laws, 1835, p. 56.

An act supplementary to "An act prescribing the mode of trying the right of property;" in force Feb. 27, 1839. Laws, 1839, p. 193.

An act to amend "An act regulating the mode of trying the right of property;" in force Feb. 28, 1839. Laws, 1839, p. 206.

**DECISIONS.** The defendant in execution, is a competent witness for the claimant in a trial of the right of property. *Clifton v. Bogardus*, 1 S. 32.

The claimant of property taken on execution is not required by the statute to state in his notice on whose execution the levy is made; it will be sufficient to claim the property, state his intention to prosecute his claim, and forbid the sale. All objections in the nature of a plea in abatement, should be made at first, and it will be too late to make them on the appeal. The appeal must be taken on the trial, and the bond executed at the same time. A bond filed the day after the trial, is too late. If the appellee appear on the trial before the circuit court, he waives thereby all irregularity in taking the appeal. *Pearce et al. v. Swan*, 1 S. 266.

As between the parties thereto, and their privies, a judgment in a trial of the right of property is evidence and is conclusive. *Arenz v. Reihle et al.*, 1 S. 340.

A landlord who has distrained on the goods of his tenant, which are afterwards taken in execution, may claim the same and have a trial of the right of property therein. *Grimsley et al. v. Klein*, 1 S. 343.

A motion to dismiss an appeal from a verdict in a trial of the right of property, is addressed to the discretion of the court, and its decision thereon cannot be assigned for error. The bond on such appeal may be executed by an attorney in fact. At the trial of the right of property levied on by attachment, the writ of attachment and the return thereof are admissible in evidence. *Shelden v. Reihle et al.*, 1 S. 519.

On the trial of the right to property levied on by execution, the claimant cannot object to the validity of the execution. On such trial in the circuit court, the jury need not sign the verdict; that is required only on the trial before a ministerial officer. *Harrison v. Singleton*, 2 S. 21.

On appeal, taken by the claimant from the verdict against him, in the trial of the right of property, the affidavit of the sheriff that after the appeal he had sold the property in controversy, with the assent of the claimant, and held the proceeds subject to his order, was held sufficient ground for dismissing the appeal. *Morgan v. Griffin*, 1 G. 565.

The proviso of the 3rd section of the act of Jan. 30, 1835, which amends the act regulating the mode of trying the right of property, in force June 1, 1827, and excludes the defendant in execution from being a witness, is confined exclusively to the original and amendatory acts, and cannot be extended to any other statute. *Miller v. Dobson*, 1 G. 572.

A verdict against the claimant, in the trial of the right of property, does not establish the right to the property in the defendant in execution. *Cassell v. Williams*, 12 Ill. 387.

The only question, on the trial of the right of property, is, does the property belong to the claimant, and this he must show affirmatively. *Marshall v. Cunningham*, 13 Ill. 20.

When a justice of the peace has been notified by the constable that property levied on is claimed, and that the time and place of trial has been named, he may proceed with the trial and render judgment on the verdict. The giving of the notices is the duty of the constable, for which he is responsible. *Ice et al. v. McLain*, 14 Ill. 62.

## CHAPTER XCII.

### RIGHT OF WAY.

#### SECTION

1. Land required for road, canal, &c., to be appraised by commissioners; their report; damages to be paid before land is taken.
2. Damages, when payable out of State treasury; when out of county treasury.
3. Materials, when wanted for public work, how valued, paid for and taken.
4. Appeals may be taken from proceedings.
5. Pulling down fence, &c., placed to protect road, penalty for; proviso as to United States mail.

#### SECTION

6. Appeals allowed from assessments of damages by opening lanes, alleys, streets, &c., as from decisions of justices of the peace.
7. Persons authorized to construct public roads, &c., when not able to purchase title to property, may petition for right of way.
8. Proceedings upon filing of petition.
9. Service of notices.
10. Commissioners, when appointed.
11. Shall be sworn, and view premises.

#### SECTION

12. Shall make report, on deciding, copies of which shall be delivered to parties and original filed with clerk.
13. Party interested may appeal.
14. Payment of damages, how made.
15. Parties appealing, to give bond.
16. Appeals, by whom taken.
17. Notice of filing reports; proviso.
18. Possession of property condemned.
19. Appeals, how docketed.
20. Questions involved in appeal cases. Verdicts.

#### SECTION

21. Judgments.
22. Force and effect of payments of judgments.
23. Amendments allowed on appeal.
24. Costs, by whom paid. Power of commissioners.
25. Who may have the benefit of this act.
26. Rule of damages.
27. When act to take effect.
28. Right of way over school section; commissioners to assess damages.
29. When act to be in force.

[Approved March 3, 1845. Rev. Stat. 1845, p. 477.]

(1.) SECTION I. 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.

(2.) SEC. II. 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 chapter, the costs of the view of the householders shall be paid by the applicant requesting the same: *Provided, also*, That nothing in this chapter, or in the several chapters relating to State roads, shall be so construed as to

authorize 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.

(3.) SEC. III. 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 chapter; and it shall be the duty of the three householders to go on the ground and assess the damages which they 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.

(4.) SEC. IV. In all cases arising under the provisions of this chapter, if the householders shall report it to be their opinion that no damages would be sustained by the owner of the land by 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 chapter, 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.

(5.) SEC. V. 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 offense, 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 be on any road where the United States' mail shall at the time be carried, the aforesaid penalty shall not be recoverable against the carrier, should he deem it necessary to expedite him in the passage of the mail.

(6.) SEC. VI. In all cases where a jury of freeholders or other citizens are or may be appointed, under the authority of any town or city in this State, to inquire into and to take into consideration the benefits as well as the injury which may accrue, and estimate and assess the damages which would be sustained, by reason of the opening, extending or widening of any street, lane, alley or road, the owner or owners of any real estate proposed to be taken for the purpose aforesaid, or any person aggrieved by the apportionment and assessment for the purpose of making payment to the person or persons whose property shall be taken for said purpose, may appeal to the circuit court of the county within the same time and under the same regulations and rules as are or shall be provided by law for taking appeals from the judgment 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.

An Act to amend the Law condemning Right of Way for purposes of Internal Improvement.

[Approved June 22, 1852. Laws, 1852, p. 148.]

(7.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That when any public road, railroad, plank road, turnpike road, canal or other public work, shall have been located by any officer or agent of the State, or of any county, or any person or corporation vested with power to take and apply private property in the construction or use of such road, canal or other work, or for any purpose connected with the same, such as constructing bridges, dams, locks, embankments, excavations, spoil-banks, turn-outs, depots, engine houses, shops, turn-tables, boat yards, wharfs or docks, and the right or title to property required for any such uses or purposes cannot be obtained by purchase, a petition shall be filed in the clerk's office of the circuit court of each county through which the location aforesaid is made, setting forth, by reference, the authority to construct the work, and the right to take and apply private property, and if the right of way only is desired, describing by its numbers, or other appropriate description, each lot or parcel of land over or across which such right is desired; or if property is required for all or any of the other purposes herein specified, stating such purpose, and describing the property so required; and in either or both cases, stating the names of all persons interested, as owners or otherwise, in the property to be affected, if known, or if not known, stating that fact, and requesting such court to cause to be ascertained the compensation to be made to each owner of or person interested in property required as aforesaid, and upon payment thereof, to require a conveyance or release of the same, or that by an order or orders of court the right and title be invested in the State, county, corporation or other person in whose name or behalf the petition is filed, to be applied and used for the purposes stated in the petition.

(8.) SEC. II. Upon the filing of the petition aforesaid, and giving the persons interested in the property required reasonable notice thereof, and of the time and place of making the application herein provided for, the petitioner in person, or by attorney, may apply to the judge of said court, or to the judge of the county court, or either of the associate justices of the last named court, to appoint commissioners to fix the compensation to be made

to the parties interested as aforesaid, for the right of way over or across land, and for land required for any of the other purposes herein expressed, as well as to assess the damages which may result from the construction or use of such road, canal or other contemplated work. Upon the hearing of which application, and each of the parties notified as aforesaid, as well as those not notified, who may appear, the said judge or associate justices shall select or appoint three disinterested freeholders of the county commissioners to fix compensation and assess damages, according to the prayer of the petition, and also fix the time and place of their first meeting. And upon notices given as aforesaid, from time to time, or the appearance of parties without notice, the same, or other commissioners shall be appointed to act with reference to parties, as they are notified or appear as aforesaid, until action shall be had with reference to all the parties and matters named in the petition: *Provided*, That reasonable notice of the time and place of making application for the appointment of commissioners shall be five days, and one day in addition for every twenty miles' travel, from the residence of the party to the place of making application.

(9.) SEC. III. Notices of the filing petitions and making applications for the appointment of commissioners, in respect to lands owned in whole or in part by infants, shall be served on the guardian; or if they have no guardian, on the infants and persons with whom they reside; and with respect to lands owned as aforesaid by idiots, lunatics or distracted persons, on the conservator, if they have any, if not, then on the person under whose care or charge they may be found; and with respect to lands owned by *femes covert*, on the husbands as well as the owner; and notices to non-residents of the county, and persons whose names are unknown, shall be published in some public newspaper published in the county, if any, or if not, in the nearest paper to such county, for three weeks in succession before the day of making the application aforesaid. And notices so served or published, shall be sufficient to authorize the appointment and action of the commissioners as herein provided for: *Provided*, If such railroad or other public work shall be located on land the property of the State, the right of way, not exceeding one hundred feet in width, is hereby granted to such company, corporation or individual.

(10.) SEC. IV. Commissioners may be appointed in term time by the circuit court, or in vacation by the judges or justices aforesaid, upon the service or publication of notice being proved by affidavits, to be filed and constitute a part of the record of the proceedings. Upon applications for appointment in vacation, copies of the petition, filed as aforesaid, shall be used, and the order of the judge or justice shall be indorsed thereon, and the same delivered to the commissioners, to guide them in their action, and show the extent of their authority.

(11.) SEC. V. Commissioners appointed as aforesaid shall be sworn before some officer having power to administer oaths, "to faithfully and impartially execute the duties required of them, according to their best judgment and understanding, and to make all their estimates and assessments according to law." And upon being sworn as aforesaid, they shall meet at the time and place fixed by the court, or judge or justices aforesaid, and proceed without delay, upon view and inspection of the premises, as well as upon hearing the allegations and testimony of the parties interested,

to fix the compensation to be made to each party or owner of lands to be taken and used as the way on which the road, canal or other work shall be constructed and pass, also for lands taken and used for any of the other purposes specified in this act; and also estimate and assess the damages sustained by any person or persons, by reason of the construction and use of the work specified in the petition, taking into consideration and estimating the benefits and advantages to the parties resulting from the construction and use of the road, canal or other improvement: *Provided*, The said commissioners shall not estimate any benefits or advantages which may accrue to lands affected in common with adjoining lands, on which such road, canal or other work does not pass.

(12.) SEC. VI. The commissioners shall, from time to time, as they make decisions with reference to lands embraced in their appointment, make reports in writing, stating separately the compensation to be paid for the right of way over or upon each lot of land, the compensation to be paid for each lot of land required for any other purpose, and the damage allowed to each owner or party, by reason of the construction and use of the improvement or work as aforesaid. A copy of each report so made shall be delivered to each of the parties interested, if requested, and the original, with a copy of the order of appointment, shall be filed with the clerk of the court in which the proceeding is had.

(13.) SEC. VII. Upon the making and filing of any report as aforesaid, any party interested may appeal from the decision of the commissioners to the circuit court of the county, as hereinafter provided; but if no appeal is taken, the decisions, estimates and assessments as reported, shall be conclusive upon the parties, and the right and title of that part of each lot or parcel of land required as aforesaid, in respect to which no compensation is allowed or damages assessed, shall vest in the State, county, corporation or person in whose behalf the proceeding is had, with the right to enter upon and use and apply the same according to the prayer of the petition and right of the case, and the right and title to that part of each tract of land required, in respect to which compensation is allowed or damages assessed, shall vest in the State, county, corporation or person petitioning as aforesaid, upon the payment of the compensation and damages so fixed or assessed, with the right to enter upon and use and apply the same for the purposes stated in the petition.

(14.) SEC. VIII. Payments of compensation and damages, estimated and assessed as aforesaid, may be made, first to parties laboring under no disability who are entitled to the land; second, to guardians of infants, husbands or trustees of *femes covert*; third, to conservators of insane persons; and a receipt for such payments shall operate as a confirmation of the action of the commissioners, and shall estop the parties in interest from all further claims or proceeding in the premises. Payments to parties residing in the State, but not in the county, including infants who have no guardian, and insane persons who have no conservator, shall be made by depositing the money with the clerk of the court in which the proceeding is had; and payments to parties residing out of the State, and persons whose names are unknown, shall be made by depositing the money in the treasury of the proper county where the land lies; and the receipt of parties entitled to money deposited as aforesaid, shall operate in like manner as receipts for



money paid to parties as herein provided: *Provided*, That if any person shall refuse to receive money when tendered, payment may, in such case, be made by depositing the amount with the county treasurer aforesaid.

(15.) SEC. IX. Parties desiring to appeal from decisions, estimates, and assessments, or either, of commissioners, shall, within ten days after being notified of the filing of the report with the clerk, execute and file an appeal bond with said clerk, payable to the people of the State, for the use of all parties interested in the condition; in which bond the action or proceeding appealed from shall be recited, with conditions, in case the appeal is taken in behalf of the petitioner, for the due and speedy prosecution of the appeal, and that he or they will pay whatever may be required by any decision, order or judgment; and in case the appeal is taken by any other party, with condition that the appeal shall be prosecuted without delay; and in case the decision, estimate or assessment, as the case may be, shall be affirmed or not increased, that the appellant will pay the costs of the appeal and of the subsequent proceedings therein, if adjudged so to do by the court. A bond executed and filed by responsible securities, without the name or signature of the party appealing, shall be obligatory and sufficient; and it shall not be necessary to insert any penalty in any such bond, but the party or parties executing the same shall be liable, upon breach, to pay the full amount which any party interested in the condition is or may be entitled to in the premises.

(16.) SEC. X. Appeals may be taken and prosecuted by husbands or trustees of *femes covert*, guardians of infants, and conservators of insane persons; and in cases where infants have no guardian, and insane persons no conservator, appeals may be taken by the friends of such parties.

(17.) SEC. XI. Notices to parties of the filing reports of commissioners shall be given as is required in respect to applications for the appointment of commissioners, and notices of appeals shall be given by the service of summons, as in cases of appeals from judgment of justices of the peace: *Provided*, That non-residents of the State, and persons whose names are unknown, may be notified by publishing notice as is required in respect to proceedings in chancery against non-residents.

(18.) SEC. XII. The entering upon, taking possession of, and applying property, with reference to which commissioners have reported as aforesaid, shall not be hindered, prevented or delayed by the prosecution of any appeal, provided the corporation or person interested in the work, or any responsible person in their behalf, will execute and file a bond with the clerk of the court in which the appeal is pending, binding the persons executing the same to pay whatever amount may be required by the order or judgment of the court in said appeal cause, and also comply with or conform to any rule or order that the court may make in relation to the matter in controversy.

(19.) SEC. XIII. Appeals prosecuted under the provisions of this act shall be docketed by the clerk next after the people's causes, and shall be tried without delay, as soon as reached on the docket, unless continued for good cause, or by consent.

(20.) SEC. XIV. Appeals shall bring before the court the questions decided or reported on by the commissioners in respect to the parties to the appeal, and unless the parties otherwise agree, the said questions shall be submitted to and tried by a jury as other appeal cases; the jury to swear

“well and truly to try the cause, and in fixing compensation or assessing damages, they will be governed by the provisions of the law under which the trial is had.” The jury shall find and state the amount, if any thing, which shall be paid as compensation for right of way; the amount, if any thing, to be paid for lands required for any other purpose; and the amount, if any thing, assessed or allowed as damages, making the verdict conform to the questions and facts in the case. Verdicts may be rendered in writing or stated orally in court, and the court shall in all cases require the verdict to be recorded in such form as to express truly and fully the finding of the jury.

(21.) SEC. XV. Upon verdicts rendered by juries, judgment shall be entered, declaring that upon the payment of compensation and damages, or either, as the case may be, that the right and title to the same for which the compensation is to be made, or on account of which damages are allowed, shall vest in the State, county, corporation or person petitioning as aforesaid, with the right to enter upon, use and apply the same for the purposes stated in the petition; or if the verdict is that no compensation shall be made in money, or damages be allowed in the premises, the like judgment shall be entered; and verdicts and judgments entered as aforesaid shall be final and conclusive between the parties.

(22.) SEC. XVI. Payments of judgments entered upon verdicts may be made, and to have the like force and effect as provided for in section eight hereof, or payments may be made in reference to either party.

(23.) SEC. XVII. In appeal cases, courts shall permit amendments to papers, records, bonds, and the execution of new bonds, whenever necessary to a fair trial and final determination of the questions involved. Courts shall also have power to make any and all rules and orders necessary to notify parties of the proceeding, and to issue all process necessary to the execution of orders and judgments as they may be entered.

(24.) SEC. XVIII. The costs of all proceedings under this act, except such as arise or grow out of appeals, shall be paid by the petitioners, and costs of appeals shall be paid as the court may direct. Any two of the three commissioners may act, and execute any or all of the duties required. They shall have power to swear or affirm witnesses who may be brought before them, also to issue summons for witnesses, and by compulsory process compel their attendance. They shall also have power to adjourn from day to day, or from one day to any succeeding day, not exceeding five, until they shall have determined and reported upon all the cases embraced in their appointment; and two dollars per day shall be paid to each for his services.

(25.) SEC. XIX. All corporations heretofore created by special charter of incorporation or under the general law, where the termini have been fixed by the legislature, and none others, may avail themselves of this act.

(26.) SEC. XX. Estimates of compensation and assessments of damages, under the provisions of this act, shall be made with reference to the land or property affected, and payable to the real person entitled to the same, whether a party to the proceeding or not.

(27.) SEC. XXI. This act to take effect and be in force from and after its passage.

An Act to amend an Act entitled "An Act to amend the Law condemning the Right of Way for purposes of Internal Improvement," approved June 22, 1852.

[Approved Feb. 12, 1853. Laws, 1853, p. 201.]

(28.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That when any canal, railroad, turnpike road, or other work of internal improvement, authorized to be constructed by any law of this State, with power, by law, to condemn land for road-way or other purposes connected with such work of internal improvement, shall in its route pass over or be located upon section sixteen (16,) in any township not organized, such company shall have power to condemn so much of said section for the purposes set forth in their petition, whether for road-way, track, depots, stations or other purpose as may be necessary, not exceeding for road-way and track, two hundred feet in width, and for depots, stations, &c., not exceeding ten acres; and notice of the application for the appointment of commissioners to fix compensation and assess damages, shall be sufficient, if served upon the school commissioner of the county in which such section is situated, in the manner prescribed by the act to which this is an amendment; and the damages assessed or compensation allowed, shall be paid into the school fund of the proper county, for the use of the inhabitants of the township in which such sixteenth section may be situated, and to be paid over to the treasurer of the same, when such township may be organized.

(29.) SEC. II. This act to be in force and take effect from and after its passage.

PRIOR LAWS. An act concerning the right of way, and for other purposes; in force May 2, 1833. Rev. Laws, 1833, p. 534.  
An act to amend an act concerning the right of way; approved Feb. 12, 1839. Laws, 1839, p. 118.

DECISIONS. Under the act concerning the right of way, in force May 2, 1833, in ascertaining the damage done the claimant, the benefit that will result from the construction, and not the location of the road, may be inquired into. *The State v. Evans*, 2 S. 208.

So much of the 92nd chapter of Revised Statutes of 1845, entitled "RIGHT OF WAY," as relates to State and county roads, is repealed by the 38th section of the 93rd chapter, entitled "ROADS." *County of Sangamon v. Brown et al.*, 13 Ill. 207.

In estimating damages under the 92nd chapter, Revised Statutes, 1845, the rule is to consider all benefits and injuries which are appreciable. The statute of June 22, 1852, establishes a different rule, and excludes benefits and advantages common to other adjoining lands. *Alton and Sangamon R. R. Co. v. Carpenter*, 14 Ill. 190.

CHAPTER XXIII.

ROADS AND RAIL ROADS.

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1. Carriages meeting, to turn to the right.
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3. Employer to dismiss drunken driver; penalty for not doing so.
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6. Owners of carriage jointly and severally liable for injuries done by driver; driver, how liable.
7. Carriage, what shall be deemed.
8. This chapter not to interfere with regulations made by cities, &c.; justice's jurisdiction.
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| <p>SECTION</p> <ol style="list-style-type: none"> <li>11. Counties to be divided into road districts, and supervisors appointed therein.</li> <li>12. Supervisors to be notified of their appointment; to return list of persons liable for road tax; sheriff's return to notice. &amp;c.</li> <li>13. Fine for refusing to accept office of supervisor.</li> <li>14. Duties of supervisor to repair roads, keep bridges in repair, erect guide-boards, &amp;c.</li> <li>15. Supervisor to clear out obstructed roads, repair damaged bridges, &amp;c.; when county to pay cost thereof.</li> <li>16. Penalty for obstructing roads, damaging bridges, &amp;c.</li> <li>17. New road, how petitioned for, viewed, and laid out; expense of view, how paid; petitioners for new road to pay one day's labor thereon.</li> <li>18. Viewers, how appointed; their duties.</li> <li>19. Useless road may be vacated, and how; road not to be established or vacated until notice be given.</li> <li>20. 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## ROADS.

[Approved March 3, 1845. Rev. Stat. 1845, p. 479.]

(1.) SECTION I. Whenever any persons traveling with any carriages, shall meet on any turnpike road or public highway in this State, the persons so meeting shall seasonably turn their carriages to the right of the centre of the road, so as to permit each carriage to pass without interfering or interrupting, under the penalty of five dollars for every neglect or offense, to be recovered by the party injured: *Provided*, This section shall not be construed to apply to any case, unless some injury to persons or property shall occur by the driver of the carriage or wagon refusing to turn to the right of the beaten track; nor shall it be construed to extend to a case where it is impracticable, from the nature of the ground, for the driver of the carriage or wagon to turn to the right of the beaten track.

(2.) SEC. II. No person, owning any carriage, running or traveling upon any road in this State, for the conveyance of passengers, shall employ or continue in employment, any person to drive such carriage who is addicted to drunkenness, or the excessive use of spirituous liquors; and if any such owner shall violate the provisions of this section, after he shall have had notice and reasonable proof that such driver is addicted to drunkenness, he shall forfeit at the rate of five dollars per day, for all the time during which he shall thereafter have kept any such driver in his employment, to be sued for by any person, and collected in any court having competent jurisdiction. The penalty, when recovered, shall be for the use of the poor of such county, except that the court in which the recovery shall be had, may allow a portion of said penalty, not exceeding twenty-five dollars, to be retained by such complainant as a compensation for his services and expenses.

(3.) SEC. III. If any driver, whilst actually employed in driving any such carriage, shall be guilty of intoxication to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by one of said passengers, and certified by him on oath, forthwith to discharge such driver from his employment; and every such owner who shall retain or have in his employ, within three months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for the time during which he shall keep any such driver

in his employment after receiving such notice, to be sued for and applied as directed in the last preceding section.

(4.) SEC. IV. No person driving any carriage upon any turnpike road or public highway within this State, with or without passengers therein, shall run his horses or carriage, or permit the same to run, upon any occasion, or for any purpose whatever; and every person who shall offend against the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding sixty days, at the discretion of the court.

(5.) SEC. V. It shall not be lawful for the driver of any carriage used for the purpose of conveying passengers for hire, to leave the horses attached thereto, while passengers remain therein, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit for the use of the poor, the sum of twenty dollars, to be recovered by action to be commenced within six months; and unless the amount of such recovery be paid forthwith, execution shall be immediately issued therefor.

(6.) SEC. VI. The owners of every carriage running upon any turnpike road or public highway for the conveyance of passengers, shall be liable jointly and severally, to the party injured, in all cases for all injuries and damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person; and that, whenever the act occasioning such injury or damage be willful, negligent or otherwise, in the same manner as such driver would be liable. Any driver of any mail stage coach, or any other vehicle for the conveyance of passengers, willfully offending against the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be imprisoned, not exceeding four months, or fined not exceeding three hundred dollars.

(7.) SEC. VII. The term "carriage," as used in this chapter, shall be construed to include stage coaches, wagons, carts, sleighs, sleds, and every other carriage or vehicle used for the transportation of passengers and goods, or either of them.

(8.) SEC. VIII. Nothing contained in this chapter shall interfere with or affect any law concerning hackney coaches or carriages in any of the cities of this State, nor interfere with nor affect the laws or ordinances of any such city for the licensing or regulating such coaches or carriages. Justices of the peace shall have jurisdiction in all cases arising under this chapter, where the penalty does not exceed one hundred dollars.

(9.) SEC. IX. 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.

(10.) SEC. X. The county commissioners' courts of the several counties in this State, shall have, and are hereby vested with general superintendance over the public roads within their respective counties; and are hereby authorized to cause new roads to be located and made, and to alter or vacate public roads within their respective counties, in the manner hereinafter provided and pointed out.

(11.) SEC. XI. 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 shall be appointed.

(12.) SEC. XII. 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 the same 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, noting such refusal on the back thereof. But if the said supervisor shall agree to accept the same, such supervisor shall, within fifteen days thereafter, return to the clerk of the county commissioners' court, a list of the names of all persons residing within his road district, liable to be taxed for road purposes; and the said 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 one 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 a failure to deliver any one of said notices in the manner and within the periods herein prescribed: *Provided*, That supervisors shall not be required to make such return, unless the county commissioners' courts shall have levied a tax, according to the provisions of this chapter.

(13.) SEC. XIII. 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. The commissioners' court shall have power, at any time, to remove from office any supervisor who shall fail or refuse to perform his duty; and all vacancies shall be filled at the term of the court at which any removal shall be made or vacancy occur.

(14.) SEC. XIV. 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 wherever 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 and guide-boards, with plain inscriptions thereon, in letters and figures, giving the direction and distance to the most noted places to which said roads may lead.

(15.) SEC. XV. 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 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 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 chapter, 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 damages: *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, on the order of the county commissioners' court.

(16.) SEC. XVI. 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 any such offense, 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 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 plank thereof, or destroy or deface any guide-board, post or mile-stone, on a public road, or dig any drain or ditch across a public road, such person, so offending, shall be indicted or sued before a justice of the peace, and on conviction, shall be fined in any sum not less than five dollars, nor more than one hundred dollars, except bridges, which shall be double the value thereof; and for burning a bridge, to be punished agreeable to the criminal code: *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, and shall keep the same in good repair.

(17.) SEC. XVII. 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, residing within five miles of the road proposed to be laid out or altered, 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 viewing. 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 chapter, 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 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 in the sum of one dollar.

(18.) SEC. XVIII. When a new road shall be applied for, as aforesaid, the county commissioners' court shall, if in their opinion the public good and convenience require it, 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, taking into consideration the expense of constructing the same, and its utility to the public, they shall proceed to locate and establish the same, on the nearest and most eligible route from point to point given, having due regard to private property; causing the same to be surveyed, designating its course through prairies and improved land, by fixing stakes in the ground, or by plowing two furrows, at the distance apart of the full width of the road, and through the timbered land by marking the trees; and shall 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.

(19.) SEC. XIX. 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 expenses of a review, (such money to be returned, if the road be declared useless,) shall appoint three suitable persons to review the same, who shall report to the said court at the next term after such appointment, whether such road be useless and burthensome, together with their reasons for such opinion; and the county commissioners may then order such road to be vacated, if, in their opinion and 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 up in the most public place in each road district through which the road or proposed road shall pass, and a like notice, particularizing the route and important points, on the door of the court-house, and of the county clerk's office, should it be kept in a separate building.

(20.) SEC. XX. 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 supervisor, as in other cases.

(21.) SEC. XXI. 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 or cart-way 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 cart-way is desired to pass; and also, by posting up a notice thereof on the door of the court-house, and clerk's office of the county, if not kept in the court-house, for the same period of twenty days; 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-way 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 examined by the court, and on hearing the objections, if any, and if the court shall be of opinion that the road is necessary and right, an order shall be made establishing the same, not exceeding thirty feet wide: *Provided*, That no such road shall be allowed to pass through any orchard, garden, door or barn-yard: *And Provided, also*, That if any owner of land shall object to the opening such road, the same shall not be opened by the person or persons desiring the same, until the person or persons objecting shall be paid all the damages to be sustained by the opening thereof; and in case the parties cannot agree on the amount of damages, the same shall be ascertained and assessed as hereinafter provided; and the damages being paid on final decision, the person or persons, applying therefor, their heirs and assigns, shall have the right to open said road, and shall have the right of way upon the same forever thereafter.

(22.) SEC. XXII. 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 labor upon some public road within the county during the year: *Provided*, That in no case shall said court be authorized to fix the number of days at less than one, or to exceed five days, as a requisition in labor. The clerk of said court shall append the number of days fixed as aforesaid, to the notice of each supervisor appointed in said county.

(23.) SEC. XXIII. The county commissioners' courts of the several counties in this State, in levying a tax, not exceeding fifty cents on every one hundred dollars' worth of taxable property in their counties respectively, for county purposes, which they are authorized by law to levy, may, at the time of fixing upon the amount of tax to be assessed and collected for county purposes, in their discretion, set apart any amount of the tax so levied for county purposes, not exceeding one-half of said levy, for road purposes; and a column in the tax book shall designate the amount of road tax due from each person, to be collected.



(24.) SEC. XXIV. The clerk of the commissioners' court, immediately on the return of the assessor's book, shall make out a list of the names of all individuals owing road tax, in each road district in the county, with the amount of tax due therefrom, ascertaining the residence of, and the road district to which each person properly belongs; which lists shall be handed to the sheriff, and by him delivered to the respective supervisors. And any clerk or sheriff who shall fail or neglect to perform the duty required in this section, within the time given to each, as specified in the twelfth section of this chapter, in serving notices on supervisors, shall be fined in the same sums as stated in said section.

(25.) SEC. XXV. It shall be the duty of each supervisor to call on all able-bodied male persons over twenty-one and under fifty years of age, in his district, to perform the number of days' labor due for the year, giving such person at least three days' notice of the time when, and the place where the work is required, and stating what description of tools to bring; which notice shall be given by the supervisor in person, verbally, or by a written or printed notice, or by some person appointed by him to warn in the hands; in which latter case the notice shall be written or printed, and signed by the supervisor. The supervisor shall observe the hour appointed to meet, that each individual do appear at the time, with the tool directed to be brought; and when on the road, that each person shall work industriously and diligently, doing at least eight hours' faithful labor in each day, at such work and in such manner as shall be directed by the supervisor. Any person neglecting or failing to attend and do the work due on the roads, after being notified as above stated, by himself, or a substitute equally able as himself, shall pay for each day one dollar. Should any person be idle, not work diligently, be turbulent, interrupt other hands or disobey the supervisors, power is hereby given, and it shall be the duty of the supervisor to discharge said hand from the road; and for each day's labor which may then be due from such person, he shall be bound to pay one dollar and fifty cents.

(26.) SEC. XXVI. The tax list being placed in the hands of the supervisor, he shall notify each person residing in said supervisor's district, of the amount due, and that the same may be discharged in labor; and shall thereupon request payment in money or labor, first notifying the individual of the time and place to attend and work the same out at a rate to be fixed by the county commissioners' court, but not exceeding one dollar per day, bringing with him such tools as may be directed by the supervisor, the labor to be performed by the principal or a substitute equally able, working industriously at least eight hours each day; and may, for any of the causes in the foregoing section, idleness, turbulence or disobedience, be discharged from the road by the supervisor, and the balance due shall be collected, with twenty-five per cent. advance.

(27.) SEC. XXVII. It shall be the duty of supervisors to sue in the name of the county commissioners, in their official capacity, for all labor and taxes which shall be due from each person residing in their respective districts, and remain unpaid after notice shall have been given, and a failure to settle the same as provided in the foregoing sections; and having collected the same, shall, without delay, disburse the money to the best advantage, on public roads in the district to which such labor or tax

properly belongs. In all cases, the supervisor shall be a competent witness in suits brought as above stated; and an appeal may be taken to the circuit court by either party, as in other cases of appeal from justices of the peace.

(28.) SEC. XXVIII. Every supervisor shall endeavor to collect all road and labor tax, and close the work by the twenty-fifth of December, annually. And they are absolutely bound to return to the clerk of the county commissioners' court the tax list, by the first of January, marking carefully and truly the amount paid on said road tax list, how much in work, and the amount in money, by each individual named, and shall give a receipt to each individual, if requested. The clerk and collector shall give credit on the general tax list, to each person, for the amount paid, and the balance due shall be collected by the proper officer out of the goods and chattels, lands and tenements of the person owing, in the same manner as other revenue for the State and county shall be collected. All moneys collected as above, after deducting the per cent. for collecting and costs paid out, to be allowed by the commissioners' court, shall be set apart in the treasury of the county as a road fund, to be disbursed by order of the commissioners' court, in the erection of bridges, and improvement of such public roads in the county as they may deem most advantageous to the public; and in no case, shall the court appropriate or divert any portion of said road fund to any other purpose than the construction of roads and road purposes: *Provided, always*, That fines and forfeitures incurred under the provisions of this chapter, shall be applied to the improvement of the public roads within the bounds of such road district wherein such fines and penalties may have been incurred.

(29.) SEC. XXIX. Supervisors are hereby authorized to hire teams to do the necessary hauling, plowing and scraping, to contract for materials for building bridges, causeways, erecting guide-boards, for making and furnishing road scrapers, and repairing roads in discharge of labor and road tax due, and so far as funds shall come into possession, procuring said teams, materials, implements and work, on the best possible terms.

(30.) SEC. XXX. All power, jurisdiction and control, is hereby given to the county commissioners' courts of the several counties, of and concerning State roads, roads located directly by the State; and the same shall be opened, improved and kept in repair as other roads in the counties, subject to alteration, change and relocation, as hereinafter pointed out.

(31.) SEC. XXXI. When any person or persons desire a change or relocation of any State road now located, notice of such intended application shall be given by setting up advertisements in writing, at least one in each road district through which said road shall pass, and on the courthouse door, twenty days previous to the sitting of the court to which application shall be made; and on petition of a majority of the qualified voters of each road district through which said road shall pass, and a majority of the voters living immediately in the vicinity of such road, the court shall appoint three viewers to examine and make the necessary relocation; they shall carefully view the road as located, and the ground for the proposed route, and being of opinion that the public good requires an alteration, in view of obtaining a more suitable place to erect a bridge over a stream, wind a hill, avoid a swamp, expensive work, or where the



present road greatly damages an individual, and can be varied without material damage to the public; in such cases, alterations may be made; and a majority of said viewers being of that opinion, they shall cause a survey and relocation to be made, returning to the commissioners' court a plat, with the courses and distances of the road as established. But if they consider an alteration not necessary, they shall so report, and the court may confirm and accept the report, or take such further action thereon as to them may seem right. In like manner, any State road now established, which may be considered useless or burdensome, on notice, petition, view and report to that effect, as required in this section in case of an alteration, may be annulled and vacated.

(32.) SEC. XXXII. When it shall become necessary to have a State or county road, now located and established, altered, relocated or vacated at a county line, or a new road laid out, the same being petitioned for, and notice given, as required in the preceding section, the same shall be agreed on by viewers from each county, to be appointed by the counties immediately interested; and no road shall be altered at a county line or elsewhere, unless a majority of the viewers appointed, agree on such change or alteration: *Provided*, That no application shall be acted upon, or viewers appointed, as contemplated in the preceding sections, unless the petitioners deposit money sufficient to pay the viewers in case an unfavorable report be made, to be refunded should the road be located, altered or vacated, as petitioned for. And the petitioners, in case a new road shall be established, or a change in the location of a road, shall contribute one day's work on the same or some other road in the county, as required in the seventeenth section of this chapter. In case of a disagreement in the location or alteration of any road crossing a county line, by the county authorities, either county may appeal to the circuit court, who shall hear and determine the case, grant a review, appoint viewers, and make such order therein as shall seem right in the establishment of the road in dispute.

(33.) SEC. XXXIII. All roads shall be surveyed, and a plat, with the courses and distances thereof, returned with the report of the viewers to the commissioners' court, which shall be recorded and filed. The commissioners' court, on the return of the report and plat, shall determine and establish on record, the width of the road, making the main leading roads four rods wide, and none less than thirty feet.

(34.) SEC. XXXIV. In the location and alteration of all roads, it shall be the duty of viewers to make the same as direct as the ground and circumstances will allow, particularly the main leading roads. Previous to entering upon their duties, they shall be sworn before some judge of a court or justice of the peace of the State, that they will faithfully, impartially, and to the best of their judgment, discharge the duties incumbent on them as road viewers under the law and appointment of the court.

(35.) SEC. XXXV. At the March term of the commissioners' court, annually, each supervisor shall make a report, showing the whole number of days' work that has been done in his district during the year; by whom done; the amount of money by him received; from whom; for road tax or otherwise, due on roads; the amount paid out by him in constructing roads, with the vouchers accompanying; at which term he shall make a settlement with the court, and if a balance should appear in his hands, the same shall

be disbursed in the district, or added to the general road fund, as the court shall order. Supervisors may appoint one or more persons to warn in the hands, and make an allowance out of the labor or tax due from such person. No allowance shall be made to any supervisor for services, out of the county treasury, except for sums required by the fifteenth section of this chapter; but he shall be wholly exempt from doing military duty in time of peace, and from serving on grand and petit juries while acting as supervisor; and shall have power and authority to appoint one or more deputies, suitable persons, to oversee laborers and direct the work, the supervisor being responsible.

(36.) SEC. XXXVI. Road viewers shall be allowed one dollar, and surveyors two dollars, for each and every day necessarily employed; and chain and axe-men, seventy-five cents per day.

(37.) SEC. XXXVII. The supervisor, 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, gravel, sand or earth, 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 agent: *Provided, also*, That unless the owner, or his or her agent, shall first consent to the cutting of timber, or the quarrying of stone, or the taking of gravel, sand or earth, 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 the amount of damages sustained by such person; and the amount so awarded shall be paid to the owner of the materials or his or her agent, out of the county treasury; and the supervisor shall be authorized and warranted in taking such materials as soon as the award shall be made.

(38.) SEC. XXXVIII. In all cases where a public road shall have been heretofore authorized by law to be laid out or constructed in this State, either by State or county authority, 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 supervisor, authorized to construct the same, on the amount of damage which such owner or owners may claim, it shall be lawful for such commissioner, superintendent or supervisor, 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 supervisor, shall assess the damages which they shall believe such owner or owners will sustain, over and above the additional value which such lands will derive from the construction of such road, and make two written reports signed by at least a majority of them; one of which they

shall give to the commissioner, superintendent or supervisor requesting the view, and the other to the opposite party; which award or assessment of damages shall, as well where the amount shall be agreed upon by the parties without applying to a justice of the peace, be laid before the county commissioners' court for consideration, who shall examine the matter, and should they decide the amount of damages is not unreasonable, or more than should be given, and that the opening and improving the road is called for by the public interest, and the finances of the county will justify, they, in that case, will approve and accept the award, and order the money to be paid; and the same being paid, the commissioner, superintendent or supervisor, shall proceed to open and construct said road; which proceedings being recorded in the commissioners' court, the right of way shall be thereby secured: *Provided*, That the corporation, company, owner or owners of the land, shall have the right to appeal from the decision of the commissioners' court to the circuit court, and the case shall be acted upon in such manner as the court may determine, with a view to justice and the establishment of the road, who shall make such order therein as may seem right and just, which decision shall be final. The provisions of this section shall extend to a cart-way, as contemplated in the twenty-first section of this chapter viewers appointed to be sworn, report to be made, the damages to be paid by the individuals desiring the cart-way, to be confirmed by the commissioners' court; and either party may appeal to the circuit court, where the case being fully heard, such judgment or order shall be made thereon as the court shall deem right, and which shall be a final decision.

(39.) SEC. XXXIX. Supervisors are hereby authorized to bring suits before any justice of the peace of the county, to recover any and all sums due for road labor, road tax, fines and forfeitures imposed by this chapter, which are intended to come into the hands of such supervisors for road purposes, and to collect, disburse and account for the same; suing in the name of the county commissioners, in their official capacity.

(40.) SEC. XL. Any supervisor who neglects to keep the roads in his district in good repair, agreeably to the provisions of this chapter, 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.

(41.) SEC. XLI. The clerk of the commissioners' court in each county shall, at each term of the circuit court, make out and furnish the grand jury with a list of the names of all supervisors in the county, with the date at which they were appointed.

(42.) SEC. XLII. Sheriffs, and clerks of the county commissioners' courts, shall be allowed a fair and reasonable compensation for discharging the duties required of them by this chapter, to be paid out of the county treasury, on the allowance and order of the county commissioners' courts respectively.

An Act to amend an Act entitled "An Act concerning Public Roads," approved February 20, 1841.  
[Approved Feb. 28, 1845. App. Rev. Stat. 1845, p. 591.]

(43.) SEC. I. *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, at their March term, annually, shall fix and cause to be entered upon the records of their courts, a certain number of days, not exceeding two nor less than one, that each and every able-bodied man, between the ages of twenty-one and fifty years, shall labor upon some public road within the county, during the year; and it shall be the duty of the clerk of said court to append the number of days fixed as aforesaid, to the notice of each supervisor appointed in said county.

(44.) SEC. II. The county commissioners' court of each and every county, in addition to the work required in the preceding section, may, at their March term, annually, assess a road tax of not more than twenty cents, on each hundred dollars' worth of taxable property, real and personal, or either, in their counties; and a column in the tax book shall designate the amount of such road tax due from each person, from whom the same is to be collected: *Provided*, That said court, in counties where the same is deemed necessary, may assess such road tax for the year eighteen hundred and forty-five, at their June session.

(45.) SEC. III. The clerk of the commissioners' court, immediately on the return of the assessor's book, shall make out a list of the names of all persons owing road tax, in each road district in the county, with the amount of tax due from each person, ascertaining the road district to which such person properly belongs; which list shall be, by said clerk, handed to the sheriff, and by him delivered to the respective supervisors; and any clerk or sheriff who shall fail or neglect to perform the duties required in this section, within the time given to each, as specified in the fourth section of the act to which this is an amendment, for serving notices on supervisors, shall be liable to the penalties stated in said section.

(46.) SEC. IV. The tax list being placed in the hands of the supervisor, he shall notify each person residing in said supervisor's district, of the amount due, and that the same may be discharged in labor on the road, and shall thereupon request payment in money or labor, first notifying such person of the time and place to attend and work the same out at the rate of seventy-five cents per day, bringing with him such tools as may be directed by the supervisor; the labor to be performed by the principal or a substitute equally able, working at least eight hours each day; and if such person shall spend the time in idleness, be turbulent, or disobey the supervisor, he shall be discharged from the road, and the balance due shall be collected, with twenty-five per cent. advance: *Provided*, All money collected by supervisors for road purposes, shall be disbursed on some road within their district.

(47.) SEC. V. When any person or persons desire a change or relocation of any State or county road now located, or hereafter to be located, and the whole distance proposed to be changed does not exceed three miles, the petitioners applying for the same shall deposit with the county commissioners' clerk a sum of money sufficient to pay for viewing and surveying said road; and on the return of such report, the clerk shall pay for the same with the money before deposited, whether the report be favorable or unfavorable to the change or relocation.

(48.) SEC. VI. In all cases where a petition is presented to the county commissioners' court, praying for a change, alteration, location or vacation of any county road, as provided for in the act to which this is an amendment, if there shall be remonstrances presented against granting the same, it shall

be the duty of the said court to give due consideration both to the petition and remonstrance, and grant or refuse the prayer of such petitioners, as in their discretion shall be just and proper.

(49.) SEC. VII. Supervisors, for each and every day necessarily employed over and above their road tax, due for road purposes, shall be allowed seventy-five cents per day for each and every day necessarily employed to carry out the provisions of this act, or the act to which this is an amendment; said money to be paid out of the county treasury, on settlement, under oath, with the county commissioners' court: *Provided*, No supervisor shall be allowed pay for a day's work, when he works with less than ten hands, unless said supervisor's district does not contain as many.

(50.) SEC. VIII. Sections fourteen, sixteen, eighteen and nineteen, of an act concerning public roads, approved February 20, 1841, together with all other parts of said act, as well as of an act to authorize county commissioners' courts to assess taxes for road purposes, approved March 4, 1843, are hereby repealed. This act to take effect and be in force from and after the first day of June next.

(51.) SEC. IX. In all cases where supervisors, under the provisions of this act, fail or refuse to comply with the law in relation to supervisors, suits may be commenced against them before justices of the peace of their counties, who shall have jurisdiction in all cases when the fines or forfeitures do not exceed one hundred dollars.

An Act making certain Fords a part of Public Roads.

[Approved Feb. 26, 1845. App. Rev. Stat. 1845, p. 593.]

(52.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in all cases where any public road in this State shall cross any stream of water, by means of a ferry, which stream, for any part of the said year, shall be fordable, that is to say, of not more than two and a half feet in depth of water in the main channel thereof, the said ford, together with the banks of said stream, leading thereto, on either side thereof, and that part of the road leading from the main road to said ford, provided the same be no further than four hundred yards from the said ferry, shall be in all respects a part of the said public road.

(53.) SEC. II. When the said ford shall be not more than two and a half feet in depth of water, it shall be the duty of the overseers of the said road, on either side of the said stream, to keep the said ford, and the roads and banks leading thereto, in good order for carriages to pass the same.

(54.) SEC. III. If any person or persons shall build any dam across such stream, thereby raising the water of such ford (unless the same be built for some useful purpose,) or shall place or cause to be placed in such ford, any logs, brush, rock or other obstructions whatever, he, she or they so offending shall pay a fine of twenty dollars for every such offense, to be recovered before any justice of the peace in the county or counties where such ford may be, at the suit of any person who may see cause to sue for the same; and shall, moreover, pay double damages to any person who shall be injured by such obstruction.

An Act to improve the Roads in the Illinois Bottom.

[Approved Feb. 27, 1847. Laws, 1847, p. 89.]

(55.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That persons immediately interested in any roads leading to any ferry, warehouse or landing on the Illinois river, that pass through low, wet or inundated land, that require more than the ordinary or legal road labor to keep them in repair, are hereby authorized to form themselves into associations for the purpose of opening, grading, bridging and keeping in repair such roads.

(56.) SEC. II. In order to form such associations, a meeting may be held at such time and place as any three of the citizens interested may agree; said three citizens to give notice of the time, place and object of the said meeting by posting up written notices of the same in three of the most public places on the road they wish to improve.

(57.) SEC. III. When the citizens are convened in public meeting, as provided for in the second section of this act, they shall organize by appointing one of their number chairman, and another secretary; they shall then determine by vote whether they will form themselves into a society or not; if a majority voting shall agree to form such society, they shall then agree upon a name by which the society shall be called and known, and elect, by ballot, a president and three directors, to be styled and known as the "President and directors of the — road society," who shall hold their offices for two years from their election, and until their successors are elected and enter on the duties of their offices. The secretary shall keep a correct record of the proceedings of the meeting, and cause a certified copy of the same to be filed by him, and recorded in the recorder's office in the county or counties in which the road is situated; which record shall be taken and deemed in all cases sufficient evidence of the existence of such society. At all succeeding elections of president and directors, the president shall give ten days' notice of the same, and the president and directors in office shall cause the same to be conducted in all respects as is provided by this act for the election of the first officers of the society.

(58.) SEC. IV. The president and directors of the society shall have power to locate or relocate State or county roads between the bluffs or highlands and the river: *Provided*, Such location shall not materially increase the length or distance of said road. When such location is made, the president shall certify the same, setting forth in said certificate the distance, the commencement and termination of said road, together with such other remarks as shall serve to identify the location of the road; which certificate shall be filed in the office of the county commissioners' clerk.

(59.) SEC. V. The president shall call annual meetings of the society in the month of May, at which meetings the society shall determine by vote the number of days' labor each member of the society shall be required to expend on the road that year, or the amount of money each member of the society shall contribute for the improvement of the road that year, to be paid to the president at such time as the society shall determine. The president shall give notice of such meeting by posting up written notice of the same in three of the most public places in the vicinity of said road, setting forth the time, place and object of said meeting.

(60.) SEC. VI. All moneys, labor or other valuable thing subscribed,

donated or given for the improvement of any road coming within the provisions of this act, shall be appropriated by the president and trustees of said road for the sole purpose of opening, grading, bridging or macadamizing said road, or for making such other improvement on said road as the society shall direct, and for no other purpose.

(61.) SEC. VII. All persons owning ferries on the Illinois river, and who pay into the treasury of any county in this State any amount of money for the privilege of keeping said ferry, shall be permitted, and they are hereby authorized, to pay the amount of money now required by law or that may hereafter be required to be paid for said privilege, to the president and directors of the road leading to said ferry, and by them appropriated as other money for the improvement of said road; the receipt of the president of the society having charge of the road, to whom the money was paid, shall be a sufficient voucher to secure to the owner of said ferry, paying the money as aforesaid, license to keep such ferry as is now or may hereafter be provided by law.

(62.) SEC. VIII. When there is no society formed to improve a road leading to a ferry, as provided in this act, the money paid by the owner or owners of such ferry for license, to the county commissioners' court, shall be paid by the order of said court to the supervisor having charge of the road leading to said ferry, and shall be expended by him in improving that part of said road situated in the Illinois bottom.

(63.) SEC. IX. Any person being a member of any society organized under the provisions of this act, and who shall have paid annually the sum of five dollars or more, or who shall have expended annually five days' labor, under the direction of the president and trustees, shall not be liable to do road labor in any county in the State; any person paying ten dollars or working ten days, annually, shall be exempt from road labor or road tax in the county in which he may reside; the receipt of the president for money paid, or his certificate for labor performed, shall be sufficient evidence of the money paid or the performance of labor.

(64.) SEC. X. All taxes imposed or assessed upon any ferry license, for any ferry across the Illinois river, shall be and the same is hereby appropriated to making and keeping in repair the roads and bridges across the Illinois bottom, leading to or from said ferry; which said tax may be discharged in labor under the direction of the supervisor of the district in which said road may be located, and to no other purpose whatever, any thing in any law to the contrary notwithstanding.

(65.) SEC. XI. The road leading from the bluffs westward through Moore's Lane, in Scott county, to where it opens upon the prairie in the Illinois bottom, and thence on as direct a route as the nature of the ground will admit, to Mechanics' Ferry, upon the Illinois river, be and the same is hereby established as a State road, to be opened and kept in repair as other State roads.

An Act to amend the several Acts relating to Public Roads.

[Approved Feb. 17, 1847. Laws, 1847, p. 111.]

(66.) SEC. I. *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, at the March term, annually, shall fix*

and cause to be entered upon the records of their courts, a certain number of days, not exceeding five nor less than two, that each and every able-bodied man, between the ages of twenty-one and fifty years, (men of color not excepted,) shall labor upon some public road within the county, during the year; and it shall be the duty of the clerk of said court to certify the number of days fixed, as aforesaid, in the notice to each supervisor appointed in said county.

(67.) SEC. II. If the county commissioners' court of any county shall deem it expedient, a road tax may be assessed and collected in said county, not exceeding twenty cents on each hundred dollars' worth of taxable property, real and personal, as contemplated in the second section of the act passed in relation to public roads, approved February 28, 1845.

(68.) SEC. III. It shall be the duty of the county commissioners' court, upon the presentation of a petition for the location or relocation of a road, to inquire into the manner in which the same was gotten up, if signed by individuals through whose lands the same may pass, as far as practicable, and require proof, and be satisfied that the notice required by law of such intended application had been given, in view that the owners of lands which may be damaged shall have notice thereof.

(69.) SEC. IV. Viewers, in locating a road, shall ascertain, as far as practicable, where damages will be claimed, and report the names of the individuals claiming to the commissioners' court, at the time of making their report; and it shall be incumbent on the owners of property, by themselves or agents, to inform the court at the term at which the road viewers shall report, of such their claims for damages; and no damages shall be allowed unless claim be made to the court as aforesaid, or to the supervisor, commissioner or superintendent appointed to open the road, as now provided by law. After a road shall be opened, and no claim for damages being set up, the State or county shall not be liable for any damages whatever.

(70.) SEC. V. It shall be the duty of supervisors to take good care of plows, road scrapers and other implements belonging to the county, in their charge, and not to lend the same unless to the supervisor to aid him in constructing public roads. Any person who shall violate the provisions of this section, shall forfeit and pay a fine of not less than three nor more than ten dollars.

(71.) SEC. VI. Each and every supervisor shall call out his hands, and do a fair proportion, at least a moiety, of the labor due, in the spring of the year, in putting the roads and bridges in good repair, and grading the same where most needed.

(72.) SEC. VII. If any person shall impair any public road by plowing, or turning a current of water so as to saturate or wash the same, he shall forfeit and pay a fine, for the first offense five dollars, and for a second offense ten dollars, and at that rate for every additional offense; which fines shall be collected either before a justice of the peace, or by indictment in the circuit court, as now provided by law.

(73.) SEC. VIII. Where any city or town has or may become incorporated under a special law, or under a general law authorizing citizens to become incorporated, no requisition in labor or money from the citizens thereof, on property within said corporation, shall be required to improve roads in the county different from the grant in the charter, but they shall

be required to work and pay a tax to improve the streets and roads, and such improvements as shall be specified in the charter, or within the limits of the incorporation, so long as the charter or incorporation shall remain in full force. In all towns and villages not incorporated, the citizens thereof shall contribute in labor, and by a tax, when assessed by the county commissioners' court of the county, in improving the streets of the town or village, and the public roads of the road district, including the same under the supervisor.

(74.) SEC. IX. In constructing bridges, where they are not covered, the supervisor shall secure the same by placing on the margins of the plank heavy hewed timber, or by erecting substantial hand rails, so as to prevent damage by wagons running off, or otherwise.

(75.) SEC. X. Any person owning lands in an adjoining or detached county in the State, other than the one in which he resides, may work out his road tax in person, or by an able and good substitute, under any one supervisor in such county where the lands lie, voluntarily attending when a supervisor shall be working on roads; which privilege is hereby granted to non-residents to work out their road taxes under any supervisor in the county where the lands are situated, and the supervisor shall give to such person a receipt for the same, and shall make return thereof to the county commissioners' court, on settlement of his accounts: *Provided*, That it shall not be incumbent on any supervisor to notify such person out of his district.

(76.) SEC. XI. Sections fourteen, sixteen, eighteen and nineteen, of chapter ninety-three, in the Revised Laws of last session, (in the act of February 20, 1841,) approved March 3, 1845, are hereby re-enacted, and declared to be in full force, except the first section, and so much of the eighth section as this act changes.

(77.) SEC. XII. Immediately on the passage of this act, it shall be the duty of the public printer to publish the same, and transmit a copy or number, by mail, to the clerk of the commissioners' court of each county in the State, to be laid before the courts at the March term, one thousand eight hundred and forty-seven, to enable them to act thereon.

Sections One and Nineteen of an Act to amend Chapter XCIII of the Revised Statutes, and to locate certain Roads.

[Approved Feb. 17, 1851. Laws, 1851, p. 176.]

(78.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That county surveyors may act as road viewers in their respective counties, without further qualification, and may administer the proper oath of office to other road viewers who may be associated with him or otherwise. Road viewers may assess damages incident to the laying out of roads, and report their assessment to the county courts of the counties in which such roads may be located.

(79.) SEC. XIX. That the county courts of the several counties of this State shall have the supervision and control of all roads and public highways within their respective counties, whether such county be organized under or by virtue of the "township organization law" or otherwise, and shall be governed by the several laws of this State relating to roads and public highways previous to and at the time of such organization; and all laws and parts of laws coming within the purview of this act, or inconsistent therewith, be and the same are hereby repealed.

An Act to amend the General Road Law, and for other Purposes.

[Approved Feb. 17, 1851. Laws, 1851, p. 184.]

(80.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That so much of the law now in force in relation to public roads as provides that supervisors shall not work with less than ten hands at one time, be and the same is hereby repealed, and hereafter supervisors may work with any number of hands which they may deem advisable.

(81.) SEC. II. That hereafter supervisors shall be allowed the sum of one dollar per day, for each and every day in which they are necessarily employed in the discharge of their duties, over and above the time consumed in working out their own tax.

(82.) SEC. III. The secretary of State is hereby required to cause a reprint, in pamphlet form, of all the general laws in relation to public roads, and the duties of supervisors, now in force, to be distributed at the same time and in the same manner as is provided for the distributing the laws and journals of the present session. The number of such pamphlets shall be three thousand, to be distributed to the counties in proportion to population: *Provided*, That such reprint shall not include any law the object and effect of which is merely to establish State roads.

An Act to amend Chapter XCIII of the Revised Statutes, entitled "Roads."

[Approved June 22, 1852. Laws, 1852, p. 176.]

(83.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That if any person or persons shall obstruct any public road, in the manner provided in section sixteen of the act to which this is an amendment, the penalty provided for in said section may be recovered either by an indictment or in an action of debt, before any justice of the peace of the county in which the offense was committed; which action may be brought in the name of and upon the complaint or information of any person who may complain, one-half to the informer, the other half to the use of the county.

(84.) SEC. II. All suits, actions and proceedings necessary to be had upon any right or cause of action, for failures to perform road labor, or pay road taxes, or to enforce any contract or promise, in reference to the opening or repairing public roads, shall be had in the corporate name of the county wherein the right of action accrued: *Provided*, That no suit shall be dismissed on account of informality in the name of the plaintiff; but the court may, on application, permit the record to be so amended as to place the name of the proper plaintiff on the record.

(85.) SEC. III. So much of the act to which this is an amendment as conflicts herewith, is hereby repealed.

(86.) SEC. IV. This act to be in force from and after its passage.

An Act to amend an Act entitled "An Act to amend Chapter XCIII of the Revised Statutes, and to locate certain Roads."

[Approved Feb. 12, 1853. Laws, 1853, p. 176.]

(87.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That so much of the nineteenth section of the above recited act as gives to the county court supervision and control

of all roads and public highways in counties which have adopted township organization, be and the same is hereby repealed.

(88.) SEC. II. This act shall be in force from and after its passage.

An Act to amend the several Acts passed at the last regular Session of the General Assembly in regard to the Location of State Roads.

[Approved March 1, 1854. Laws, 1854, p. 10.]

(89.) SEC. I. *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.

(90.) SEC. II. That in all cases where commissioners have been appointed at the last session of the legislature to review and locate State roads, and any or all of said commissioners have removed, died or refuse to act, then the county court or board of supervisors of the county in which said commissioners were required to be sworn, may appoint commissioners to fill said vacancies, and said commissioners shall have power to perform all the duties by the acts to which this is an amendment.

(91.) SEC. III. This act to take effect and be in force from and after the passage thereof.

An Act to amend Chapter XCIII of Revised Statutes, entitled "Roads."

[Approved Feb. 15, 1855. Laws, 1855, p. 172.]

(92.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases when it shall become necessary to appoint commissioners to assess the damages caused by the laying out or construction of any State or county road over the lands belonging to any company, corporation or individual, it shall be the duty of the judges of the county court, when application shall be made to them for that purpose, to appoint three householders, who shall assess the damages in the same manner as is provided for by the act to which this is an amendment.

(93.) SEC. II. So much of section thirty-eight of chapter ninety-three of the Revised Statutes, as authorizes justices of the peace to appoint said commissioners to assess said damages, be and the same is hereby repealed. This act to take effect and be in force from and after its passage.

**PRIOR LAWS.** An act for opening, repairing, improving and regulating roads and highways, and creating a fund for that purpose; in force March 29, 1819. Laws, 1819, p. 333. Repealed March 1, 1827.

An act further to amend the "Act for opening, repairing, improving and regulating roads and highways, and creating a fund for that purpose;" in force Feb. 15, 1821. Laws, 1821, p. 167. Repealed March 1, 1827.

An act to amend the several acts relating to roads and public highways; in force Jan. 15, 1825. Laws, 1825, p. 130. Repealed March 1, 1827.

An act to provide for the establishment of ferries, toll-bridges and turnpike roads; in force Feb. 12, 1827. Laws, 1827, p. 220.

An act concerning public roads; in force March 1, 1827. Laws, 1827, p. 340. Rev. Laws, 1833, p. 539.

An act to amend "An act to provide for the establishment of ferries, toll-bridges and turnpike roads," approved Feb. 12, 1827; in force May 1, 1829. Rev. Laws, 1833, p. 545.

An act to amend an act entitled "An act concerning public roads," approved Feb. 12, 1827; in force March 2, 1833. Rev. Laws, 1833, p. 546.

An act concerning public roads; in force Feb. 3, 1835. Laws, 1835, p. 129.

An act to amend "An act concerning public roads;" in force Jan. 18, 1836. Laws, 1836, p. 207.

An act to amend an act entitled "An act to amend an act concerning public roads," approved Jan. 18, 1836; in force March 3, 1837. Laws, 1837, p. 274.

An act to extend the time for the location of State roads; in force Jan. 30, 1840. Laws, 1840, p. 68.

An act concerning public roads; in force March 1, 1841. Laws, 1841, p. 232.

**DECISIONS.** An act of the General Assembly regulating road labor from each male inhabitant between the ages of 21 and 50 years, is constitutional. *Sawyer v. The City of Alton*, 3 S. 127.

The fact that a road is used by the public as a highway, and recognized and kept in repair as such by the county commissioners and supervisors, raises the legal presumption that such road is a public highway; but this presumption may be rebutted. The 7th section of the act of Feb. 3, 1835, concerning public roads, and the 2nd section of the act of Jan. 18, 1836, amendatory thereof, confer upon county commissioners' courts, a general superintending and discretionary power over public roads and bridges. *Eyman et al. v. People*, 1 G. 4.

By the 30th section of the act of Feb. 20, 1841, concerning public roads, the owner of land has an appeal to the circuit court, from the decision of the county commissioners' court, on the report of the householders assessing his damages. *Hutchins v. County Commissioners*, 1 G. 345.

County commissioners have exclusive jurisdiction over roads in their counties. Record evidence of the establishment of a road is not necessary to prove it a public highway; and if such evidence be produced, all the previous steps required by the statute need not be shown to have been taken. Opening and laying out roads are not the exercise of judicial powers. Parol evidence is admissible to show where a road is located. *Nealy v. Brown et al.*, 1 G. 10.

In proceedings for obstructing a road, under the road law of 1841, record evidence of the steps preliminary to the location, is not necessary. A road is, in law, considered established and opened when the county commissioners' court has approved the report of the viewers and the location. One may not obstruct a public road for the shortest time, and in estimating damages therefor, the jury may count fractions of a day. A claim for damages for the location of a public road, must be expressly made, and in season. A supervisor is a competent witness against a person for the obstruction of a public road, and may institute a suit therefor, under the law of 1841, before a justice of the peace. Penalties, under the road law of 1841, are not repealed by the Revised Statutes of 1845. *Ferris v. Ward et al.*, 4 G. 499.

That portion of the 92nd chapter of Rev. Laws, 1845, entitled "RIGHT OF WAY," which relates to State and county roads, is repealed by the 38th section of 93rd chapter, Rev. Laws, 1845, entitled "ROADS." The latter statute limits the right of appeal to the owner of the land where the road is located. An appeal lies from a decision of the county court to the circuit court; upon trial of which, the regularity and validity of the proceedings establishing the road, may be inquired into. If the county court had jurisdiction, and proceeded regularly, the only question in the circuit court is the amount of damages; and after the damages are assessed in the circuit court, the county court may vacate the order establishing the road. No appeal is given to the owner, till after the county court directs the road to be opened, nor can land be appropriated for a road till such order is made. No appeal lies from the decision of the county court refusing to open and construct a road. Tenants in common may join in an appeal, but not those having different interests. A county is liable for costs if the appellant is successful. The owner, on appeal, must prove affirmatively his title to the land, and that he will sustain damages by the construction of the road. The owner must object to the location of the road, and claim damages, in the first instance, and the damages assessed must be paid by the county, before the road can be made. *County of Sangamon v. Brown et al.*, 13 Ill. 207.

Commissioners to assess damages for the opening of a road, have no authority to make an agreement with the owner in relation thereto, and such an agreement, unexecuted, may be revoked. *Kimball v. Yates et al.*, 14 Ill. 464.

In a collateral proceeding, the minutes, files and other proofs, showing the proceedings of the county commissioners' court, may be examined to ascertain whether a road was legally laid out and established. Parol proof of the existence of a highway, showing that it was traveled, recognized and worked as such, may raise the presumption of dedication. When a report is signed by two of three viewers of a road, the third will be presumed to have been present and consulting, till the contrary is shown. *Louk v. Woods*, 15 Ill. 256.

Where an order establishing a road is introduced in evidence, it is unnecessary to show that the previous legal steps were taken, the presumption being that the preliminary proceedings were regular. The act of March 3, 1835, did not require a survey of the road to be made and filed, but that its course should be designated by stakes, &c., and such marks, and not the report of the viewers, determine the locality of the road. *Dumoss et al. v. Francis*, 15 Ill. 543.



## RAIL ROADS.

An Act to provide for a General System of Railroad Incorporations.

[Approved Nov. 5, 1849. Laws, 1849, (2nd Sess.) p. 15.]

(94.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any number of persons, not less than twenty-five, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning and maintaining such railroad, by complying with the following requirements: When stock to the amount of at least one thousand dollars for every mile of said road so intended to be built, shall be in good faith subscribed, and ten per cent. paid thereon as herein required, then the said subscribers may elect directors for the said company; thereupon they shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the number of years the same is to continue, which shall not exceed fifty years, the amount of the capital stock of the company, which shall be the actual cost of constructing the road, together with the cost for the right of way, motive power, and every other appurtenance for the completion and running of said road, as nearly as can be estimated by competent engineers; the number of shares of which said stock shall consist; the number of directors, and their names, to manage the concerns of the company, who shall not be one-half in the number of the stockholders, and shall hold their offices until others are elected; the place from and to which the proposed road is to be constructed, and each county into or through which it is intended to pass, and its length, as near as may be, and the names of five commissioners to open books of subscription to the stock. Each subscriber to such article of association shall subscribe thereto his name, place of residence, and the number of shares of stock taken by him in such company. The said articles of association may, on complying with the next section, be filed in the office of secretary of State, and thereupon the persons who have subscribed, and all persons who shall, from time to time, become stockholders in such company, shall be a body corporate, by the name specified in such articles.

(95.) SEC. II. Such articles of association shall not be filed in the office of the secretary of State until ten per cent. on the amount of the stock subscribed thereto shall have been actually and in good faith paid, in cash, to the directors named in such articles, nor until there is indorsed thereon, or annexed thereto, an affidavit, made by at least three of the directors named in such articles, that the amount of stock required by the first section has been subscribed, and that ten per cent. on the amount has actually been paid in.

(96.) SEC. III. A copy of any articles of association filed in pursuance of this act, with a copy of the affidavit aforesaid indorsed thereon, or annexed thereto, and certified to be a copy by the secretary of this State, or his deputy, shall, in all courts and places, be presumptive evidence of the incorporation of such company, and of the facts therein stated.

(97.) SEC. IV. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, by the name stated in such certificate, and shall be capable of suing and being sued, and may have a common seal, and may make and alter the same at pleasure, and be capable

in law of purchasing, holding and conveying any real estate and personal property whatever, necessary for the construction of such road, and for the erection of all necessary buildings, yards and appurtenances for the use of the same.

(98.) SEC. V. The commissioners for opening books of subscription, named in the act of incorporation, shall, from time to time, after the company shall be incorporated, open books of subscription to the capital stock of the company, in such places and after giving such notice as a majority of them shall direct; which books of subscription shall be kept open until all the capital stock shall be subscribed, if the corporation shall so long exist, and in case a greater amount of stock shall be subscribed than the whole capital of said company, the commissioners shall distribute such capital stock as equally as possible among the subscribers; but no share thereof shall be divided in making such distribution, nor shall a greater number of shares be allotted to any subscriber than such subscriber shall have subscribed for.

(99.) SEC. VI. As soon as practicable after such capital stock shall have been subscribed and distributed as aforesaid, the commissioners to receive subscriptions thereto shall appoint a time and place for the meeting of the stockholders to choose directors; such meeting to be held in one of the counties in or through which such railroad is proposed to be constructed, and notice thereof shall be given by said commissioners, by public notice to be published not less than twenty days previous thereto, in the State paper, and a newspaper published in each county through which the said road shall be intended to run, in which a newspaper shall be published. Thirteen directors shall be chosen at such meeting, by ballot, and by a majority of the votes of the stockholders, being present in person or by proxy, and every such stockholder being so present at such election, or at any subsequent election of directors, shall be entitled to give one vote for every share of stock which he shall have owned for the thirty days next preceding such election; but no stockholder shall vote at any such election upon any stock, except such as he shall have owned for such thirty days. No person shall be a director unless he shall be a stockholder, owning stock absolutely and in his own right, and qualified to vote for directors at the election at which he shall be chosen; and at least seven of the directors shall, at the time of their election, be residents of the counties in or through which the route of such railroads shall run. The directors shall be directors for one year, and until others are elected in their places.

(100.) SEC. VII. The commissioners named in the last preceding section shall be inspectors of the first election of directors, shall openly count the votes and declare the result, and shall, within ten days thereafter, file a certificate thereof, subscribed by them or a majority of them, in the office of the secretary of State, and in the office of the clerk of each county, or with the clerk of the county commissioners' court, as the case may be, of each county in or through which such railroad shall be proposed to be constructed, and shall also deliver to the treasurer of such company all moneys [received] by such commissioners on subscriptions to such capital stock, and all books and papers in their possession relative to such subscriptions. All subsequent elections shall be held at such time and place in one of these counties through which such railroad shall pass, as shall be directed by the by-laws of the company.

(101.) SEC. VIII. A general meeting of the stockholders of any corporation formed under this act shall be holden annually, at the time and place appointed for the election of directors, and a meeting may be called at any time during the interval between such annual meetings, by the directors or by the stockholders owning not less than one-fourth of the stock, by giving thirty days' public notice of the time and place of the meeting, in the State paper, and a newspaper published in each county through which the said road shall be run or be intended to run, in which a newspaper shall be published; and when any such meeting is called by the stockholders, the particular object of such call shall be stated, and if at any such meeting thus called, a majority in value of the stockholders are not represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days, without transacting any business, and if, within said three days, stockholders having a majority of the stock do not attend such meeting, then the said meeting shall be dissolved.

(102.) SEC. IX. At the regular meeting of the stockholders of any corporation, it shall be the duty of the president and directors in office for the preceding year to exhibit a clear and distinct statement of the affairs of the said company, and at any meeting of the stockholders a majority of those present in person or by proxy may require similar statements from the directors, whose duty it shall be to furnish them when thus required; and at all general meetings of the stockholders, a majority in value of the stockholders in said company may fix the rate of interest which shall be paid by the company, for loans for the construction of said road and its appendages, may remove any president or any director of said company and elect others in their stead: *Provided*, Notice of such intended removal has been given, as required by the last preceding section.

(103.) SEC. X. In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of the company, when it ought to have been made, the company for that reason shall not be dissolved, if within ninety days thereafter they shall hold an election for directors in such manner as shall be provided by the by-laws of the company. There shall be a president of the company, who shall be chosen by and from the directors, and also such subordinate officers as the company, by its by-laws, may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office as the company, by its by-laws, may require.

(104.) SEC. XI. It shall be lawful for the directors to call in and demand from the stockholders, respectively, all sums of money by them subscribed, at such time and in such payments or installments as the directors shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payments shall not be made by the stockholders within sixty days after personal demand, or notice requiring such payment shall have been made in each county through which said road shall be laid out in which a newspaper shall be published.

(105.) SEC. XII. The directors of such company shall have power to make by-laws for the management and disposition of stock, property and business affairs of such company, not inconsistent with the laws of this State, and prescribing the duties of officers, artificers and servants that may be employed, for the appointment of all officers for carrying on all the business within the object and purposes of such company.

(106.) SEC. XIII. The stock of such company shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company, but no shares shall be transferable till all previous calls thereon shall have been fully paid in, or the said shares shall have been forfeited for the non-payment of calls thereon; and it shall not be lawful for such company to use any of their funds in the purchase of any stock in their own or in any other corporation.

(107.) SEC. XIV. All the stockholders of any such company that shall be hereafter incorporated under this act, shall be severally individually liable to the creditors of such company to an amount equal to the amount of stock held by them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by the company in manner aforesaid shall have been paid in, and a certificate thereof shall have been made and recorded, as prescribed in the following section; and shall be jointly and severally liable for all debts that may be due and owing to all their laborers, servants and apprentices, for services performed for such corporation, but not be liable to an action therefor before an execution shall be returned satisfied in whole or in part against the corporation, and then the amount due on said execution shall be the amount recoverable, with costs, against said stockholders.

(108.) SEC. XV. The president and a majority of the directors, within thirty days after the payment of the last installment of the capital stock, so fixed and limited by the company, shall make a certificate, stating the amount of the capital stock so fixed and paid in; which certificate shall be signed by the president and a majority of the directors, and sworn to by the president and secretary, and they shall, within the said thirty days, file and record the same in the office of the secretary of State.

(109.) SEC. XVI. If the directors of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall thereafter be contracted so long as they shall respectively remain in office: *Provided*, That if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall, within thirty days thereafter, or after their return, if absent, file a certificate of their absence or objection with the clerk of the company, and with the clerk of the county, or with the clerk of the county commissioners' court of the county in which the principal office of said company is located, they shall be exempt from the said liability.

(110.) SEC. XVII. If any certificate, or report made, or public notice given by the officers of any such company, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

(111.) SEC. XVIII. No person holding stock in any such company, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accord-

ingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or persons interested in such trust fund would have been if he had been living and competent to act, and held the same stock in his own name.

(112.) SEC. XIX. Every such administrator, executor, guardian or trustee, shall represent the shares of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder.

(113.) SEC. XX. Every such company, before proceeding to construct a part of their road through any county named in their certificate of association, shall make a map and profile of the route intended to be adopted by such company; which shall be certified by a majority of the directors, and filed in the office of the county clerk of such county, or with the clerk of the county commissioners' court of such county, for the inspection and examination of all parties interested therein.

(114.) SEC. XXI. Every such corporation shall possess the general powers, and be subject to the general liabilities and restrictions expressed in the special powers following, that is to say:

1st. To cause such examination and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for the railroad, and for such purpose, by their officers, agents and servants, to enter upon lands or waters of any person, but subject to responsibility for all damages which they shall do thereto.

2nd. To receive, hold and take such voluntary grants and donations of real estate and other property, as shall be made to it, to aid in the construction, maintenance and accommodation of such railroad; but the real estate thus received by voluntary grants shall be held and used for the purposes of such grants only.

3rd. To purchase, and by voluntary grants and donations receive and take, and by its officers, engineers and surveyors and agents, enter upon and take possession of, and hold and use all such land and real estate and other property as may be necessary for the construction and maintenance of its railroad and stations, depots and other accommodations necessary to accomplish the object for which the corporation is created; but not until the compensation to be made therefor, as agreed upon by the parties, or ascertained as hereinafter prescribed, be paid to the owner or owners thereof, or deposited as hereinafter directed, unless the consent of such owner be given to enter into possession.

4th. To lay out its road, not exceeding six rods wide, and to construct the same, and for the purpose of cuttings, embankments, and procuring stone and gravel, may take as much more land within the limits of its charter, in the manner provided hereinafter, as may be necessary for the proper construction and security of the road.

5th. To construct their road upon or across any stream of water, water course, road, highway, railroad or canal, which the route of its road shall intersect; but the corporation shall restore the stream or water course, road or highway thus intersected, to its former state, or in a sufficient manner not to have impaired its usefulness.

6th. To cross, intersect, join and unite its railroad with any other railroad before constructed, at any point on its route, and upon the grounds of

such other railroad company, with the necessary turn-outs, sidings and switches, and other conveniences, in furtherance of the objects of its connections; and every company whose railroad is or shall be hereafter intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or manner of such crossings and connections, the same shall be ascertained and determined by commissioners to be appointed by the court, as is provided hereinafter in respect to the taking of lands.

7th. To purchase lands or take them, may change the line of its road whenever a majority of the directors shall so determine, as is hereinafter provided, but no such change shall vary the original route of such road to exceed one mile laterally.

8th. To take, transport, carry and convey persons and property on their railroad, by the force and power of steam, of animals, or any mechanical powers, or by any combinations of them, and receive tolls or compensation therefor.

9th. To erect and maintain all necessary and convenient buildings, stations, depots and fixtures, and machinery for the accommodation and use of their passengers, freight and business, and obtain and hold the lands necessary therefor.

10th. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor; but such compensation for any passenger and his ordinary baggage shall not exceed three cents a mile, unless by special act of the legislature, and shall be subject to alteration as hereinafter provided.

11th. To borrow money, to be applied to the construction of their railroad and fixtures, and purchase of engines and cars, at such rates of interest as is hereinafter provided.

(115.) SEC. XXII. Any number of persons, not less than thirteen, intending to organize a corporation under the provisions of this act, and every company that may hereafter organize under this act, may present a petition to the legislature, stating the place from and to which they propose to construct their road, and its location and route, with reasonable certainty, or that they intend to run the said road on the most direct and eligible route between the points of terminus, and praying the legislature to determine whether the construction of the said proposed road will be of sufficient public use to justify the taking of private property for the construction of the same. And if the legislature shall determine and decide by law that such proposed road will be of sufficient public utility to justify the taking of private property for constructing and maintaining said road, under the provisions of this act, then such company, when organized, may enter upon, take possession of and use all such lands, real estate, as may be required for the construction and maintenance of their railroad, and the convenient accommodations appertaining to the same; making compensation, in the manner hereinafter provided, for all lands, real estate, thus taken possession of and used, except such as may be voluntarily given to or purchased at an agreed price by the said corporation. Whenever the said corporation shall not have acquired by gift or purchase, any land, real estate, so required as aforesaid, or which may be

affected by any operation connected by such construction and maintenance, the said corporation may present to the circuit court of the district where said lands or real estate shall lie, a petition, signed by its attorney or agent, describing with convenient accuracy and certainty, by map or otherwise, the lands or real estate so required to be taken or affected as aforesaid, setting forth the name and residence of each owner or other person interested therein as owner, lessee or incumbrancer, as far as known to such attorney or agent, or appearing of record, and praying the appointment of commissioners, to ascertain the compensation to be made to such owners and persons interested, for the taking or injuriously affecting such land or real estate as aforesaid. The court shall have satisfactory evidence that notice of an intended application, and the time and place thereof, for the appointment of commissioners of appraisal between said corporation and the owners and persons interested in such lands and real estate, had been given at least ten days previously, to such owners personally, or to some person of suitable age, at their residence or on the premises; or by the publication thereof in a newspaper printed in the county in which such lands or real estate may lie, such publication to be allowed only in respect to owners who shall appear by affidavit to have no residence in the county, known to such agent or attorney, whereat such notice could be delivered as aforesaid. The court may adjourn the proceedings from time to time; shall direct any future notice thereof to be given that may seem proper; shall have proofs and allegations of all parties interested, touching the regularity of the proceedings; and shall, by an entry in its minutes, appoint five competent and disinterested persons commissioners to ascertain such compensation as aforesaid, specifying in such entry a time and place for the first meeting of such commissioners. The said commissioners, before entering upon the duties of their office, shall take the oath required by the laws and constitution of this State, and any one of them may administer oaths to witnesses produced before them; and may adjourn, and may hold meetings for that purpose. Whenever they shall meet to hear proofs and allegations, unless by appointment of the court or pursuant to adjournment, they shall cause reasonable previous notice of such meetings to be given to the said owners or parties interested, or their attorney or agent, and may each of them issue subpoenas and compel witnesses to appear and testify; they shall hear the proofs and allegations of the parties, and any three or more of them, after reviewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owners and parties interested, for the lands or real estate to be taken, as well as all damages accruing to the owner of the lands and real estate aforesaid, taken in consequence of the condemnation of the same, or injuriously affected as aforesaid, making such deduction or allowance for real benefit or advantages which such owners or parties interested may derive from the construction of said road, and may in their discretion assess a separate reasonable sum in favor of such owner and parties interested, or of any person appointed by the court to appear as attorney for them, for costs, expenses and reasonable counsel fees. They, or a majority of them, shall make subscribe and file with the clerk of the county, or with the clerk of the county commissioners' court, in which such lands or real estate shall lie, a certificate of their said ascertainment and assessment, in which such

lands or real estate shall be described by map or otherwise, with convenient accuracy and certainty. The court, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the State treasury, or other place for that purpose approved by the court, shall make and cause to be entered in its minutes, a rule describing such lands or real estate, in manner aforesaid, such ascertainment of compensation, with the mode of making it, and such payment or deposit of the same compensation as aforesaid; a certified copy of which rule shall be recorded and indexed in the proper recorder's office, in like manner and with the like effect as if it were a deed of conveyance from the said owners and parties interested to the said corporation. Upon the entry of such rule, the said corporation shall become seized in fee of all the lands and real estate described in said rule, as required to be taken as aforesaid, during the continuance of the corporation, by this or any subsequent act, and may take possession of and hold and use the same for the purposes of said road, and shall thereupon be discharged from all claim for any damages by reason of any matter specified in said petition, certificate or rule of said court. If, at any time after an attempted or actual ascertainment of compensation under this or any other act, or any purchase by or donation to said corporation, of any lands for the purposes aforesaid, it shall appear that the title acquired thereby to all or any part of such lands for the use of said road, or if said corporation shall fail or be deemed defective, the said corporation may proceed anew to perfect such title, by procuring an ascertainment of the compensation proper to be made to any person or persons who have title, claim or interest in or lien upon such lands, and by making payment thereof in the manner hereinafter provided, as near as may be; and at any stage of such new proceedings, or of any proceedings under this act, the court may, by a rule in that behalf made, authorize the said corporation, if already in possession, and if not in possession, to take possession of and use such premises during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation on account thereof: *Provided*, Such corporation shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf, when ascertained; and in every case where possession shall be so authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said commissioners shall be entitled to receive from said corporation, a compensation not exceeding two dollars for each day actually employed by them in the discharge of their duties. Such compensation to be taxed and allowed by the court. If any commissioner so appointed shall die, be unable or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the court. The proceedings hereby authorized may be had in the circuit court in a county where the lands lie, and all motions to the circuit court shall be made at a general or special term thereof, in said county. The said commissioners shall file the said certificate in the county where the lands to be affected may lie, or in any adjacent county, and any clerk may transfer the same and the proceedings connected therewith, to the clerk of the county in which the lands to be affected may lie, or of any county adjacent

thereto, whenever such commissioner or clerk shall be so required by said corporation, its agent or attorney. And the legislature hereby reserves [the right] to itself to indicate the routes and termini of said roads, and the same shall not be constructed or commenced without the expressed sanction of the legislature of this State, by a law to be passed hereafter.

(116.) SEC. XXIII. In case any infant, idiot, or insane person, or any unknown owner or owners, not personally notified to appear, and who shall not appear after such notice, on the appointment of commissioners, shall be interested in any such lands, real estate and property, the court shall appoint some proper person to appear before the said commissioners and act as attorney for and in behalf of such infant, idiot, insane person, unknown owner, or non-appearing owner, not personally served with notice.

(117.) SEC. XXIV. If at any time after the location of the track of said road, in whole or in part, and the filing of the map thereof, it shall appear to the directors of said company that the line in some parts thereof may be improved, it shall be lawful for the said directors, from time to time, to alter the line, and cause a new map to be filed in the office where the map showing the first location is or shall be filed, and may thereupon proceed to take possession of the lands embraced in such new location that may be required for the construction and maintenance of said road on such new line, and the convenient accommodations appertaining to the same, either by agreement with the owner or owners, or by such proceedings, as near as may be, as are authorized under the preceding section of this act, and use the same in place of the line for which the new is substituted. Nothing in this act contained shall authorize the said company to make a location of their track within any city without the consent of the common council of said city.

(118.) SEC. XXV. Whenever the track of said railroad shall cross a road or highway, such road or highway may be carried under or over the track, as may be found most expedient; and in cases where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such road or highway, or such new line, as may be deemed requisite by said directors. Unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid, compensation therefor shall be ascertained in the manner in this act provided, as nearly as may be, and duly made by said corporation to the owners and persons interested in such lands; the same, when so taken or compensation made, to become part of such intersecting road or highway, in such manner and by such tenure as the adjacent parts of the same highway may be held for highway purposes.

(119.) SEC. XXVI. If any such corporation shall, for its purpose aforesaid, require any land belonging to the people of this State, or to any of the counties or towns, the General Assembly of the State and the county or town officers, respectively, having charge of such lands, may grant such lands to such corporations for a compensation, which shall be agreed upon between them; and if they shall not agree upon a sale and price, the same may be taken by the corporation as is before provided in respect to other cases.

(120.) SEC. XXVII. Every conductor, baggage-master, engineer, brake-

man or other servant of any such railroad corporation, employed on a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and the initial letters of the style of the corporation by which he is employed. No conductor or collector without such badge, shall demand or be entitled to receive from any passenger any fare, toll or ticket, or exercise any of the powers of his office; and no other of said officers or servants, without such badge, shall have any authority to meddle or interfere with any passenger, his baggage or property.

(121.) SEC. XXVIII. Every such corporation shall make an annual report to the secretary of this State, of the operations of the year ending on the first day of January; which report shall be verified by the oaths of the treasurer, and the acting superintendent of operations, and filed in his office by the twentieth day of January, in each year, and shall state—

- 1st. The capital stock and the amount actually paid in;
- 2nd. The amount expended for the purchase of lands for the construction of the road, for buildings, and for engines and for cars, respectively;
- 3rd. The amount and nature of its indebtedness, and the amounts due the corporation;
- 4th. The amount received for the transportation of passengers, of property, of the mails, and from other sources;
- 5th. The amount of freight, specifying the quantity in tons, of the products of the forests, of animals, of vegetable food, other agricultural products, manufactures, merchandise, and other articles;
- 6th. The amount paid for repairs, engines, cars, buildings and salaries;
- 7th. The number and amount of dividends, and when paid;
- 8th. The number of engine houses and shops, of engines and cars, and their character;
- 9th. The number of miles run by passenger, freight and other trains, respectively;
- 10th. The number of men employed, and their occupation;
- 11th. The number of persons injured in life or limb, and the causes of such injury;
- 12th. Whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation.

(122.) SEC. XXIX. Any such corporation which shall neglect to make such report, shall be liable to a penalty of two hundred and fifty dollars, to be sued for in the name of the people of this State.

(123.) SEC. XXX. The property belonging to any company organized under the provisions of this act, shall be listed by the resident secretary or other proper officer, with the auditor of State, which shall be subject to the same rate of taxation as other similar property of individuals, and the revenue arising therefrom shall be paid into the State treasury, until the entire extinction of the internal improvement debt of the State, after which the said property shall be subject to taxation, and the revenue arising therefrom paid as in the case of all other property in the State. The revenue derived under this section to be applied to the payment of the public debt of the State.

(124.) XXXI. The State shall have a lien upon all railroads of said corporations, and their appurtenances and stock therein, for all penalties,



taxes and dues which may accrue to the State from said corporations; which lien of the State shall take precedence of all demands, judgments or decrees against said corporation; and the citizens of this State shall have a lien upon all personal property of said corporation to the amount of one hundred dollars, originally contracted within this State; which, after said lien of the State, shall take precedence of all other debts, demands, judgments or decrees, liens or mortgages, against said corporation.

(125.) SEC. XXXII. The legislature may, when any such railroad shall be opened for use, from time to time, alter or reduce the rates of toll, fare, freight, or other profits upon such road; but the same shall not, without the consent of the corporation, be so reduced as to produce with said profits less than fifteen per cent. per annum on the capital actually paid in; nor, unless on an examination of the amounts received and expended to be made by the secretary of State, he shall ascertain that the net income divided by the company from all sources for the year then last past shall have exceeded an annual income of fifteen per cent. upon the capital of the corporation actually paid in.

(126.) SEC. XXXIII. Any such corporation shall, when applied to by the postmaster general, convey the mail of the United States on their road or roads, respectively; and in case such corporation shall not agree as to rates of transportation thereof, and as to time, rate of speed, manner and condition of carrying the same, it shall be lawful for the governor of this State to appoint three commissioners, who, or a majority of them, after fifteen days' notice, in writing, of the time and place of meeting to the corporation, shall determine and fix the prices, times and condition aforesaid, but such prices shall not be less for carrying said mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. And in case the postmaster general shall require the mail to be carried at other hours, and at a higher speed than the passenger trains be run at, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof, and for the services to be fixed aforesaid.

(127.) SEC. XXXIV. If any passenger shall refuse to pay his fare or toll, it shall be lawful for the conductor of the train and the servants of the corporation to put him out of the cars at any usual stopping place the conductor shall select.

(128.) SEC. XXXV. Every such corporation shall start and run their cars for the transportation of passengers and property, at regular times to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and the junctions of other railroads, and at sidings and stopping places established for receiving and discharging way passengers and freight, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of tolls, freight or fare legally authorized therefor.

(129.) SEC. XXXVI. In case of the refusal by such corporation, or their agents, to take and transport any passengers or property, or to deliver the same or either of them at the regular or appointed time, such corpora-

tion shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit.

(130.) SEC. XXXVII. In forming a passenger train, baggage or freight or merchandise or lumber cars shall not be placed in rear of passenger cars, and if they or any of them shall be so placed and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor or engineer of the train, shall each and all be held guilty of intentionally causing the injury, and be punished accordingly.

(131.) SEC. XXXVIII. A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine, and shall be rung or whistled, at the distance of at least eighty rods from the place where the said road shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to the State, and also be liable for all damages which shall be sustained by any person by reason of such neglect.

(132.) SEC. XXXIX. Every such corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each public road or street, where the same is crossed by the railroad on the same level. Said boards shall be elevated, so as not to obstruct the travel, and to be easily seen by travelers; and on each side of said boards shall be painted in capital letters, of at least the size of nine inches each, the words "*Railroad crossing—look out for the cars while the bell rings or the whistle sounds.*" But this section shall not apply to streets in cities or villages, unless the corporation be required to put up such boards, by the officers having charge of such streets.

(133.) SEC. XL. If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as the conductor of any car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

(134.) SEC. XLI. If any person shall willfully do, or cause to be done, any act or acts whereby any building, construction or work of any such corporation, or any engines, machine or structures, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation, treble the amount of damages sustained by means of such offense.

(135.) SEC. XLII. All penalties imposed by this act may be sued for by the district attorney, and in the name of the people of the State of Illinois; and if such penalty be for a sum not exceeding one hundred dollars, then such suit may be brought before a justice of the peace.

(136.) SEC. XLIII. Every such corporation shall, within a reasonable time after the road shall be located, cause to be made,

1st. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the secretary of State; and also like maps of the parts thereof located in different counties, and file the same in the office for recording deeds in the county in which said parts of said road shall lie, there to remain as of record forever; and



struct the railroad, and the grades and curves.

(137.) SEC. XLIV. If any such corporation shall not, within five years after its incorporation, begin the construction of its road and expend thereon ten per cent. on the amount of its capital, and finish the road and put it in full operation in ten years thereafter, its act of incorporation shall become void.

(138.) SEC. XLV. All existing railroad corporations within this State shall respectively have and possess all the powers and privileges, and be subject to all the duties and liabilities and provisions contained in this act, so far as they shall be applicable to their present conditions, and not inconsistent with their several charters, and all railroad companies that are now constructing their roads, may acquire title to lands necessary for that purpose under the provisions of this act.

(139.) SEC. XLVI. This act shall take effect and be in force from and after its passage.

An Act supplemental to an Act entitled "An Act to provide for a General System of Railroad Incorporations."

[Approved Nov. 6, 1849. Laws, 1849, (2nd Sess.) p. 28.]

(140.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever the citizens of any city or county in this State are desirous that said city or county should subscribe for stock in any railroad company already organized or incorporated, or hereafter to be organized or incorporated under any law of this State, such city or county may and are hereby authorized to purchase or subscribe for shares of the capital stock in any such company, in any sum not exceeding one hundred thousand dollars for each of such cities or counties; and the stock so subscribed for or purchased, shall be under the control of the county court of the county or common council of the city making such subscription or purchase, in all respects as stock owned by individuals.

(141.) SEC. II. That for the payment of said stock, the judges of the county court of the county or the common council of the city making such subscription or purchase, are hereby authorized to borrow money at a rate not exceeding ten per cent. per annum, and to pledge the faith of the county or city for the annual payment of the interest, and the ultimate redemption of the principal; or if the said judges or common council should deem it most advisable, they are hereby authorized to pay for such subscription or purchase, in bonds of the city or county, making such subscription to be drawn for that purchase, in sums not less than fifty dollars, bearing interest not exceeding ten per centum per annum: *Provided,* That no bond shall be paid out at a rate less than par value.

(142.) SEC. III. The railroad companies already organized or incorporated, or hereafter to be organized or incorporated under the laws of this State, are hereby authorized to receive the bonds of any county or city becoming subscribers to the capital stock of such company, at par, and in lieu of cash, and to issue their bonds, bearing interest not exceeding ten per centum per annum for any moneys by them borrowed for the construction of their railroad and fixtures, or for the purchase of engines and cars, and for such purpose may dispose of any bonds by them received as aforesaid.

issued, by any county or city under the provisions of this act, whereby any debt shall be created by said judges of the county court of any county, or by the common council of any city, to pay any such subscription, unless a majority of the qualified voters of such county or city (taking as a standard the number of votes thrown at the last general election previous to the vote had upon the question of subscription under this act for county officers,) shall vote for the same; and the judges of the county court of any county, or the common council of any city, desiring to take stock as aforesaid, shall give at least thirty days' notice, in the same manner as notices are given for election of State or county officers in said counties, requiring said electors of said counties or said cities to vote upon the day named in such notices, at their usual place of voting, for or against the subscription for said capital stock which they may propose to make, and said notices shall specify the company in which stock is proposed to be subscribed, the amount which it is proposed to take, and the time which the bonds proposed to be issued are to run, and the interest which said bonds are to bear; or in case it is proposed to borrow money to pay such subscription, then the notices shall state the terms upon which such loan is to be effected; and the opinion of the electors shall be expressed upon their ballots "for subscription," or "against subscription," and counted and returned by the judges and clerks of elections as in other cases; and if a majority of the voters of said county or city, assuming the standard aforesaid, shall be in favor of the same, such authorized subscription or purchase, or any part thereof, shall then be made by said judges or common council. In case any election had under this act, is held upon a day of general election, then the number of votes thrown at such general election for county officers shall be the standard of the number of qualified voters as aforesaid. No bonds shall be issued under the provisions of this act by any county or city, excepting for the amounts required to be paid at the time of subscription, and for the amounts of and at the time when assessments upon all the stockholders of said company shall be regularly assessed and made payable.

(144.) SEC. V. This act shall take effect from and after its passage.

An Act to amend an Act entitled "An Act supplemental to an Act entitled 'An Act to provide for a General System of Railroad Incorporations,'" approved Nov. 6, 1849.

[Approved Feb. 15, 1851. Laws, 1851, p. 109.]

(145.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That for the payment of the annual interest which may accrue upon any bond or bonds which may be hereafter issued by the county court of the county of Jo Daviess, in payment for stock which may be subscribed by the said county, to the capital stock of the Galena and Chicago Union Railroad company, in pursuance of the provisions of the act to which this is an amendment, the said county court shall be and they are hereby authorized and empowered to levy a tax, not exceeding four mills to the dollar, on the valuation of the real and personal property in said county; which said tax shall be collectable and payable in gold and silver only, and be applied to the purposes aforesaid, and no other.

(146.) SEC. II. This act to take effect and be in force from and after its passage.

Sections Five and Sixteen of an Act to incorporate the Wabash Valley Railroad Company, and to regulate the Capital Stock of other Railroads.

[Approved June 22, 1852. Laws, 1852, p. 187.]

(147.) SEC. V. The capital stock of said company shall be five hundred thousand dollars, which said capital stock of this or any other organized railroad company, may, by order of their several boards of directors, be increased, when deemed necessary, to any amount not exceeding the actual *bona fide* estimated cost of constructing and equipping their respective roads, and subscription to the increased capital stock may be made, from time to time, as may be ordered and directed by the board of directors of such companies, respectively; which stock shall be divided into shares of fifty dollars each, which shall be deemed personal property, and may be issued, certified, transferred and registered in such manner and at such places as may be ordered and provided by the board of directors, who shall have power to require the payment of stock subscribed in the manner and at the time and in such sums as they may direct; and on the refusal or neglect on the part of stockholders, or any of them, to make payment on the requisition of the board of directors, the share of such delinquent may, after thirty days' public notice, be sold at public auction under such rules as the directors may adopt, the surplus money, if any remains after deducting the payments due, with the interest and necessary cost of sale, to be paid to the delinquent stockholder. The board of directors, hereinafter named and approved, shall cause books to be opened for subscription to the capital stock of said company, at such times and places and in such manner as they shall direct: *Provided*, That as soon as seventy-five thousand dollars of *bona fide* subscription shall be made to said capital stock, and five per cent. thereon paid, it shall be lawful for said company to commence the construction of said road.

(148.) SEC. XVI. Said company is hereby authorized, from time to time, to borrow such sum or sums of money as may be necessary for completing and finishing or operating their said railroad, and to issue and dispose of their bonds, in denominations of not less than five hundred dollars, at such rate of interest, not exceeding seven per cent. per annum, and at such discount as may be thought for the benefit of the company. This section shall apply to all railroad incorporations in the State which desire to avail themselves of its provisions, and for any amount so borrowed, and to mortgage their corporate property and franchises, or convey the same, by deed of trust, to secure the payment of any debt contracted by said company for the purposes aforesaid; and the directors of said company may confer on any bondholder of any bond issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of said company, at any time, not exceeding ten years from the date of the bond, under such regulations as the directors of said company may see fit to adopt.

See *ante*, p. 146, under title "CHANCERY," "An act to provide for bringing actions at law or in chancery, against railroad companies," approved Feb. 12, 1853.

An Act to amend an Act entitled "An act to provide for a General System of Railroad Incorporations."

[Approved Feb. 12, 1853. Laws, 1853, p. 222.]

(149.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all railroad companies incorporated, or which may be hereafter incorporated under the authority of this State, the lines or routes of which railroads may connect with or cross each other, shall have power to make contracts or arrangements with each other for the use of each others' engines, machinery or cars, as also for the mutual transportation of material, merchandise and passengers upon and along the lines of each others' roads, upon such terms as may be mutually agreed upon between any such corporations.

An Act to enable Railroad Companies and Plank Road Companies to consolidate their Stock.

[Approved Feb. 28, 1854. Laws, 1854, p. 9.]

(150.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all railroad companies and plank road companies now organized, or hereafter to be organized, which now have or hereafter may have their termini fixed by law, whenever their said road or roads intersect by continuous lines, be and the same are hereby authorized and empowered to consolidate their property and stock with each other, and to consolidate with companies out of this State, whenever their lines connect with the lines of such companies out of this State.

(151.) SEC. II. Such consolidation may take place whenever the said companies shall respectively agree upon the terms and conditions of the same; and the said companies, when so consolidated, shall be authorized to agree upon the name or names of such consolidated company, and by such name or names the said consolidated company shall be a body corporate and politic, shall have a common seal or seals, and by such name or names shall be respectively contracted with and make contracts, shall sue and be sued, implead and be impleaded with, and shall have all the powers, franchises and immunities which the said respective companies shall have, by virtue of their respective charters, before such consolidation passed within the State of Illinois: *Provided*, That each consolidated company shall file for record, in the office of the secretary of State, a copy of their said articles of consolidation, evidenced by the signature of the presiding officer of each of the said companies, and the corporate seal thereof.

(152.) SEC. III. The corporation or corporations formed by virtue of the provisions, of this act shall have power to increase their capital stock to any amount required by resolution of their respective boards of directors, not exceeding the amount of the cost of the roads and works constructed and equipped by them; to borrow money and fix the rate of interest therefor; to issue bonds and the same to sell at such price as they may deem expedient, such sales being hereby authorized and confirmed; and to make any other contracts authorized by the by-laws of the said corporation or corporations, within the purview of their said charters.

(153.) SEC. IV. Such corporation or corporations, when so formed, shall have the same power to consolidate with other companies when their lines connect, upon such terms as may be agreed upon by them respectively.

(154.) SEC. V. No company in this State shall be authorized under the

provisions of this act to consolidate with any company beyond the limits of this State, until the termini of such company in this State shall first have been fixed by the laws of this State at the boundary line thereof.

(155.) SEC. VI. This act shall not be so construed as to authorize any plank road not having power to build a railroad, to consolidate with any railroad so as to lay a railroad upon any plank road track, until the termini of such railroad shall have been expressly fixed by law, nor shall any plank road so consolidate with any railroad unless authorized by law to lay a railroad track.

(156.) SEC. VII. All proceedings for the purpose of consolidation as above provided, shall be fixed and regulated by the by-laws of the respective companies desiring such consolidation: *Provided*, That such consolidation shall not take place until the terms of such consolidation shall have been approved by a majority of the stockholders in interest, in person or by proxy, at an annual or called meeting, of which due notice shall be given, by publication or in writing, to all stockholders interested, or the same be approved by the written consent of a majority of the stockholders in interest, filed in the office of their company.

(157.) SEC. VIII. When it shall be necessary for the construction of any railroad to cross the track of any other railroad, stream of water, water-course, road or highway, which it may intersect or cross by reason of such extension, into or through any adjoining State, or by reason of its consolidation with any other road or roads, company or companies, as provided in this act, it shall be lawful for said company to construct their road across or over the same by such track or tracks, bridge or bridges, viaduct or viaducts, as may be necessary to the convenience of the extension or consolidation of said road: *Provided*, Said company shall restore the railroad, stream of water, water-course, road or highway thus intersected or crossed, to its former state, or in a sufficient manner not materially to interfere with its usefulness.

(158.) SEC. IX. This act shall take effect from and after its passage.

An Act to facilitate the Construction of Railroads.

[Approved March 1, 1854. Laws, 1854, p. 11.]

(159.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any city or county in this State, which, under the provisions of an act entitled "An act supplemental to an act entitled 'An act to provide for a general system of railroad incorporations,'" approved November 5, 1849, has heretofore subscribed, or may hereafter subscribe for stock in any railroad company, payable in the bonds of said city or county, it shall be lawful for the city council of such city, or the judges of such county, and they are hereby authorized and empowered to issue and deliver to such railroad company the whole or any portion of the bonds of such city or county, payable on such subscription, at any time hereafter, when in their opinion the interest of such city or county will be promoted thereby, whether the assessments upon the stockholders of said company have been regularly assessed and made payable or not.

(160.) SEC. II. That this act shall take effect and be in force from and after its passage.

An Act to provide for the Burial of the Dead occurring on Railroads, and in or by Vehicles carrying Passengers.

[Approved Feb. 15, 1855. Laws, 1855, p. 170.]

(161.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in all cases where any railroad company shall bring dead persons into this State, on board their cars or otherwise, the same being paupers or without personal effects, or friends to defray the expense of their burial, and that of paying such expenses of a coroner's jury, the said company shall be liable for all such charges as become necessary, in holding a coroner's inquest and a decent burial, and the necessary expenses of the same.

(162.) SEC. II. In like manner shall every railroad company running cars within this State be liable for all the expense of the coroner and his inquest, and the burial of all persons who may die on the cars, or who may be killed by collision or other accident occurring to such cars, or otherwise; and any coroner, city, town or person, who shall take charge of and decently inter any such body or corpse, or cause an inquest to be held over such corpse, shall have cause of action against such company before any court having competent jurisdiction.

(163.) SEC. III. The same liability in every respect shall attach to all steamboats, propeller boats, vessels or stages, which are engaged in whole or part in the conveyance of passengers for hire.

(164.) SEC. IV. This act shall be a public act, and shall take effect from and after its passage.

An Act to regulate the Duties and Liabilities of Railroad Companies.

[Approved Feb. 14, 1855. Laws, 1855, p. 173.]

(165.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That every railroad corporation whose line of road or any part thereof is open for use, shall, within six months after the passage of this act, and every railroad company formed or to be formed, but whose lines are not now open for use, shall, within six months after the lines of such railroad or any part thereof are opened, erect and thereafter maintain fences on the sides of their road or the part thereof so open for use, suitable and sufficient to prevent cattle, horses, sheep and hogs from getting on to such railroad, except at the crossing of public roads and highways, and within the limits of towns, cities and villages, with openings, or gates, or bars at the farm crossings of such railroad, for the use of the proprietors of the lands adjoining such railroads; and shall also construct, where the same has not already been done, and hereafter maintain, at all road crossings now existing or hereafter established, cattle guards, suitable and sufficient to prevent cattle, horses, sheep and hogs from getting on to such railroad; and so long as such fences and cattle guards shall not be made after the time hereinbefore prescribed for making the same shall have elapsed, and when such fences and cattle guards are not in good repair, such railroad corporation and its agents shall be liable for all damages which shall be done by the agents or engines of any such corporation to any cattle, horses, sheep or hogs thereon; and when such fences and guards shall have been duly made, and shall be kept in good repair, such railroad corporation shall not be liable for any such damages, unless negligently or willfully done.

No railroad corporation shall be required to fence the sides of its roads, except when such fence is necessary to prevent horses, cattle, sheep and hogs from getting on to the track of the railroad from the lands adjoining the same, nor shall they be required to construct said fences on the sides of their railroads where the same runs through uninclosed lands lying at a greater distance than five miles from any settlement. Nor shall the said companies be required to erect and maintain said fences through lands where the proprietors of said lands have already erected fences, or agreed with said companies so to do.

(166.) SEC. II. But it shall be the duty of every owner of land adjoining any railroad, who has received a specific sum as compensation for fencing along the line of land taken for the purpose of said railroad, and has agreed to build and maintain a lawful fence on the line of said road, to build and maintain such fence: and it shall also be the duty of every owner of land adjoining every railroad, who has received compensation for building and maintaining a lawful fence on the line of said road, by way of damages, in the condemnation of land taken for the purposes of said road under the laws of this State, to build and maintain such fence; and if said owner, his heirs or assigns, shall not build said fence within six months after he has been notified to do so by the said railroad corporation, or shall neglect to maintain said fences, if built, said corporations shall build and thereafter maintain such fence, and may maintain a civil action against the person so neglecting to build or maintain said fence, to recover the expense thereof; and such railroad corporation shall not be liable to such owner or owners, their heirs and assigns, for any damages which shall be done by the agents or engines, locomotives or cars of any such corporation, to any cattle, horses, sheep or hogs of said owner or owners, their heirs, assigns or lessees, coming upon said road, by reason or on account of the failure of such owner or owners, their heirs or assigns, to construct or maintain said fences.

(167.) SEC. III. If any person shall ride, lead or drive any horse or other animal upon such road and within such fences and guards, other than at farm or road crossings, without the consent of the corporation, or who shall pull down, tear down or otherwise render insufficient to exclude stock, any part of said fencing, he shall be liable to a penalty of not less than ten or more than one hundred dollars, to be recovered in action of debt before any court having jurisdiction in such cases, in the name of the company or corporation owning such road, and for its use, and also shall pay all damages which shall be sustained thereby to the party aggrieved.

An Act to enable Railroad Companies to enter into operative Contracts, and to borrow Money.

[Approved Feb. 12, 1855. Private Laws, 1855, p. 304.]

(168.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all railroad companies incorporated or organized under, or which may be incorporated or organized under the authority of the laws of this State, shall have power to make such contracts and arrangements with each other, and with railroad corporations of other States, for leasing or running their roads or any part thereof; and also to contract for and hold, in fee simple, or otherwise, lands or buildings in this or other States, for depot purposes; and also to purchase and hold such personal property as shall be necessary and convenient for carrying into effect the object of this act.*

(169.) SEC. II. All railroad companies incorporated or organized, or which may be incorporated or organized as aforesaid, shall have the right of connecting with each other and with the railroads of other States, on such terms as shall be mutually agreed upon by the companies interested in such connection.

(170.) SEC. III. Every railroad company incorporated or organized, or which may hereafter be incorporated or organized under the authority of the laws of this State, shall have power to borrow such sums of money, from time to time, as may, in the opinion of the directors, or a majority of them, be necessary for constructing, completing or operating their railroad, or for aiding in the construction, or operating any connecting railroad, whether within or without this State, and may issue and dispose of their bonds or obligations for any amount so borrowed, and may mortgage all or any portion of their property and franchises, to secure the payment of any debt contracted by the company for the purpose aforesaid; and such company may sell their bonds or obligations, either within or without the State, at such rates and prices as the directors of the company, or a majority of them, may sanction and determine, and said sales shall be as valid and obligatory upon the company for the full amount of the bonds or obligations sold, as if such bonds or obligations were sold at par value; and all such bonds and obligations may be made convertible into stock at such times and upon such terms as the directors may determine.

DECISIONS. Companies organized under the general railroad law of Nov. 5, 1849, cannot condemn lands for obtaining a right of way, until the General Assembly shall have passed a law approving the route and termini of the proposed roads. *Gillwater v. Miss. & Atlantic R. R. Co.*, 13 Ill. 1.

The General Assembly may enact general laws, to regulate corporations in the exercise of their franchises, in such manner as to provide for the public safety. Such a law, requiring a bell to be rung, or whistle sounded, on a railroad engine, when about to cross another road, is binding on railroad corporations created before the passage of such general law; and the omission of such signal is *prima facie* negligence. Railroad corporations are not liable for all damages which may occur where the signal is not given, until proof that the damages were caused by omitting to give the signal. In the exercise of privileges, a railroad corporation is subject to the general police laws of the State, like an individual. *Galena & Chicago U. R. R. Co. v. Loomis*, 13 Ill. 548.

## CHAPTER XCIV.

### SALTPETER CAVES.

#### SECTION

1. Saltpeter caves to be inclosed so as to exclude stock.

#### SECTION

2. Persons working caves without inclosing them, fined fifty dollars, and liable for all damages.

[Approved March 3, 1845. Rev. Stat. 1845, p. 490.]

SECTION I. All persons working saltpeter caves in this State, for the purpose of manufacturing saltpeter, shall, previous to commencing the manufacture of saltpeter, inclose such caves with a good and lawful fence, and

keep the same at all times in good repair, so as prevent cattle and other stock from gaining access thereto.

Sec. II. All persons working saltpeter caves in this State, and not first complying with the preceding section, 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 offense may be committed, upon complaint made by any person, in the name of the county commissioners' court of such county, one-half to the person suing therefor, the other to the county commissioners' court of the county; and shall also be liable for all damage which individuals may sustain by reason of their stock gaining access to saltpeter caves or manufactories.

PRIOR LAWS. An act to provide for the inclosing and guarding saltpeter caves in this State; in force June 1, 1835. Laws, 1835, p. 151.

## CHAPTER XCV.

### SEAT OF GOVERNMENT.

#### SECTION

1. Seat of government to be at Springfield; supreme court to hold its terms, and the General Assembly its sessions, at that place; residence of officers

#### SECTION

required to be at the seat of government, to be at Springfield, &c.

[Approved March 3, 1845. Rev. Stat. 1845, p. 490.]

SECTION I. The seat of government of the State of Illinois, shall be deemed and held to be at Springfield, in the county of Sangamon; and all terms of the supreme court, and sessions of the General Assembly, shall be holden at Springfield; and all acts, judicial, legislative or executive, required to be done or executed at the seat of government, shall be done and executed at Springfield; and all laws requiring any officers to reside at the seat of government, or requiring any matter or thing to be done and performed, or requiring action of any kind, by officers or individuals, at the seat of government, are hereby made and declared applicable to Springfield, as the seat of government.

PRIOR LAWS. Constitutional provision, old constitution, State of Illinois, section 13, schedule. Rev. Stat. 1845, p. 40.

An act for the removal of the seat of government of the State of Illinois; in force March 30, 1819. Laws, 1819, p. 361.

An act permanently to locate the seat of government of Illinois; in force Feb. 5, 1833. Rev. Laws, 1833, p. 572.

An act permanently to locate the seat of government of the State of Illinois; in force Feb. 25, 1837. Laws, 1837, p. 321.

An act supplemental to an act to permanently locate the seat of government of Illinois; in force Feb. 3, 1837. Laws, 1837, p. 322.

## CHAPTER XCVI.

### SECRETARY OF STATE.

#### SECTION

1. Secretary to keep State seal; to keep record of executive acts; report, &c.
2. To purchase furniture, fuel for offices, and for the General Assembly; his accounts, how kept and paid.
3. To keep State-house in repair. &c. mm
4. To preserve furniture, &c., of the two houses.
5. Shall, when requested, give certified copies of laws, &c., in his office; fees therefor.
6. Commissions to be countersigned, sealed, and register thereof kept by secretary.
7. Laws, &c., to be deposited in secretary's office.
8. Books, bills, &c., in possession of either house of the General Assembly, to be deposited in secretary's office on their adjournment.

#### SECTION

9. Duty of secretary and treasurer to preserve from waste, the State-house and public property in Springfield.
10. Geological specimens, &c., to be preserved by the secretary of State.
11. To keep catalogues, &c., of geological specimens.
12. To file and preserve letters and statements concerning specimens; to report to the legislature.
13. Secretary of State authorized to subscribe for and purchase certain works
14. Which he is to preserve and bind, and place in State library.
15. May continue subscriptions.

[Approved March 3, 1845. Rev. Stat. 1845, p. 491.]

(1.) SECTION I. 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; 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 house of the General Assembly.

(2.) SEC. II. It shall be the duty of the secretary of State to procure the necessary furniture, presses for the safe deposit of the archives of his office, and the necessary books and stationery, and fuel for use therein. It shall be his duty to purchase all articles necessary for the use of the members of the General Assembly, and the officers of the same, which he shall charge to the State in his own name, taking, in all cases, a receipt from the person of whom the same shall be purchased; and all expenditures under this section shall be certified by the governor to the auditor of public accounts, who shall issue his warrant upon the State treasurer for the amount of the same.

(3.) SEC. III. As often as the windows and doors of the State-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.

(4.) SEC. IV. 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 secure rooms and locked therein; and he shall not permit any part of the said furniture to be used during the recess of the General Assembly for any purpose whatever.

(5.) SEC. V. 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.

(6.) SEC. VI. 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.

(7.) SEC. VII. 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.

(8.) SEC. VIII. The secretary of the senate and clerk of the house of representatives, at the close of each session of 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.

(9.) SEC. IX. It shall be the duty of the secretary of State and treasurer, to take charge of and safely preserve from waste, the houses, lots, grounds and appurtenances, situated within the city of Springfield, and belonging to the State of Illinois.

(10.) SEC. X. It shall be the duty of the secretary of State, to receive and safely preserve, in some convenient and proper place in the State-house, all such geological and mineralogical specimens, ancient remains, Indian and other antiquities, as may be presented or sent to him.

(11.) SEC. XI. It shall also be the duty of the secretary of State, to make and preserve, in the library room of the State-house, or in the room where said specimens shall be kept, a catalogue, specifying therein from what place, from whom and when the same was received, with such additional memoranda as he shall deem important and proper.

(12.) SEC. XII. It shall be the duty of the secretary of State to file away and preserve in his office, all letters and written statements accompanying said specimens, and such treatises on scientific subjects as shall be furnished to him; and at each session of the General Assembly, he shall report thereto, giving a general account of the specimens received and the information obtained.

An Act to authorize the Secretary of State to subscribe for certain Periodical Works.

[Approved Feb. 21, 1845. App. Rev. Stat. 1845, p. 594.]

(13.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the secretary of State is authorized and required, in behalf of the State of Illinois, to subscribe for Niles' Register, Silliman's Journal and the North American Review, and purchase the back numbers of said works that are not now in the State library, and pay for the same out of any moneys not otherwise appropriated.

(14.) SEC. II. It shall be the duty of the secretary of State, to receive and preserve the said works, and have them bound in the same form that the remaining numbers are bound, and place them in the State library, subject to the care of the librarian.

(15.) SEC. III. The secretary of the State is authorized to continue said subscriptions, until otherwise directed by law.

PRIOR LAWS. An act defining and regulating the duties of the secretary of State; in force March 1, 1819. Laws, 1819, p. 87.

An act defining and regulating the duties and term of service of the secretary of State; in force Feb. 14, 1831. Rev. Laws, 1833, p. 567.

An act providing stationery and fire wood for the use of the General Assembly; in force Jan. 6, 1825. Laws, 1825, p. 59; Rev. Laws, 1833, p. 590.

An act requiring the secretary of State and State treasurer to take charge of the public buildings, and for other purposes; in force Feb. 26, 1841. Laws, 1841, p. 302.

An act to authorize and direct the secretary of State to receive and preserve geological specimens, and for other purposes; in force March 4, 1843. Laws, 1843, p. 154.

DECISIONS. The secretary of State may rightfully refuse to countersign and seal a commission which the governor has no legal power to issue. *The People ex rel. v. Forquer, Breese, 68.*

The office of secretary of State is not limited in its duration by the constitution, and it remains unlimited, till the General Assembly shall by law fix the time of its duration. The governor, therefore, cannot remove the secretary at his pleasure, but only when a vacancy occurs. *Field v. The People, 2 S. 79.*

## CHAPTER XCVII.

### SECURITIES.

#### SECTION

1. One person bound as security for another, who is about to abscond or become insolvent, may notify creditor to bring suit, if right of action has accrued; if creditor fail to bring suit or take measures to recover of principal in a reasonable time, securities to be released from liability.
2. Heirs and other legal representatives; same rights and liabilities pertain to them as to principals.
3. What securities not affected by this chapter.
4. Rights and remedies of creditor against principal debtor not impaired hereby.

#### SECTION

5. Securities, who have paid debt for principal, may have summary remedy for its recovery.
6. Obligations of joint securities to creditor, and to each other, defined.
7. Security shall not confess judgment so as to distress principal, provided principal will give him collateral security.
8. How bail may proceed against principal, after having suffered judgment.

[Approved March 3, 1845. Rev. Stat. 1845, p. 493.]

SECTION. I. 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, and 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, her 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 requisi-



tions 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 may be due by such bond, bill or note.

SEC. II. 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 hereinbefore 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 hereinbefore provided for a security or securities, when his or their creditors shall be guilty of a similar failure.

SEC. III. Nothing contained in this chapter 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. IV. The rights and remedies of any creditor or creditors, against any principal debtor or debtors, shall be in nowise affected by this chapter, anything herein to the contrary, or seeming to the contrary notwithstanding.

SEC. V. 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. VI. 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 aforesaid, 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.

SEC. VII. 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, as 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.

SEC. VIII. 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.

See *post*, under title "WILLS," "An act respecting executors, administrators, guardians and their securities," approved Feb. 12, 1853.

PRIOR LAWS. An act providing for the relief of securities in a summary way, in certain cases; approved March 24, 1819. Laws, 1819, p. 243; Rev. Laws, 1833, p. 570.  
An act for the relief of certain securities therein named; in force Dec. 5, 1842. Laws, 1843, p. 222.

## CHAPTER XCVIII.

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An Act to establish and maintain a System of Free Schools.

[Approved Feb. 15, 1855. Laws, 1855, p. 51.]

SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That at the election to be held on Tuesday after the first Monday of November, A. D. 1856, and biennially thereafter, there shall be elected, by the legal voters of this State, a State superintendent of public instruction, who shall hold his office for two years, and until his successor is duly elected and qualified.*

SEC. II. Before entering upon his duties, he shall take and subscribe the usual oath of office, and shall also execute a bond in the penalty of twenty-five thousand dollars, payable to the State of Illinois, with sureties to be approved by the governor, conditioned for the prompt discharge of his duties as superintendent of public instruction, and for the faithful application and disposition, according to law, of all school moneys that may come into his hands by virtue of his office; said bond and oath shall be deposited with the secretary of State, and an action may be maintained thereon by the State, at any time, for a breach of the conditions thereof.

SEC. III. It shall be his duty to keep an office at the seat of government of this State, and to file all papers, reports and public documents transmitted to him by the school officers of the several counties, each year separately, and to keep and preserve all other public documents, books and papers relative to schools coming into his hands as State superintendent, and to hold the same in readiness to be exhibited to the governor, or to any committee of either house of the General Assembly, and shall keep a fair record of all matters pertaining to the business of his office.

SEC. IV. He shall, without delay, pay over all sums of money which may

come into his hands by virtue of his office, to the officer or persons entitled to receive the same, in such manner as may be prescribed by law.

SEC. V. He shall counsel and advise, in such manner as he may deem most advisable, with experienced and practical school teachers, as to the best manner of conducting common schools, and as to the most approved text books, maps, charts, apparatus, &c., to be used in common schools.

SEC. VI. Said superintendent shall have the supervision of all the common and public schools in the State, and shall be the general adviser and assistant of school commissioners in the State; he shall, from time to time, as he shall deem for the interest of schools, address circular letters to said commissioners, giving advice as to the best manner of conducting schools, constructing school-houses, furnishing the same, and procuring competent teachers; he shall recommend the best approved text-books, maps, charts and apparatus, and uniformity in the use of the same, as well as in the manner of conducting schools throughout the State.

SEC. VII. He shall visit every county in the State at least once during his term of office, confer freely with the school officers as to the manner of conducting schools, and shall deliver a public lecture to the teachers and people of each county on the subject of education, if deemed practicable, and perform generally such duties as may tend to advance the interest of education.

SEC. VIII. Said State superintendent shall, before the fifteenth day of December of every year preceding that in which shall be holden a regular session of the General Assembly, report to the governor the condition of schools in the several counties of the State; the whole number of schools which have been taught in each county in each of the preceding years, commencing on the first Monday of October; what part of said number have been taught by males exclusively; what part by females exclusively; what part of said whole number have been taught by males and females at the same time, and what part by males and females at different periods; the number of scholars in attendance at said schools; the number of white persons in each county under twenty-one years of age; the amount of township and county fund; the amount of the interest of the State or common school fund, and of the interest of the township and of the county fund annually paid out; the amount raised by an *ad valorem* tax; the whole amount annually expended for schools; the number of school-houses, their kind and condition; the number of townships and parts of townships in each county; the number and description of books and apparatus purchased for the use of schools and school libraries under the provisions of this act, the prices paid for the same, and total amount purchased, and what quantity and how distributed; and the number and condition of the libraries; together with such other information and suggestions as he may deem important in relation to the school laws, schools, and the means of promoting education throughout the State; which report shall be laid before the General Assembly at each regular session.

SEC. IX. The said State superintendent of public instruction shall make such rules and regulations as he may think necessary and expedient to carry into full effect the provisions of this act, and of all the laws which now are or may hereafter be in force for establishing and maintaining schools in this State; and the said superintendent shall have power, and it shall be his duty, to explain and interpret and determine to all school commissioners, directors,

township and other school officers, the true intent and meaning of this act, and their several duties enjoined thereby, and his decision shall be final, unless otherwise directed by the legislature, or reversed by a court of competent jurisdiction.

SEC. X. The said State superintendent shall have power to direct and cause the school commissioner of any county, director or board of trustees, or township treasurer of any township, or other school officer, to withhold from any officer, or township, or teacher, any part of the common school, or township, or other school fund, until such officer, township or teacher, shall have complied with all the provisions of this act relating to his, her or their duties, and such rules and regulations as the State superintendent may prescribe, not inconsistent with this act; and the State superintendent may forbid the payment of any part of the common school, township, county or other school fund, to any district in which the school or schools have not been kept according to law, or in which no school has been kept for six months during the year next preceding the demand for payment.

SEC. XI. And the said State superintendent shall receive annually the sum of fifteen hundred dollars, to be paid quarterly, as a salary for the services required under the provisions of this act, or any other law that may be passed, and also for all necessary contingent expenses, for books, postage and stationery pertaining to his office, to be audited and paid by the State, as the salaries and contingent expenses of other officers are paid.

SEC. XII. On the Tuesday next after the first Monday in November next, and on the Tuesday next after the first Monday in November every two years thereafter, there shall be elected, by the qualified voters of each and every county in this State, a school commissioner, who shall execute the duties herein required. He shall, before entering upon his duties, take an oath for the faithful discharge of his duties. He shall, before entering upon his duties, execute a bond, payable to the State of Illinois, with two or more responsible freeholders as security, to be approved by the county court, in a penalty of not less than twelve thousand dollars, to be increased at the discretion of said court, in proportion to his responsibilities, conditioned that he will faithfully perform all the duties of school commissioner of said county, according to the laws which are or may be in force; by which bond the obligors shall be bound jointly and severally, and upon which an action or actions may be maintained by the board of trustees of the proper township, for the use of any township or fund injured by any breach thereof; and joint action may be had for two or more funds.

SEC. XIII. The bond required in the foregoing section shall be in the following form, viz.:

"STATE OF ILLINOIS, }  
County, } ss.

KNOW ALL MEN BY THESE PRESENTS, That we, A. B., C. D. and E. F., are held and firmly bound jointly and severally, unto the people of the State of Illinois, in the penal sum of — dollars, to the payment of which, we bind ourselves, our heirs, executors and administrators, firmly by these presents. In witness whereof we have hereunto set our hands and seals, this — day of —, 18—.

The condition of the above obligation is such, that if the above bounden A. B., school commissioner of the county aforesaid, shall faithfully discharge all the duties of said office according to the laws which now are or may hereafter be in force, and shall deliver over to his successor in office all moneys, books, papers and property in his hands as such school commissioner, then this obligation to be void; otherwise to remain in full force and virtue.

A — B — [SEAL.]  
C — D — [SEAL.]  
E — F — [SEAL.]"

Which bond shall be filed in the office of the county court.

SEC. XV. The said commissioner shall be liable to removal by the county court for any palpable violation of law, or omission of duty; and if a majority of said court shall at any time be satisfied that his bond is insufficient, it shall be his duty, on notice, to execute a new bond, to be payable, conditioned and approved as the first bond; the execution of which shall not affect the old bond, or the liability of the security thereon; and when the office of school commissioner shall become vacant by death, resignation or otherwise, the county court or board of supervisors shall fill the same by appointment for the unexpired term, and the person so appointed shall hold his office until his successor shall be qualified.

SEC. XV. The said commissioner shall provide three well-bound books, to be known and designated by the letters A, B, C, for the following purposes: In book A he shall record at length all petitions presented to him for the sale of common school lands, and the plats and certificates of valuation made by or under the direction of the trustees of schools, and the affidavits in relation to the same. In book B he shall keep an account of all sales of common school lands; which account shall contain the date of sale, name of purchaser, description of lands sold, and the sum sold for. In book C he shall keep a regular account of all moneys received for lands sold, or otherwise, and loaned or paid out; the person of whom received, and on what account, and showing whether it is principal or interest; the person to whom loaned, the time for which the loan was made, the rate of interest, the names of the securities when personal security is taken, or if real estate is taken as security, a description of said real estate, and if paid out, to whom, when and on what account, and the amount paid out; the list of sales, and the accounts of each township fund to be kept separate. Said books shall be paid for out of the county treasury of the counties in which they are used.

SEC. XVI. Whenever the bond of the township treasurer, approved by the board of trustees of schools, as required by law, shall be delivered by the trustees of schools, or either of them, to the school commissioner, he shall receive and file the same with the papers of his office. He shall then, on demand, deliver to said township treasurer, who shall receipt therefor, all moneys in his hands belonging to said township; also, all bonds, mortgages, notes and securities of every description, for money or property due or to become due the township, and all papers of every description belonging or in anywise pertaining to the rights or interests of said township; and the receipt of said treasurer to the school commissioner shall be carefully preserved, and shall be evidence of the facts therein stated, as well in favor of the school commissioner as against the township treasurer.

SEC. XVII. Upon the receipt of the amount due upon the auditor's warrant, as provided in section sixty-eight hereof, the school commissioner shall apportion said amount, (except the amount allowed said commissioner, as provided for in section seventy-four hereof,) to the several townships and fractional townships in his county, according to the number of white children under twenty-one years of age, returned to him, (as provided for in section thirty-seven hereof,) and in which townships or parts of townships schools have been kept in accordance with the provisions of this act, and with the instructions of the State and county superintendents, and shall pay over the distributive share belonging to each township and fractional town-

ship, as aforesaid, to the respective township treasurers, or other authorized persons, annually. When there is a county fund in the hands of any school commissioner, it shall be loaned, and the interest applied as provided in this section with respect to the interest on the State fund.

SEC. XVII. The school commissioner shall, also, on or before the second Monday of November before each regular session of the General Assembly, or annually, if so required to do by the State superintendent, communicate to said State superintendent all such information and statistics upon the subject of schools in the county as the said State superintendent is bound to embody in his report to the governor, (as provided for in section eight hereof,) and such other information as the State superintendent shall require; and the said school commissioner shall also communicate the aforesaid information and statistics to the county convention of his county, at its biennial meetings, and at such other meetings as said convention may require.

SEC. XIX. The school commissioner, upon his removal or resignation, or at the expiration of his term of service, (or in case of his death, his representatives,) shall deliver over to his successor in office, on demand, all moneys, books, papers and personal property belonging to the office, or subject to the control or disposition of the school commissioner.

SEC. XX. The school commissioner may loan any money, not interest, belonging to the county fund, or to any township fund, before the same is called for according to law, by the township treasurer, at the same rate of interest, upon the same security and for the same length of time, as is provided by this act in relation to the township treasurers; and notes and mortgages taken in the name of the "school commissioner" of the proper county, shall be, and all loans heretofore made in the name of "school commissioners," are hereby declared to be as valid as if taken in the name of "trustees of schools" of the proper township, and suits may be brought in the name of "school commissioners," on all notes and mortgages heretofore or hereafter made payable to school commissioners.

SEC. XXI. It shall be the duty of the school commissioner to visit, as often as practicable, the several schools of his county, and to note the common method of instruction and branches taught, and give such directions in the art of teaching, and the method thereof, in each school, as to him, together with the directors, shall be deemed expedient and necessary, so that each school shall be equal to the grade for which it was established, and that there may be, as far as practicable, uniformity in the course of studies in the schools of the several grades respectively, and shall carry out the advice and instructions of the State superintendent.

SEC. XXII. In all cases where the township board of trustees of any township shall fail to prepare and forward, or cause to be prepared and forwarded, to the school commissioner, the information and statistics required of them in section thirty-seven (37) of this act, it shall be the duty of said school commissioner to employ a competent person to take the enumeration, and furnish said statistical statement, as far as practicable, to the commissioner; and said person so employed shall have free access to the books and papers of said township, to enable him to make such statement; and the township treasurer, or other officer or person in whose custody such books and papers may be, shall permit said person to examine such books and

papers, at such times and places as such person may desire, for the purposes aforesaid; and the said school commissioner shall allow and pay to the person so employed by him, for the services, such amount as he may judge reasonable, out of any money which is or may come into said commissioner's hands, apportioned as the share of or belonging to such township; and the said school commissioner shall proceed to recover and collect the amount so allowed or paid for such services, in a civil action before any justice of the peace in the county, or before any court having jurisdiction, in the name of the State of Illinois, of and against the trustees of schools of said township, in their individual capacity; and in such suit or suits the said school commissioner and township treasurer shall be competent witnesses; and the money so recovered, when collected, shall be paid over to the school commissioner, for the benefit of said township, to replace the money taken as aforesaid.

SEC. XXIII. When any real estate shall have been taken for debts due to any school fund, the title to which real estate has become vested in any school commissioner, or trustees of schools, for the use of the inhabitants of two or more townships, the school commissioner may resell such real estate for the benefit of said townships, under the provisions of this act regulating the sale of the common school lands; and the said commissioner is hereby authorized to execute conveyances to purchasers; and said commissioner shall be entitled to retain the same per centage on the amount of such sale, out of the assets thereof, as he is entitled to for selling common school lands.

SEC. XXIV. Each congressional township, as surveyed and laid off by authority of the United States, is hereby established a township for school purposes. The business of the township shall be done by three trustees, to be elected by the legal voters of the township; and the said township, upon the election of trustees as aforesaid, as hereinafter provided for, shall be a body corporate and politic, by the name and style of "Trustees of schools, of township \_\_\_\_\_, range \_\_\_\_\_," according to the number. The said corporation shall have perpetual existence, and shall have power to sue and be sued, to plead and be impleaded, in all courts and places where judicial proceedings are had. Said trustees of schools shall continue in office two years, and until others are elected and enter upon the duties of their office.

SEC. XXV. No person shall be eligible to the office of trustee of schools, unless he shall be twenty-one years of age and a resident of the township.

SEC. XXVI. The election of trustees of schools shall be on the second Monday of January, biennially, but in townships where such election has not been heretofore had, or where there are no trustees of schools, the election of trustees of schools may be holden on any Monday; notice being given as hereinafter in this section required. The first election shall be ordered, if in townships already incorporated, by the trustees of schools of the township, the township treasurer giving notice of the time and place, by posting up notices of the same at least ten days previous to the day of election, at or in the school-house, or in the most public place in every school district in the township. If there are no trustees of schools in a township, the clerk of the county court shall cause the notice to be given as aforesaid. For all subsequent elections, the like notices shall be given by the trustees of schools, through the township treasurer: *Provided*, That if, upon any day appointed as aforesaid, for election aforesaid, the said trustees of schools, or judges, shall be of opinion that, on account of the small attendance of voters, the

public good requires it, or if the voters present, or a majority of them, shall desire it, they shall postpone said election until the next Monday, and at the same place and hour; at which meeting the voters shall proceed as if it were not a postponed or adjourned meeting: *Provided, also*, That if notice shall not have been given as above required, then and in that case said election may be ordered as aforesaid, and holden on the first Monday in February, or any other Monday; notice thereof being given as aforesaid.

SEC. XXVII. Two of the trustees of schools of incorporated townships, if present, shall act as judges, and one as clerk of said election. If said trustees shall fail to attend, or refuse to act when present, and in townships unincorporated, the qualified voters present shall choose from amongst themselves three judges and a clerk to open and conduct said election.

SEC. XXVIII. The time and manner of opening, conducting and closing said election, and the several liabilities appertaining to the judges and clerks, and to the voters separately and collectively, and the manner of contesting said elections, shall be the same as prescribed by the general election laws of this State, defining the manner of electing magistrates and constables, so far as applicable, subject to the provisions of this act: *Provided*, The judges may close said election at four o'clock, P. M.

SEC. XXIX. No person shall vote at said election unless he possesses the qualification of a voter at a general election. In case of a tie at such election, it shall be determined by lot, on the day of election, by the judges thereof.

SEC. XXX. When a vacancy or vacancies shall occur in the board of trustees of schools, the remaining trustee or trustees shall order an election to fill such vacancy, upon any Monday; notice to be given as required in section twenty-six hereof.

SEC. XXXI. Upon the election of trustees of schools, the judges of the election shall cause the poll-book of said election to be delivered to the school commissioner of the county, with a certificate thereon, showing the election of said trustees, and names of the persons elected; which poll-book, with the certificate, shall be filed by said commissioner, and shall be evidence of such election.

SEC. XXXII. The said trustees of schools, elected as aforesaid, shall be successors to the trustees of school lands appointed by the county commissioners' court, and of trustees of schools elected in townships under the provisions of "An act making provisions for organizing and maintaining common schools," approved February 26, 1841, and of "An act to establish and maintain common schools," approved March 1, 1847. All rights of property, and rights and causes of action, existing or vested in the trustees of school lands, or trustees of schools appointed or elected as aforesaid, for the use of the inhabitants of the township, or any part of them, shall vest in the trustees of schools as successors, in as full and complete a manner as was vested in the school commissioner, the trustees of school lands, or the trustees of schools appointed and elected as aforesaid.

SEC. XXXIII. It shall be the duty of the township board of trustees to hold regular semi-annual sessions on the first Mondays of April and October in each year, and they may meet at such other times and at such other places as they may think proper; and the president of the board, or any two members thereof, may call a special meeting of the board; and

at all meetings of the board, two of its members shall constitute a quorum to transact any business. Said board shall organize by appointing one of their number president, and some person who shall not be a director or member of the board, township treasurer, who shall be *ex officio* clerk of the board. The said president and township treasurer shall hold their respective offices during the term for which that board of trustees by which they are appointed shall have been elected, and until their successors are appointed, and until their newly appointed treasurer has given bond as required by this act; either of said officers, however, for good cause, may be removed by the board. It shall be the duty of the president, when present, to preside at the meetings of the board; and it shall be the duty of the clerk to be present at all meetings of the board, and to record in a book to be provided for the purpose, all their official proceedings, which shall be a public record, open to the inspection of any person interested therein; and all said proceedings, when recorded, shall be signed by the president and clerk. If the president or clerk shall be absent, or refuse to perform any of the duties of his office at any meeting of the board, a president or clerk *pro tempore* may be appointed.

SEC. XXXIV. Trustees of schools shall prepare, or cause to be prepared, a map of their township as often as may be necessary, on which shall be designated districts, to be styled district No. —, in township No. —, which they may alter or change at any regular session; which map shall be certified by the president and clerk of the board, and filed with and recorded by the county clerk, in a book to be kept for that purpose, to be paid for out of the county treasury.

SEC. XXXV. At each of their half-yearly meetings, on the first Monday of April and October, the trustees of schools shall proceed to ascertain the amount of State, county and township funds liable to distribution, to wit: the interest actually on hand from the State and county school fund, and such of the interest, rents, issues and profits arising from the township lands and funds as have accrued and become due since their last regular half-yearly meeting, except the two per cent. and the three per cent., which the school commissioner is allowed to retain. The said trustees shall immediately thereupon proceed to distribute the aggregate amount of State, county and township funds thus ascertained to be liable to distribution, as follows: First, to the township treasurer, the two per cent. allowed him; second, for the payment of the books of the township treasurer, if anything be due for that purpose; third, for the payment of any reasonable charges for dividing common school lands, and making plats, &c., as provided for in this act; fourth, the balance they shall apportion on the several schedules certified and returned from each school in the township according to law, in proportion to the number of days certified on such schedules respectively to have been taught since the last regular return day fixed by the act or trustees for the return of schedules; and the township treasurer shall, as soon as practicable, pay out the money so apportioned to the several persons to whom it shall be distributed. The said trustees of schools shall also make such orders, not contrary to law, for the collection of the funds due as in their discretion shall be most for the interest of the funds. They shall also, at their said half-yearly meetings, ascertain the amount of tax money, if any, the treasurer has in hands belonging to any school district being wholly



or partly in his township; and they shall see that the treasurer charges himself in his cash book, in a separate column, in favor of the proper district, with the amount they shall find to be in his hands belonging to such district; and the amount so ascertained to be in the hands of the treasurer, shall be paid out as in this section directed. The trustees of schools shall also examine the certificate of the district directors to which such tax fund belongs, and they shall thereupon direct the treasurer, by orders upon him, to pay the tax money aforesaid to the several persons who may appear to be entitled to it according to said certificate.

SEC. XXXVI. Whenever it may be desirable to establish a school composed of pupils, residents of two or more districts, or two or more townships, it shall be the duty of the respective boards of education of each of such townships, to transfer such number of the pupils residing in such townships as the boards may deem proper, to the school so established in the township in which the school-house is or may be located; but the enumeration of scholars shall be taken in each of such townships as if no such transfer had been made; and such school, when so composed, shall be supported from the school funds of the respective townships in which the pupils composing such school shall reside, and from which they shall have been transferred; and the board of that township in which the school-house where such school is kept is located, shall have the control and management of such school; and the boards of each of such townships so connected for school purposes, shall each pay its respective share of the entire expenses, of every kind, incurred in the establishment and support of such school, to be computed in proportion to the number of pupils residing in each of such townships composing such school; and each board of the townships from which pupils are transferred, shall draw an order on the township treasurer, signed by its president, in favor of the township treasurer whose board shall have the control and management of such school, as the case may be, for the amount of its share of the entire expenses aforesaid of such school; and the board of the township having the control and management, as aforesaid, of such school, shall pay out of its treasury the whole amount required for the establishment and maintenance of such schools, in the same manner as provided in this act for the establishment and maintenance of other schools: *Provided, however,* By agreement of the several boards interested therein, said school may be placed under the control and management of such persons as may be determined by a majority of said boards.

SEC. XXXVII. The board of trustees of each township in this State shall prepare, or cause to be prepared, by the township treasurer, the clerk of the board, or other person, and forwarded to the school commissioners of the county in which the township lies, on or before the second Monday of October, preceding each regular session of the General Assembly of this State, and at such other times as may be required by the school commissioner, or by the State superintendent of public instruction, a statement, exhibiting the condition of schools in their respective townships for the preceding biennial period, giving separately each year, commencing on the first Monday of October, and ending on the last of September, which statement shall be as follows:

1st. The whole number of schools which have been taught in each year; what part of said number have been taught by males exclusively; what part

have been taught by females exclusively; what part of said whole number have been taught by males and females at the same time; and what part by males and females at different periods.

2nd. The whole number of scholars in attendance at all the schools, giving the number of males and females separately.

3rd. The number of male and female teachers, giving each separately; the highest, lowest and average monthly compensation paid to male and female teachers, giving each item separately.

4th. The number of persons under twenty-one years of age.

5th. The amount of the principal of the township fund; the amount of the interest on the township fund paid into the township treasury; the amount of State or common school fund received by the township treasurer; the amount raised by *ad valorem* tax, and the amount of such tax received into the township treasury; and the amount of all other funds received into the township treasury.

6th. The amount paid for teachers' wages; the amount paid for school-house lots; the amount paid for building, repairing, purchasing, renting and furnishing school-houses; the amount paid for school apparatus, for books and other incidental expenses for the use of school libraries; the amount paid as compensation to township officers and others.

7th. The whole amount and a full account of the receipts and expenditures for school purposes.

8th. The number of books of each kind used in the schools, and the years in which each book was purchased, together with such other statistics and information in regard to schools as the State superintendent or school commissioner may require.

SEC. XXXVIII. In all cases where a township is or shall be divided by a county line or lines, the board of trustees of such township shall make, or cause to be made, separate enumerations of male and female white persons of the ages as directed in the fourth specification of the foregoing section thirty-seven (37) of this act, designating separately the number residing in each of the counties in which such township may lie, and forward each respective number to the proper school commissioner of each of said counties; and in like manner, as far as practicable, all other statistics and information enumerated and required to be reported in the aforesaid section thirty-seven, shall be separately reported to the several school commissioners; and all such parts of said statistical information as are not susceptible of division, and are impracticable to be reported separately, shall be reported to the school commissioner of the county in which the sixteenth section of such township is situated.

SEC. XXXIX. At each semi-annual meeting, and at such other meetings as they may think proper, the said township board shall examine all books, notes, mortgages, securities, papers, moneys and effects of the corporation, and the accounts and vouchers of the township treasurer, or other township school officer, and shall make such order thereon for their security, preservation, collection, correction of errors, if any, and for their proper management, as may seem to said board necessary.

SEC. XL. The board of trustees of each township in the State may receive any gift, grant, donation or demise, made for the use of any school or schools, or library, or other school purposes within their jurisdiction; and



they shall be and are hereby invested, in their corporate capacity, with the title, care and custody of all school-houses, school-house sites, school libraries, apparatus or other property belonging to any school district as now organized, or which may be within the limits of their jurisdiction, with full power to control the same in such manner as they may think will promote the interest of schools and the cause of education; and when, in the opinion of the school directors, the school-house site has become unnecessary, or unsuitable or inconvenient for a school, said board may sell and convey the same in the name of said board; and such conveyance shall be executed by the president and clerk of said board, and the avails shall be paid over to the township treasurer for the benefit of schools; and all conveyances of real estate which may be made to said board shall be made to said board in their corporate name, and to their successors in office; and said board may purchase and hold such real estate and personal property as may be necessary for the establishment and support of schools.

SEC. XLI. The township board shall cause all moneys for the use of the township to be paid over to the township treasurer. They shall have power, also, to remove the township treasurer at any time, for any failure or refusal to execute or comply with any order or requisitions of said board, legally made, or any other improper conduct in the discharge of his duty as treasurer, or at any time they may deem such removal expedient. They shall also have power, for any failure or refusal as aforesaid, to sue him upon his bond, as provided in section fifty-eight hereof.

SEC. XLII. The township trustees are hereby vested with general power and authority to purchase real estate, if in their opinion the interests of the township fund will be promoted thereby, in satisfaction of any judgment or decree wherein the said board or school commissioner are plaintiffs or complainants; and the title of such real estate so purchased shall vest in said board, for the use of the inhabitants of said township, for school purposes; and all purchases of land heretofore made by school commissioners, or trustees of school lands, or trustees of schools, for the use of any fund or township for the use of schools, are hereby declared valid. The said board are hereby vested with general power and authority to make all settlements with persons indebted to them in their official capacity; or receive deeds of real estate in compromise; and to cancel, in such manner as they may think proper, notes, bonds, mortgages, judgments and decrees, existing, or that may hereafter exist, for the benefit of the township, when the interest of said township, or the fund concerned, shall, in their opinion, require it, and their action shall be valid. Said board of education are hereby authorized to lease or sell, at public auction, any land that may come into their possession, in such manner and on such terms as they shall deem for the interest of the township: *Provided*, That in all cases of sale of land, as provided in this section, the sale shall be made at the same place, and notice given of it in the same manner, as is provided in this act for the sale of the sixteenth section.

SEC. XLIII. It shall be the duty of the legal voters within each school district to meet at the school-house, or other convenient place in the district, on the first Monday of October next, or as soon thereafter as the township may be laid off into districts, and on the first Monday of October biennially thereafter, and elect three persons within the district, to be styled school

directors, who shall continue in office for the term of two years, and until their successors are elected. But the first election may be held on any Monday, notice being given by the township treasurer, according to the provisions of this act. The legal voters, when assembled, shall choose three of their number to act as judges, and one as clerk, at such election. In case of a tie of said election for school directors, it shall be determined by lot on the day of the election, by the judges thereof.

SEC. XLIV. A majority of said directors shall constitute a quorum to do business; and the board, when convened, shall have power to purchase libraries for the district, to be paid for out of the tax funds of the district. They shall establish a sufficient number of common schools for the education of every individual person over the age of five and under twenty-one years, in their respective districts; and shall make the necessary provision for continuing such schools in operation for at least six months in each year, and longer, if practicable. They shall cause suitable lots of ground to be procured, and suitable buildings to be erected, purchased or rented for school-houses, shall supply the same with furniture and fuel, and make all other provisions relative to schools which they may deem proper. They shall exercise a general supervision over the schools of their respective districts, and shall, by one or more of their number, visit every school in the district at least once a month, and shall cause the result of such visit to be entered on the records of the board. They shall have the appointment of all the teachers of the schools in the district, shall fix the amount of teachers' salaries or compensation, and may dismiss them at any time for incompetency, cruelty, negligence or immorality; shall direct what branches of learning shall be taught in each school, and may suspend or expel from the schools, all pupils found guilty, on full examination and hearing, of refractory or incorrigibly bad conduct. Said school directors are hereby authorized to receive and hold, by their name of school directors, for the use of schools in the district, any book purchased for or donated to the district library; and the same shall be kept and controlled and loaned to the inhabitants of the district, under twenty-one years of age, according to rules prescribed by said directors. But the librarian shall in no case receive any compensation out of the common school or township fund for his services as librarian.

SEC. XLV. If judgment shall be obtained against any township board of trustees or school directors, the party entitled to the benefit of such judgment may have execution therefor, as follows, to wit: It shall be lawful for the court in which such judgment shall be obtained, or to which such judgment shall be removed, by transcript or appeal from a justice of the peace, or other court, to issue thence a writ, commanding the directors, trustees and treasurer of such township to cause the amount thereof, with interest and costs, to be paid to the party entitled to the benefit of said judgment, out of any moneys, unappropriated, of said township; or if there be no such moneys, out of the first moneys applicable to the payment of the kind of services or indebtedness for which such judgment shall be obtained, as provided in section sixty-four of this act, which shall be received for the use of such township; and to enforce obedience to such writ by attachment, or by mandamus, requiring such board to levy a tax for the payment of said judgment; and all legal process, as well as writs to enforce payment of

a judgment, shall be served either on the president or the clerk of the board.

SEC. XLVI. The school commissioner shall, either by himself or any person or persons whom he shall appoint, examine such person or persons proposing to teach a common school in the county, in relation to his or her qualification to teach orthography, reading in English, penmanship, arithmetic, English grammar, modern geography, and the history of the United States; and if he or they shall be satisfied that such person sustains a good moral character, and is qualified properly to teach all the aforesaid branches, he or they shall give such person a certificate of qualification; which certificate shall be good and valid in said county for two years from the date thereof, and said certificate may be renewed, at its expiration, by indorsement thereon by the said commissioner or examiners. The said certificate to the teacher may be in the following form, viz.:

The undersigned having examined \_\_\_\_\_, Illinois, \_\_\_\_\_, 18\_\_\_\_, and being satisfied that \_\_\_\_\_ sustains a good moral character, hereby certify that \_\_\_\_\_ is qualified properly to teach the following branches, viz.: orthography, reading in English, penmanship, arithmetic, English grammar, modern geography and the history of the United States; which certificate is good and valid in said county for two years from the date hereof, renewable at the option of the school commissioner or of any two members of the board of examiners, by his or their indorsement thereon.  
Given under \_\_\_\_\_ hands, at the date aforesaid.

A \_\_\_\_\_ B \_\_\_\_\_, School Commissioner.  
C \_\_\_\_\_ D \_\_\_\_\_, } Examiners."  
E \_\_\_\_\_ F \_\_\_\_\_, }

Provided, That each and every school or schools, of whatever grade, established or authorized to be established under the provisions of this act, shall be a school or schools for the purpose of teaching various branches of an English education; and no part of the common school fund, township fund, or of any other school fund, shall be paid out or appropriated for the establishing, conducting or the supporting in any manner of any other character or class of school or schools, as aforesaid designated: *Provided*, That nothing therein contained shall prevent the teaching a foreign language in a common school as aforesaid.

SEC. XLVII. It shall be the duty of the school commissioner to fix upon the time of holding meetings for the examination of teachers, in such places in their respective counties, as will, in their opinion, best accommodate the greatest number of candidates for examination, notice of all such meetings having been published in some newspaper of general circulation; and all teachers who do not attend at the appointed time for said examination, shall pay to the school commissioner, one dollar for their certificate.

SEC. XLVIII. No teacher shall be entitled to any portion of the common school or township fund, or other public fund, or be employed to teach any school under the control of any board of education of any township in this State, who shall not, before his employment, exhibit to said board, or to a committee of said board, a certificate of qualification obtained under the provisions of this act; nor shall any teacher be paid any portion of the school or public fund aforesaid, unless he shall have kept and furnished schedules as herein directed.

SEC. XLIX. Teachers shall make schedules of the names of all scholars under twenty-one years of age, attending their schools, in the form prescribed

by this act; and when scholars reside in two or more districts, townships or counties, separate schedules shall be kept for each district, township or county; and the absence or presence of every scholar shall be set down under the proper date, and opposite the name, on every day that the school is open; and the absence of the scholar shall be signified by a blank—the presence by a mark. The schedule to be made and returned by the teacher shall be, as near as circumstances will permit, in the following form, viz.:

*A Schedule of a Common School, kept by A. B., at \_\_\_\_\_, in District number \_\_\_\_\_, in township sixteen north, range five east of the third principal meridian, in the County of \_\_\_\_\_, in the State of Illinois.*

Names of Scholars attending my school, and residing in District number _____, in Township _____ north, range _____ west, in _____ County.	15.	16.	17.	18.	19.	20.	21.	22.	23.	24.	25.	26.	27.	28.	29.	30.	31.	1.	2.	3.	4.	5.	Total number Days of each Scholar.
	1855. Monday, January	Tuesday, "	Wednesday, "	Thursday, "	Friday, "	Monday, "	Tuesday, "	Wednesday, "	Thursday, "	Friday, "	Monday, "	Tuesday, "	Wednesday, "	Thursday, "	Friday, "	Monday, "	Tuesday, "	Wednesday, "	Thursday, "	Friday, "	Monday, "	Tuesday, "	
John Smith.....	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	16
Isaac Meslier.....	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	14
Sarah Danforth.....	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	17
Mary Newman.....	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	12
Grand total number of Days.....																						59	

And said teacher shall add up and set down the whole number of days' attendance of each scholar, and add up said whole numbers, and make out the grand total number of days' attendance, as in the form above prescribed, and shall attach thereto his certificate, which shall be in the following form, viz.:

"I certify that the foregoing schedule of scholars attending my school, as therein named, and residing as specified in said schedule, to the best of my knowledge and belief, is correct; and that it was a school for the purpose of teaching various branches of an English education.  
A. B., Teacher."

Teachers shall also include in said schedule, or furnish a separate report, containing the name of each scholar, and the name of each book used by each scholar, and the year in which each book was purchased: *Provided*, Said schedule shall not include any book reported in a former schedule. When the teacher shall have completed his or her schedule or schedules, as above required, he or she shall deliver it to some one of the directors or to a committee of at least two members of said board appointed for the purpose; and it shall be the duty of said director, in connection with some other director of the board, or of said committee, to carefully examine such schedule or schedules, and after correcting all errors, and if they shall find such schedule to have been kept according to law, they shall certify to the same, as near as practicable, in the following form, viz.:

"STATE OF ILLINOIS, }  
County, } ss.

WE, the undersigned, directors of the board of education in township number —, range number —, in the county aforesaid, certify that we have examined the foregoing schedule, and find the same to be correct, and that the school was conducted according to law. That there is now due to said C. D., teacher, as per contract, the sum of — dollars and — cents, and that the said teacher has a legal certificate of good moral character and of qualification to teach a common school, (or of such a grade as the case may be.)

Witness our hands, this — day of —, A. D. 18—.

A. B., } Directors of  
C. D., } Board of Education."

Which schedule or schedules, certified as aforesaid, by at least two directors of the board of education, shall be filed by said directors with the township treasurer; and until such schedule and report, as aforesaid, shall have been filed as aforesaid, it shall not be lawful for said treasurer to pay said teacher, or for the board of education, or any two members thereof, to draw an order in favor of said teacher, as provided in section sixty-nine hereof.

Sec. L. School directors shall certify no schedule that reaches back to a time more than six months from the time fixed by law for the regular return and presentation of schedules to the school directors. Schedules made and certified as aforesaid shall, at least two days before the first Saturdays of April and October, be delivered by the directors to the township treasurer.

Sec. LI. The township treasurer appointed by the board of trustees, as provided in section thirty-three of this act, shall, before entering upon his duties, execute a bond, with two or more freeholders, who shall not be members of the board of education, as securities, payable to the board of the township for which he is appointed treasurer, with a sufficient penalty to cover all liabilities which may be incurred, conditioned faithfully to perform all the duties of township treasurer, in township —, range —, in — county, according to law. The security shall be approved by at least a majority of the board of education, and shall be delivered by one of the directors to the school commissioner of the proper county. And in all cases where such treasurer aforesaid is to have the custody of all bonds, notes, mortgages, moneys and effects denominated principal, and belonging to the township for which he is appointed treasurer, the penalty of said treasurer's bond shall be twice the amount of said bonds, notes, mortgages, moneys and effects. And every township treasurer appointed subsequent to the first, as herein provided, shall execute bond, with security, as is required of the first treasurer.

Sec. LII. The bond required in the foregoing section shall be in the following form, viz.:

"STATE OF ILLINOIS, }  
County, } ss.

KNOW ALL MEN BY THESE PRESENTS, That we, A. B., C. D. and E. F., are held and firmly bound, jointly and severally, unto the board of —, in said county, in the penal sum of — dollars, for the payment of which we bind ourselves, our heirs, executors and administrators firmly by these presents.

In witness whereof, we have hereunto set our hands and seals this — day of —, A. D. 18—.

The condition of the above obligation is such, that if the above bounden A. B., township treasurer of township —, range —, in the county aforesaid, shall faithfully discharge all the duties of said office according to the laws which now are or may hereafter be in force, and shall deliver to his successor in office all moneys, books, papers, securities and property in his hands as such township treasurer, then this obligation to be void, otherwise to remain in full force and virtue.

Approved and accepted by G. H., }  
I. J., } Directors of  
K. L., } Board of Education."

A — B —. [SEAL.]  
C — D —. [SEAL.]  
E — F —. [SEAL.]

Sec. LIII. Every township treasurer shall provide himself with two well-bound books, the one to be called a cash book, the other a loan book. He shall charge himself in the cash book with all moneys received, stating the charge, when, from whom and on what account received; and credit himself with all moneys paid or loaned, the amount loaned, the date of the loan, the rate of interest, the time when payable, the name of the securities, or if real estate be taken, a description of the same. He shall also enter in separate accounts, moneys received and moneys paid out, charging the first to debit account, and crediting the latter as follows, to wit: 1st. The principal of the township fund, when paid in and when paid out; 2nd. The interest of the township fund, when received and when paid out; 3rd. The common school fund and other funds, when received from the school commissioner, and when paid out; 4th. The taxes received from the county collector, distinguishing between that for general school purposes and that levied for the purpose of prolonging schools, as provided in section seventy-four of this act; 5th. Donations received; 6th. Moneys coming from all other sources; and in all cases entering the date when received and when paid out; and he shall also arrange and keep his books and accounts in such other manner as may be directed by the State or county superintendent, or the board of trustees. He shall also provide a book, to be called a journal, in which he shall record fully and at length the acts and proceedings of the board, their orders, by-laws and resolutions; which book shall be at all times subject to the inspection of said board, or other persons authorized by this act, or of any committee appointed by the inhabitants of the township to examine the same. And he shall also provide a book to be called a record, in which he shall enter a brief description of all notes or bonds belonging to the township, and upon the opposite page he shall note down when paid, or any remarks to show where and in what condition it is, as in the following form, viz.:

Makers' Names.	Date of Note.	When due.	Amount.	Remarks.
A. B., C. D., E. F.	January 1, 1839.	January 1, 1845.	\$90 00	January 6, 1848, handed to I. J. Esq., for collection, (or January 6, 1847, paid.)

Sec. LIV. The township treasurers shall loan, upon the following conditions, all moneys which shall come to their hands by virtue of their office, except such as may be subject to distribution according to section — hereof. The rate of interest shall be ten per centum per annum, payable half yearly in advance. The time for which loans shall be made shall not be less than six months nor more than five years. For all sums not exceeding one hundred dollars, loaned for not more than one year, two responsible securities shall be given; for all sums over one hundred dollars and for all loans for more than one year, security shall be given by mortgage on real estate, unincumbered, in value double the amount loaned, with a condition that in case additional security shall at any time be required, the same shall be given to the satisfaction of the board of trustees for the time being. Notes, bonds, mortgages and other securities taken for money or other property, due or to become due to the board of trustees for the township, shall be payable to the

said board by their corporate name; and in such name, suits, actions and complaints, and every description of legal proceedings, may be had for the recovery of money, the breach of contracts, and for every legal liability which may at any time arise or exist, or upon which a right of action shall accrue to the use of this corporation: *Provided, however,* That notes, bonds, mortgages and other securities in which the name of the school commissioner, or of the trustees of schools, are inserted, shall be valid to all intents and purposes; and suit shall be brought in the name of the board of trustees as aforesaid. The wife of the mortgagor, (if he has one,) shall join in the mortgage given to secure the payment of money loaned by virtue of the provisions of this act.

SEC. LV. Mortgages to secure the payment of money loaned under the provisions of this act, may be in the following form, viz.:

"I, A. B., of the county of \_\_\_\_\_, and State of \_\_\_\_\_, do hereby grant, convey and transfer to the board of trustees of township \_\_\_\_\_, range \_\_\_\_\_, in the county of \_\_\_\_\_, and State of Illinois, for the use of the inhabitants of said township, the following described real estate, to wit: (*Here insert the premises.*) Which real estate I declare to be in mortgage for the payment of \$\_\_\_\_, loaned to me, and for the payment of all interest that may accrue thereon, to be computed at the rate of \_\_\_\_\_ per cent. per annum, until paid. And I hereby covenant to pay the said sum of money in \_\_\_\_\_ years from the date hereof, and to pay interest on the same at the rate aforesaid, half-yearly in advance. I further covenant that I have a good and valid title to said estate, and that the same is free from all incumbrance; and that I will pay all taxes and assessments which may be levied on said estate; and that I will give any additional security that may at any time be required by said board of education; and if said estate be sold to pay said debt, or any part thereof, or for any failure or refusal to comply with or perform the conditions or covenants herein contained, I will deliver immediate possession of the premises. And in consideration of the premises, C., wife of said A. B., doth hereby release to the said board all her right and title of dower in the aforegranted premises, for the purposes aforesaid.

In testimony whereof, we have hereunto set our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_,  
 A\_\_\_\_\_ B\_\_\_\_\_. [SEAL.]  
 C\_\_\_\_\_ B\_\_\_\_\_. [SEAL.]"

Which mortgage shall be acknowledged and recorded as is required by law for other conveyances of real estate, the mortgagor paying the expenses of acknowledgment and recording, and fifty cents as a fee to the township treasurer.

SEC. LVI. Upon the breach of any condition or stipulation contained in said mortgage, an action may be maintained and damages recovered as upon other covenants; but mortgages made in any other form to secure payment as aforesaid, shall be valid as if no form had been prescribed. In estimating the value of real estate mortgaged to secure the payment of money loaned under the provisions of this law, the value of improvements liable to be destroyed shall not be included.

SEC. LVII. In all cases where the board of trustees shall require additional security for the payment of money loaned, and such security shall not be given, the township treasurer shall cause suit to be instituted for the recovery of the same, and all interest thereon to the date of judgment: *Provided,* That proof be made of the said requisition. In the payment of debts by executors and administrators, those due the common school or township fund shall have a preference over all other debts, except funeral and other expenses attending the last sickness, not including the physician's bill. And it shall be the duty of the township treasurer to attend at the office of the probate justice upon the proper day, as other creditors, and have any debts due as aforesaid, probated and classed, to be paid as aforesaid.

SEC. LVIII. If default be made in the payment of interest due upon

money loaned [by] any school commissioner or county treasurer, or in the payment of the principal, interest at the rate of twelve per cent. per annum shall be charged upon the principal and interest from the day of default, which shall be included in the assessment of damages, or in the judgment in suit or action brought upon the obligation to enforce payment thereof; and interest as aforesaid, may be recovered in action brought to recover interest only. And the said township treasurers are hereby empowered to bring appropriate actions, in the name of the board of trustees, for the recovery of the half-yearly interest, when due and unpaid, without suing for the principal, in whatever form secured, and justices of the peace shall have jurisdiction in such cases of all sums under one hundred dollars.

SEC. LIX. All suits brought, or actions instituted under the provisions of this act, may be brought in the name of the "Board of trustees of township \_\_\_\_\_, range \_\_\_\_\_," except as is provided for action *qui tam* in this act, or in favor of school commissioners. The township treasurer shall demand, receive and safely keep, according to law, all moneys, books and papers of every description, belonging to his township. He shall keep the township fund loaned at interest; and if on the first Monday of April in any year, there shall be any interest or other funds on hand which shall not be required for distribution, such amount not required as aforesaid, shall forever be considered as principal in the funds to which it belongs, and loaned as such.

SEC. LX. On the first Mondays of April and October, of every year, the township treasurer shall lay before the board of trustees a statement, showing the amount of interest, rents, issues and profits that have accrued or become due since their last regular half-yearly meeting, on the township lands and township funds, and also the amount of State and county fund interest on hand. He shall also lay before the said trustees all books, notes, bonds, mortgages, and all other evidence of indebtedness belonging to the township, for the examination of the trustees, and shall make such other statement as the board may require, touching the duties of his office.

SEC. LXI. For any failure or refusal to perform all the duties required of township treasurer by law, he shall be liable to the board of trustees upon his bond, to be recovered by action of debt by said board, in their corporate name, for the use of the proper township, before any court having jurisdiction of the amount of damages claimed; but if said treasurer, in any such failure or refusal, acted under and in conformity to a requisition or order of said board, or a majority of them, entered upon their journal and subscribed by their president and clerk, then and in that case the members of said board aforesaid, or those of them voting for said requisition or order as aforesaid, and not the treasurer, shall be liable, jointly and severally, to the inhabitants of the township, to be recovered by action of assumpsit, in the official name of the school commissioner, for the use of the proper township.

SEC. LXII. When a township treasurer shall resign, or be removed, and at the expiration of his term of office, he shall pay over to his successor in office all money on hand, and deliver over all books, notes, bonds, mortgages, and all other securities for money, and all papers and documents of every description, in which the corporation may have any interest whatever; and in case of the death of the township treasurer, his securities and legal

representatives shall be bound to comply with the requisitions of this section. And for any failure to comply with the requisitions of this section, he shall be liable to a penalty of not less than ten, nor more than one hundred dollars, at the discretion of the court before which judgment may be obtained; and the obtaining or payment of said judgment shall in nowise discharge or diminish the obligation of his official bond.

SEC. LXIII. All bonds, notes, mortgages, and other evidence of indebtedness, moneys and effects, in the hands of any school commissioner, trustee of schools, township treasurer, or other officer or person, and belonging to any county or township, and which have heretofore accrued, or may hereafter accrue from the sale of the sixteenth [section,] or of the common school lands of any township or county, or for the sale of any real estate or other property taken for any debt, or on any judgment, due to the principal of any county or township fund, and all surplus interest and other funds which have been or shall hereafter be carried to and made part of the principal of any township or county funds, by any law which has heretofore been or may hereafter be enacted, in the hand of any county, township, or other officer or person, and belonging to any county or township, and all sums arising from the loaning or reloading of the principal of any township or county fund, are hereby declared to be, and shall forever hereafter constitute the principal of the township or county fund, to whichever it may respectively belong, and no part thereof shall ever be distributed or expended for any purpose whatever, except the interest, rents and profits thereof, but shall be loaned out, and held to use, rent or profit, as herein, heretofore, or may hereafter be, provided by law.

SEC. LXIV. So much of the school moneys coming into the hands of the township treasurer, which has been or may be derived from the State tax. State fund, or common school fund of the State, or from any township tax funds levied for the purpose of continuing the terms of schools, after the State funds have been exhausted, as provided in section sixty-nine (69) hereof, shall be applied only to the payment of teachers, in the respective townships to which such fund belongs, and all be drawn from the treasury for no other purpose whatever; and all other school funds, paid into the township treasury, arising from taxation, or from other sources, and the interest of the township fund, not otherwise specifically directed to be applied by this act, shall be applied and expended, under the direction and at the discretion of the board of directors of the district to which such funds belong, in procuring school-house sites, and improving the same, in building, repairing and furnishing school-houses, in the payment of compensation to township treasurers, and other school purposes, as such board are authorized to make under the provisions of this act: *Provided, however,* That nothing herein shall be so construed as to prevent the application of said school funds to the payment of teachers, when necessary, in the opinion of said board, so to apply them, or any part thereof.

SEC. LXV. All moneys and school funds, liable to distribution, not being principal, paid into the township treasury, or coming into the hands of the township treasurer, shall be paid out only on the order of the proper board, signed by their president and clerk; and for all payments made, receipts shall be taken and filed; and in all such orders shall be stated the purpose for which or on what account drawn; and all such orders may be in the following form, to wit:

"The treasurer of township number —, range number —, in — county, will pay to — or bearer, — dollars and — cents, on his contract for repairing Sulphur Spring school-house, (or otherwise, as the case may be.)

By order of the board of — said township.  
C. D., Clerk."

A. B., President.

Which, together with the receipt of the person to whom paid, shall be filed in the office of the township treasurer: *Provided, however,* The township treasurer may pay to any teacher his wages, on such teacher presenting a certificate of the amount due him, and an order for the same, by any two members of the board of directors, and on said teacher filing with said treasurer a true copy of his certificate of qualification, certified by the said two members to be such as is required by law; which certificate and order as aforesaid shall be appended to the aforesaid true copy of said teacher's qualification; which certificate and order may be in the following form, viz.:

"We, the undersigned directors of —, in township —, range number —, in the county of —, hereby certify the foregoing to be a true copy of A. B., teacher's certificate of qualification, and is such as is required by law, to qualify (him or her) to teach in the school which (he or she) has taught; and we further certify that the amount due said A. B. is — dollars and — cents, which amount the treasurer of said township is hereby required to pay.

Given under our hands — this — day of —, 18—.

A. B., }  
C. D., } Directors.

To E. D., Township Treasurer, T.— R.—."

Which, on payment being made, the treasurer shall file in his office, together with said teacher's receipt for the amount paid. But no order shall be drawn, or paid, in favor of any teacher, until his or her schedule shall have been completed and filed, as provided in section forty-nine of this act, nor until he or she shall have complied with all his or her duties as prescribed by law.

SEC. LXVI. The common school fund of this State shall consist of such sum as will be produced by the annual levy and assessment of two mills upon each dollar's valuation of all the taxable property in the State, and there is hereby levied and assessed annually, in addition to the revenue for State purposes, the said two mills upon each dollar's valuation of all the taxable property in the State, to be collected and paid into the State treasury as other revenue is collected and paid; and the amount due from the State, according to a statement and settlement of the account between the State and that fund, under the provisions of an act entitled "An act to provide for the distribution and application of the interest on the school, college and seminary fund," approved on the seventh of February, one thousand eight hundred and thirty-five, and of all funds which have been or may be received by the State from the United States, for the use and support of common schools, and also of the money added to the common school fund which was received from the United States under an act of Congress providing for a distribution of the surplus revenue of the United States, and which was invested in bank stock, by authority of the State, and of the amount added to the school fund under an act requiring the three per cent. fund to be invested in State bonds: *Provided,* That in cases where heretofore, the State taxes have not been collected in any county, such county shall not be entitled to a distribution of the college, seminary and school fund, for the period of time that no such taxes have been collected, and that the portion of the fund aforesaid shall in such cases be distributed without regard to such county.



SEC. LXVII. The State shall pay an interest of six per cent. per annum upon the amount of the aforesaid common school fund, except on so much thereof as may be realized from the levy of the tax directed to be levied under the provisions of this act, which shall be paid annually, and applied to the support of common schools, as herein provided. The State shall also pay, as aforesaid, and at the same time, an interest of six per centum per annum upon the amount due the college and seminary fund; which interest shall be loaned to the common school fund, and known in this law and applied in all cases as interest on the common school fund as aforesaid.

SEC. LXVIII. On the first Monday in January, in each and every year next after taking the census of the State, the auditor of public accounts shall, under the supervision of the commissioners of the school fund of the State, ascertain the number of white children in each county in the State, under twenty-one years of age, and shall thereupon make a dividend to each county, of two-thirds the sum from the tax levied and collected under the provisions of the sixty-sixth section of this act; and the interest due on the school, college and seminary fund, in proportion to the number of white children in each county under the age aforesaid, and of the remaining one-third, in proportion to the number of townships and parts of townships in each county, and issue his warrant to the school commissioner of each county upon the collector thereof. And upon presentation of said warrant by the school commissioner to the collector of his county, said collector shall pay over to the school commissioner the amount of said warrant out of the first specie funds which may be collected by him, and not otherwise appropriated by law, taking said commissioner's receipt therefor; and on settlement with the auditor, said collector shall be credited with the amount specified in said receipt, in the same manner as if it had been paid into the treasury. Dividends shall be made as aforesaid, according to the proportions ascertained to be due to each county annually thereafter, until another census shall have been taken, and then dividends shall be made and continued as aforesaid, according to the last census: *Provided*, That if any collector shall fail or refuse to pay, in gold or silver, the amount of the aforesaid warrant, or any part thereof, by the first day of March, annually, or so soon thereafter as it may be presented, it shall be competent for the school commissioner to proceed against said collector and his securities, in an action of debt, in the county court; which court is hereby vested with full power and authority to hear and determine all such suits, render judgment and issue execution, or said suit may be brought in any court having jurisdiction; and the said collector shall pay twelve per centum, to be assessed as damages upon the amount due, and which shall be included in the judgment obtained against him.

SEC. LXIX. At each meeting in October, or at any subsequent meeting thereafter, before the first day of May, annually, each township board of trustees in this State shall determine, by estimate, as nearly as practicable, the entire amount of money necessary to be expended in the township, to keep in good condition and operation a sufficient number of free schools for the accommodation of all the children in said township during the ensuing year, over and above the available means arising from the township fund, or from other sources, and applicable to general school purposes, and also such additional amount as the board may think necessary for the exclusive pur-

pose of supplying any deficiency in the fund for the payment of teachers, and for the purpose of extending the terms of schools after the State or common school fund shall have been exhausted; and shall determine, as nearly as practicable, what rate per cent. on the one hundred dollars' valuation of all the taxable property in the township, each of said amounts separately, will require to be levied; each of which rates so estimated and required to be levied, together with a list of the names of all the resident tax-payers of the township, the said board shall make known, by certificate in writing, signed by the president and clerk of the board, to the clerk of the county court of the county, on or before the first Monday of July next thereafter, in each year; which certificate may be in the following form, viz.:

"We, the undersigned, president and clerk of the board of trustees of township No. —, range No. —, in the county of —, and State of Illinois, do hereby certify that said board have estimated and required to be levied for the year 18—, the rate of —, for general school purposes, and the rate of —, for paying teachers and extending terms of schools, on each one hundred dollars' valuation of taxable property in said township.

Given under our hands, this — day of —, 18—.

A— B—, *President*.

C— D—, *Clerk*."

SEC. LXX. For the purpose of erecting school-houses, or purchasing school-house sites, or for the repairing and improving the same, for procuring furniture, fuel and district libraries, the board of directors of any district shall be authorized to have levied and collected a tax annually on all the property in their district, by furnishing a certificate similar to the one required by the provisions of this section, from trustees of schools.

SEC. LXXI. According to the rate or rates certified as aforesaid, the said county clerk, when making out the tax books for the collector, shall compute each taxable person's tax in said township, or that part of the township in the county, or in any district, taking as a basis the total amount of taxable property returned by the county assessor for that year, lying and being in said township, part of township or district, whether belonging to residents or non-residents, and also each and every tract of land assessed by the assessor, which lies, or the largest part of which lies, in said township or part of township or district. The said county clerk shall cause each person's tax so computed to be set upon the tax book, to be delivered to the county collector for that year, in a separate column, against each tax-payer's name, or parcel of taxable property, as it appears in said collector's books, to be collected in the same manner, and at the same time, as State and county taxes are collected. The computation of each person's tax, and the levy made by the clerk as aforesaid, shall be final and conclusive: *Provided*, The rate shall be uniform, and shall not exceed the rate certified by the township board of trustees or directors; and the said county clerk, before delivering the tax books to the collector, shall make out and deliver, on demand, to each township treasurer, or other authorized person, of the respective townships, or part of townships, in the county, a certificate of the amount due his township, of said tax so levied and placed upon the tax books; and on or before the first day of April next, after the delivery of the tax books containing the computation and levy of said taxes aforesaid, or so soon thereafter as the township treasurer, or other authorized person, shall present the said certificate of the amount of said tax, and make a demand therefor, the said county collector shall pay to said township treasurer, or other authorized person, the full amount of said tax, so certified by the county clerk, retaining



from said amount only two per centum, as his fees for collection, taking of the township treasurer, or other authorized person, his receipt therefor, which receipt shall be evidence, as well in favor of the collector as against the township treasurer, or other authorized person for him; and said treasurer, or other authorized person for him, shall enter the same in separate accounts, in his cash book, distinguishing between that part of said account for general school purposes, and that for paying teachers and extending the terms of schools, and pay the same out as provided for by this act.

SEC. LXXII. If any collector shall fail to pay the amount of said tax, or any part thereof, as required in the aforesaid section, it shall be competent for the township treasurer, or other authorized person, to proceed against such collector and his securities in an action of debt in the county court; which court is hereby vested with full power and authority to hear and determine all such suits, render judgments and issue execution; or said suit may be brought in any other court having jurisdiction; and the said collector, so in default, shall pay twelve per centum upon the amount due, to be assessed as damages, which shall be included in the judgment rendered against him: *Provided*, No collector shall be liable for such part of said tax as he shall be able to make appear he could not have collected by law, until he may be able to so collect such amount.

SEC. LXXIII. When a township is or shall hereafter be situated in two or more counties, the certificate of the rate of taxation, required in the sixty-eighth (68) [section] of this act, shall be returned to the clerks of the county court of each of such counties, furnishing to each clerk the names of the resident tax-payers of that part of such township which lies in his county, and each of said clerks shall proceed in all respects, as regards the taxable residents and taxable property of that part of such township situated in his county, as required by the seventy-first section of this act, and for the purpose of enabling the trustees of townships or school directors, to make the estimate of taxes required as provided in section seventy-one, the county clerk of each county shall furnish to the clerk of each of said boards, the total amount of valuation of the taxable property of each township, part of township, or district respectively, as returned by the assessor of the previous year; and to enable the clerk of the county court to perform this duty for the first estimates of the boards, as aforesaid, the clerks of said boards, respectively, shall furnish to said county clerk a list of all the names of the resident tax payers of the previous year in said township or part of township or district, in the county, and thereafter said list of names shall be furnished as provided in section sixty-nine of this act. For the purpose of erecting school-houses, or purchasing school-house sites, or for repairing and improving the same, it shall be lawful for the board of directors of any district to borrow money at a rate of interest not exceeding ten per cent. per annum, and issue bonds therefor in sums not less than one hundred dollars; which bonds shall be executed by the president and clerk of said board: *Provided*, That the total indebtedness incurred by any district under this section, shall not at any time exceed one per centum of the assessed value of the real and personal property of said district.

SEC. LXXIV. School commissioners shall be allowed to retain, out of the township funds of the township for which the services may be rendered,

three per cent. upon the amount of sales of school lands, and upon the real estate taken for debt, for their services in making such sales, including such other services connected therewith as are required by the provisions of this act, and two per cent. they may retain upon the amount of all sums distributed, paid or loaned out by them for the support of schools; and for visiting schools, they shall be allowed to retain two dollars per day, for any number of days not exceeding fifty during any year, which account shall be certified and sworn to by the commissioner of each county.

SEC. LXXV. Township treasurers shall be allowed to retain two per cent. upon all sums paid out, or loaned by them: *Provided, however*, The boards of trustees may reduce said compensation; and said boards shall, and it is hereby made their duty, to make a reasonable allowance to said treasurers for their services performed as clerks of said boards, to be paid out of the township funds. School commissioners, trustees of schools, school directors and all other school officers, shall be exempted from working on the roads, serving on juries and military duty.

SEC. LXXVI. If any school commissioner, trustee of schools, township treasurer, director, or any other person entrusted with the care, control, management or disposition of any school, college, seminary or township fund, for the use of any county, township, district or school, shall convert any such funds, or any portion thereof, to his own use, he shall be liable to indictment, and, upon conviction, shall be fined in not less than double the amount of money converted, and imprisoned in the county jail not less than one nor more than twelve months, at the discretion of the court.

SEC. LXXVII. Trustees of schools shall be liable, jointly and severally, for the sufficiency of securities taken from township treasurers; and in case of judgment against said treasurers and their securities, for or on account of any default of any such treasurer, on which the money shall not be made for want of sufficient property whereon to levy execution, actions on the case may be maintained against said trustees, jointly or severally, and the amount not collected on said judgment shall be recovered with costs: *Provided*, That if said trustees can show, satisfactorily, that the security taken from the treasurer, as aforesaid, was at the time of said taking, good and sufficient, they shall not be liable as aforesaid.

SEC. LXXVIII. The real estate of school commissioners, of township treasurers, and all other school officers, and of the securities of each of them, shall be bound for the satisfaction and payment of all claims and demands against said commissioners and treasurers, and other officers, as such, from the date of issuing process against them, in actions or suits brought to recover such claims or demands, until satisfaction thereof be obtained; and no sale or alienation of real estate by any commissioner, treasurer or other officer, or security aforesaid, shall defeat the lien created by this section, but all and singular such real estate held, owned or claimed as aforesaid, shall be liable to be sold in satisfaction of any judgment which may be obtained in such actions or suits.

SEC. LXXIX. Trustees of schools, school directors, or either of them, failing or refusing to make returns of children in their township or district, according to the provisions of this act, or if either of them shall knowingly make a false return, the party so offending shall be liable to a penalty of not less than ten dollars nor more than one hundred dollars, to be recovered

by action of assumpsit, before any justice of the peace of the county, which penalty, when collected, shall be added to the township fund; and if any school commissioner, director or trustee, or either of them, or other officer whose duty it is, shall negligently or willfully fail or refuse to make, furnish or communicate the statistics and information, or shall fail to discharge the duties enjoined upon them or either of them, at the time and in the manner required by the provisions of sections eighteen and thirty-seven of this act, such delinquent or party offending, shall be liable to a fine of twenty-five dollars, to be recovered before any justice of the peace, on information in the name of the people of the State of Illinois, and when collected, shall be paid to the school commissioner of the proper county for the use of schools.

SEC. LXXX. School commissioners, trustees of schools, directors and township treasurers, or either of them, and any other officer having charge of school funds or property, shall be responsible for all losses sustained by any county, township or school fund, by reason of any failure on his or their part to perform the duties required of him or them by this act, or by any rule or regulation authorized to be made by this act; and each and every of the officers aforesaid shall be liable for any such loss sustained as aforesaid, and the amount thereof may be recovered, in a civil action, before any court having jurisdiction thereof, at the suit of the State of Illinois, for the use of the county, township or fund injured; and the amount, when collected, shall be paid to the proper officer, for the benefit of said county, township or fund injured.

SEC. LXXXI. No justice of the peace, probate justice, constable, clerk of any court, or sheriff, shall charge any costs, in any suit where any agent of any school fund, suing for the recovery of the same, or any interest due thereon, is plaintiff, and shall be, from any cause, unsuccessful in such suit. School commissioners appointed heretofore, shall continue in office until superseded according to the provisions of this act, and their duties, responsibilities and powers shall be governed by the provisions herein named. Trustees of school lands heretofore appointed, and trustees of schools heretofore elected, shall also continue to discharge the duties of their office until trustees of schools are elected under the provisions of this act. Townships heretofore incorporated shall, without any further action or proceeding, be considered as incorporated under the provisions of this act, and the trustees and other officers shall continue to discharge their duties till superseded by appointment or election under this law; and all school directors and officers heretofore appointed shall continue in office until superseded by the election as provided in this act, and shall be governed by the provisions of the laws heretofore in force, unless otherwise directed by this act. Leases of school lands shall remain valid and be executed according to the laws under which they were made. Common school lands valued and offered for sale and, remaining unsold shall be sold upon terms prescribed by this act. All taxes levied and contracts made under the laws hereby repealed, shall remain valid, and all rights, remedies, defenses, and causes of action existing, or which may hereafter exist or arise, under or by virtue of said repealed laws, shall continue and remain valid, and shall be enforced, notwithstanding the repeal of said laws, unless canceled according to the provisions of this act.

SEC. LXXXII. This act shall not be so construed as to repeal or

change, in any respect, any special acts in relation to schools, in cities or incorporated towns, except that it shall be the duty of the several boards of education, or other officers, of any city or incorporated town, having in charge schools under the provisions of any of the said special acts, or of any ordinance of any city or incorporated town, on or before the second Monday of October preceding each regular session of the General Assembly of this State, or annually, if required so to do by the State superintendent, to make out and render a statement of all such statistics and other information in regard to schools, and the enumeration of children, or white persons, as are required to be communicated by township boards of trustees or directors, under the provisions of the thirty-seventh (37) section of this act, or so much thereof as may be applicable to said city or incorporated town, to the school commissioner of the county where such city or incorporated town is situated, or of the county in which the larger part of such city or town is situated; nor shall it be lawful for the county school commissioner, or any other officer or person, to pay over any portion of the common school fund, to any local treasurer, school agent, clerk, board of education, or other officer, or person, of any township, city, or incorporated town, unless a report of the number of children, or white persons, and other statistics relative to schools, and a statement of such other information as is required of the boards of trustees or directors as aforesaid, and of other school officers and teachers under the provisions of this act, shall have been filed, at the time or times aforesaid, specified in this section, with the school commissioner of the proper county as aforesaid.

SEC. LXXXIII. In townships in which there shall be persons of color, the board of education shall allow such persons a portion of the school fund, equal to the amount of taxes collected for school purposes from such persons of color in their respective townships.

SEC. LXXXIV. Section number sixteen in every township granted to the State by the United States for the use of schools, and such sections and parts of sections as have been or may be granted as aforesaid, in lieu of all or part of section number sixteen, and also of the lands which have been or may be selected and granted as aforesaid, for the use of schools, to the inhabitants of fractional townships in which there is no section number sixteen, or where such section shall not contain the proper proportion for the use of schools in such fractional township, shall be held as common school lands; and the provisions of this act referring to common school lands shall be deemed to apply to the lands aforesaid.

SEC. LXXXV. All the business of such townships, so far as relates to common school lands, shall be transacted in that county which contains all or a greater portion of said lands. If any person shall, without being duly authorized, cut, fell, box, bore, destroy or carry away any tree, sapling or log standing or being upon any school lands, such person shall forfeit and pay for every tree, sapling or log so felled, boxed, bored, destroyed or carried away, the sum of eight dollars; which penalty shall be recovered, with costs of suit, by an action of debt or assumpsit, before any justice of the peace having jurisdiction of the amount claimed, or in the county or circuit court, either in the corporate name of the board of trustees of the township to which the land belongs, or by action of *qui tam*, in the name of any person who will first sue for the same; one half for the use of the

person suing, the other half to the use of the township aforesaid. When two or more persons shall be concerned in the same trespass, they shall be jointly and severally liable for the penalty herein imposed. Every trespasser upon common school lands shall be liable to indictment, and upon conviction, fined in three times the amount of the injury occasioned by said trespass, and shall stand committed as in other cases of misdemeanor. All penalties and fines collected under the provisions of this section, shall be paid to the township treasurer, and be added to the principal of the township fund; and all other fines, penalties and forfeitures imposed or incurred in any of the circuit courts of this State, or collected by justices of the peace or other county officers, except fines collected in incorporated towns or cities, for the violation of the by-laws or ordinances of said towns or cities, shall be paid to the school commissioner of the county where such fines, penalties and forfeitures have been collected, and the same shall be distributed by said commissioner in the same manner as the common school funds of the State are distributed; and if any county officer or justice of the peace aforesaid shall fail or refuse to pay as aforesaid, after collection, such officer or justice of the peace so failing or refusing to pay as aforesaid, shall forfeit and pay double the amount of such fine, penalty or forfeiture as aforesaid, collected by him, to be recovered before any court having jurisdiction, in a civil action, at the suit of the school commissioner.

SEC. LXXXVI. When the inhabitants of any township or fractional township shall desire the sale of any of the common school lands of the township or fractional township, they shall present a petition to the school commissioner of the county in which the school lands of the township or the greater part thereof, lie, for the sale thereof; which petition shall be signed by at least two-thirds of the white male inhabitants of the township or fractional township, of and over twenty-one years of age. The signing of the petition must be in the presence of two citizens of the township, after the true meaning thereof shall have been explained; and when signed, an affidavit shall be affixed thereto, by the two citizens, proving the signing in the manner aforesaid, and stating the number of white male inhabitants in the township or fractional township, of and over twenty-one years of age; and said petition, so proved, shall be delivered to the school commissioner for his action thereon: *Provided*, That no whole section shall be sold in any township containing less than fifty inhabitants; and common school lands in fractional townships may be sold when the number of inhabitants and number of acres are in the ratio of fifty to six hundred and forty, but not before.

SEC. LXXXVII. When the petition and affidavits are delivered to the school commissioner as aforesaid, he shall notify the trustees of said township thereof, and said trustees shall immediately proceed to divide the land into tracts or lots of such form and quantity as will produce the largest amount of money; and after making such division, a correct plan of the same shall be made, representing all divisions, with each lot numbered and defined, so that its boundaries may be forever ascertained. Said trustees shall then fix a value on each lot, having regard to the terms of sale, certify to the correctness of the plat, stating the value of each lot per acre, or per lot, if less than one acre, and referring to and describing the lot in the certificate, so as fully and clearly to distinguish and identify each lot; which plats and

certificate shall be delivered to the school commissioner, and shall govern him in advertising and selling said lands.

SEC. LXXXVIII. In subdividing common school lands for sale, no lot shall contain more than eighty acres, and the division may be made into town or village lots, with roads, streets or alleys between them and through the same; and all such divisions, with all similar divisions hereafter made, are hereby declared legal; and all such roads, streets and alleys, public highways.

SEC. LXXXIX. The terms of selling common school lands shall be to the highest bidder, for cash, with the privilege to each purchaser of borrowing from the school commissioner the amount of his bid, for any period not less than one nor more than five years, upon his paying interest and giving security, as in case of money loaned by township treasurer, as provided in this act.

SEC. XC. The place of selling common school lands shall be at the court-house of the county in which the lands are situated; or the trustees of schools may direct the sale to be made on the premises; and upon the reception by the school commissioner of the plat and certificate of valuation from the trustees, he shall proceed to advertise the said land for sale, in lots as divided and laid off by said trustees, by posting notices thereof in at least six public places in the county, forty days next anterior to the day of sale, describing the land, and stating the time, terms and place of sale; and if any newspaper is published in said county, said advertisement shall be printed therein for four weeks before the day of sale; if none, then it shall be sold under the notice aforesaid.

SEC. XCI. Upon the day appointed, the school commissioner shall proceed to make sales, as follows, viz.: he shall begin at the lowest number of lots, and proceed regularly to the highest, till all are sold or offered. No lot shall be sold for less than its valuation by the trustees. Sales shall be made between the hours of ten o'clock A. M., and six o'clock P. M., and may continue from day to day. The lots shall be cried separately, and each lot cried long enough to enable any one present to bid who desires it.

SEC. XCII. Upon closing the sales each day, the purchasers shall each pay or secure the payment of the purchase money, according to the terms of sale; or in case of his failure to do so by ten o'clock the succeeding day, the lot purchased shall be again offered at public sale, on the same terms as before, and if the valuation or more shall be bid, shall be stricken off; but if the valuation be not bid, the lot shall be set down as not sold. If the sale is or is not made, the former purchaser shall be required to pay the difference between his bid and the valuation of the lot; and in case of his failing to make such payment, the school commissioner may forthwith institute an action of debt or assumpsit, in his name, as commissioner, for the use of the inhabitants of the township where the land lies, for the required sum; and upon making proof, shall be entitled to judgment, with costs of suit; which, when collected, shall be added to the principal of the township fund. And if the amount claimed does not exceed one hundred dollars, the suit may be instituted before a justice of the peace; but if more than that sum, then in the circuit court of any county wherein the party may be found.

SEC. XCIII. All lands not sold at public sale, as herein provided for, shall be subject to sale at any time thereafter, at the valuation; and school

commissioners are authorized and required, when in their power, to sell all such lands at private sale, upon the terms at which they are offered at public sale.

SEC. XCIV. In all cases where common school lands have been heretofore valued, and have remained unsold for two years after having been offered for sale, or shall hereafter remain unsold that length of time, after being valued and offered for sale in conformity to this act, the trustees of schools where such lands are situated may vacate the valuation thereof, by an order to be entered on book A, of the school commissioner, and cause a new valuation to be made, if, in their opinion, the interests of the township will be promoted thereby. They shall make said second valuation in the same manner as the first was made, and shall deliver to the school commissioner a plat of such second valuation, with the order of vacation to be entered as aforesaid; whereupon said school commissioner shall proceed in selling said lands in all respects as if no former valuation had been made: *Provided*, That the second valuation may be made by the trustees of schools without petition, as provided in this act.

SEC. XCV. Upon the completion of every sale by the purchaser, the school commissioner shall enter the same on book B, and shall deliver to the purchaser a certificate of purchase, stating therein the name and residence of the purchaser, describing the land and the price paid therefor; which certificate shall be evidence of the facts therein stated.

SEC. XCVI. At the first regular term of the county court in each year, the school commissioner shall present to the court of his county, first, a statement showing the sales of school lands made subsequent to the first regular term of the previous year, which shall be a true copy of the sale book, (book B); second, statements of the amount of money received, paid, loaned out, and on hand, belonging to each township or fund under his control, the statement of each fund to be separate; third, statements copied from his loan book, (book C,) showing all the facts in regard to loans which are required to be stated upon the loan book; all of which the county court shall thereupon examine and compare with the vouchers, and the county court, or so many of them as may be present at the term of the court, shall be liable individually to the fund injured, and to the securities of said school commissioner, in case judgment be recovered of said securities, for all damages occasioned by a neglect of the duties, or any of them, required of them by this section: *Provided*, Nothing herein contained shall be construed to exempt the securities of said school commissioner from any liability as such securities, but they shall still be liable to the fund injured, the same as if the county commissioners were not liable.

SEC. XCVII. The school commissioner shall also, at the time aforesaid, transmit to the auditor of public accounts, a full and exact transcript from book B, of all the sales made subsequent to each report. The statement in section ninety-six (96) hereof, required to be presented to the county court, shall be preserved and copied by the clerk of said court into a well-bound book, kept for that purpose, and the list transmitted to the auditor shall be filed, copied and preserved in like manner.

SEC. XCVIII. Every purchaser of common school land shall be entitled to a patent from the State, conveying and assuring the title. Patents shall be made out by the auditor from returns made to him by the school commis-

sioner. They shall contain a description of the land granted; and shall be in the name of and signed by the governor, countersigned by the auditor, with the great seal of the State affixed thereto by the secretary of State, and shall operate to vest in the purchaser a perfect title in fee simple. When patents are executed as herein required, the auditor shall note on the list of sales the date of each patent, in such manner as to perpetuate the evidence of its date and delivery, and thereupon transmit the same to the school commissioner of the proper county, to be by him delivered to the patentee, his heirs or assigns, upon the return of the original certificate of purchase; which certificate, when returned, shall be filed and preserved by the school commissioner.

SEC. XCIX. Purchasers of common school lands, and their heirs and assigns, may obtain duplicate copies of their certificates of purchase, and of patents, upon filing affidavit with the school commissioner in respect to certificates, and with the auditor in respect to patents, proving the loss or destruction of the originals; and such copies shall have all the force and effect of the originals.

SEC. C. An act entitled "An act to establish and maintain common schools," approved February 12, 1849; an act to amend said act, approved February 12, 1851; an act entitled "An act to increase the school fund," approved February 10, 1853; and all other acts and parts of acts coming in conflict with the provisions of this act, are hereby repealed. This act to be in force from and after its passage.

SEC. CI. The public printer is hereby required to print thirty thousand copies of this act, under the direction of the secretary of State, who shall first make a perfect index hereto, to be distributed by him according to population among the several counties of the State, and deposited with school commissioners, to be distributed by them to the directors of the boards of education and township treasurers, for the use of the different officers under this law.

PRIOR LAWS. An act providing for the establishment of free schools; in force Jan. 15, 1825. Laws, 1825, p. 121; Rev. Laws, 1833, p. 556.

An act amending the act providing for the establishment of free schools, approved Jan. 15, 1825, and for other purposes; in force Feb. 17, 1827. Laws, 1827, p. 364. Repealed Feb. 26, 1841.

An act relating to the school lands; in force May 1, 1827. Laws, 1827, p. 366.

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; in force March 1, 1833. Rev. Laws, 1833, p. 562. Repealed Feb. 26, 1841.

An act authorizing a credit on sales of school lands; in force June 1, 1833. Rev. Laws, 1833, p. 566. Repealed Feb. 26, 1841.

An act confirming certain leases of school lands; in force Feb. 22, 1833. Rev. Laws, 1833, p. 566. Repealed Feb. 26, 1841.

An act concerning the school fund; in force Feb. 13, 1833. Rev. Laws, 1833, p. 567.

An act to provide for the distribution and application of the interest on the school, college and seminary funds; in force Feb. 7, 1835. Laws, 1835, p. 22. Repealed Feb. 26, 1841.

An act concerning the school fund; in force Feb. 6, 1835. Laws, 1835, p. 25.

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. Laws, 1835, p. 25. Repealed Feb. 26, 1841.

An act providing for the security of school funds; in force Feb. 12, 1835. Laws, 1835, p. 27. Repealed Feb. 26, 1841.

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;" in force Jan. 15, 1836. Laws, 1836, p. 249. Repealed Feb. 26, 1841.

An act in relation to the title of school and canal lands; in force Jan. 16, 1837. Laws, 1837, p. 153. Repealed Sept. 10, 1845.

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 March 1, 1833, approved Feb. 7, 1837; in force March 4, 1837. Laws, 1837, p. 312.

An act to amend the several acts in relation to common schools; in force March 4, 1837. Laws, 1837, p. 314. Repealed Feb. 26, 1841.

An act explanatory of the act to amend the several acts in relation to common schools, approved March 4, 1837; in force July 21, 1837. Laws, 1837, p. 89.

An act establishing ferries on school lands for the use of the inhabitants of townships; in force Feb. 16, 1838. Laws, 1838, p. 120. Repealed Feb. 26, 1841.

An act to amend an act entitled "An act to amend the several acts in relation to common schools," approved March 4, 1837; in force Jan. 18, 1840. Laws, 1840, p. 90.

An act further to amend the several acts in relation to common schools; in force Feb. 3, 1840. Laws, 1840, p. 96. Repealed Feb. 26, 1841.

An act requiring school commissioners to distribute school funds at the county seats; in force Jan. 31, 1840. Laws, 1840, p. 87.

An act to amend the several laws to provide for the distribution of the interest on the school, college and seminary fund; in force Jan. 7, 1841. Laws, 1841, p. 166.

An act authorizing school commissioners to convey land in certain cases; in force Feb. 25, 1841. Laws, 1841, p. 257.

An act in relation to the school fund; in force Feb. 17, 1841. Laws, 1841, p. 257.

An act making provisions for organizing and maintaining common schools; in force July 1, 1841. Laws, 1841, p. 259. Repealed March 31, 1849.

An act to enable the inhabitants of incorporated townships to dissolve their incorporations; in force Feb. 23, 1843. Laws, 1843, p. 275.

An act to alter the provisions of "An act making provisions for organizing and maintaining common schools," approved Feb. 26, 1841; in force Feb. 20, 1843. Laws, 1843, p. 281.

An act supplementary to an act to establish and maintain common schools; in force May 1, 1845. Laws, 1845, p. 40.

An act to establish and maintain common schools; in force Feb. 26, 1845. Rev. Laws, 1845, chapter 98, "Schools," p. 495; Laws, 1845, p. 51. Repealed March 31, 1841.

An act supplementary to an act to establish and maintain common schools; approved March 1, 1845. Appendix to Rev. Laws, 1845, p. 594.

An act to establish and maintain common schools; in force March 1, 1847. Laws, 1847, p. 119. Repealed March 31, 1849.

An act to amend the 12th section of the act entitled "An act to establish and maintain common schools;" in force Feb. 11, 1847. Laws, 1847, p. 149.

An act to establish and maintain common schools; in force April 13, 1849. Laws, 1849, p. 153. Repealed Feb. 15, 1855.

An act to amend an act, in force April 13, 1849, entitled "An act to establish and maintain common schools;" in force Feb. 15, 1851. Laws, 1851, p. 127. Repealed Feb. 15, 1855.

An act to increase the school fund; in force Feb. 10, 1853. Laws, 1853, p. 90. Repealed Feb. 15, 1855.

An act to provide for the election of State superintendent of public instruction; in force Feb. 23, 1854. Laws, 1854, p. 13.

**DECISIONS.** Judgment for prospective interest cannot be rendered, under the statute regulating the amount of interest to be paid by a delinquent borrower of school funds. *Pearsons v. Hamilton*, 1 S. 415.

The 20 per cent. interest, which delinquent borrowers of school funds are required to pay, under the statute of 1835, is in the nature of a penalty, and should be claimed in the declaration. *Hamilton v. Wright*, 1 S. 582; *Russell et al. v. Hamilton*, 2 S. 56.

In an action by the commissioner of school lands, for the use of the inhabitants of a township, the inhabitants of that township cannot be jurors. *Russell et al. v. Hamilton*, 2 S. 56.

"A." may maintain an action in his individual name, on a note payable to "A.," school commissioner, &c., and he may bring suit by petition and summons, and recover interest, without specially claiming in the declaration the rate of interest specified in the note.

Under the school laws, the school commissioner is the legal agent to receive patents both for the State and the purchaser; and when patents are delivered to him, under the law, the State is divested of the title and it is vested in the purchaser. When lands were sold by the school commissioner for one-fourth cash, and the balance on a credit of one, two and three years, and a certificate given, stipulating that patents should issue to the purchasers, on full payment, it was held, that the certificate did not affect the provisions of the act of 1829, requiring the auditor to forward the patents on receiving the returns of the school commissioner, nor restrain him from issuing them before the expiration of the term of credit. The assignee of a certificate of purchase of school land, assigned after the issue of the patent to the original purchaser, is not entitled, under the act of 1837, to receive the patent in his own name. *The People v. The Auditor*, 2 S. 567.

In an action on the bond of a school commissioner, for the benefit of a township, the breach

alleged that the commissioner had not paid a certain amount to the trustees of that township; it was held, that the treasurer, and not the trustees of the township, is entitled to receive the money. When a township has been incorporated, the money received for the sale of its school lands must be paid to the treasurer. *County Commissioners of Greene County v. Smith et al.*, 3 S. 227.

The General Assembly has power to authorize a sale of school sections, and a note given to a school commissioner, therefore, is for a good and valuable consideration. If the consent of the inhabitants of a township is necessary to a sale of its school lands, that consent is provided for in the statute, requiring a petition for its sale to be signed by three-fourths of the white male adults. *Bradley v. Case*, 3 S. 585.

Commissioners of school lands may sell school lands in town lots or other subdivisions, and a note given therefor is founded on a good and valuable consideration. The act of 1833, allowing a credit on the sale of school lands, is only permissive, and a purchaser cannot object that the terms, of sale were cash or credit, at the option of the buyer. *Barger et al. v. Jones*, 3 S. 613.

A note made to a school commissioner, may be sued in the name of his successor in office, under the act of Feb. 26, 1841. *Mandove v. McHatten et al.*, 4 S. 95.

Under the laws of this State, a township incorporated for common school purposes, is quasi a public corporation, and the General Assembly may change, enlarge, restrain or abolish it, and exercise control over its money and property for the use of those to whom it belongs; may direct how school funds shall be loaned, upon what security, at what rate of interest, in what currency they may be received, and by whom applied. A tender of bills of the State Bank, for a debt due the school fund of a township, made before the issuing of the proclamation of the governor, &c., forbidding their reception, is good, and may be pleaded in bar of an action for recovery. *Bush v. Shipman et al.*, 4 S. 186. See also, *Keyes v. Jasper*, 4 S. 305.

Money in the hands of a school commissioner, on retiring from office, should be delivered over specifically, or in funds of equivalent value, to his successor. *Hamilton et al. v. Cook County*, 4 S. 519.

The inhabitants of a township are not answerable for false representations made by a school commissioner, at a sale of school lands, when he exceeds his legal authority in making such representations. *Cook et al. v. School Commissioner*, 1 G. 537.

A school commissioner was appointed in 1834, and gave bond with sureties. He continued in office from 1834 to 1839, giving bond each year with different sureties. When he went out of office he had not disbursed any of the fund, nor did he pay over to his successor. In a suit on the bond of 1837, it was held, that the commissioner was not re-appointed each year, but had a continuing term of office, and that the sureties of the bond of 1837, were liable for the money in his hands during that year. *Miller et al. v. Macopin County*, 2 G. 50.

Under the act of Jan. 12, 1833, the inhabitants of a township may determine whether their school lands shall be sold on credit, but the terms of the credit are left to the commissioner, and he may contract with the buyer for the payment of interest. *Kidder v. Trustees, &c.*, 5 G. 191.

A debtor to the school fund paid the amount due to a school commissioner, after his removal from office, and knowing such removal: Held, that the successor of the commissioner could recover of the debtor. *Jameson v. Conway*, 5 G. 227.

A school commissioner who loans school money on real estate security, and who, not using due caution by examining the public records, takes as security property to which the borrower has no title, is liable, on his bond, for the full amount of the loan, with interest in arrear. *The People v. Haines et al.*, 5 G. 528.

If a commissioner sell school land without mortgage security, as the law requires, the lien on the land is not lost, and may within a reasonable time be enforced, against subsequent purchasers with notice. *School Trustees v. Wright et al.*, 12 Ill. 432.

A school commissioner, who is required by law to take real security of treble the value of the sum loaned, performs his duty when he takes the best means of learning the value of the security, and therefore believes it sufficient. He would be liable if he did not believe the security adequate, or was guilty of negligence in informing himself. *Greene County v. Bledsoe*, 12 Ill. 267.

The ordinance of 1818, granting section 16 in each township for the use of schools, does not secure to the inhabitants a ferry franchise. Trustees of schools are public corporations, controllable by the General Assembly, and a ferry or other franchise to such a corporation, may be changed or destroyed, as public good requires, so that their property is not diverted from its uses and objects. The sale and title of school lots to one having a ferry franchise thereon, would not be affected by a forfeiture of the franchise. *Trustees of Schools, &c. v. Tatman*, 13 Ill. 27.

Under the school law of 1849, a teacher is entitled to no portion of the school fund, unless before the commencement of the school, he obtain the certificate of qualification, and present it to the school directors. *Casey v. Baldridge et al.*, 15 Ill. 65.

Under the act of Feb. 12, 1849, it is essential to the legality of a school tax, that it be certified to the clerk of the county, on the day required by law. The General Assembly may remedy defects in such tax law, while the tax is yet uncollected. *Cougill et al. v. Long*, 15 Ill. 202.

The penalty of 20 per cent. imposed by the school laws, is imposed only on the borrower, must be specially declared for, is no part of the contract of loan, and is not assignable. *Bradley v. Snyder et al.*, 14 Ill. 263.

The school law of Feb. 12, 1849, includes two classes of cases; one where interest is due and



unpaid, and one where principal is due and unpaid. In the first case, the amount of unpaid interest bears interest at the rate of 12 per cent. per annum, and may be sued for and recovered in a separate action. In the other case, the principal bears interest at the rate of 12 per cent. per annum from the time it becomes due. *Trustees of Schools v. Bibb*, 14 Ill. 371.

## CHAPTER XCIX.

### SHERIFFS AND CORONERS.

#### SECTION

1. Sheriffs, when elected, to be commissioned.
2. To give bond, and take oath of office.
3. Bond and oath to be filed and certified.
4. If sheriff or coroner do not qualify, &c., office to be vacant, and filled as other vacancies.
5. General duties of sheriffs and coroners.
6. Powers as conservators of the peace.
7. Sheriff to attend circuit court; to have custody of court-house and jail.
8. Sheriff to perform duties of office until his successor is elected and qualified; to deliver papers, &c., to successor.
9. May, after expiration of term, collect fee bills, &c.
10. Sheriff may appoint deputy; when sworn, deputy may perform duties of sheriff; sheriff to be liable for his acts.
11. Sheriff and coroner forbidden to purchase property sold by them on execution.
12. No sheriff or deputy to act as county treasurer; treasurer not to act as sheriff or collector.
13. If sheriff shall have failed to pay over money on previous execution, second execution directed to coroner.
14. Sheriff, when to settle with county commissioners' court for taxes collected; to settle with auditor of public accounts; if in arrears, not to be commissioned on re-election; *quietus*.
15. Sheriff or coroner failing or refusing to pay over money collected, what proceedings had against them.
16. Failing to pay over county funds collected, how proceeded against.

#### SECTION

17. Failing to settle with auditor of public accounts, how proceeded against; pay ten per cent. damages.
18. If office of sheriff become vacant, coroner to perform his duties until filled; venue not to be changed on account of interest, &c., of sheriff, but coroner to perform duties.
19. Duty of coroner respecting inquests on dead bodies found.
20. When coroner's jury assembled, foreman to be appointed and oath administered; duty of jury to inquire cause of death.
21. Witnesses, coroner may compel attendance of: when evidence to be reduced to writing, and witness required to appear; penalty for refusing to recognize; coroner to return verdict into the circuit court.
22. Duty of coroner to apprehend suspected persons.
23. Burial of the dead; disposition of his effects.
24. If coroner be absent, magistrate may perform his duties.
25. Execution of deeds by sheriff; before whom to be acknowledged.
26. If sheriff go out of office or die, duties, how performed, and business, how finished.
27. If sheriff, coroner, &c., refuse to pay over money under one hundred dollars, suit may be brought before justice of the peace; securities, how liable; further proceedings.
28. Judgment against sheriff; appeals allowed in certain cases.

[Approved March 3, 1845. Rev. Stat. 1845, p. 513.]

SECTION I. 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.

Sec. II. 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 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.

SEC. III. 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.

SEC. IV. 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 should 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 in other cases of election.

SEC. V. 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.

SEC. VI. 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.

SEC. VII. 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.

SEC. VIII. Whenever the office of any sheriff or coroner 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. IX. 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.

SEC. X. 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 office, 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. XI. No sheriff, deputy 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. XII. No sheriff or deputy sheriff shall be eligible to the office of county treasurer; nor shall any county treasurer be permitted to act as deputy sheriff or collector.

SEC. XIII. The clerk of the circuit court in any county in this State, on the application of the plaintiff in any judgment on which an execution can properly be issued, and an affidavit being filed by such plaintiff, his agent or attorney, that the sheriff has failed to pay over money collected by him on any previous execution in favor of the same plaintiff, or any other person, on demand made therefor by the plaintiff in such previous execution, his agent or attorney, shall issue execution on such judgment, directed to the coroner of the county, who shall be authorized and required to perform all duties in relation to said execution, which the sheriff is authorized and required to perform, where the execution is directed to him.

SEC. XIV. 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 June 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 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. XV. 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 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.

SEC. XVI. 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.

SEC. XVII. 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 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.

SEC. XVIII. In cases 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; and 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 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. XIX. 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 by-standers, 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. XX. 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 of 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 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 same body came to its death, and of all other facts of and concerning the same, together with all material circumstances in anywise related to or connected with the said death, and make up and sign a verdict, and deliver the same to the coroner.

SEC. XXI. 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 witnesses 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 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. XXII. If, at any inquisition held under the authority of this chapter, any person or persons shall be implicated with the unlawful 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 county, there to remain until discharged by due course of law.

SEC. XXIII. 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, however*, This section shall not extend to any person, except he shall have been a stranger or a non-resident.

SEC. XXIV. In the 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 chapter.

SEC. XXV. When the 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.

SEC. XXVI. 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.

SEC. XXVII. 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. XXVIII. 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.

PRIOR LAWS. An act defining the duties of sheriffs and coroners of the State of Illinois; in force March 2, 1819. Laws, 1819, p. 109.

An act for the relief of the several sheriffs of this State; in force Jan. 3, 1821. Laws, 1821, p. 4.

An act for the relief of the several sheriffs of the State of Illinois; in force Jan. 19, 1821. Laws, 1821, p. 19.

An act defining the duties of coroners; in force Jan. 20, 1821. Laws, 1821, p. 22.

An act for the relief of the several sheriffs of the State of Illinois; in force Feb. 6, 1821. Laws, 1821, p. 100.

An act defining the duty of sheriffs and other officers; in force Feb. 8, 1821. Laws, 1821, p. 116.

An act for the relief of the several sheriffs of this State; in force Dec. 23, 1822. Laws, 1822, p. 80.

An act for the relief of ex-sheriffs; in force Jan. 24, 1827. Rev. Laws, 1827, p. 370.

An act concerning sheriffs and coroners; in force June 1, 1827. Rev. Laws, 1827, p. 371; Rev. Laws, 1833, p. 573.

An act to amend an act entitled "An act concerning sheriffs and coroners," approved Feb. 12, 1827; in force Feb. 7, 1831. Rev. Laws, 1833, p. 578.

An act concerning sheriffs and coroners; in force Jan. 7, 1831. Rev. Laws, 1833, p. 578.

An act prescribing the duties of coroners; in force Jan. 20, 1821. Rev. Laws, 1833, p. 578.

An act to amend the law in relation to sheriffs and coroners; in force March 1, 1839. Laws, 1839, p. 217.

An act to regulate the compensation of sheriffs for conveying convicts to the penitentiary; in force March 2, 1839. Laws, 1839, p. 274.

An act concerning sheriffs, coroners, constables, justices of the peace and probate justices of the peace; in force Feb. 1, 1840. Laws, 1839, (Special Sess.) p. 73.

DECISIONS. The ten per cent. damages given by the 14th section of the act of 1827, respecting sheriffs and coroners, is a different remedy from that given by the 30th section of the practice act of 1827; and the plaintiff in execution may avail himself of either. *Beard v. Foreman*, 1 S. 40.

Under the act of Feb. 12, 1827, the clerk of a circuit court acts under the law, and ministerially, in receiving and filing the bond of a sheriff, and administering to him the oaths of office; and these acts may be done in or out of court. By the same statute, the thirty days allowed the sheriff to give bond and take the oath, are to be computed from the time of the notice given him by the clerk; and this, whether a term of court intervene or not. *The People v. Fletcher*, 2 S. 482.

By the statute of 1827, concerning sheriffs and coroners, the sheriff's bond is valid, until disapproved by the court; and such disapproval would vacate the office, but not make void the bond. *Davis v. Haydon et al.*, 3 S. 35.

The law of 1827, which provides that in case of the death of the sheriff, the coroner shall act as sheriff, does not repeal the law of 1825, which provides that the power of the deputy sheriff to act shall not be taken away by the death of the sheriff, but shall continue till the appointment of a new sheriff. *McCluskey v. McNeely*, 3 G. 578.

By section 18, chapter 99, Rev. Stat. 1845, a coroner may go on and finish the execution of process directed to a sheriff, as a new sheriff might who succeeds the old one by election. *Greenup v. State*, 12 Ill. 25.

## CHAPTER C.

### SHOWS AND JUGGLERS.

#### SECTION

1. No shows to be exhibited, or tricks, &c., performed, unless free of charge, until county commissioners' court grant license; forfeiture for neglecting.

#### SECTION

2. Justices of the peace to issue *capias* for offender, on the complaint, or oath, of county commissioner, treasurer, or any citizen of a county.

[Approved March 3, 1845. Rev. Stat. 1845, p. 520.]

SECTION I. 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 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 offense, 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.

SEC. II. 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 *captas* or warrant, and if affidavit be not made, a summons shall be issued.

PRIOR LAWS. An act to prohibit shows of wax figures, tricks of jugglers, &c. in force May 1, 1829. Rev. Laws, 1833, p. 582.

## CHAPTER CL.

### SLANDER.

SECTION	SECTION
1. What words charging another with commission of crime, deemed slanderous and actionable.	2. Charging person with swearing falsely, whether in judicial proceeding or not, actionable.

[Approved March 3, 1845. Rev. Stat 1845, p. 521.]

SECTION I. If any person shall falsely use, utter or publish words, which in their common acceptation 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.

SEC. II. 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 acceptation, amount to such charge, whether the words be spoken in conversation of and concerning a judicial proceeding, or not.

PRIOR LAWS. An act respecting crimes and punishments. Section 9; approved Feb. 12, 1821. Laws, 1821, p. 126.

An act declaring certain words actionable; approved Dec. 27, 1822. Laws, 1823, p. 82; Rev. Laws, 1833, p. 583.

DECISIONS. Where the defendant pleads justification to an action of slander for charging the plaintiff with perjury, he will be held to the same strictness of proof, as in a prosecution for perjury. *Crandall v. Dawson*, 1 G. 556.

In an action of slander for charging the plaintiff with fornication, where the defendant does not justify, he may mitigate damages, by showing the general character of the plaintiff, and by showing facts tending to disprove malice, but which do not tend to prove the truth of the charge; and the same rule of evidence as to general reputation governs as when the character of a witness is sought to be impeached. *Regnier v. Cabot*, 2 G. 34.

Under the statute respecting slander, the words, "Mrs. Edwards has raised a family of children by a negro," do not, in their plain and popular sense, or in common acceptation, amount to a charge of fornication, unconnected with other circumstances. *Patterson et al. v. Edwards et al.*, 2 G. 720.

In an action of slander for charging the plaintiff with fornication, it is immaterial whether the defendant designed or expected to be believed, or not. Malice is inferred from speaking the slanderous words, and if they were used in an unqualified manner, whether in jest or earnest, no legal distinction can be drawn in favor of the speaker. *Hatch v. Potter et ux.*

Repetition of the slander at any time within the statute of limitations, or even after the commencement of the suit, may be proved in aggravation of damages. *Idem.*

The 3rd section, 66th chapter, Rev. Stat. 1845, is confined exclusively to actions for verbal slander, and does not include libel. *Hazel v. Shelby*, 11 Ill. 9.

The act, declaring what words are actionable, is a public law of which the courts will take notice without special reference thereto in the declaration. Words which, in their common acceptation, amount to a charge of having sworn falsely, are actionable, whether spoken of and concerning a judicial proceeding, or not; and are none the less actionable, because the declaration avers that they were spoken in a conversation concerning a judicial proceeding. It is not necessary that the words spoken in a conversation concerning a judicial proceeding, should be spoken under such circumstances as to charge the crime of perjury. Where the declaration is general, that the defendant "swore falsely," a plea of justification will be good, which refers to the time, place and occasion of the false swearing, and alleges the truth of the words spoken. If the declaration allege swearing falsely in a judicial proceeding, without the averments which will make the charge amount to perjury, the defendant may justify by alleging that the plaintiff did swear falsely in the specified proceeding. If the declaration allege that the defendant by his words intended to impute perjury, then the justification must show that the plaintiff did commit perjury. And generally, the justification must be co-extensive with the slander charged. *Sanford v. Gaddis*, 13 Ill. 329. See also, *Darling v. Banks*, 14 Ill. 46.

If the slanderous charge of perjury is with reference to a particular portion of the testimony of a witness only, then if that testimony were immaterial, the words are not actionable. *Idem.*

Proof that slanderous words were used in reference to a bill in chancery, which the defendant, at the time of speaking, supposed and believed the plaintiff had sworn to, when in truth it was sworn to by another, and that the allegations of the bill were false, will not be admitted even in mitigation of damages. Retraction of a slander, if a part of the *res gesta*, and for reparation of the injury, is admissible in evidence to mitigate damages. The venue in slander is transitory. *Owen v. McKean*, 14 Ill. 459.

In slander, the words alleged must be proved; other words of like meaning, or equivalent words or expressions, are not sufficient. The charge "you swore falsely," is not sustained by proof that the words spoken were, "you have sworn false." All the words need not be proved unless all be necessary to make the slander; and proof of additional words will not vitiate, unless they qualify the whole so as to destroy the slander. Words charged as spoken affirmatively, or of a person, will not be sustained by proof of words spoken interrogatively, or to a person. *Sanford v. Gaddis*, 15 Ill. 228.

In slander, the plea of justification, if made in good faith, in the belief that it will be sustained, should not aggravate the damages. *Sloan v. Petrie*, 15 Ill. 425.

## CHAPTER CII.

### STEAM BOATS.

## SECTION

1. How boats on rivers of this State shall be officered and furnished; regulations in ascending and descending navigation.
2. When boats meet in a narrow place, what to be done; in night time, descending boat to keep main channel.
3. Duty of masters and officers; rules and regulations for safety of boat.
4. Responsibility of master and owners; causing death carelessly, deemed manslaughter.

## SECTION

5. Racing forbidden; liability of owners and officers to punishment, and for damages.
6. Landing passengers, regulations respecting.
7. Carrying gunpowder, under what restrictions and regulations; penalty.
8. Punishment for putting gunpowder on boats without informing officers.
9. Copies of this chapter to be posted up on boats; penalty for omitting.

[Approved March 3, 1845. Rev. Stat. 1845, p. 521.]

SECTION I. It shall be 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 ascending 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.

SEC. II. 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 chutes, but shall keep the main channel in order to avoid the ascending boats.

SEC. III. 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.

SEC. IV. The master and owners shall be severally and jointly responsible for damages which any person may sustain by any 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.

SEC. V. 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 the 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.

SEC. VI. 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 it is impracticable or decidedly inconvenient to bring the boat to the shore, they may land the passengers in good, sufficient and comfortable boats, which shall 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 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.

SEC. VII. 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. VIII. 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.

SEC. IX. Copies of this chapter 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.

**PRIOR LAWS.** An act to prevent disasters on steamboats navigating the waters within the jurisdiction of Illinois; in force July 21, 1837. Laws, 1837, (2nd Sess.) p. 89.

**DECISIONS.** The statute of 1845, respecting steamboats, is in some respects in conflict with the act of July 21, 1837, on the same subject, and in those respects the latter law prevails. In case of collision between steamboats, in this State, the one which is out of her proper place, as prescribed by the statute, is *prima facie* wrong, and liable for the damages. A boat, ascending a river, should take the middle of the channel, so that one descending can take either side. In the night, the ascending boat may pass up the small chutes of the river, and the boat descending must keep the main channel, on either side the center thereof. But a boat may not run upon another boat, because the latter may be out of her proper course, and in the proper course of the former; proper and ordinary diligence must be used to avoid a collision, and he who does not use such diligence, will be answerable for the consequences. *Moore v. Moss*, 14 Ill. 106.

### CHAPTER III. SURVEYORS.

#### SECTION

1. County surveyors, when elected; term of office.
2. Surveyors to be commissioned.
3. Surveyors to be sworn.
4. Duty of county surveyor.
5. May appoint deputies, who shall be sworn.
6. Chainmen to be employed and sworn.
7. Surveys, how made; perpetuating surveys; to furnish proprietor with field notes; to keep a record

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8. of his surveys; certified copies of such record to be *prima facie* evidence.
8. Records of surveyors to be delivered to successor, penalty for refusal; act or record of surveyor not to be conclusive, but may be reviewed.
9. Two or more persons owning land in same claim, to have land surveyed by county surveyor.
10. Said survey to be recorded.
11. Duty of assessor.

[Approved March 3, 1845.

Rev. Stat. 1845, p. 523.]

(1.) SECTION I. County surveyors shall be elected in the several counties in this State on the first Monday in August, on the expiration of the terms of those now in office, and every fourth year thereafter. When so elected, they shall continue in office for the term of four years, and until their successors are elected and qualified.

(2.) SEC. II. The election of county surveyors shall in all things be conducted, and returns thereof made to the office of the secretary of State, as provided by the chapter regulating elections; and upon such election being made, the governor shall commission such county 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 surveyor of the receipt of his commission.

(3.) SEC. III. 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 indorsed on his commission.

(4.) SEC. IV. 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.

(5.) SEC. V. 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.

(6.) SEC. VI. All chainmen necessary, shall be employed by the person wanting surveying done. They shall be good and disinterested persons, to be approved by the surveyor, and they shall be sworn by the surveyor to measure justly and exactly, to the best of their knowledge.

(7.) SEC. VII. It shall be the duty of all county surveyors, previous to their making any survey, under the authority of this chapter, 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 surveyors 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 established, 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.

(8.) SEC. VIII. 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, shall 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.

An Act authorizing the Survey of certain Lands therein named.

[Approved Dec. 31, 1844. App. Rev. Stat. 1845, p. 606.]

(9.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in any case, when two or more persons shall own or be in possession of separate parcels of land, situate



in the same claim and survey, or legal subdivision of land, they may have the same surveyed by the county surveyor of the county in which the land is situated. The said surveyor, when required thereto, shall survey the lot of each proprietor in said claim and survey, or other legal subdivision of land, and make a plat thereof, designating the respective shares of each proprietor, by figures appropriately fixed therein, and specifying the number of acres in each lot, and certifying that the same was surveyed by him in conformity to law.

(10.) SEC. II. The proprietors of said lots of land may have the said survey and certificate recorded in the recorder's office of their respective counties; for which service of recording, the said officers shall receive for each lot, ten cents in full compensation.

(11.) SEC. III. It shall be the duty of the assessor in each county to enter for taxation in his books, all lands liable to taxation in each claim and survey so platted and recorded, by the numbers of the respective lots, designating the claim and survey, and the number of acres in each lot, and their value, in separate columns, the taxes on which shall be paid and received by their respective numbers.

PRIOR LAWS. An act for the appointment of surveyors for the several counties of this State; in force Jan. 31, 1821. Laws, 1821, p. 62. Repealed June 1, 1829.

An act supplemental to an act entitled "An act for the appointment of surveyors for the several counties of this State;" in force Feb. 9, 1821. Laws, 1821, p. 117. Repealed June 1, 1829.

An act regulating the appointment and duties of county surveyors; in force June 1, 1829. Rev. Laws, 1833, p. 591.

DECISIONS. The provision of the 5th section of the act in force June 1, 1829, respecting surveyors, that "all chainmen necessary shall be employed by the person wanting surveying done," does not apply to surveyors of town plats, but to the establishing of lines and corners of sections of public lands, and the subdivisions thereof, as surveyed by the United States. *Pearsons et al. v. Bailey*, 1 S. 507.

## CHAPTER CIV.

### TOWNSHIP ORGANIZATION.

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An Act to provide for Township Organization.

[Approved Feb. 17, 1851. Laws, 1851, p. 35.]

ARTICLE FIRST.

(1.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That at any general election that may be holden in the several counties in this State, the qualified voters in any*

county may vote for or against township organization in any county in this State.

(2.) SEC. II. The county court, on petition of fifty legal voters of said county, shall cause to be submitted to the voters of the county, the question of township organization under this act, by ballot, to be written or printed, or partly written or partly printed, "For township organization," or "Against township organization," to be canvassed and returned in like manner as votes for State and county officers.

(3.) SEC. III. The clerks of the county court shall enter an abstract of the returns of said election, to be made out and certified as in elections for State and county officers, record the same at length upon the record of the county court of the county, and shall certify the same to the auditor of public accounts.

(4.) SEC. IV. If it shall appear by the returns of said election that a majority of the legal voters of said county are for township organization, then the county so voting in favor of its adoption shall be governed by and subject to the provisions of this act on and after the first Tuesday of April next succeeding: *Provided*, That a majority of the voters voting at such election shall be taken and deemed a majority of the voters of said county.

(5.) SEC. V. The county court shall, at its next session, appoint three commissioners, residents of the county, to divide the county into towns or townships, and the said commissioners' services shall be audited by the first board of supervisors, and paid by the county.

(6.) SEC. VI. The commissioners shall proceed to divide such county into towns, by making as many towns as there are townships, according to government surveys. Where fractions of townships are caused by the county lines not being in accordance with the surveyed townships, then the commissioners may attach such fractions to adjoining towns, where the number of inhabitants or the amount of territory shall not be sufficient for a separate town. Where a surveyed township shall have too few inhabitants for a separate organization, then such township may be added to some adjoining town, or such township may be divided between two or more towns for the time being. And when creeks or rivers may so divide such townships as to be inconvenient for transacting town business, then such creek or river may be made the town boundary, and the town fractions so formed may be disposed of as fractions caused by county lines.

(7.) SEC. VII. Towns shall be named in accordance with the express wish of the inhabitants of the town, and if there shall not be a degree of unanimity as to the name, the commissioners may designate the name.

(8.) SEC. VIII. The commissioners so appointed shall make a written report of their proceedings, giving the names and bounds of each town, and present such report to the clerk of the county court, on or before the first day of March next succeeding.

(9.) SEC. IX. The clerk of the county court shall thereupon make out notices for each town, designating a suitable place for holding the first town meeting in such town, which shall be holden on the first Tuesday of April next thereafter, and shall deliver such notice to the sheriff of the county, who shall cause the same to be posted in not less than three of the most public places of the township, and not less than fifteen days before the first Tuesday in April aforesaid.

(10.) SEC. X. Each clerk of the county court shall, within thirty days after receiving such report of the commissioners, transmit, by mail, to the auditor of public accounts of this State, an abstract of such report, giving the bounds of each town, and the names designated; and said clerk shall record, in a book for the purpose, a description of each town, as fully as the report of the said commissioners.

(11.) SEC. XI. If the auditor of public accounts, on comparing the abstracts of the reports from the several counties, shall find that any two or more townships have names alike, he shall transmit to the clerk of the county court of the county or counties which have to alter the name or names of such town or towns, and the board of supervisors of such county shall, at its next meeting thereafter, adopt for such town some name different from those heretofore named, so that no two towns organized under this act shall be named alike, and when such name shall be adopted, the clerk of the county court shall inform the auditor of public accounts, as before directed.

(12.) SEC. XII. The auditor of public accounts shall make a record of the names and boundaries of the several towns organized under this act.

## ARTICLE SECOND.

(13.) SEC. I. Each town, as a body corporate, has capacity—

1st. To sue and be sued, in the manner prescribed in the laws of this State;

2nd. To purchase and hold lands within its own limits, and for the use of its inhabitants, subject to the power of the General Assembly;

3rd. To make such contracts, purchase and hold such personal property as may be necessary to the exercise of its corporate or administrative powers; and

4th. To make such orders for the disposition, regulation or use of its corporate property as may be deemed conducive to the interest of its inhabitants.

(14.) SEC. II. No town shall possess or exercise any corporate powers, except such as are enumerated in this act, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted.

(15.) SEC. III. All acts or proceedings by or against a town, in its corporate capacity, shall be in the name of such town, but every conveyance of lands within the limits of such town, made in any manner, for the use or benefit of its inhabitants, shall have the same effect as if made to the town by name.

## ARTICLE THIRD.

(16.) SEC. I. The citizens of the several towns of this State, qualified by the constitution to vote at general elections, shall annually assemble and hold town meetings in their respective towns, on the first Tuesday of April, at such place in each town as the electors thereof, at their annual town meetings, shall from time to time appoint; and notice of the time and place of holding such meeting shall be given by the town clerk, by posting up written or printed notices in three of the most public places in said town, at least ten days prior to said meeting.

(17.) SEC. II. There shall be chosen, at the annual town meeting in each town, one supervisor, one town clerk, one assessor, one collector, one overseer of the poor, three commissioners of highways, two constables, two justices of the peace, as many overseers of highways as there are road districts in the town, and so many pound-masters as the electors may determine: *Provided*, That justices of the peace and constables shall be elected only once in four years, except to fill vacancies, and such justices and constables shall be successors to precinct justices and constables: *Provided*, *further*, That any town having eight hundred or more legal voters, shall be entitled to elect one additional supervisor.

(18.) SEC. III. The assessor and commissioners of highways elected in every town shall, by virtue of their office, be fence viewers of such town.

(19.) SEC. IV. The electors of each town shall have power, at their annual town meetings,

1st. To determine the number of pound-masters, and the locality of pounds;

2nd. To elect such town officers as may be required to be chosen;

3rd. To direct the institution or defense of suits at law or in equity, in all controversies where such town shall be interested;

4th. To direct such sum to be raised in such town, for prosecuting or defending such suit, as they may deem necessary;

5th. To make rules and regulations for ascertaining the sufficiency of all fences in such towns, and for impounding animals;

6th. To determine the time and manner in which cattle, horses, mules, asses, hogs, sheep or goats, shall be permitted to go at large;

7th. To impose such penalties on persons offending against any rule or regulation established by such town, except such as relate to the keeping and maintaining of fences, as they may think proper, not exceeding ten dollars for each offense; and

8th. To apply such penalties, when collected, in such manner as they may deem most conducive to the interest of such town.

(20.) SEC. V. Special town meetings shall be held to supply vacancies in the several cases hereinafter provided for. They shall be held when the supervisors, town clerk and justices of the peace, or any two of them, together with at least twelve other freeholders of the town, shall, in writing, file in the office of town clerk a statement, that a special meeting is necessary to the interest of the town; and the town clerk, or, in case of his absence, the supervisor, shall post up notices in five of the most public places in the town, giving at least ten days' notice of such special town meeting, and such meeting shall act on no subject that shall not be specified in the notice calling such meeting.

## ARTICLE FOURTH.

(21.) SEC. I. The electors present, at any time between the hours of nine and ten o'clock in the forenoon of the day on which there is an annual or special town meeting, shall be called to order by the town clerk, if there be one; in case there be none, or he is not present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such town meeting.

(22.) SEC. II. The town clerk last before elected or appointed, shall

be the clerk of the town meeting, and shall keep faithful minutes of its proceedings, in which he shall enter at length every order or direction, and all rules and regulations made by such meetings.

(23.) SEC. III. If the town clerk be absent, then such person as shall be chosen for that purpose by the electors present shall act as clerk of the meeting.

(24.) SEC. IV. Town meetings shall be kept open from the time of opening in the morning until the setting of the sun, unless the voters present may, by vote, adjourn one hour, from twelve till one o'clock.

(25.) SEC. V. All questions upon motions made at town meetings shall be determined by the majority of the electors voting; and the officer presiding at said meeting shall ascertain and declare the result of the votes upon each question.

(26.) SEC. VI. If any person offering to vote at any election, or upon any questions arising at such town meeting, shall be challenged as an unqualified voter, the presiding officer shall proceed thereupon in like manner as the judges at general elections are required, adapting the oath to the circumstances of the town meeting.

(27.) SEC. VII. No person shall be a voter at any town meeting unless he shall be qualified to vote at general elections, and has been for the last thirty days an actual resident of the town wherein he shall offer to vote.

(28.) SEC. VIII. The minutes of the proceedings of every town meeting, subscribed by the clerk of said [meeting,] and by the presiding officer, shall be filed in the office of town clerk, within two days after such town meeting.

#### ARTICLE FIFTH.

(29.) SEC. I. Before the electors shall proceed to elect any town officer, proclamation shall be made of the opening of the polls, by the town clerk, and proclamation shall in like manner be made of each adjournment, and of the opening and closing of the polls, until the election is ended.

(30.) SEC. II. The supervisor, town clerk, assessor, overseer of the poor, collector, commissioners of highways, constables and justices of the peace, shall be chosen by ballot; all other officers shall be chosen either by ballot, by yeas and nays, or by dividing the electors, as the electors of the meeting may determine.

(31.) SEC. III. When the electors vote by ballot, all the officers voted for shall be named in one ballot, which shall contain, written or printed, or partly written and partly printed, the names of the persons voted for, and the offices to which such persons are intended to be chosen, and shall be delivered to the presiding officer so folded as to conceal the contents.

(32.) SEC. IV. When the election is by ballot, a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote shall be received.

(33.) SEC. V. When the election is by ballot, the presiding officer shall deposit the ballots in a box provided for that purpose.

(34.) SEC. VI. At the close of every election by ballot, the presiding officer shall proceed publicly to canvass the votes; which canvass, when commenced, shall be continued, without adjournment or interruption, until the same be completed.

(35.) SEC. VII. The canvass shall be conducted by taking a ballot at a time from the ballot box, and continue counting until the number of ballots are equal to the number of names on the poll list, and if there shall be any left in the box, they shall be immediately destroyed, and such persons as shall have the greatest number of votes shall be declared to be elected. If, on opening the ballots, two or more ballots shall be found to be so folded that it shall be apparent that the same person voted them, the presiding officer shall destroy such votes immediately.

(36.) SEC. VIII. The canvass being completed, a statement of the result shall be entered at length, by the clerk of the meeting, in the minutes of its proceedings, to be kept by him as before required, which shall be publicly read by him to the meeting, and such reading shall be deemed notice of the result of the election, to every person whose name shall have been entered on the poll list as a voter.

(37.) SEC. IX. The clerk of every town meeting, within ten days thereafter, shall transmit to any person elected to any town office, whose name shall not have been entered on the poll list as a voter, a notice of his election.

#### ARTICLE SIXTH.

(38.) SEC. I. No person shall be eligible to any town office, unless he shall have been one year a resident of such town.

(39.) SEC. II. Every person chosen to the office of supervisor, town clerk, assessor, overseer of the poor, and commissioner of highways and collector, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe, before some justice of the peace, such oath or affirmation of office as is prescribed by law.

(40.) SEC. III. Such person shall, within eight days thereafter, cause such certificate to be filed in the office of the town clerk.

(41.) SEC. IV. If any person chosen or appointed to either or any of the town offices above enumerated, shall neglect to take and subscribe such oath, and cause the certificate thereof to be filed as above required, such neglect shall be deemed a refusal to serve.

(42.) SEC. V. Every person chosen or appointed to the office of overseer of highways or pound-master, before he enters on the duties of his office, and within ten days after he shall have been notified of his election or appointment, shall cause to be filed in the office of town clerk, a notice signifying his acceptance of such office. A neglect to cause such notice to be filed, shall be deemed a refusal to serve.

(43.) SEC. VI. Every person chosen or appointed to the office of collector, before he enters upon the duties of his office, and within eight days after he receives notice of the amount of taxes to be collected by him, shall execute to the supervisor of the town, and his successor in office, and lodge with him a bond, with one or more sureties, to be approved by such supervisor in double the amount of such taxes, conditioned for the faithful execution of his duties as such collector.

(44.) SEC. VII. The supervisor shall, within six days thereafter, file such bond, with his approval indorsed thereon, in the office of the recorder, who shall make an entry thereof in a book to be provided for the purpose,

in the same manner in which judgments are recorded, and every such bond shall be a lien on all the real estate, severally, of such collector within the county at the time of the filing thereof, and shall continue to be such lien until its conditions, together with all costs and charges which may accrue by the prosecution thereof, shall be fully satisfied.

(45.) SEC. VIII. Every person chosen to the office of constable, before he enters upon the duties of his office, and within eight days after he shall be notified of his election or appointment, shall take and subscribe the oath of office prescribed by law, and shall execute, in the presence of the supervisor or town clerk of the town, with one or more sureties to be approved of by such supervisor or town clerk, an instrument in writing, in which such constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay, on account of any executions which shall be delivered to him for collection, by virtue of his office.

(46.) SEC. IX. The supervisor or town clerk shall, if approved, indorse such approval on such instrument, which shall be his approval of the sureties therein named, and then shall cause the same to be filed in the office of the town clerk; and a copy of such instrument, certified by the town clerk, shall be presumptive evidence in all courts of the execution thereof by such constable and his sureties.

(47.) SEC. X. All actions against a constable or his sureties, upon such instrument, shall be prosecuted within two years after the expiration of the year for which the constable named therein shall have been elected or appointed.

(48.) SEC. XI. If any person, chosen or appointed to the office of collector or constable, shall not give such security and take such oath as is required above, within the time limited for that purpose, such neglect shall be deemed a refusal to serve.

(49.) SEC. XII. If any person, chosen or appointed to the office of supervisor, town clerk, assessor, commissioner of highways or overseer of the poor, shall refuse to serve, he shall forfeit to the town the sum of twenty-five dollars.

(50.) SEC. XIII. If any person, chosen or appointed to the office of overseer of highways or pound-master, shall refuse to serve, he shall forfeit to the town ten dollars.

(51.) SEC. XIV. If any town officer, who is required by law to take the oath of office, shall enter upon the duties of his office before he shall have taken such oath, he shall forfeit to the town the sum of fifty dollars.

(52.) SEC. XV. Town officers, except justices of the peace and constables, shall hold their office for one year, and until others are chosen or appointed in their places, and are qualified. The justices of the peace and constables shall hold their offices for four years, or until others are chosen and qualified.

## ARTICLE SEVENTH.

(53.) SEC. I. If any town shall neglect, at its annual town meeting, to choose its proper town officers, or either of them, for any vacancy occurring, it shall be lawful for the justices of the peace, together with the supervisor and town clerk, or by warrant under their hands and seals, to appoint such

officers, and the persons so appointed shall hold their respective offices until others are chosen or appointed in their places, and shall have the same powers and be subject to the same duties and penalties as if they had been duly chosen by the electors; and in case any town in any county wherein township organization has been adopted, or shall hereafter be adopted, shall refuse or neglect to organize for the election of officers, the board of supervisors may annex said town to any adjoining town, and the said town so annexed shall hereafter form and constitute a part of said adjoining town.

(54.) SEC. II. The justices and supervisors or town clerks making such appointments, shall cause such warrants to be forthwith filed in the office of the town clerk, and forthwith give notice to each person appointed.

(55.) SEC. III. The justices of the peace of a town may, for sufficient cause shown to them, accept the resignation of any town officer of their town, and whenever they shall accept any such resignation, they shall forthwith give such notice thereof to the town clerk of the town.

## ARTICLE EIGHTH.

(56.) SEC. I. The moderator chosen by the electors to preside at the annual or special town meeting, shall regulate the business and proceedings thereof, and shall decide all questions of order, and shall make public declaration of all votes passed. When any vote so declared by him shall, upon such declaration, be questioned by one or more of the electors present, he shall make the vote certain by causing the voters to rise and be counted, or by dividing off.

(57.) SEC. II. If any person shall conduct in a disorderly manner, and after notice from the moderator, shall persist therein, the moderator may order him to withdraw from the meeting, and on his refusal, may order a constable or other person to take him from the meeting, and confine him in some convenient place until the meeting shall adjourn; and the person so refusing to withdraw, shall, for such offense, further forfeit a sum not exceeding ten dollars, for the use of the town.

(58.) SEC. III. If any moderator shall, at any town meeting, before the poll is closed, read or examine, or permit any person to read or examine the names on any voter's ballot, with the view of ascertaining any candidate voted for by him, such moderator shall forfeit to the use of the town the sum of twenty-five dollars.

(59.) SEC. IV. Before the moderator or the presiding officer of any town meeting, shall enter upon the duties of his office, he shall take an oath faithfully and impartially to discharge the duties of such office; which oath may be administered by the town clerk or other proper officer.

## ARTICLE NINTH.

(60.) SEC. I. The supervisor of each town shall receive and pay over all moneys raised therein, for defraying town charges, except those raised for the support of highways and bridges. Said supervisor shall give bond, with one or more sureties, conditioned for the faithful discharge of his duties in relation to the town revenue; such bond to be approved by the town clerk and filed in his office, with such approval indorsed thereon.

Whenever the town clerk shall ascertain that such bond has been forfeited, he shall institute suit, in the name and for the use of the inhabitants of the town, against such supervisor.

(61.) SEC. II. He shall prosecute, in the name of the town or otherwise, as may be necessary, for all penalties of fifty dollars and under, given by law to such town, or for its use, and for which no other officer is specially directed to prosecute; and no person shall be disqualified from being a witness or juror in such suit, by reason of his being an inhabitant of said town.

(62.) SEC. III. He shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, in a book to be provided for that purpose, at the expense [of the town,] and said books to be delivered to his successor in office.

(63.) SEC. IV. On Tuesday preceding the annual town meeting, he shall account with the justices of the peace and town clerk of the town, or a majority of them, for the disbursement of all moneys received by him in his official capacity.

(64.) SEC. V. At every such accounting, the justices and town clerk, or a majority of them, shall enter a certificate in the supervisor's office book of accounts, showing the state of his accounts at the date of the certificate.

(65.) SEC. VI. The supervisor of each town shall attend the annual meeting of the board of supervisors of the county, and at every adjourned or special meeting of said board, of which he shall have notice.

(66.) SEC. VII. He shall receive all accounts which may be presented to him against the town, and shall lay them before the board of town auditors, at or before their annual meeting.

(67.) SEC. VIII. He shall lay before the board of supervisors such copies of entries concerning moneys voted to be raised in his town, as shall be delivered to him by the town clerk.

(68.) SEC. IX. If any supervisor shall refuse or shall willfully neglect to perform any of the duties of his office contained in the preceding section, he shall forfeit to the town the sum of fifty dollars, and be disqualified to act as the supervisor of said town.

#### ARTICLE TENTH.

(69.) SEC. 1. The town clerk of each town in this State shall have the custody of all records, books and papers of the town, and he shall duly file all certificates of oaths and other papers required by law to be filed in his office.

(70.) SEC. II. He shall transcribe in the book of records of his town, the minutes of the proceedings of every town meeting held therein, and he shall enter in his book every order or direction, and all rules and regulations by any such town meeting.

(71.) SEC. III. He shall deliver to the supervisor, before the annual meeting of the board of supervisors of the county, in each year, certified copies of all entries of votes for raising money, made since the last meeting of the board of supervisors, and recorded in the town book.

(72.) SEC. IV. The town clerk, immediately after the election or appointment of any justice of the peace, or the qualifying of any constables elected

or appointed in their respective towns, shall return to the county clerk of their respective counties, the names of such justices and constables.

(73.) SEC. V. If any town clerk shall willfully omit to make such return, such omission is hereby declared to be a misdemeanor, and on conviction thereof, the person so offending shall be adjudged to pay a fine not exceeding ten dollars.

(74.) SEC. VI. Copies of all papers duly filed in the office of the town clerk, and transcripts from the book of records, certified by him, shall be evidence in all courts, in like manner as if the originals were produced.

#### ARTICLE ELEVENTH.

(75.) SEC. I. In each town, the supervisors, town clerk and justice of the town, shall constitute a board of auditors to examine the accounts of the overseers of the poor and the commissioners of highways for such town, for moneys received and disbursed by them.

(76.) SEC. II. The board of auditors of town accounts shall meet for the purpose of examining the same annually, in each town in the State, on the Tuesday preceding the annual town meeting to be held in such town.

(77.) SEC. III. The accounts so audited [shall] be delivered, with the certificate of the auditors or a majority of them, to the town clerk, to be by him kept on file for the inspection of any of the inhabitants of the town. They shall also be produced by the town clerk at the next annual meeting, and shall be there read by him.

(78.) SEC. IV. The board of auditors, composed of the same officers then in office, shall, at the same time and place as in section two, examine and audit all charges and claims against their respective towns, and the compensation of all town officers, except supervisors, for county services.

(79.) SEC. V. The said board shall make a certificate, to be signed by a majority of said board, specifying the nature of the claim or demand, and to whom the amount is allowed, and shall cause said certificate to be delivered to the town clerk of said town, to be by him kept on file for the inspection of any of the inhabitants of said town, and the aggregate amount shall be delivered to the supervisor, to be by him laid before the board of supervisors, at their annual meeting. The board of supervisors shall cause the amount of said charges to be levied upon the property of said town, and collected as other taxes are levied and collected. The claims and compensation audited and allowed, shall be read to the electors at the next annual meeting as directed in section three.

#### ARTICLE TWELFTH.

(80.) SEC. I. The following town officers shall be entitled to compensation, at the following rates, for each day necessarily devoted by them to the service of the town in the duties of their respective offices:

(81.) SEC. II. The town clerk, assessor, overseer of the poor, and commissioners of highways, shall receive for their services one dollar and fifty cents per day, when attending to business out of town, and one dollar for business in their town: *Provided*, That the town clerk shall be paid fees for the following, and not a per diem: for serving notices of election upon



town officers, as required by law, twenty-five cents each; for filing any paper required by law to be filed in his office, ten cents each; for posting up notices required by law, twenty-five cents each; for recording any order or instrument of writing authorized by law, six cents for each one hundred words; for copying any record in his office and certifying the same, six cents for every one hundred words, to be paid by the person applying for the same.

(82.) SEC. III. The pound-master shall be allowed the following fees for his services, to wit: for taking into the pound and discharging therefrom every horse, ass or mule, and all neat cattle, ten cents each; for every sheep or lamb, three cents each; and for every [hog], large or small, five cents.

#### ARTICLE THIRTEENTH.

(83.) SEC. I. Whenever any controversy or cause of action shall exist between any towns of this State, and between any town and individual or corporation, such proceedings shall be had, either at law or equity, for the purpose of trying and finally settling such controversy, and the same shall be conducted in the same manner, and the judgment or decree therein shall have the like effect, as in other suits or proceedings of a similar kind between individuals and corporations.

(84.) SEC. II. In all such suits and proceedings, the town shall sue and be sued by its name, except where town officers shall be authorized by law to sue in their name of office, for the benefit of the town.

(85.) SEC. III. But no towns, or their officers, shall be required to appear, answer or plead to any such suit or action at the first term of the court after the commencement thereof, (when the same shall be commenced in the circuit court,) unless the process aforesaid shall be served as herein directed, at least thirty days before the commencement of the term.

(86.) SEC. IV. In all legal proceedings against the town by name, the first process, and all other proceedings required to be served, shall [be] served on the supervisor of the town, and whenever any suit or proceeding shall be commenced, it shall be the duty of the supervisor to attend to the defense thereof, and to lay before the electors of the town, at the first town meeting, a full statement of such suit or proceeding, for their direction in regard to the defense thereof.

(87.) SEC. V. On the trial of every action in which a town will be a party or interested, the electors and inhabitants of such town shall be competent witnesses and jurors, except that in suits and proceedings by and against towns, no inhabitant of either town shall be a juror.

(88.) SEC. VI. Any person [action] in favor of a town which, if brought by an individual, could be prosecuted before a justice of the peace, may be prosecuted by such town in like manner, before any such justice, but no action to recover shall be brought [before] any of the justices of the peace residing in the town for the benefit of which the same is prosecuted, but all such actions may be brought before any one of the justices of the peace residing in any other town in the same county.

(89.) SEC. VII. Whenever any [action] shall be brought to recover a penalty imposed for any trespass committed on the lands belonging to the town, if it shall appear on the trial thereof that the actual amount of injury

to such town lands, in consequence of such trespass, exceeds the sum of twelve dollars and fifty cents, then the amount of the actual damage, with costs of suit, shall be recovered in said action, instead of any penalty for the same trespass imposed by the town meeting, and such recovery shall be a bar to every other suit for the same trespass.

(90.) SEC. VIII. Whenever by any decree or decision in any suit or proceeding brought to settle any controversy in relation to town commons, or other lands the common property of a town, or for the partition thereof, the right of any town shall be settled and confirmed, the court in which such proceeding shall be had, may partition such lands according to right of the parties.

(91.) SEC. IX. In all suits or proceedings prosecuted by or against towns, or by and against town officers, in their name of office, costs shall be recovered as in like cases between individuals. Judgments recovered against a town or against town officers, in actions prosecuted by or against them in their name of office, shall be a town charge, and when levied and collected, shall be paid to the person or persons to whom the same shall have been adjudged.

#### ARTICLE FOURTEENTH.

(92.) SEC. I. Whenever the inhabitants of any town shall determine, at an annual town meeting, to erect one or more pounds therein, the same shall be kept under the care and direction of such pound-masters as shall be chosen or appointed for that purpose.

(93.) SEC. II. The inhabitants of any town may, at any annual town meeting, discontinue any pounds therein.

(94.) SEC. III. The following shall be deemed town charges:

1st. The compensation of town officers for services rendered their respective towns;

2nd. Contingent expenses necessarily incurred for the use and benefit of the town;

3rd. The moneys authorized to be raised by the vote of a town meeting for any town purposes; and

4th. Every sum directed by law to be raised for any town purpose.

(95.) SEC. IV. The moneys necessary to defray the town charges of each town, shall be levied on the taxable property in such town, in the manner prescribed in the act for raising revenue and other moneys for State and county purposes and expenses.

(96.) SEC. V. Whenever the term of any supervisor, town clerk, commissioner of highways or overseer of the poor, shall expire, and other persons shall be elected or appointed to such office, it shall be the duty of such successor or successors, immediately after he or they shall have entered on the duties of the office, to demand of his or their predecessor all the books and papers under his or their control belonging to such office.

(97.) SEC. VI. Whenever either of the officers above named shall resign, or the office become vacant in any way, and another person shall be elected or appointed in his stead, the person so elected or appointed shall make such demand of his predecessor, or of any person having charge of such books and papers.

(98.) SEC. VII. It shall be the duty of every person so going out of

office, whenever thereto required, pursuant to the foregoing provisions, to deliver, upon oath, all the records, books and papers in his possession, or in his control, belonging to the office held by him; which oath may be administered by the officer to whom such delivery shall be made. It shall also be the duty of every supervisor, commissioner of highways and overseer of the poor, so going out of office, at the same time, to pay over to such successor the balance of moneys remaining in his hands, as ascertained by the auditors of town accounts.

(99.) SEC. VIII. Upon the death of any of the officers enumerated, the successor of such officer shall make such demand as above provided, of the executors or administrators of such deceased officer, and it shall be the duty of such executors or administrators to deliver, upon the like oath, all records, books and papers in their possession, or under their control, belonging to the office held by their testator or intestate.

## ARTICLE FIFTEENTH.

(100.) SEC. I. Each county, as a body corporate, has capacity,—

- 1st. To sue and be sued, in the manner prescribed by law;
- 2nd. To purchase and hold land within its own limits, and for the use of its inhabitants, subject to the power of the General Assembly over the same;
- 3rd. To make such contracts, and to purchase and hold such personal property, as may be necessary to the exercise of its corporate or administrative powers; and
- 4th. To make such orders for the disposition, regulation or use of its corporate property as may be deemed conducive to the interests of its inhabitants.

(101.) SEC. II. No county, under this organization, shall possess or exercise any corporate powers except such as are enumerated in this act, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or given.

(102.) SEC. III. All acts and proceedings by or against a county in its corporate capacity, shall be in the name of the board of supervisors of such county, but every conveyance of land within the limits of such county, made in any manner for the use and benefit of its inhabitants, shall have the same effect as if made to the board of supervisors.

(103.) SEC. IV. The powers of a county as a body politic can only be exercised by the board of supervisors thereof, or in pursuance of a resolution by them adopted.

## ARTICLE SIXTEENTH.

(104.) SEC. I. The supervisors of the several cities and towns of the counties of this State that shall adopt the town system under this act, shall meet annually, in their respective counties, for the dispatch of business, as a board of supervisors. They may also hold special meetings, at such times and places as they may find convenient, and shall have power to adjourn from time to time, as they may deem necessary.

(105.) SEC. II. The annual meetings of the board of supervisors shall be holden on the second Monday in September in each and every year, at the county seat, and if the court-house be deemed convenient, to be held therein.

(106.) SEC. III. The board of supervisors, at their first meeting in every year, shall organize by choosing one of their number as chairman, who shall preside at all meetings of the board during the year. In case of his absence at any meeting, the members present shall choose one of their number as temporary chairman.

(107.) SEC. IV. The board of supervisors of each county in this State, shall have power, at their annual meetings, or at any other meeting,

- 1st. To make all such orders, concerning the corporate property of the county, as they may deem expedient;
- 2nd. To audit all accounts chargeable against such county, and to direct the raising of such sums as may be necessary to defray the same;
- 3rd. To audit the accounts of town officers and other persons, against their respective towns, as are not otherwise by law provided for, and to direct the raising of such sums as may be necessary to defray the same;
- 4th. To appropriate funds to aid in the construction of roads and bridges in any part of their respective counties, whenever a majority of the whole board of the county may deem it proper and expedient; and
- 5th. To perform all other duties, not inconsistent with this act, which may be required of or enjoined on them by any law of this State to the county courts.

(108.) SEC. V. A majority of the supervisors of any county shall constitute a quorum for the transaction of business, and all questions which shall arise at meetings, shall be determined by the votes of the majority of the supervisors present, except in such cases as is otherwise provided.

(109.) SEC. VI. The board of supervisors shall sit with open doors, and all persons may attend their meetings.

(110.) SEC. VII. Every chairman of the board of supervisors shall have power to administer an oath to any person, concerning any matter submitted to the board, or connected with their powers and duties.

(111.) SEC. VIII. The clerk of the county court shall be clerk of the board of supervisors, and whose general duty shall be,

- 1st. To record in a book, to be provided for that purpose, all the proceedings of the board;
- 2nd. To make regular entries of all the resolutions or decisions on all questions concerning the raising or payment of moneys, or for the regulating of affairs under their control;
- 3rd. To record the vote of the supervisors on any question submitted to the board, if required by any member of the board; and
- 4th. To file and preserve all accounts acted upon by the board.

(112.) SEC. IX. The clerk shall receive a reasonable compensation for his services, to be fixed by the board, to be paid by the county.

(113.) SEC. X. The books, records and accounts of the board of supervisors shall be deposited with the clerk, and shall be open without reward, to the examination [of all persons.]

(114.) SEC. XI. It shall be the duty of the clerk to designate upon every account upon which any sum shall be audited and allowed by the board, and the charges for which the same was allowed; and he shall deliver to any person who may demand it, a certified copy of any account on file in his office, on receiving from such person five cents for every one hundred words contained in said copy.

(115.) SEC. XII. It shall be the duty of the several boards of supervisors, as often as it shall be necessary, to build court-houses and jails, or cause the same to be repaired, in their respective counties, at the expense of such counties.

(116.) SEC. XIII. It shall be the duty of the board of supervisors to take charge of the poor, and the management of the poor-house in their respective counties that is given to the county commissioners' court, and the overseers of the poor of the several towns shall be accountable to, and their compensation shall be audited by, the board of supervisors, and paid by the county.

(117.) SEC. XIV. Each member of the board of supervisors shall be allowed a compensation for his services and expenses in attending the meetings of the board, or for attending to any other business for the benefit of the town or county, at the rate of one dollar and fifty cents per day, to be audited by the board and paid by the county.

(118.) SEC. XV. If any supervisor shall willfully refuse or neglect to perform any of the duties which are or shall be required of him by law, as a member of the board of supervisors, he shall, for every such offense, forfeit the sum of two hundred dollars.

#### ARTICLE SEVENTEENTH.

(119.) SEC. I. Every person elected or appointed to the office of county treasurer, shall, within ten days after he is notified of his election or appointment, file, in the office of the county clerk, a written acceptance of the office of treasurer, and, before he enters upon the duties of his office, shall give bond to the supervisors of the county, with two or more sufficient sureties, to be approved of by the board of supervisors, and in such sum as they shall direct, conditioned that such person shall faithfully execute the duties of his office, and shall pay, according to law, all moneys which shall come to his hands as treasurer, and render a just and true account thereof to the board of supervisors, or to the auditor of public accounts of this State, when thereunto required.

(120.) SEC. II. Such bond, when approved by the board of supervisors, shall be entered upon the records and filed in the office of the county clerk. Said clerk shall forward a certified copy thereof to the auditor of public accounts, who shall file the same in his office; and such copy shall have the same force and effect as the original bond. County treasurer's bonds shall be a lien against their real estate.

(121.) SEC. III. It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatever source they may be derived, and all moneys belonging to the State, which by law are directed to be paid to him, and to pay and apply such moneys in the manner required by law.

(122.) SEC. IV. The county treasurer shall keep a just and true account of the receipts and expenditures of all moneys, in a book or books to be kept for that purpose, which books shall be provided at the expense of the county.

(123.) SEC. V. The county treasurer shall have the same power to collect the taxes charged against the delinquent or non-resident lands or town lots, and to make sale thereof for the same, as is now or may here-

after be vested in the sheriff or collector under the general laws of this State, and shall account for and pay over the State tax in like manner and at the same time that county collectors are required to pay over said tax. Said treasurer shall be entitled to like fees for delinquent real estate, and for traveling to the seat of government, as county collectors are entitled to under the revenue laws. The county treasurer shall, within twenty days after having completed the collection of the delinquent tax, deposit the assessment rolls or tax books returned by the town collectors, in the office of the county clerk.

(124.) SEC. VI. At the annual meeting of the board of supervisors, or at such other times as they shall direct, the county treasurer shall exhibit to them all his books and accounts, and all vouchers relating to the same, to be credited and allowed.

(125.) SEC. VII. Upon the death, resignation or removal from office of any county treasurer, all the books and papers belonging to his office, shall be delivered to his successor in office, upon his oath, or in case of his death, upon the oath of his executors or administrators. In case such treasurer shall have left the county, a demand may be made of any one having charge of the books or papers belonging to said office, who shall surrender them up, and on oath, if required.

(126.) SEC. VIII. If any such preceding county treasurer, or in case of his death, if his executors or administrators shall refuse or neglect to deliver such books, papers and moneys, upon oath, when lawfully required or demanded, every such person shall forfeit, for the use of the county, the sum of one thousand dollars.

(127.) SEC. IX. The county treasurer shall be allowed two per cent. on the amount of State tax received and paid over into the State treasury, and shall be allowed one per cent. for receiving the county and town tax, and one per cent. for laying out the same: *Provided*, That he shall not be allowed any commission for paying over to a successor.

(128.) SEC. X. Whenever any county treasurer shall fail or refuse to pay over the county revenue, the board of supervisors shall cause suit to be prosecuted on his bond, and the auditor shall have the same power to prosecute suit against the county treasurers, on the copy of their bonds, as is allowed by law for prosecuting suits against county collectors.

(129.) SEC. XI. All moneys recovered in any such action shall be paid or appropriated for the uses contemplated or directed by law.

#### ARTICLE EIGHTEENTH.

(130.) SEC. I. Every person shall be assessed in the town or district where he resides, for all the lands then owned by him within such town or district.

(131.) SEC. II. Land owned by a person residing in a town or district where the same is situated, but occupied by another person, may be assessed in the name of the owner or occupant, at the election of the assessor.

(132.) SEC. III. All lands owned by any person which are not situated in the town or district where such owner may reside, shall be taxed as non-resident, and assessed as hereinafter provided for.

(133.) SEC. IV. Every person shall be assessed in the town or district

where he resides when the assessment is made, for all personal estate owned by him, including all such personal estate in his possession or under his control as trustee, guardian, executor or administrator, and in no case shall property held under either of these trusts be assessed against any other person.

(134.) SEC. V. The real estate of all incorporated companies, liable to taxation, shall be assessed in the town or district in which the same shall lie, in the same manner as real estate of individuals. All the capital stock of every incorporated company, liable to taxation, shall be assessed in the town or district where the principal office of said company is located or business transacted. In the case of toll-bridges, the company owning such bridge shall be assessed in the town or district in which the tolls are collected. In the case of a stage company, the horses and stages shall be taxed in the town or district where they are usually kept.

#### ARTICLE NINETEENTH.

(135.) SEC. I. It shall be the duty of the clerk of the county court, in each and every county where they have organized into townships, to procure or prepare, in conformity with the instructions with which he may from time to time be furnished by the auditor of public accounts, blanks or books, properly ruled and with suitable heading, for the use of the assessors of the several towns or districts in his county, a suitable number of which shall always be ready for the assessors throughout the county, and each assessor shall call for the same on or before the first day of May in each and every year. The expense of procuring the same shall be audited by the board of supervisors, and paid out of the county treasury. He shall also furnish each assessor with a list of all taxable lands within their respective towns or districts as have not been heretofore furnished.

(136.) SEC. II. Between the first days of May and July in each year, the assessor shall proceed to ascertain, by diligent inquiry, the names of all the taxable inhabitants in their respective towns or districts, and also the taxable property, real or personal, within the same.

(137.) SEC. III. They shall set down, in the separate columns, as headed for each article of taxable property, according to their best information and judgment, in accordance with the revenue laws of this State.

(138.) SEC. IV. When a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such, with the addition of his name to his representative character.

(139.) SEC. V. The assessor shall complete the assessment rolls on or before the first day of August in each year, and shall forthwith cause notices thereof to be posted up in three or more of the most public places in the town, ward or district.

(140.) SEC. VI. Such notices shall set forth the time and place where he will meet with the town clerk and supervisor of the town, to correct the roll; which time of meeting shall not be less than ten days from completing the assessments, nor more than fifteen days from the time of such completion.

(141.) SEC. VII. The assessor, town clerk and supervisor shall attend at the time and place specified in the notice, and on the application of any person conceiving himself aggrieved, they shall review the assessment, and when the person objecting thereto shall make an affidavit that the value of

his personal estate does not exceed a certain sum specified in such affidavit, the assessor shall reduce the assessment to the sum specified in such affidavit, and if he or any other one objects to the valuation put upon any of their real estate, the board shall hear the objections, and may reduce the same, if a majority of the board think it advisable, and in such case the assessor shall correct his list.

(142.) SEC. VIII. The oath required by the preceding section may be administered by the assessor, town clerk or supervisor.

(143.) SEC. IX. After the assessment is corrected according to the provisions of section seven of this article, the assessor shall sign the assessment roll, and shall sign and attach thereto a certificate in the following form:

"I do hereby certify that I have set down in the above assessment roll, as corrected, all the real estate situated in the town (or district, as the case may be,) according to my best information, and that I have estimated the value of the real estate at the sum which I have deemed to be the true value thereof; and also that the said assessment rolls contain, as corrected, a true statement of the aggregate amount of taxable personal estate of each and every person named in the said roll, excluding such stocks as are otherwise taxable; and that, with the exception of those cases in which the value of such personal estate has been sworn to by the owner or possessor, I have estimated the same according to my best information and belief."

(144.) SEC. X. The assessors, in the execution of their duties, shall use the forms and pursue the instructions which shall from time to time be transmitted to them by the auditor of public accounts, or furnished them by the county clerks.

(145.) SEC. XI. In assessing the lands and town lots in any town or district, the assessor shall list the same in numerical order, placing each separate section, and, as far as practicable, each government subdivision of a section, by itself, and shall return the assessment roll, certified, to the clerk of the county court, on or before the first day of September in each year.

(146.) SEC. XII. The clerk, upon the receipt of the several assessment rolls, shall carefully compare the same with the list of taxable land on file in his office, correcting all errors which he may discover, and add to the roll of the proper town the name of the purchaser, and the description of all such lands as have been omitted by the assessor which are liable to taxation. He shall then make a fair copy of the several assessment rolls; which copy, together with the original, shall be laid before the board of supervisors, at their annual meeting in each year; for which service said clerk shall be allowed a sum not exceeding two cents for each tract of land, and one cent on each town lot contained in said rolls, and where the real estate and personal property are separate, one half cent for each person's name and valuation of personal property contained in said rolls.

(147.) SEC. XIII. If any assessor shall willfully refuse or neglect to perform any of the duties required of him by this act, he shall forfeit to the people of this State the sum of fifty dollars, and be liable for all damages sustained by any such refusal or neglect.

#### ARTICLE TWENTIETH.

(148.) SEC. I. The board of supervisors of each county in this State, at their annual meeting, shall examine the assessment rolls of the several towns in their county, for the purpose of ascertaining whether the valuations in one town or district bear just relation to all the towns and districts in

the county, and they may increase or diminish the aggregate valuation of real estate in any town or district, by adding or deducting such sum upon the hundred as may, in their opinion, be necessary to produce a just relation between all the valuations of real estate in the county, but they shall, in no instance, reduce the aggregate valuations of all the towns and districts below the aggregate valuation thereof as made by the assessor. They may make such alterations in the descriptions of the lands of non-residents as they shall deem necessary, and they shall assess the value of all such lands as have been omitted by the assessor and listed by the clerk, and cause the same to be placed opposite the description of said lands in a column prepared for that purpose.

(149.) SEC. II. They shall, at their annual meeting, fix upon a certain rate upon the hundred dollars to be levied upon the taxable property, both real and personal, in their respective counties, for county purposes, which they shall cause to be entered upon their record, and they shall, at the same time, also enter upon their record the amount to be collected in each town in their respective counties for town purposes. They shall carefully compare the copy made by the county clerk with the original assessment roll, and when so compared and corrected, they shall cause the taxes to be extended on the copy. They shall also cause to be indorsed on the original assessment roll, the amount per cent. levied on each one hundred dollars' worth of valuation, as taxes thereon, under the hand of their chairman, attested, by the clerk and seal of the county court; which roll shall remain in the county clerk's office until the month of March next thereafter. The town clerks shall call on the county clerk during the month of March in each year, for the original assessment rolls of the previous year of their respective towns; which rolls they shall file in their respective offices for the use of the town.

(150.) SEC. III. They shall cause to be estimated and set down, in a separate column to be prepared for that purpose in the copied assessment roll, opposite the several sums set down as the valuations of real and personal estate, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax thereon.

(151.) SEC. IV. They shall also cause to be added up and set down the aggregate valuation of the real and personal estate in the several towns and districts, as corrected by them, and the county clerk shall transmit to the auditor of public accounts, by mail, a certificate of such aggregate valuation, showing separately the aggregate valuation of real and personal estate, and the amount of State and county tax.

(152.) SEC. V. The board of supervisors shall cause the copied and corrected assessment roll of each town or district in their respective counties, with the taxes extended thereon, to be delivered to the collector of such town or district, on or before the fifteenth day of November in each year.

(153.) SEC. VI. To each assessment roll so delivered to a collector, a warrant, under the hand and seal of the chairman of the board of supervisors, attested by the county clerk and seal of the county court, shall be annexed, commanding such collector to collect from the several persons named in the assessment roll, the several sums mentioned in the last column of such roll, opposite their respective names. The warrant directed to the collector of a town shall direct the collector, out of the moneys to be collected, after deducting the compensation to which he may legally be entitled,

to pay over to the commissioners of highways the amount of tax collected for the support of highways and bridges, and to the supervisor of the town all other moneys which shall have been collected therein, to defray any other town expenses; to the township treasurers the school fund tax, and to the county treasurer the State and county tax collected by them. The county treasurer shall pay over to the proper officers the amount of tax collected by them on the delinquent real estate.

(154.) SEC. VII. In all cases the warrant shall authorize the collector, in case any person named in such assessment roll shall neglect or refuse to pay his tax, to levy the same by distress and sale of the goods and chattels of such person, and it shall require all payment therein specified to be made by such collector on or before the fifteenth day of February next ensuing.

(155.) SEC. VIII. The chairman of the board of supervisors and county clerk, as soon as the assessment rolls have been delivered to the several collectors, with such warrants annexed, shall transmit, under their hands and seals of the county court, to the treasurer of the county, an account thereof, stating the names of the several collectors, the amount of money they are respectively to collect, the purposes for which the same are to be collected, and the persons to whom and the time when the same are to be paid; and the county treasurer, on receiving such accounts, shall charge to each collector the sums to be collected by him.

#### ARTICLE TWENTY-FIRST.

(156.) SEC. I. Every collector, upon receiving the tax list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call at least once on the person taxed, or at his or her place of residence, if in the town or district for which such collector has been chosen, and shall demand payment of the taxes charged to him on his property.

(157.) SEC. II. In case any person shall refuse or neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same.

(158.) SEC. III. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisement, to be posted up in at least three public places in the town where such sale is to be made. The sale shall be by public auction.

(159.) SEC. IV. If the property distrained shall be sold for more than the amount of the taxes, the surplus shall be returned to the person in whose possession such property was when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner.

(160.) SEC. V. In case any person upon whom any tax shall be assessed, under the provisions of this act, in any city or town of this State, shall have removed out of such city or town after such assessment, and before such tax, which now is or hereafter may be assessed, in any district of any city or in any town, upon the estate of such person situated out of the city or town in which he shall reside, and within the county, it shall be lawful, in

either of those cases, for the collector of said city or town to levy and collect such tax of the goods and chattels of the person assessed, in any district within said cities, or in any town within the said county to which such person shall have removed, or in which he shall reside.

(161.) SEC. VI. Every collector shall pay over, within one week after the time mentioned in his warrant for paying the moneys directed to be paid to the town officers of his town and to the county treasurer, the sums required in such warrant to be paid to them respectively, first retaining the compensation to which he may be legally entitled. The town officers to whom any such moneys shall be paid, shall deliver to the collector duplicate receipts therefor, one of which shall be filed by the collector with the county treasurer, for the amount therein stated to have been received, and no other evidence of such payment shall be received by the county treasurer.

(162.) SEC. VII. Whenever any greater amount of taxes shall be assessed in any town than the town charges thereof, and its proportion of the tax and county charges, the surplus shall be paid by the collector to the supervisor of the town, who shall hold the same until wanted by the town to pay any town expenses.

(163.) SEC. VIII. The collectors shall receive the tax on the part of any lot, piece or parcel of land charged with taxes: *Provided*, The persons paying such tax shall furnish a particular specification of the part; and if the tax on the remainder of such lot or parcel of land shall remain unpaid, the collector shall enter such specification in his return to the county treasurer, to the end that the part on which the tax remains unpaid may be clearly known.

(164.) SEC. IX. If any part on which the tax shall be so paid be an undivided share, then the person paying the same shall state to the collector who is the owner of such share, that it may be excepted in case of a sale for the tax on the remainder, and the collector shall enter the name of such owner on his account of arrears of taxes.

(165.) SEC. X. If any of the taxes entered in his tax bill annexed in his warrant shall remain unpaid, and the collector shall not be able to collect the same in the time required by his warrant, he shall then deliver to the county treasurer his tax book, and a list containing a description of such taxes due and unpaid; and on making oath before the county treasurer, or, in case of his absence, before any justice of the peace, that the sums mentioned in said list remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to or in the possession of the person so charged with or liable to pay such sums whereon he could levy the same, he shall be credited by the county treasurer the amount thereof, and the county treasurer shall give the collector a receipt for the same.

(166.) SEC. XI. If any person, chosen or appointed to the office of collector of any town, district or city in this State, shall refuse to serve, or shall die, resign, or remove out of the town, district or city, or the office becomes vacated in any other way, before he shall have entered upon or completed the duties of his office, or shall in any way be disabled from completing the same, the supervisor and justices of such town or district, or any two of them, shall forthwith appoint a collector for the remainder of the year, who shall give the like security, and be subject to the like penalties, and have the same powers and compensation as the collector in whose place

he was appointed, and the supervisor or town clerk shall forthwith give notice of such appointment to the county treasurer. But such appointment shall not exonerate the former collector or his sureties from any liability incurred by him or them.

(167.) SEC. XII. If a warrant shall have been issued as by law provided, prior to any appointment under the last section, the original warrant, if the same can be obtained, shall be delivered to the collector so appointed, and shall be considered as giving him the same powers as if originally issued to him. But if such warrant cannot be obtained, a new one shall be made out by the clerk of the board of supervisors of the county, and shall be signed by the chairman of the board of supervisors, in the same way and manner as the original was, which shall be directed to the collector so appointed; and upon every such appointment the supervisor of the town or district, if he shall think it necessary, may extend the time limited for the collection of the taxes, for a period not exceeding thirty days, of which extension he shall forthwith give notice to the county treasurer. The collector so appointed shall keep an account of all collections made by the former collector, so far as he can ascertain the same, and when any one shall present a receipt for taxes paid to the former collector, he shall mark against the amount of taxes so paid, to whom paid, and the time when paid.

(168.) SEC. XIII. If any collector shall refuse or neglect to pay to the general town officers of his town, or to the county treasurer, the sums required by his warrant to be paid to them respectively, or either of them, or to account for the same as unpaid, the county treasurer shall, within twenty days after the time when such payments ought to have been made, issue a warrant, under his hand and seal, directed to the sheriff of the county, commanding him to levy such sums as shall remain unpaid and unaccounted for by such collector, of the goods and chattels, lands and tenements of such collector, and to pay the same to the county treasurer, and to return such warrant within forty days after the date thereof; which warrant the county treasurer shall immediately deliver to the sheriff of the county. But no such warrant shall be issued by the county treasurer, for the collection of moneys payable to town officers, without proof, by the oath of such town officers, of the refusal or neglect of the collector to pay the same, or account therefor as above provided.

(169.) SEC. XIV. The sheriff to whom such warrant is directed shall immediately cause the same to be executed, and shall make return thereof to the county treasurer, within the time specified, and shall pay to him the money received by virtue thereof, deducting from his fees the same compensation that the collector would have been entitled to retain. Such part of the moneys, if any, as ought to have been paid by the collector to the town officers, shall be paid by the county treasurer to the officers to whom the collector was directed to pay the same; but if the whole amount of moneys due from the collector shall not be collected in such warrant, the county treasurer shall first retain the amount which ought to have been paid him, before making any payment to the town officers.

(170.) SEC. XV. If the whole sum due from the said collector shall be collected, the sheriff shall so state in his return; but if part only, or if no part of such sum shall be collected, the sheriff shall note in his return the amount levied, if any, exclusive of his fees, and shall also certify that such



collector has no goods or chattels, land or tenements in his county, from which the moneys or the residue thereof, as the case may be, could be levied, and in either case the county treasurer shall forthwith give notice to the supervisor of the town or district of the amount due from such collector.

(171.) SEC. XVI. The supervisor shall forthwith cause the bond of such collector to be put in suit, and shall be entitled to recover thereon the sum due from such collector, with costs of suit, and the moneys recovered shall be applied and paid to the supervisor, in the same manner in which it was the duty of the collector to have applied and paid the same.

(172.) SEC. XVII. If any sheriff shall neglect to return any such warrant, or to pay the money levied thereon, within the time limited for the return of said warrant, or shall make any other return than such as is above mentioned, the county treasurer shall forthwith proceed to collect the whole sum directed to be levied by such warrant, by a proper suit hereof, [therefor,] and he may proceed in the first instance by a writ of attachment against the goods and chattels, lands and tenements, rights and credits, of such sheriff, and the same proceeding may be had thereon, in the proper court, as is now provided by law in ordinary cases of attachment.

(173.) SEC. XVIII. In case the county treasurer shall fail to collect such moneys by attachment or suit, as is provided for in the next preceding section hereof, he shall certify to the auditor of public accounts that he has issued such warrant, stating its contents, that the sheriff has neglected to return the same in the manner required by law, or to pay the money levied thereon, as the case may be, and that he has pursued the remedy, by attachment or suit, without effect.

(174.) SEC. XIX. The auditor of public accounts shall give notice thereof to the attorney general, or any one acting as such, who shall immediately prosecute such sheriff and his sureties for the sum due on such warrant; which sum, when collected, shall be paid to the treasurer of this State, and by him, on the warrant of the auditor of public accounts, to the county treasurer, the county part thereof: *Provided*, That any such proceeding may be had under the general laws of this State.

(175.) SEC. XX. Upon the settlement of the amount of taxes directed to be collected by any collector, in any of the towns or cities in this State, the county treasurer shall, if requested, give to such collector, or any of his sureties, a satisfaction piece in writing, and shall acknowledge the same before some person authorized to take acknowledgments of deeds.

(176.) SEC. XXI. Upon the production of such satisfaction piece, acknowledged as aforesaid, the recorder of the county shall enter satisfaction of record of the collector's bond, which shall be discharged.

(177.) SEC. XXII. The officer taking and returning such acknowledgment, shall be entitled to the same fees as for taking and entering acknowledgments of satisfaction of a deed or mortgage.

(178.) SEC. XXIII. The collector of any town shall be entitled to three per cent. on all moneys collected by him, as his compensation.

#### ARTICLE TWENTY-SECOND.

(179.) SEC. I. The commissioners of highways in the several towns in this State, shall have the care and superintendence of highways and bridges therein; and it shall be their duty:

1st. To give directions for the repairing of the roads and bridges in their respective towns;

2nd. To regulate the roads already laid out, and to alter such of them as they or a majority of them shall deem proper, as hereinafter provided;

3rd. To cause such roads used as highways as have been laid out but not sufficiently described, and such as have been used for twenty years, but not recorded, to be ascertained, described and entered of record in the town clerk's office;

4th. To cause the highways and bridges, which are or may be erected over streams intersecting highways, to be kept in repair;

5th. To divide their respective towns into so many road districts as they shall deem convenient, by writing, under their hands, to be lodged with the town clerk, and by him to be entered in the town book; such division to be made annually, if they shall think it necessary, and in all cases to be made at least ten days before the annual town meeting;

6th. To assign to each of the said road districts, such of the inhabitants liable to work on highways as they shall think proper, having regard to proximity of residence as much as may be; and

7th. To require the overseers of highways, from time to time, and as often as they shall deem necessary, to warn all persons to work on highways, to come and work thereon, with such implements, carriages, sleds, cattle or teams as the said commissioners or any one of them, shall direct.

(180.) SEC. II. The commissioners of highways of each town shall render to the board of town auditors, at their annual meeting for auditing the accounts of town officers, an account in writing, stating,

1st. The labor assessed and performed in such town;

2nd. The sums received by such commissioners for fines and commutations, and all other moneys received under this act;

3rd. A statement of the improvements necessary to be made on such roads and bridges, and an estimate of the probable expense of making such improvements, beyond what the labor to be assessed in that year and the road tax will accomplish;

4th. Also, a statement in writing of all expenses and damages in consequence of laying out, altering or discontinuing roads.

(181.) SEC. III. It shall be the duty of the commissioners of highways of each town to cause suitable guide-boards to be put up at such places as they may deem necessary.

(182.) SEC. IV. It shall be the duty of the overseers of highways in each town,

1st. To repair and keep in order the highways within their several districts for which they shall have been elected;

2nd. To warn all persons from whom road labor is due, to work on the highways, at such times and places, within their several districts, as they may think proper;

3rd. To collect all fines and commutation money, and to execute all lawful orders of the commissioners of highways; and

4th. To deliver to the clerk of the town, within sixteen days after their election or appointment, a list subscribed by such overseer, of the names of all the inhabitants in his road district who are liable to work on the highways.

(183.) SEC. V. The commissioners of highways, whenever they shall think it necessary, may direct and empower any overseer of highways in their respective towns, to procure a good and sufficient iron or steel shod scraper and plow, or either of them, for the uses of his road district, to be paid for by moneys arising from commutation and fine within the district.

(184.) SEC. VI. If any person, chosen or appointed to the office of overseer of highways, shall refuse to serve, or if his office shall become vacant, the commissioners of highways of the town shall, by warrant under their hands, appoint some other person in his stead, and the overseer so appointed shall have the same powers, be subject to the same orders, and liable to the same penalties, as overseers chosen at the town meeting.

(185.) SEC. VII. The commissioners making the appointment shall cause such warrant to be forthwith filed in the office of the town clerk, who shall give notice to the person appointed, as in other cases.

(186.) SEC. VIII. Every overseer of highways who shall refuse or neglect to perform any of the duties of this act, or which may be lawfully enjoined on him by the commissioners of highways of his town, and for the omission of which a penalty is hereinafter provided, shall, for every such refusal or neglect, forfeit the sum of ten dollars, to be sued for by the commissioners of highways of the town, and when recovered, to be applied by them in making and improving the roads and bridges therein.

(187.) SEC. IX. The commissioners of highways of each town shall meet within eighteen days after they shall be chosen, at the town clerk's office, on such day as they shall agree upon, and afterwards at such other times and places as they shall think proper.

(188.) SEC. X. The town clerk shall deliver the lists filed by the overseers to the commissioners of highways of the town, who shall proceed to ascertain, estimate and assess the highway labor and road tax to be performed and paid in their town the next ensuing year.

(189.) SEC. XI. 1st. Every male inhabitant, being above the age of twenty-one years and under the age of fifty, (excepting paupers, idiots, lunatics, and such others as are exempt by law,) shall be assessed at least two days in each and every year.

2nd. The commissioners of highways shall assess a road tax on all real estate liable to taxation of the town, to any amount they may deem necessary, not exceeding twenty cents on each one hundred dollars' worth, as valued on the assessment roll of the previous year.

3rd. They shall affix to the name of each person named in the lists so furnished by the overseers, the number of days assessed to each person for highway labor, and also a description of each tract of land and the name of the owner, if known, with the valuation thereof, as taken from the assessment roll of the previous year, and the amount of road tax assessed thereon, in a separate column. The lists so prepared shall be subscribed by the commissioners, and deposited with the town clerk, to be filed in his office.

(190.) SEC. XII. The commissioners shall direct the clerk of the town to make a copy of each list, and shall subscribe such copies; after which they shall cause the several copies to be delivered to the respective overseers of highways of the several districts in which the highway labor is assessed. One copy for each overseer shall contain the name and number of days assessed to each person, the other the land road tax.

(191.) SEC. XIII. The names of persons left out of any such list, and of new inhabitants, shall from time to time be added to the several lists, and they shall be rated by the overseers in the same proportion, to work on the highways, as others rated by the commissioners on such list, subject to an appeal to the commissioners.

(192.) SEC. XIV. It shall be the duty of the commissioners of highways of each town, to credit such persons as live on private roads and work the same, so much on account of their assessment as such commissioners shall deem necessary to work such private road, or to annex such private road to some of the highway districts.

(193.) SEC. XV. The town clerk shall, within ten days after the commissioners of highways have filed in his office the amount of road tax assessed on the real estate of the town, post a notice on the outer door of the house where the town meeting was last held, stating the amount of road tax assessed on each one hundred dollars' worth of the real estate of the town, and that all persons interested can pay the same in labor on the highways, under the direction of the overseers of highways in the districts where the land is situated.

#### ARTICLE TWENTY-THIRD.

(194.) SEC. I. It shall be the duty of overseers of highways to give at least three days' notice to all persons assessed to work on the highways, and residing within the limits of their respective districts, of the time and place when and where they are to appear for that purpose, and with what implements; but no person being a resident of the town shall be required to work on any highway other than in the district in which he resides, except he resides in a district on a town line, which district belongs to an opposite town, and unless he shall elect to work in some district where he has any land; and in such case he may, with the approbation of the commissioners of highways, apply the work assessed in respect to such land in the district in which the same is situated.

(195.) SEC. II. Every person liable to work on the highways shall work the whole number of days for which he shall have been assessed, but every such person, other than an overseer of highways, may elect to commute for the same, or for some part thereof, at the rate of seventy-five cents per day; in which case such commutation money shall be paid to the overseer of highways of the district in which the person commuting shall reside, to be applied and expended by such overseer in the improvement of the roads and bridges in the same district.

(196.) SEC. III. Every person intending to commute for his assessment, or any part thereof, shall, within twenty-four hours after he shall be notified to appear and work on the highways, pay the commutation money for the work required of him by such notice, and the commutation shall not be considered as complete until such money be paid.

(197.) SEC. IV. Every overseer of highways shall have power to require a team or a cart, wagon or plow, with a pair of horses or oxen, and a man to manage them, from any person having the same within his district, who shall have been assessed two days or more and who shall not have commuted for his assessment, and the person furnishing the same upon

such requisition shall be entitled to a credit of two days for each day's service therewith.

(198.) SEC. V. Every person assessed to work on the highways and warned to work, may appear in person or by an able-bodied man as a substitute, and the person or substitute so appearing shall actually work eight hours in each day, under a penalty of twelve and a half cents for every hour such person or substitute shall be in default, to be imposed as a fine on the person assessed.

(199.) SEC. VI. If any such person or his substitute shall, after appearing, remain idle or not work faithfully, or hinder others from working, such offender shall, for every offense, forfeit the sum of one dollar.

(200.) SEC. VII. Every person so assessed and duly notified, who shall not commute, and who shall refuse or neglect to appear as above provided, shall forfeit for every day's refusal or neglect, the sum of one dollar. If he was required to furnish a team, carriage, man or implements, and shall refuse or neglect to comply, he shall be fined as follows:

1st. For wholly omitting to comply with such requisition, three dollars for each day.

2nd. For omitting to furnish a cart, wagon or plow, one dollar for each day.

3rd. For omitting to furnish a pair of horses or oxen, one dollar for each day.

4th. For omitting to furnish a man to manage the team, one dollar each day.

(201.) SEC. VIII. It shall be the duty of every overseer of highways, within six days after any person so assessed and notified shall be guilty of any refusal or neglect, for which a penalty or fine is prescribed in this act, unless a satisfactory excuse shall be rendered to him for such refusal or neglect, to make complaint, on oath, to one of the justices of the peace of the town.

(202.) SEC. IX. The justice to whom such complaint shall be made, shall forthwith issue a summons, directed to any constable of the town, requiring him to summon such delinquent to appear forthwith before such justice, at some place, to be specified in the summons, to show cause why he should not be fined according to law, for such refusal or neglect, which summons shall be served personally, or by leaving a copy at his personal abode.

(203.) SEC. X. If, upon the return of such summons, no sufficient cause shall be shown to the contrary, the justice shall impose a fine as is provided in this act for the offense complained of, and shall forthwith issue a warrant, under his hand and seal, directed to any constable of the town where such delinquent shall reside, commanding him to levy such fine, with the costs of proceedings, of the goods and chattels of such delinquent.

(204.) SEC. XI. The constable to whom such warrant shall be directed, shall forthwith collect the moneys therein mentioned. He shall pay the fine, when collected, to the justice of the peace who issued the warrant, who is hereby required to pay the same to the overseer who entered the complaint, to be by him expended in improving the roads and bridges in the district of which he is overseer.

(205.) SEC. XII. Every penalty collected for refusal or neglect to appear and work on the highways, shall be set off against his assessment upon which

it was founded, estimating every dollar collected as a satisfaction for one day's work.

(206.) SEC. XIII. The acceptance by an overseer of any excuse for refusal or neglect, shall not, in any case, exempt the person excused from commuting for or working the whole number of days for which he shall have been assessed during the year.

(207.) SEC. XIV. Each and every overseer of highways shall be entitled to one dollar per day, to be paid out of fines and commutation money, for every day he is necessarily employed in the execution of his duties as overseer, beyond the amount of his own highway labor and road tax—the number of days to be accounted to and audited by the commissioners of highways: *Provided*, That when there are no funds from fines and commutations, the commissioners may pay the overseers out of other funds in their hands, if they think proper.

(208.) SEC. XV. It shall be the duty of the overseer of highways to warn all residents of his district, against whom a land road tax is assessed, giving them three days' notice to work out the same upon the highways, and he shall receive such tax in labor from every able-bodied man, or his substitute, at the rate of seventy-five cents per day, and any person or his agent may pay such tax in road labor at the rate of seventy-five cents per day, or in that proportion, for a less amount: *Provided*, That any person may elect to pay such tax to the overseer in money.

(209.) SEC. XVI. It shall be the duty of the overseer of highways, when such land tax has been paid, either in money or labor, to write the word "paid," distinctly, against each name or tract on his list on which the same has been paid.

(210.) SEC. XVII. Every overseer of highways shall deliver to the supervisor of his town, at least five days previous to the annual meeting of the board of supervisors, the list furnished by the commissioners of highways, containing the land road tax, with an affidavit thereon, sworn to before some justice of the peace of said town, that on all tracts of land on such list, opposite which the word "paid" is not written, such tax is due and remains unpaid, according to the best of his belief and knowledge.

(211.) SEC. XVIII. If any overseer shall refuse or neglect to deliver such list to the supervisor, as is provided in the last preceding section, or shall neglect or refuse to make the affidavit as therein directed, he shall, for every such offense, forfeit the sum of five dollars, and also the amount of tax or taxes remaining unpaid, to be recovered by the commissioners of highways of the town, and to be applied by them in improving the roads and bridges of such town.

(212.) SEC. XIX. It shall be the duty of the supervisors of the several towns to receive the list of the overseers of highways when delivered pursuant to the preceding section, and to lay the same before the supervisors of the county.

(213.) SEC. XX. It shall be the duty of the board of supervisors to cause the amount of such arrearages of road tax to be levied on the lands so returned, and to be collected in the same manner that the contingent charges of the county are levied and collected, and to order the same when collected to be paid over to the commissioners of highways of the towns, to be by them applied to the construction of roads and bridges.

(214.) SEC. XXI. It shall be the duty of every overseer of highways, to have at least three-fourths of the road labor assessed in his district worked out or actually expended on the highways previous to the first day of October in every year.

(215.) SEC. XXII. Every overseer of highways shall, on the second Tuesday next preceding the time of holding the annual town meeting in his town, within the year for which he is elected and appointed, render to one of the commissioners of highways of the town an account in writing, containing,

1st. The names of all persons assessed to work on the highways in the district of which he is overseer;

2nd. The names of all those who have actually worked on the highways, with the number of days they have actually worked;

3rd. The names of all those who have been fined, and the sums in which they have been fined;

4th. The names of all those who have commuted, and the manner in which the moneys arising from fines and commutations have been expended by him; and,

5th. The amount of uncollected road tax which he has returned to the supervisor of the town, as required in section seventeen of this article.

(216.) SEC. XXIII. Every such overseer shall also then and there pay to the commissioners all moneys remaining in his hands unexpended, to be applied by the commissioners in making and improving the roads and bridges in the town, in such manner as they shall direct.

(217.) SEC. XXIV. If any overseer shall refuse or neglect to render such account, or if having rendered the same, he refuse or neglect to pay any balance which may then be due from him, he shall, for every such offense, forfeit the sum of five dollars, to be recovered with the balance of the moneys remaining in his hands, by the commissioners of highways of the town, and to be applied in making and improving the roads and bridges. It shall be the duty of the commissioners to prosecute for such penalty, in every instance in which no return is made.

#### ARTICLE TWENTY-FOURTH.

(218.) SEC. I. The commissioners of highways may alter or discontinue any road, or lay out any new road, when petitioned by any number of legal voters, not less than twelve, residing within three miles of the road so to be altered, discontinued or laid out. Said petition shall set forth in writing a description of the road, and what part thereof is to be altered or discontinued; and if for a new road, the names of the owners of lands, if known, over which the road is to pass, the point at which it is to commence, its general course, and the place at or near where it is to terminate.

(219.) SEC. II. Whenever any number of legal voters determine to petition the commissioners of highways for the alteration or discontinuance of any road, or laying out of any new road, they shall cause a copy of their petition to be posted up in three of the most public places in the town, twenty days before any action shall be had in reference to said petition.

(220.) SEC. III. Whenever the commissioners of highways shall receive a petition in compliance with the two preceding sections, they shall, or a

majority of them, within ten days after the expiration of the twenty days required in section two of this article, personally examine the proposed alteration, discontinuance, or route for the new road proposed to be laid out, and shall hear any reasons that may be offered for or against altering, discontinuing or laying out the same. If they shall be of opinion that such alteration, discontinuance or laying out shall be necessary and proper, and that the public interest will be promoted thereby, they shall grant the prayer of the petitioners as hereinafter provided.

(221.) SEC. IV. Whenever the commissioners of highways shall determine to lay out any new road, or alter any old one, they shall cause a survey to be made by a competent surveyor, who shall make a report to them of such survey, accompanied with a plat, particularly describing the route by metes and bounds, courses and distances, and also the lands over which such road passes. They shall incorporate such report and survey, accompanied with the plat, in an order, to be signed by them, declaring such road so altered or laid out to be a public highway; which order, together with the petition, shall be deposited with the town clerk, who shall note the time of filing the same. In case the commissioners shall determine not to alter, discontinue or lay out any roads in accordance with any petition to them presented, they shall note the fact on the back of said petition, and deposit it with the town clerk, who shall note the time of filing the same.

(222.) SEC. V. It shall be the duty of the town clerk, whenever any order of the commissioners for laying out, altering or discontinuing a road shall be received by him, to carefully file the same, and the time hereinafter limited for appealing from such order shall be computed from the time of filing the same, but the town clerk shall not record such order until a final decision is made, and not then unless such order is confirmed.

(223.) SEC. VI. The damages sustained by reason of the laying out, or opening, or altering any road may be ascertained by the agreement of the owners and the commissioners of highways, and unless such agreement be made or the owners of the land shall, in writing, release all claims to damages, the same shall be assessed in the manner hereinafter prescribed, before such road shall be opened, or worked, or used. Every agreement and release shall be filed in the town clerk's office, and shall forever preclude such owners of such lands from all further claim for such damages. In case the commissioners and owners of land claiming damages cannot agree, it shall be the duty of the commissioners to assess the damages at what they may deem just and right to each individual claimant with which they cannot agree, and deposit a statement of the amount of damages so assessed to each individual with the town clerk, who shall note the time of filing the same. It shall be the duty of commissioners, in all cases of assessing damages, to estimate the advantages and benefits the new road or alteration of an old one will confer on complainants for the same, as well as the disadvantages.

(224.) SEC. VII. No damages shall be allowed by reason of the alteration of any old road, unless such alteration or new road passes through enclosed, cultivated or improved lands: *Provided*, That commissioners of highways may allow damages, when in their opinion it is absolutely necessary so to lay out a new road, either diagonally across a lot of land, or in any way so as materially to injure the same.

(225.) SEC. VIII. Any person or persons, being owners of or agents for

any tract of land over which any highway, altered, discontinued or laid out, shall run, feeling themselves aggrieved by any order made by the commissioners of highways, may appeal from the same at any time within thirty days after the filing of such order in the town clerk's office. Such appeal shall note the time that such order was filed, and shall be made to three supervisors of the county, neither of which shall be a resident of the town in which said highway is situated. All persons who desire to make an appeal from such order, shall act in concert, and make their appeal to the same three supervisors.

(226.) SEC. IX. Every such appeal shall be in writing, addressed to the supervisors, and signed by the party or parties appealing. It shall briefly state the ground upon which it is made, and whether it is brought in relation to damages assessed by the commissioners of highways, or in relation to the alteration, discontinuance or laying out of the road, or whether it is brought to reverse entirely the determination of the commissioners, or only to reverse a part thereof; and in the latter case, it shall specify what part. The appeal shall be left with one of the three supervisors, by the person or persons appealing, and such person or persons shall also leave a notice of such appeal with each of the other supervisors to whom the appeal is made.

(227.) SEC. X. It shall be the duty of the supervisors to whom the appeal is made, as soon as may be convenient after the expiration of thirty days from the filing of the order in the town clerk's office from which the appeal is made, to agree upon a time when and where they will meet to consider the same; which shall be at some place deemed convenient at or near the road to be examined.

(228.) SEC. XI. The person or persons making the appeal shall cause a notice in writing, of the time and place agreed on by the three supervisors when and where they will meet, to be served on each of the commissioners of highways from whose order they appealed, and also on at least three of the petitioners who petitioned in relation to such road; which notices shall be served at least eight days before the time mentioned therein, by delivering one to each commissioner, or leaving one at each of their dwelling-houses, and in like manner shall the notices be served on each of the three petitioners.

(229.) SEC. XII. It shall be the duty of the supervisors to convene at the time and place mentioned in the notice, and to hear the proofs and allegations of the parties. They shall have power to issue process, to compel the attendance of witnesses, and may adjourn from time to time, as may be necessary. Their decision, or that of any two of them, shall embrace the whole matter in controversy. They shall first consider the propriety and expediency of locating, altering or discontinuing the road; secondly, the subject of damages, if such subject was embraced in the appeal under which they are acting, and they shall fix upon the amount of damages, which, in their judgment, is right and just to be paid to each person claiming, but no person shall be entitled to a re-assessment of damages unless his or her name appears in the appeal in reference to that subject. The supervisors shall be governed by the same, unless in assessing damages as is provided in section sixth of this article, for the government of commissioners of highways in such case.

(230.) SEC. XIII. Every such supervisor shall be entitled to receive one dollar and fifty cents for every day employed in hearing and deciding such

appeal, to be paid by the party appealing, where the determination of the commissioners shall be affirmed; but where it is reversed, to be charged against the town.

(231.) SEC. XIV. Upon the refusal of the commissioners to alter, discontinue or lay out any new road petitioned for as provided in section one of this article, any one of the petitioners may appeal from such determination, in the same manner, and subject to the same provisions and restrictions, as relates to persons who feel themselves aggrieved by a determination of the commissioners to alter, discontinue or lay out a new road.

(232.) SEC. XV. Where an appeal shall have been made from a determination of the commissioners refusing to lay out, alter or discontinue a road, and the supervisors shall reverse such determination, such supervisors shall alter, discontinue or lay out the road applied for, as the case may be, and in doing so shall proceed in the same manner in which commissioners of highways are directed to proceed in the like cases. Such roads shall be opened by the commissioners of the town, in the same manner as if laid out by themselves.

(233.) SEC. XVI. In case any one of the supervisors to whom such application shall have been made, shall become unable to attend before the determination of such appeal, it shall be the duty of the remaining supervisors named therein to associate with themselves another of the supervisors of the same county, who shall act with them in all subsequent proceedings, in the same manner as if he had been originally named in such appeal. In case the term of office of any supervisor shall expire before the determination of such appeal, he shall continue to act in the premises the same as if he had been re-elected.

(234.) SEC. XVII. The amount of damages as finally settled by the three supervisors, or as agreed on by the commissioners of highways, together with all charges of officers and other persons employed in laying out, altering or discontinuing any road, shall be rendered by the commissioners of highways to the board of town auditors, with the amount of damages and charges due each individual; which accounts shall be audited by said board, certified to and deposited with the town clerk. The town clerk shall make out the aggregate amount of such damages and charges, with his certificate thereto attached, and deliver the same to the supervisor of the town, previous to the annual meeting of the board of supervisors.

(235.) SEC. XVIII. After a final decision by any three supervisors to whom any road difficulty has been appealed, if in the opinion of the supervisor, town clerk, the justices of the peace, and the commissioners of highways, or any five of them, the damages are manifestly too high, and that in providing for the payment thereof, an oppressive tax will have to be levied on the property of said town, they may petition the board of supervisors, at any meeting of said board held within six months after such decision, for relief, either from the whole or part of the damages. The board shall hear the reasons for and against granting such relief, and if a majority of them shall be of opinion that the town should be relieved from the whole amount of damages, then and in that case the opening of said road shall be postponed until the damages, or a major part thereof, are in some other way provided for than by levying a tax upon the property of the town.

(236.) SEC. XIX. When the commissioners of highways of any town shall disagree with the commissioners of any other town of the same county, relating to the laying out of a new road, or the alteration of an old road, extending into both towns, or when the commissioners of a town in one county shall disagree with the commissioners of a town in another county, relative to the laying out of a new road, or altering an old road, which shall extend into both counties, the commissioners of both towns shall meet together, at the request of either disagreeing commissioner, and make their determination upon such subject of disagreement.

(237.) SEC. XX. Whenever the commissioners of highways of any town receive a petition, praying the location of a new road, alteration or discontinuance of an old one, upon the line between two towns, such road shall be laid out, altered or discontinued by two or more of the commissioners of highways of each of said towns, either upon such line or as near thereto as the convenience of the ground will admit, and they may so vary the same, either to the one or the other side of such line, as they may think proper.

(238.) SEC. XXI. It shall be the duty of the said commissioners, when there may be such highway, to divide it into two or more road districts, in such manner, that the labor and expense of opening, working and keeping in repair such highway, through each of the said districts, may be equal, as near as may be, and to allot an equal number of the said districts to each of the said towns.

(239.) SEC. XXII. Each district shall be considered as wholly belonging to the town to which it shall be allotted for the purpose of opening and improving the road, and keeping it in repair, and the commissioners shall cause such highway, and the partition and allotment thereof, to be recorded in the office of town clerk, in each of their respective towns.

(240.) SEC. XXIII. All highways heretofore laid out upon the line between any two towns, shall be divided, allotted, recorded and kept in repair in the manner above directed.

(241.) SEC. XXIV. Whenever the commissioners of highways shall have laid out any public highway through any inclosed, cultivated or improved lands, in conformity with the provisions of this act, and their determination shall not have been appealed from, they shall give the owner or occupant of the land through which such road shall have been laid, sixty days' notice, in writing, to remove his fences. If such owner does not remove his fences within sixty days, the commissioners shall cause such fences to be removed, and shall direct the road to be opened and worked.

(242.) SEC. XXV. If the determination of the commissioners shall have been appealed from, then the sixty days' notice shall be given after the decision of the supervisors upon such appeal shall have been filed in the office of the town clerk of the town.

(243.) SEC. XXVI. The public roads now existing by law are declared the public highways of the town in which they shall lie.

(244.) SEC. XXVII. Any person liable to be assessed for road labor, may apply to the commissioners of highways to lay out a private road, and the commissioners shall proceed to examine into the merits of such application, and be governed in their proceedings by the rules and regulations prescribed in this act, in relation to public roads. The damages assessed, in

consequence of the laying out of such private road, shall be paid by the person applying for the same.

(245.) SEC. XXVIII. Whenever the commissioners of highways shall have laid out any public highway through any inclosed, cultivated or improved lands, in conformity to the provisions of this act, and their determination shall not have been appealed from, they shall give the owner or occupant of the lands through which such road shall have been laid, sixty days' notice, in writing, to remove his fences. If such owner shall not remove his fences within sixty days, the commissioner shall cause such fences to be removed, and shall direct the road to be opened and worked.

(246.) SEC. XXIX. All public roads to be laid out by the commissioners of highways of any town shall not be less than four rods wide, and all private roads shall not be more than three rods wide.

(247.) SEC. XXX. Every private road, when laid out, shall be for the use of the applicant applying for the same, his heirs and assigns, but not to be converted to any other use or purpose than that of a road.

(248.) SEC. XXXI. The public roads now existing by law, are declared the public highways of the town in which such roads shall lie, and this act shall not be construed as conferring any power on commissioners of highways to alter State roads now or hereafter existing by law.

#### ARTICLE TWENTY-FIFTH.

(249.) SEC. I. Each town acting under township organization shall constitute an election precinct, and the supervisor, assessor and collector shall be *ex officio* judges of elections. The supervisor, or, in case of his absence, the town clerk, shall post up notices of general elections, in like manner as is now required of sheriffs and county clerks, under the general laws of this State.

(250.) SEC. II. The county judge, sitting as a county court, without associates, in counties acting under township organization, shall have the same jurisdiction of suits brought by collectors for taxes on delinquent lands and town lots, as the county courts have under existing laws, and all acts of county courts, heretofore done in suits for taxes on delinquent lands and town lots, are hereby legalized.

(251.) SEC. III. The several wards in the city of Chicago shall be entitled to elect one supervisor in each ward, in addition to the township supervisors, and the several supervisors so elected shall be members of the board of supervisors of Cook county, and shall have, possess and enjoy all the rights, powers and privileges that are now or hereafter shall be possessed and enjoyed by the several township supervisors, when voting as a county court. The election for such supervisors to be held at the same time and in the same manner as the election for township supervisors.

(252.) SEC. IV. Upon the petition of fifty legal voters of any county acting under township organization, it shall be the duty of the county clerk, upon the filing of such petition with him, to cause notices to be posted up in three of the most public places in each town of such county, at least twenty days previous to the next annual town meeting, that the question of township organization, under this act, will be voted upon. At such meeting said vote shall be taken by ballot, to be written or printed, or partly written and



partly printed, "For township organization," or "Against township organization," and shall be canvassed and returned in like manner as votes for State and county officers.

(253.) SEC. V. If it shall appear by the returns of said election, that a majority of all voters voting at such election have voted against township organization, then the county so voting shall cease to act under such organization, from and after the election and qualification of such county officers, as are provided for in such counties as have never adopted township organization.

(254.) SEC. VI. At the next general election after the voters of any such county have determined against township organization, there shall be an election for all the officers required by law in counties that have never adopted township organization, except such officers as may have been previously elected, and are entitled to hold over; and notice of such election shall be given as is now provided by law.

(255.) SEC. VII. It shall be the duty of the secretary of State to cause to be printed, immediately on the adjournment of the General Assembly, three thousand copies of this act, and shall cause the same to be forwarded to the county clerks of the several counties acting under township organization, to be by them distributed amongst the several towns in said counties.

(256.) SEC. VIII. An act entitled "An act to provide for township and county organization, under which any county may organize whenever a majority of voters of such county, at any general election, shall so determine," is hereby repealed, but no rights accrued or liabilities incurred under said act shall be affected hereby.

(257.) SEC. IX. This act shall be applicable to counties or townships heretofore organized, as fully as to those that may be organized hereafter, and take effect on the first day of April next.

An Act supplemental to "An Act to provide for Township Organization."

[Approved Feb. 17, 1851. Laws, 1851, p. 135.]

(258.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases where counties may have voted for township organization, but have not organized, upon the petition of fifty legal voters of the county so having voted for such organization, it shall be the duty of the county clerk, upon the filing of such petition with him, to cause notices to be posted up in the different precincts of the county as is now required by law, at least thirty days previous to the election, that the question of township organization will be voted upon. At such election said vote shall be taken by ballot, to be written or printed, or partly written and partly printed, "For township organization," and "Against township organization," and shall be canvassed and returned in like manner as votes for State and county officers.

(259.) SEC. II. If it shall appear by the returns of said election, that a majority of all voters voting at such election have voted against township organization, then the county so voting shall not organize, and the county shall remain as if no vote had ever been taken for or against township organization, and the county officers shall remain in office until their terms shall legally expire.

(260.) SEC. III. The provisions of this act shall apply exclusively to the county of Vermillion.

(261.) SEC. IV. This act shall take effect and be in force from and after its passage.

An Act to amend an Act entitled "An Act to provide for Township Organization," and to extend the Powers and Duties of Overseers of the Poor.

[Approved March 4, 1854. Laws, 1854, p. 23.]

(262.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all counties that have adopted, or may hereafter adopt, township organization, the overseers of the poor, in their respective towns, may, with the consent of the judge of the county court, bind out apprentices or servants, the minor children of any poor person who has become chargeable to their town, as having a lawful settlement therein, or who is supported there, in whole or in part, at the charge of the county; and also all minor children who are themselves chargeable to the town, as having a lawful settlement therein, or as poor persons supported by the county: *Provided,* That no minor shall be bound under the provisions of this act, unless such minor shall have become chargeable as a pauper.

(263.) SEC. II. Such children, whether over or under the age of fourteen years, may be bound—females to the age of eighteen years, and males to the age of twenty-one years; and provision shall be made in the contract for teaching such children to read, write, and the ground rules of arithmetic, and for such other instruction, benefit and allowance, either within or at the end of the term of their apprenticeship, as the overseer may think reasonable.

(264.) SEC. III. No minor shall be so bound by the overseer of the poor unless by indentures of apprenticeship, executed in duplicate, by the overseer of the poor and by the master, one copy to be retained by the master, and one copy shall be, by the overseer of the poor, deposited with the town clerk, to be kept by said town clerk for the use of the minor.

(265.) SEC. IV. All considerations of money, or other things paid or allowed by the master, upon any contract of service or apprenticeship, made in pursuance of this act, shall be paid or secured to the sole use of the minor hereby bound.

(266.) SEC. V. The overseers of the poor shall inquire into the treatment of all children bound by them, and of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect and breach of contract on the part of their masters.

(267.) SEC. VI. In case of any misconduct or neglect of the master, a complaint may be filed by the overseer of the poor, or in case of absence of such overseer of the poor, the supervisor of the town in which such minor was bound by the judge of the county court, setting forth the facts and circumstances of the case; and the said court, after having duly notified the master of such complaint, by giving said master at least ten days' notice of the time and place, shall proceed to hear and determine the cause.

(268.) SEC. VII. After a free hearing of the parties, or of the complaint alone, if the master shall neglect to appear, the court may render a judgment, or decree, that the minor be discharged from his apprenticeship or

service, and for the costs of the suit against the master, and may issue execution for the same.

(269.) SEC. VIII. If the complaint shall not be maintained, and it shall appear to the satisfaction of the said court that the complaint was made without any just or reasonable cause, the court shall render judgment for the costs against the complainant.

(270.) SEC. IX. This act to take effect and be in force from and after its passage.

An Act to amend "An Act to provide for Township Organization," approved Feb. 17, 1851.

[Approved Feb. 27, 1854. Laws, 1854, p. 27.]

(271.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the several towns in all such counties as have heretofore adopted, or may hereafter adopt, the township organization law, shall have power to direct such sums to be raised in their respective towns, for prosecuting or defending suits, or for the support and maintenance of roads and bridges, or for any other purpose, as they may deem necessary.

(272.) SEC. II. The board of auditors of town accounts shall meet at the town clerk's office for the purpose of examining and auditing the town accounts, semi-annually, in their respective towns, on the Tuesday next preceding the annual meeting of the board of supervisors, and on the Tuesday next preceding the annual town meeting in April, and at such other times as the interest of the town may require.

(273.) SEC. III. The supervisors of the several towns shall lay before the board of supervisors, at their first meeting after the annual town election, their several certificates of election, which shall be examined by the board of supervisors, and if found regular, shall be filed in the office of the clerk of the county court.

(274.) SEC. IV. The board of supervisors shall have full and complete power and jurisdiction to alter the boundaries of towns, to change town lines, and to divide or enlarge towns in their respective counties, to suit the convenience of the inhabitants residing therein; but no new town shall be created under the provisions of this act, unless there shall be at least thirty legal voters residing in such new town, nor unless at least twenty of such legal voters of such town shall petition for such alteration.

(275.) SEC. V. At the annual or other meeting of the board of supervisors, they shall examine the assessment rolls of the several towns, and shall equalize the same according to the first section of article twentieth of the act to which this is an amendment. Said board of supervisors shall have power, and it is hereby made their duty, in case the assessment roll of any town or towns shall, by affidavit or otherwise, be made to appear to the satisfaction of said board, or a majority of them, to have been unlawfully, partially or improperly made, and that such assessment is grossly wrong and partial, to amend such assessment, or declare the same null and void; and said board shall have power to appoint some suitable person or persons, who shall be residents of such town, to proceed to make a new assessment of property therein, and make return thereof to said board of supervisors, on or before a day to be fixed and specified by said board.

(276.) SEC. VI. In case the collector of any town shall have been or

may hereafter be estopped by injunction, or the decision of any court, from the collection of the taxes, in consequence of the assessment of the property in said town being wrongfully or illegally assessed, it shall be the duty of the board of supervisors of the county in which any such town is located, to hold a meeting as soon after they shall have notice of such injunction being granted or decision rendered as practicable, and they shall inquire into the facts in the case, and if a majority of the board are of the opinion that any such assessment was wrongfully or illegally made, they are hereby authorized and empowered, and it shall be their duty to appoint one or more persons, residents of said town, to re-assess the property therein.

(277.) SEC. VII. The person or persons so appointed shall make and subscribe the oath, and be governed in all things pertaining to said assessment in like manner as town assessors, and shall proceed without delay to make such re-assessment. Such person or persons shall attend at the office of the town clerk of said town for the purpose of reviewing the lists or rolls of said assessment, and said assessment rolls or lists shall be examined and corrected in like manner and by the same officers that would be authorized to review and correct it if it had been a regular assessment, except that the person or persons making the assessment shall act instead of the regular assessor: *Provided,* That the person or persons making such assessment shall first give at least ten days' notice of the time and place of reviewing the assessment; which notice shall be once published in some newspaper published in said county, if there be any paper published therein, and said notice shall be posted up in three or more of the most public places in such town.

(278.) SEC. VIII. The person or persons making the assessment aforesaid shall make return thereof to the county clerk, in manner and form as is or may be prescribed by law for making returns of assessments, and be allowed such reasonable compensation therefor as the board of supervisors shall determine and allow; which compensation shall be paid in like manner as the compensation of town assessors is paid. Upon the return of the assessment rolls aforesaid, the county clerk shall cause the proper list of the property assessed, with the taxes extended thereon, to be made for the use of the town collector. Said lists shall be made out and delivered to the collector authorized to collect the taxes due thereon, as soon after the assessment rolls or lists are received by the clerk as practicable.

(279.) SEC. IX. The board of supervisors shall have power, and they are hereby fully authorized, to appoint some suitable person to collect the taxes due on the tax lists made out as aforesaid, if in their opinion it is expedient to do so; and the person so appointed shall execute bond, and qualify in like manner, and shall receive like compensation and shall be subject to like penalties, as town collectors are subject to. Any person appointed and qualified as provided for in this section, shall have full power and authority to collect the taxes charged in the tax list, and for that purpose he may levy on and make sale of goods and chattels, and do all and everything necessary to be done in the premises, in like manner as town collectors are authorized to do by the general laws relative to the collection of the revenue.

(280.) SEC. X. The board of supervisors shall fix the time at which such collector shall make return and settlement for the taxes collected by

him: *Provided*, That such time shall in no case exceed sixty days from the time the tax list is delivered to said collector, and the county collector is hereby authorized and required to collect the taxes due on any assessment made under the provisions of this act on non-resident property, by sale or otherwise, in like manner as he is authorized to do in cases of regular assessments: *Provided*, That in cases where the return and settlement of the town collector, as contemplated in this section, is made after the first day of July, the abstract or list of the delinquent lands required to be furnished to the auditor's office, shall not be so furnished. The fifty per cent. required by section twenty-four of the "Act regulating the collection of the revenue," to be charged on the delinquent lands, shall not be charged in cases where the return is not made until after the first day of July as aforesaid, until after the thirtieth day of October next thereafter, but on all taxes remaining due on the first day of November, in that year, on any such delinquent lands, the clerk shall add the fifty per cent., according to section twenty-four aforesaid, to such delinquent taxes, and add the aggregate thereof to the tax of the subsequent year, and the amount so charged shall be collected in like manner as other taxes on delinquent lands are required to be collected.

(281.) SEC. XI. In all cases when the collector of any town shall not have paid over to the county collector the State revenue, prior to the time such county collector is required to pay said revenue into the State treasury, the county collector shall pay over the State revenue collected in said town within thirty days after the time of settlement with the town collectors.

(282.) SEC. XII. At the first meeting of the commissioners of highways after they shall have been duly elected and qualified, they shall proceed to choose one of their number treasurer. The treasurer so chosen shall receive and have charge of all moneys raised in the town for the support and maintenance of roads and bridges. He shall hold such moneys at all times subject to the order of the commissioners of highways, and shall pay them over upon their order, or a majority of said commissioners, and not otherwise. He shall execute bond with good and sufficient security, in such sum as the supervisor and town clerk shall determine, conditioned for the faithful discharge of his duties as such treasurer, and that he will honestly and faithfully account for and pay over, upon the order of the commissioners of highways, all moneys that shall come to his hands by virtue of his said office, which bond shall be payable to the supervisor, approved by the supervisor and town clerk, and filed in the town clerk's office.

(283.) SEC. XIII. Whenever it shall be necessary in any town to build a bridge, the cost of which shall be more than can be raised by ordinary road taxes, the commissioners of highways shall lay before the town auditors of such town, a statement of the amount of money necessary for the construction thereof, and said board of auditors shall certify the same to the board of supervisors of the county in which such town is situated; the amount so certified shall by said board of supervisors be levied on the taxable property of such town, and collected by the collector thereof, in the same manner as other taxes are levied and collected.

(284.) SEC. XIV. The overseers of roads of the several towns are hereby authorized to enter upon any unimproved land most convenient, and to cut and haul away timber, or to quarry and haul rock, gravel, sand or

earth which may be necessary for the purpose of building or repairing any bridge or causeway in their respective road districts: *Provided*, That such overseers shall not take away timber already cut, or rock or gravel already quarried for another purpose, without leave from the owner or his agent: *And Provided, also*, That unless the owner or his agent shall first consent to the cutting of timber or the quarrying of stone, or the taking of gravel, sand or earth, the overseers of roads shall call upon two discreet householders to value the materials about to be used, and if the owner of the materials shall think proper, he or she may choose two other discreet householders to act with such as may be chosen by the overseer of highways, 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 deposit it with the clerk of the town in which such bridge is situated, who shall file the same in his office. Said award shall be final and conclusive of the amount of damages sustained by such person, and the amount so awarded shall be audited, levied and collected in the same manner provided in the next preceding section of this act, and the overseer of highways shall be authorized and warranted, and is hereby fully empowered, to take such materials as aforesaid, for the purposes contemplated in this section, as soon as such award shall be made.

(285.) SEC. XV. In all towns having a population of more than two thousand inhabitants, it shall be lawful for the qualified voters thereof to elect one justice of the peace, and one constable for each and every thousand of its inhabitants, until the population shall reach five thousand, after which the number of justices of the peace and constables shall not be increased. Said justices of the peace and constables shall be elected in the same manner and shall hold their offices for the same term of time, as other justices of the peace and constables. Said justices of the peace shall be commissioned by the governor, and shall have the same jurisdiction, power and authority, and be subject to the same liabilities, and shall execute bond and be sworn in the same manner, as other justices of the peace.

(286.) SEC. XVI. The commissioners of highways are hereby vested with full jurisdiction and control of the roads and bridges in their respective towns, as provided in the acts to which this is an amendment, and all laws and parts of laws inconsistent with this section are hereby repealed.

(287.) SEC. XVII. All roads laid out by order of the commissioners of highways shall be opened within five years from the time of laying out the same. If not opened within the time aforesaid, the same shall be deemed to be vacated.

(288.) SEC. XVIII. The third section of the twenty-fifth article of the act to which this is an amendment, is hereby declared to be applicable to the city of Peoria, and the several wards in said city of Peoria shall be entitled to elect one supervisor in each ward, in addition to the town supervisor, who shall have the same powers, and perform the same duties as the additional supervisors provided for in said section third of article twenty-fifth are authorized to exercise and perform as members of the board of supervisors.

(289.) SEC. XIX. The additional supervisor provided for in the second section of third article of the act to which this is an amendment, shall be called an assistant supervisor, and shall be elected as such, and shall have no power or authority except as a member of the board of supervisors.

(290.) SEC. XX. The affidavit required to be sworn to by overseers of highways in section seventeen of the twenty-third article of the act to which this is an amendment, may be made and sworn to, and the oath therein required may be administered by the supervisor of the town, or by any justice of the peace.

(291.) SEC. XXI. At all town meetings and elections of town officers, the polls may be closed at four o'clock in the afternoon, but may keep open until a later hour, in the discretion of the board of election.

(292.) SEC. XXII. The county collectors or treasurers shall be allowed, in their settlement with the auditor, for receiving the State tax from the town collectors, and paying the same into the State treasury, adjusting the accounts of said town collectors, correcting non-resident lists, &c., a commission of one per cent., when the amount received does not exceed ten thousand dollars, and half of one per cent. on all sums received from town collectors over that amount.

(293.) SEC. XXIII. The sixth, seventh, eighth, ninth, tenth, eleventh, and twenty-second sections of this act shall apply to the assessment of property and the collection of taxes for the year 1853, as well as subsequent years.

(294.) SEC. XXIV. The town clerks of the several towns in counties governed by the township organization law, shall file in the office of the clerk of the county court a list of the names of all town officers elected at the annual town meeting, within twenty days after such election shall be held.

(295.) SEC. XXV. All acts or parts of acts inconsistent with or repugnant to the provisions of this act, are hereby repealed. This act shall take effect and be in force from and after its passage.

(296.) SEC. XXVI. That section second of article twelve of the act to which this is an amendment, be and the same is hereby so amended that the town assessor shall receive, for his services as assessor, one dollar and fifty cents per day.

An Act to amend an Act entitled "An Act to provide for Township Organization." ~~in~~  
[Approved Feb. 14, 1855. Laws, 1855, p. 45.]

(297.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the third section of article twenty-fifth of an act to provide for township organization, approved February 17, 1851, be so amended that hereafter the village of Naperville shall be entitled to elect one supervisor, in addition to the township supervisors, and the supervisor so elected shall be a member of the board of supervisors of Du Page county, and shall have, possess and enjoy all the rights, powers and privileges that are now or hereafter shall be possessed and enjoyed by the several township supervisors of said county; the election for such supervisor to be held at such time and in such manner as the act of incorporation of the said village of Naperville shall provide.

(298.) SEC. II. This act shall be in force from and after its passage.

An Act authorizing Boards of Supervisors of the several Counties to dispose of certain Real Estate therein named, and to confer upon them certain other Powers.

[Approved Feb. 15, 1855. Laws, 1855, p. 132.]

(299.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the boards of supervisors of the

several counties in this State which have adopted township organization, be and they are hereby authorized and empowered to sell and dispose of the poor farms of their respective counties, at such times and on such terms as they may think proper, and upon said sale being made, and said premises being paid for, according to the terms and conditions of said sale, it shall be the duty of the chairman of the board of supervisors to make, execute and deliver to the purchaser or purchasers of said farm a good and sufficient deed therefor, in behalf of said county; which deed shall convey the interest of said county in and to said farm to the said purchaser or purchasers thereof.

(300.) SEC. II. All sales of the poor farms belonging to the several counties of this State heretofore made by the board of supervisors, are hereby confirmed, and it shall be the duty of the chairman of said board to convey said property, by deed, as is provided for in the first section of this act.

(301.) SEC. III. In all cases where any real estate has heretofore been sold by the board of supervisors of any county in this State acting under township organization, or by the county commissioners of any such counties acting previous to the adoption of the township organization law, it shall be the duty of the chairman of the board of supervisors in any county where such sale or sales has been made as aforesaid, to convey the same, by deed, in behalf of said county for which he may be acting, to the purchaser or purchasers of said real estate; which said deed shall convey the interest of said county in and to said real estate to the purchaser or purchasers thereof.

(302.) SEC. IV. This act shall take effect and be in force from and after its passage.

An Act in relation to the Compilation and Distribution of the General Laws of the State of Illinois relative to Township Organization.

[Approved Feb. 9, 1855. Laws, 1855, p. 188.]

(303.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That upon delivery to the secretary of State of a number of copies sufficient to supply each township in the State, in the counties adopting township organization, with ten copies for each township, of a work entitled "A compilation of all the general laws of the State of Illinois relative to township organization, to which are added numerous practical forms and notes, with references to decisions of the older States on questions upon like statutes, with a copious index, by Elijah M. Haines, counselor at law," the said secretary of State shall give to the said Elijah M. Haines, the compiler of said work, or to his order, a certificate of the delivery thereof, stating therein the number of copies so delivered; the number required, as contemplated by this act, to be ascertained from the records of the office of the auditor of public accounts.

(304.) SEC. II. That on presentation of the said certificate to the auditor of public accounts, he shall draw his warrant on the treasurer for such sum as the number of copies so delivered as aforesaid shall amount to, at the price for which the same shall be sold to individuals, provided the same shall not exceed twenty-five cents per copy.

(305.) SEC. III. The secretary of State shall distribute the said books among the several counties adopting township organization, allowing to each county a sufficient number to afford ten copies to each township therein,

which shall be transmitted by the secretary of State to the several county clerks of said counties, to be distributed among the several town officers as the board of supervisors shall order.

(306.) SEC. IV. This act to take effect and be in force from and after its passage.

**PRIOR LAWS.** An act to provide for township and county organization, under which any county may organize, whenever a majority of voters of such county, at any general election, shall so determine; approved Feb. 12, 1849. Laws, 1849, p. 190. Repealed April 1, 1851.

An act to extend the time for collectors, in counties which have adopted township organization, to complete their duties; approved Jan. 24, 1850. Laws, 1851, p. 7.

**DECISIONS.** The General Assembly can provide no system of township organization, except under and by virtue of the 6th section, 7th article of the constitution of 1848; and, thereupon, the right of a county to adopt such organization, depends on the affirmative vote of a majority of all the legal voters of the county; and the power of the county court over the business of the county, continues till organization is adopted by such vote. The township organization law of Feb. 12, 1849, is in force in such counties as have adopted it by a majority of all their voters. That portion of the 4th section of that law, which is inconsistent with the constitution, may be disregarded without invalidating the whole law. *The People v. Brown et al.*, 11 Ill. 478.

Under the township law of 1849, the annual meeting of the board of supervisors is in November, and the board may elect a temporary chairman, whether there be a regular chairman or not. Any meeting of the board, at which a quorum is present, is valid. That part of the township law, which gives jurisdiction over county affairs to the board of supervisors, took effect on the 1st Tuesday of April, 1850. The township law does not abolish county corporations, but changes the name. Suits instituted in the old name are not abated by the change. *Town of Ottawa v. La Salle County*, 11 Ill. 654.

Under the township law of Feb. 17, 1851, the county treasurer is allowed a commission of two per cent. on all money received and paid into the state treasury, by whoever paid him; and this commission is in full compensation, from the State, for his services for the State. The word "fees," in the law, refers only to the costs allowed the collector for preparing the delinquent list for publication, for selling the lands, and for conveying to purchasers, which "fees" are paid by the owners or the purchasers. The collectors are repaid the printer's fees, by the sale of the lands, and he has no claim for any of them, except what is charged on lands forfeited to the State. *The People v. Long*, 13 Ill. 629.

Though the constitution makes no provision for the abandonment of the township organization system, yet the legislature may provide for its abrogation by pursuing the same course, and adopting the same guarantees to protect the rights of all, which the constitution requires in the adoption of the system; that is, it should be done at a general election, and by a majority of all the voters. *The People ex rel. v. Couchman*, 15 Ill. 142.

## CHAPTER CV.

[CHAPTER CIV. REVISED STATUTES, 1845.]

### TRESPASS.

#### SECTION

1. Penalty for carrying away or injuring trees of a certain description; all other kinds.
2. Penalties, how recovered; how applied; if, when suit is instituted before a justice of the peace, title to land be set up by defendant, cause removed to circuit court, and how.
3. If recognizance to prosecute be forfeited, justice shall

#### SECTION

- enter judgment and issue execution; recognizance, when forfeited, to be put in suit.
4. Cutting and injuring timber, under pretense of lease of school lands, &c., how punished.
5. Penalties, how recovered, and how applied; duty of overseers of the poor to prosecute, &c.

[Approved March 3, 1845. Rev. Stat. 1845, p. 525.]

**SECTION I.** Any 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, chestnut, 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. II.** The penalties herein above provided, shall be recoverable, with costs of suit, either by action of debt, in the name and in 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*, 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. III.** 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 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 recognizance was taken, may, by a writ or writs of *scire facias*, proceed to judgment and execution thereon.

**SEC. IV.** If any person or persons shall, 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, chestnut, 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. V. The penalties provided in the preceding section, 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.

See *ante*, p. 370, "An act for the protection of State lands."

See also, *ante*, p. 371, "An act to amend chapter CIV, Revised Statutes, entitled "TRESPASS."

PRIOR LAWS. An act to prevent trespasses by cutting timber; in force Feb. 27, 1819. Laws, 1819, p. 84; Rev. Laws, 1833, p. 602.

An act to amend an act entitled "An act to prevent trespasses by cutting timber," approved Feb. 27, 1819; in force Jan. 12, 1839. Laws, 1839, p. 42.

DECISIONS. Under the act of Feb. 27, 1819, to prevent trespassing by cutting timber, the act of the defendant must be proved to have been his own personal act, or the act of his servants or agents, done by his express or implied authority. *Cushing v. Dill*, 2 S. 460.

In the act of Feb. 1819, the word "owner," means one who has an estate in fee simple, and such ownership must be proved by the plaintiff in order to recover. *Wright v. Bennett*, 3 S. 258.

Under the act to prevent trespassing by cutting timber, proof of actual possession of the premises by the plaintiff, claiming title in fee simple, is presumptive evidence of title in him to that extent, and throws the burden of rebutting such presumption on the defendant. In the absence of such proof on the part of the plaintiff, he must produce the best evidence the case will admit of, such as his deeds and documentary evidence of title. *Mason v. Park*, 3 S. 532.

In an action of debt, under the statute for cutting timber, the plaintiff must prove title in himself to the land on which the trespass was committed; and the absence of such proof cannot be supplied by proof of possession. *Whiteside et ux. v. Divers*, 4 S. 336. See also, *Clay v. Boyer*, 5 G. 506.

When the wife is joined with the husband in such action, proof of an estate in the wife will sustain the action. *Idem*.

Under the 1st section of chapter CIV, Rev. Stat. 1845, the declaration must allege that the trees were felled without first having permission of the owner; and all the facts upon which the statute finds the penalty must be averred, and the different classes of trees enumerated. The acts of the defendant must be proved to have been committed knowingly and willfully; but the declaration need not aver them to have been done contrary to the form of the statute, if it clearly appears to be framed on the statute. *Whitcraft et al. v. Vanderver*, 12 Ill. 235.

To sustain the action for cutting timber, under the statute of 1845, it is enough that the defendant cut the trees on the plaintiff's land, and that he knew at the time, or had good reason to know, that the land was not his own. But he would not be liable if he really believed he was cutting on his own land, and was not culpably ignorant of its true boundaries. *Watkins v. Gale*, 13 Ill. 152.

## CHAPTER CVI.

[CHAPTER CV. REVISED STATUTES, 1845.]

## VENUE.

## SECTION

1. Either party may have change of venue; for what causes to be granted; application, how made; duty of judge.
2. In case of private property taken for public uses, when damages are to be assessed, on appeal, change of venue may be granted; how applied for and granted.
3. Duty of judge in such cases.
4. Objections to appeal bond, when not allowed.
5. Change of venue, when and how obtained in criminal cases; duty of officers as to custody and removal of prisoner.
6. Changes of venue not to be granted after first term, unless cause arise subsequently; ten days' notice required.
7. In civil cases, all plaintiffs or defendants must join in application; in criminal cases, one may apply.
8. Venue may be changed to another circuit.

## SECTION

9. When change is granted in vacation, what proceedings to be had.
10. If change be granted in term time, what proceedings to be had; not to be granted until after indictment found.
11. Expenses attending change of venue, how paid; if not paid, how collected.
12. When venue changed in criminal cases, witnesses, and others recognized to appear, to remain bound.
13. If venue, in criminal case, be changed in term time, witnesses to be recognized to appear.
14. If prisoner be convicted, to be returned to county from whence the cause came; costs of his trial to be paid by such county.
15. Questions respecting regularity of proceedings, considered waived after verdict.
16. Manner and grounds of change of venue; duty of constable.

[Approved March 3, 1845. Rev. Stat. 1845, p. 527.]

(1.) SECTION I. 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 its discretion, without any application from either party: *Provided*, That neither party shall have more than one change of *venue*.

(2.) SEC. II. Whenever any appeal shall be depending in any of the circuit courts of State, from any assessment of damages for land or other property taken under the authority of any law of this State, for the use of any railroad, canal, turnpike or any other highway, or for any purpose whatever, it shall and may be lawful for the people, or county, or other corporation, or person for whose use such land or other property is to be taken, or the person conducting the appeal in their behalf, or for the claimant or claimants, or his, her or their agents, or attorney at law, or attorney in fact, to file his, her or their affidavit in writing, stating that he, she or they verily believe that a fair and impartial trial of said appeal cannot be had in the court where the said appeal is depending, on account that either the judge of the court, or the people of the county, are interested or prejudiced against



the cause of the party on whose behalf said application is made, or in favor of the cause of the other party, or for or against the parties as aforesaid.

(3.) SEC. III. On filing such affidavit, it shall be the duty of the court to change the *venue* of said cause to some convenient county, to which objections shall not be made by similar affidavit. And said appeal shall be docketed and tried in the court to which the *venue* thereof is changed, in the same manner as if it had been originally instituted there.

(4.) SEC. IV. If any objection shall be taken to any such appeal on account of any defect in the appeal bond, such objection shall not be sustained: *Provided*, The appellant, his, her or their agent or attorney, shall enter into and acknowledge such bond, with sufficient security as may be approved by said court.

(5.) SEC. V. 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 applicant 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 indorse 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.

(6.) SEC. VI. Changes of *venue* shall not be granted after the first term of the court at which the party applying might have been heard, unless the party so applying shall show that the causes for which the change is asked have arisen, or come to his, her or their knowledge, subsequent to the term at which the application might have been made; and shall also have given to the opposite party ten days' previous notice of his or their intention to make such application, except in cases where the causes have arisen or come to the knowledge of the party making the application, within less than ten days of making the same.

(7.) SEC. VII. In civil causes, wherein there are two or more plaintiffs or defendants, a change of *venue* shall not be granted, unless the application is made by or with the consent of all the parties, plaintiffs or defendants, as the case may be; and in criminal cases, where this application is made by a part of the defendants, and is granted, a copy of the indictment, and not the original, shall be transmitted to the court to which the change of *venue* is

ordered; and the copy, certified by the clerk to be correctly made, shall stand as the original.

(8.) SEC. VIII. 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 the circuit in which the suit was instituted.

(9.) SEC. IX. 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.

(10.) SEC. X. 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.

(11.) SEC. XI. 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.

(12.) SEC. XII. 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 change, and a failure to do so shall work a forfeiture of the recognizance.

(13.) SEC. XIII. 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.

(14.) SEC. XIV. 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 con-

viction 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.

(15.) SEC. XV. All questions concerning the regularity of proceeding in obtaining changes of venue, and the right of the court to which the change is made, to try the cause and execute the judgment, shall be considered as waived after trial and verdict.

An Act allowing Persons arrested on Criminal Charges to remove the place of Examination, as therein provided.

[Approved Feb. 11, 1847. *Laws*, 1847, p. 46.]

(16.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That when any person is arrested on any criminal charge, and taken before any justice of the peace for examination, he or she shall have the privilege of removing said examination from before said justice, upon filing an affidavit that said justice is so prejudiced against him or her that he or she believes they cannot have a fair and impartial investigation before said justice; and upon the filing of said affidavit, it shall be the duty of said justice to transmit all the papers connected with or growing out of said examination, to the next nearest acting justice of the peace, or, in case of his absence or sickness, before any other justice of the peace of the next adjoining precinct in the county, who shall proceed to hear and determine the matter as though the same had been originally commenced before him: *Provided*, The constable having the defendant in charge shall hold him in his custody until the complaint shall be heard and disposed of by the justice to whom the papers shall be sent as aforesaid.

See an act entitled "An act to change the venue of certain suits therein named, from Mercer circuit court to Rock Island circuit court," in force April 13, 1849. *Laws*, 1849, p. 22.

See *ante*, p. 296, "An act to provide for a change of venue in the county courts," approved March 1, 1854.

**PRIOR LAWS.** An act directing the mode of changing the venue; in force Feb. 23, 1819. *Laws*, 1819, p. 46. Repealed Jan. 23, 1827.

An act amending the "Act directing the mode of changing the venue," in force Feb. 8, 1821. *Laws*, 1821, p. 113. Repealed Jan. 23, 1827.

An act to provide for changing the venue in civil and criminal cases; in force Jan. 23, 1827. *Laws*, 1827, p. 381; *Rev. Laws*, 1833, p. 606.

An act to amend the act entitled "An act to provide for changing the venue in civil and criminal cases," approved Jan. 23, 1827; in force Feb. 28, 1839. *Laws*, 1839, p. 198.

An act to amend the law in relation to change of venue; in force Feb. 1, 1840. *Laws*, 1840, p. 36. Repealed Feb. 23, 1841.

**DECISIONS.** When a petition for change of venue is made, and verified by an affidavit according to the statute, the obligation of the court to allow it is imperative. *Clark v. The People*, 1 S. 117.

Reasonable notice of a motion for a change of venue should be given to the adverse party; and what constitutes reasonable notice is left to the discretion of the court. *Berry v. Wilkinson et al.*, 1 S. 164.

Four persons were indicted, and one obtained a change of venue without the consent of the others, and was tried, the indictment was returned to the county where it was found, and the three tried in that county; the proceedings were held to be right, and the court of the county to which the venue was changed, should have returned the indictment to the county where it was found, and retained a copy on its records. *Hunter et al. v. The People*, 1 S. 453.

A change of venue may be granted by consent, in a criminal case, without petition or affidavit; and the court to which the cause is sent, cannot inquire into the regularity of the order granting the change. *The People v. Scates*, 3 S. 351.

After trial and verdict, a prisoner cannot object to the jurisdiction of the court to which the cause was sent by change of venue. When a motion for change of venue is made, by reason of the prejudice of the inhabitants, it is a proper practice to require the plea first to be entered. *Gardner v. The People*, 3 S. 83.

Under the statute, when a change of venue is ordered, the clerk should certify and transmit a transcript of the previous proceedings in the case as they appear of record, and also all the original papers filed in the case, certifying to their genuineness. The court to which the venue is changed must have such transcript and original papers before them in order to hear and determine the case; and when such transcript and papers are not transmitted by the clerk, the court to which the venue has been changed, may grant a rule on the clerk to transmit them, and continue the case for that purpose. Where the requisite certificate is not attached to the transcript and papers, the cause may be dismissed on motion, unless a cross-motion be interposed for a rule on the clerk for a proper transcript. *Wight v. Kirkpatrick*, 4 S. 339.

An affidavit that the party entertained serious and well-grounded fears, that he would not receive a fair and impartial trial, on account of the prejudices that he believed existed in the mind of the judge, and that he believed these prejudices so great against him, that he would be unsafe in submitting to a trial before him, is sufficient for a change of venue, under the statute. *McGoon v. Little et al.*, 2 G. 42.

Only the parties to the record, and not third persons, can apply for a change of venue. *Crowell v. Maughis*, 2 G. 419.

A prisoner, indicted for murder, moved a change of venue by reason of the prejudice of the inhabitants of the county; the court ordered a change to a county not the nearest. To this the prisoner objected, and moved a change out of the circuit, alleging prejudice in the judge: *Held*, that the court erred in the change to a county not the nearest, and that all the subsequent proceedings were erroneous. *Baxter v. The People*, 2 G. 578.

A change of venue, out of the circuit, was ordered, on condition that the party should pay the costs thereof, and cause the transcript and papers to be filed in the court to which the change was ordered, within fifteen days before the next term thereof. It was held that such conditions could not be imposed, that the party was at liberty to disregard them, and that the change was consummated by the order of the court, independent of the conditions. *Bellingall v. Duncan et al.*, 2 G. 591.

A party who had obtained a change of venue, taken several steps in the cause, consented to a continuance, and at a subsequent term submitted the cause for trial, without objecting that the original papers had not been transmitted, is too late to apply for an order of dismissal for that cause; application for a rule on the clerk to transmit the papers should have been made at the first term after the change. *Granger v. Warrington*, 3 G. 299.

The omission of a clerk to append a certificate to the transcript, that a paper transmitted therewith was an original indictment, should not vitiate the proceedings; especially as the objection was not made in the circuit court. *Holliday v. The People*, 4 G. 111.

If, on application for a change of venue, the party swear that information of the facts sworn came to his knowledge on the day the petition was drawn, and the notice given of the motion, it is equivalent to stating that he then received the information for the first time. It is error to refuse a change of venue when a clear right to it is shown; and in such case all subsequent proceedings will be set aside. *Barrows v. The People*, 11 Ill. 121.

The party obtaining a change of venue cannot object to a trial in the court to which the same is removed, if enough appear to give jurisdiction to that court. *McBain v. Enloe*, 13 Ill. 76.

When a *quo warranto* is re-ordered to for the enforcement of the private rights of the relator, a change of venue may be granted, under the statute. *The People ex rel. v. Shaw*, 13 Ill. 581.

All objections to jurisdiction by reason of an insufficient certificate of the proceedings in a change of venue, are waived, if the parties go to trial without taking exception for that cause. Only the parties who have a trial pending, are required to join in the application for a change of venue; defendants in default need not join. A defendant who has tendered an issue, and waived his right to object to a change of venue, cannot object that the change was irregular as to a co-defendant in default. *Hitt v. Allen*, 13 Ill. 592.

By the statute, a prisoner is entitled to a change of venue, as a matter of right, upon making the requisite application, and the change may be granted without petition and affidavit, if assented to by the prosecuting officer. Objection to a change should be made in the circuit court. *Brennan et al. v. The People*, 15 Ill. 511.

On application for change of venue in the recorder's court of Chicago, the recorder is vested with a discretion in the matter, and error cannot be assigned upon his decision. *Maton et al. v. The People*, 15 Ill. 536.

## CHAPTER CVII.

[CHAPTER CVI. REVISED STATUTES, 1845.]

## WAREHOUSES.

## SECTION

1. If perishable property be left in a warehouse for fifteen months, it may be sold at auction, to pay

## SECTION

charges, &c.; notice of sale to be given by advertisement.

[Approved March 3, 1845. Rev. Stat. 1845, p. 530.]

SECTION I. If any person shall leave, in any public or private warehouse in this State, any property of a perishable nature, or which, if not taken away and sold within fifteen months from the time at which such property was so left, would not, at the expiration of that time, be worth the charges which should then be due upon such property, and if the charges upon such property shall not be paid, then and in that case, it shall be lawful for the occupant or occupants of such warehouse, to sell at auction to the highest bidder, only so much of such property as will pay the charges due, and the expense of selling and advertising the same, upon giving not less than three weeks' public notice of the time and place of such sale, in two or more newspapers published in the town where such warehouse may be situated, or the vicinity thereof.

## CHAPTER CVIII.

[CHAPTER CVII. REVISED STATUTES, 1845.]

## WARRANTS OF CITIES AND TOWNS.

## SECTION

1. Warrant or order to be drawn for only one amount on one claim.  
2. To be drawn if in favor of person to whom due, and no other.

## SECTION

3. Warrants payable only to payee, or his legal representatives.  
4. Penalty for violation of this chapter, and how recovered.

[Approved March 3, 1845. Rev. Stat. 1845, p. 531.]

SECTION I. In all cases in which any city or town in this State shall be indebted to any person or persons, on any account whatsoever, a warrant or voucher shall be drawn on the treasurer of such city or town, for the whole amount found due to such person, by the tribunal having power to audit and allow claims against such city or town; and such tribunal shall not, in any case, draw more than one warrant or voucher for the amount allowed to one individual at one time.

SEC. II. No warrant or voucher drawn on the treasurer of any city or town, shall be drawn in favor of any other person than the one to whom the

same may be due, and such warrant or voucher may be in the form now prescribed by law.

SEC. III. No treasurer of any city or town in this State, shall pay any warrant or voucher drawn on him, unless such warrant be presented for payment by the person in whose favor such warrant is drawn, or his assignee, or executor, or administrator.

SEC. IV. Any officer or officers of any town or city, that shall be guilty of violating the provisions of this chapter, shall be deemed guilty of a misdemeanor in office; and for every such violation, shall be fined in a sum not exceeding five hundred dollars, to be recovered by indictment.

PRIOR LAWS. An act to prevent cities or towns from issuing warrants to circulate as money; in force March 4, 1843. Laws, 1843, p. 67.

## CHAPTER CIX.

[CHAPTER CVIII. REVISED STATUTES, 1845.]

## WEIGHTS AND MEASURES.

## SECTION

1. One standard of weights and measures; to conform to that established by Congress.  
2. Heaped measure, what shall be.  
3. Other measure, not heaped.  
4. Contracts, &c., to conform to this standard.  
5. The hundred weight; the ton.  
6. Weight of various grains per bushel.  
7. Original standards to be procured by State sealer; where deposited; when opened.  
8. Copies to be made for counties.  
9. Devices to be impressed on standards.  
10. County sealers to compare and seal weights and measures brought to them.

## SECTION

11. County sealers to compare with State sealer once in ten years; penalty for neglecting.  
12. Fees of county sealer.  
13. Penalty for using weights and measures not conforming to the standard herein established.  
14. Secretary of State to be State sealer; clerks of county commissioners' courts to be county sealers.  
15. Standard weight of a bushel of coal.  
16. When act to be in force.  
17. Standard weight of a bushel of corn.  
18. When act to take effect.  
19. Standard weight of certain articles enumerated.  
20. Acts repealed.

[Approved March 3, 1845. Rev. Stat. 1845, p. 532.]

1.) SECTION I. There shall be but one standard of measure of length and surface, one of weight and one measure of capacity, throughout the State, which shall be in conformity with the standard of measure, length, surface and weight established by Congress.

(2.) SEC. II. All commodities sold by heaped measure, shall be duly heaped up in the form of a cone, the outside of the measure, by which the same shall be measured to be the extremity of the base of such cone, and such cone to be as high as the articles to be measured will admit.

(3.) SEC. III. The measures used for measuring dry commodities not heaped, shall be stricken with a straight stick or roller, and of the same diameter from end to end.

(4.) SEC. IV. Contracts hereafter to be executed, made within this State, for any work to be done, or for anything to be sold, delivered, done or agreed for by weight or measure, shall be taken and construed to be made according to the standard weight and measure thus ascertained.

(5.) SEC. V. The hundred weight shall consist of one hundred pounds, and twenty such hundreds shall constitute a ton.

(6.) SEC. VI. Whenever wheat, rye, Indian corn, barley, buckwheat or oats shall be sold by the bushel, and no special agreement as to the weight or measurement shall be made by the parties, the bushel shall consist of sixty pounds of wheat, of fifty-four pounds of rye, of fifty-two pounds of Indian corn, of forty-four pounds of barley, of forty pounds of buckwheat, and thirty-two pounds of oats.

(7.) SEC. VII. The following original standards, made in conformity to the provisions of this chapter, to wit: A yard, a pound, a liquid gallon and a half bushel, shall be procured by the State sealer of weights and measures, and deposited in a chest in his office, which shall only be opened for the sole purpose of comparing such standards with the copies hereinafter described, unless by a joint resolution of the two houses of the legislature, or on the call of either house for information, or by the order of the governor for scientific purposes.

(8.) SEC. VIII. Copies of the said original standards, to be made of such materials as the State sealer shall direct, shall be deposited by him in the offices of the county sealers of the respective counties of this State, at the expense of said counties, who shall severally be responsible for the preservation of the copies respectively delivered to them.

(9.) SEC. IX. The State sealer shall cause to be impressed on each of the copies of such original standards, the letter "I," and such other additional device as he shall direct, for the particular county; which device shall be recorded in the State sealer's office, and a copy thereof delivered to the respective county sealers.

(10.) SEC. X. The several county sealers shall compare all weights and measures which shall be brought to them for that purpose, with the above mentioned copies of such standards in their possession; and when the same are found or made to conform to the legal standards, the officer comparing them shall seal and mark such weights and measures.

(11.) SEC. XI. It shall be the duty of the county sealers of weights and measures, to compare the copies in their possession once in every ten years, with those existing in the office of the State sealer; and every county sealer who neglects to have the copies in his possession compared as aforesaid, shall pay into the county treasury fifty dollars for county purposes; whenever any county sealer fails for one month to pay the aforesaid penalty, it shall be the duty of the county commissioners' court to commence suit therefor in their own name, before any justice of the peace of the county, and when collected, the same shall be paid into the county treasury for the uses aforesaid.

(12.) SEC. XII. Each county sealer shall be entitled to receive for his services, at and after the following rates: For sealing and marking every beam, six and a quarter cents; for sealing and marking measures of extension, at the rate of six and a quarter cents per yard—not to exceed twenty-five cents for any one measure; for sealing and marking every weight, two cents; for sealing and marking liquid and dry measures, if the same be of the capacity of a gallon or more, six and a quarter cents; of less than a gallon, two cents. They shall also be entitled to a reasonable compensation for making such weights and measures conform to the standard established by this chapter.

(13.) SEC. XIII. If any person or persons shall hereafter use any weights, measures or beams, in weighing or measuring, which shall not be conformable to the standards of this State, established by this chapter, whereby any purchaser of any commodity or article of trade or traffic shall be injured or defrauded, such purchaser may maintain an action on the case against the offender; and if judgment shall be rendered for the plaintiff, he shall recover five times the damages with costs of suit.

(14.) SEC. XIV. The secretary of State shall be *ex officio* State sealer of weights and measures, and the clerks of the county commissioners' court shall be county sealers of weights and measures for their several counties.

An Act to fix the Standard Weight of Coal.

[Approved Feb. 18, 1847. Laws, 1847, p. 168.]

(15.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever mineral coal shall be sold by the bushel within the limits of this State, and no special agreement as to the weight or measurement shall be made by the parties, the bushel shall consist of eighty pounds, and this shall be the standard weight of a bushel of coal.

(16.) SEC. II. This act to be in force from and after its passage.

An Act in relation to Weights and Measures.

[Approved Feb. 15, 1851. Laws, 1851, p. 112.]

(17.) SEC. I. *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, whenever any Indian corn shall be sold by the bushel, and no specified agreement as to the weight or measure shall be made by the parties, the bushel of corn shall consist of fifty-six pounds.

(18.) SEC. II. This act to take effect from and after the first day of March next.

An Act to amend an Act concerning Weights and Measures.

[Approved Feb. 14, 1855. Laws, 1855, p. 178.]

(19.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever any of the following articles shall be contracted for, or sold, or delivered, and no special contract or agreement shall be made to the contrary, the weight per bushel shall be, as follows, to wit: Shelled corn, fifty-six (56) pounds; corn in the ear, seventy (70) pounds; wheat, sixty (60) pounds; rye, fifty-six (56) pounds; oats, thirty-two (32) pounds; barley, forty-eight (48) pounds; Irish potatoes, sixty (60) pounds; sweet potatoes, fifty-five (55) pounds; white beans, sixty (60) pounds; castor beans, forty-six (46) pounds; clover seed, sixty (60) pounds; timothy seed, forty-five (45) pounds; flax seed, fifty-six (56) pounds; hemp seed, forty-four (44) pounds; blue grass seed, fourteen (14) pounds; buck-wheat, fifty-two (52) pounds; dried peaches, thirty-three (33) pounds; dried apples, twenty-four (24) pounds; onions, fifty-seven (57) pounds; salt, fifty (50) pounds; stone coal, eighty (80) pounds; malt, thirty-eight (38) pounds; bran, twenty (20) pounds; turnips, fifty-five (55) pounds; hair, (plastering) eight (8) pounds; unslacked lime, eighty (80)

pounds; corn meal, forty-eight (48) pounds; fine salt, fifty-five (55) pounds.

(20.) SEC. II. All laws and parts of laws inconsistent with this act are hereby repealed.

PRIOR LAWS. An act regulating weights and measures; in force March 22, 1819. Laws, 1819, p. 169; Rev. Laws, 1833, p. 660. Repealed March 4, 1843.

An act to regulate weights and measures; in force March 4, 1843. Laws, 1843, p. 317.

## CHAPTER CX.

[CHAPTER CX. REVISED STATUTES, 1845.]

### WILLS.

#### SECTION

1. Who capable of making will, devising estate, real and personal.
2. Wills, testaments and codicils to be in writing; how signed; how witnessed; how proved before probate court; fraud, compulsion, &c., when to invalidate will; when satisfactorily proved, will to be recorded; its effect.
3. Duty of witnesses to appear before court of probate and prove will; punishment for refusal.
4. How testimony of non-resident witnesses taken.
5. If probate justice be a witness, will may be proved before circuit court; clerk of court to certify will to probate court; effect of will thus proved.
6. When will is presented, to be proved and letters testamentary granted, without delay; will may be contested within five years; proceeding in such cases.
7. When subscribing witness be dead, how will may be proved.
8. Wills proved and properly authenticated out of this State, to be recorded and of force in this State.
9. Nuncupative will, how proved; to be committed to writing; its effect; fraud and compulsion may invalidate will; to be recorded; letters testamentary not to be granted until after sixty days.
10. In case of nuncupative will, heirs, &c., to be notified to appear and make objection; if none be made, letters to be granted.
11. If devisee be subscribing witness, will to be void as to him, unless otherwise proved; rights of such witness, how preserved.
12. Debtor not discharged from liability by being chosen executor.
13. Children born subsequent to execution of will, how provided for.
14. Estate, how disposed of, if devisee die, and the will contain no provision for such contingency.
15. How will may be revoked or canceled.
16. Wills to be recorded; authenticated copies to be evidence.
17. In what county will shall be proved.
18. Person having will, to deliver the same to court of probate on death of testator; how compelled to do so, or punished for refusing; destroying or secreting will, punished as larceny.
19. Executors, when entitled to letters testamentary; on their failure to act, letters of administration to be granted.
20. Duty of executors; on appointment to have will recorded; may refuse to act; penalty for neglect to act, without just excuse; penalty, how recovered.

#### SECTION

21. If executor refuse to administer, who shall be appointed administrator.
22. Executor of executor not to be executor of first testator.
23. Person aged seventeen years may be executor, but must have guardian until of age.
24. Power of executor over estate, before probate of the will; his liability in such case.
25. One of two executors dying, the other to act.
26. Oath to be taken by executor or administrator; form of; by whom administered.
27. Bond to be given by executors; form of; execution of.
28. When bond may be dispensed with; when required.
29. If person appointed executor, be under proper age, or be otherwise incompetent to act, administrator to be appointed; when husband may act for wife; fact of incompetency, how tried.
30. When, by division of county, administrator is thrown into new county, how to proceed.
31. Letters of administration, obtained by fraud, may be revoked.
32. Probate court to try issue if fraud in such case.
33. On such revocation, letters to be granted anew.
34. On resignation of administrator, another to be appointed; resignation not to effect release.
35. In case of contest or delay, in procuring probate of will, court may appoint administrator for the time during which such contest or delay exists.
36. Form of letters granted to such person.
37. Form of bond to be given.
38. Form of oath to be taken.
39. Duty of person so appointed; his compensation.
40. Power to collect debts, &c.; suits brought, &c.
41. On appointment of administrator, person appointed *pro tem.*, to deliver assets to such administrator; penalty for refusal; how sued for and recovered.
42. Estate not bequeathed, how distributed.
43. Creditor may, in certain cases, attest will.
44. If, by renunciation of benefits of will by the widow, legacies be diminished, how loss apportioned.
45. If widow commit waste, how liable; second husband liable therefor.
46. What deemed intestate estate; how such estate disposed of; rights of heirs; rights of widow; of collaterals, &c.
47. Estate of wife, when one-half to go to husband.
48. Separate property to be retained by widow, free from debts; how set apart to her.
49. Widow may relinquish specific articles and take others, or money in lieu of them.

#### SECTION

50. Right of widow to separate property not affected by her renouncing, or failing to renounce benefits of will.
51. Persons having received advancement out of estate, may return the same and receive same benefits of will as other distributees.
52. Intermarriage of parents to legitimate children; and entitle them to share in estate.
53. Illegitimate children to inherit estate of mother.
54. Posthumous children to share in estate of parent.
55. Husband to administer upon estate of wife; wife upon estate of husband; when next of kin, creditors, indifferent person or public administrator; proof of death of intestate to be made.
56. Public administrators, how appointed.
57. When administration to be granted to the public administrator.
58. Further powers and duties of public administrator.
59. Oath of public administrator.
60. Bond required of public administrator; on neglect, his office vacated.
61. If, after letters are granted to public administrator, other persons be found entitled thereto, first letters to be revoked and new granted; when application therefor to be made; compensation of public administrator.
62. Balance remaining in the hands of public administrator after payment of debts, how disposed of.
63. Public administrator may, in first instance, protect property of intestate, until letters to proper person can be perfected.
64. When person, other than kin or creditors, apply for letters, how to proceed.
65. Form of letters to executors.
66. Form of letters to administrators.
67. Oath of administrators, form of.
68. Bond, form of; how to be executed.
69. Bonds, how prosecuted; effect of recovery; costs in suits thereon; certified copies of bonds to be evidence.
70. Administrator of executor or administrator, his rights and duties.
71. Letters of administration to be revoked, if will be produced.
72. If such will be afterwards set aside, letters *de bonis non* granted.
73. If persons having received letters become incompetent, letters to be revoked, and others granted; such revocation to be recorded.
74. Executor or administrator residing or removing out of State, or neglecting to render accounts, &c., to be removed, and others appointed.
75. If the office of one of several executors or administrators become vacant, may be filled, &c.; if office of all is vacated, how filled; liability of one whose letters are revoked; actions may be maintained by successor.
76. Construction of words and phrases.
77. False pleading not to make administrator or executor liable beyond value of assets.
78. Court of probate may demand additional security; on refusal, may revoke letters; effect thereof.
79. Securities apprehensive of loss, by acts of principal, how relieved.
80. Condition of new bond.
81. Inventory to be made and filed in probate court; what facts it shall contain.
82. Warrant of appraisement to be granted; form thereof; fee of probate justice therefor; vacancy, how filled.
83. Oath of appraisers; their duties.
84. Appraisement bill to be certified, and filed in office of probate justice.
85. Inventories, bills of appraisement, and copies thereof to be *prima facie* evidence.
86. New assets found, to be inventoried, appraised, and return thereof made.
87. Appraisers' fees.
88. If estate be found solvent, widow may elect her share of estate; duty of executor or administrator to set apart to her, her share; penalty for neglect or refusal to do so; how penalty may be sued for and recovered.
89. Inventories, &c., to be successively made; what facts to be reported to probate court from time to time.

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90. Persons having effects belonging to estate, and concealing the same, how compelled to account for and surrender the same.
91. Books of deceased person subject to inspection.
92. Executors and administrators chargeable with estate received.
93. Sales of real estate, when directed in will, how made, and when valid.
94. Property of deceased not to be removed out of this State; if done, letters to be revoked, and suit brought on bond; verdict of jury; measure of damages.
95. Time to be fixed for adjusting accounts; notice to be given to creditors; how given; creditors not presenting claims, their rights; costs, when estate answerable for; execution to be stayed one year.
96. Sale of assets; notice thereof; terms of sale; when estate not to be sold, but distributed in kind.
97. Crops may be disposed of; when to be sold, &c.; avails thereof to be assets.
98. Clerk and crier at sale; their compensation; hours of sale; when sale void.
99. Sale bill to be returned to probate court, after sale of effects; to be certified by clerk and crier.
100. Claims not due may be presented and allowed, after deducting rebate of interest.
101. Suit not to be brought against executor until the expiration of one year; exception; costs, when not to be recovered.
102. Suit not to be brought after one year subsequent to final settlement of accounts.
103. When personal estate is found insufficient to pay debts, executor or administrator may petition circuit court, for leave to sell real estate; notice of such petition to be given; what statements to be filed with petition.
104. Court to hear petition and examine proof, &c., of parties interested; may, if proper, order sale of real estate; property divided and sold, in what manner; surplus, how disposed of.
105. Who shall make sale and execute conveyance; what conveyance shall set forth; its effect.
106. Sale to be at public vendue; hour of sale; place of sale; notice of sale; how given; penalty for selling contrary to law; sale to be valid notwithstanding informality; credit may be given; security to be taken.
107. Guardian *ad litem* to be appointed for infant heirs or devisees.
108. Real estate not to be sold until personal estate is applied in payment of debts.
109. Appeals allowed; when to be taken.
110. Assets arising from sale of real estate to be applied in payment of debts.
111. Certificates of United States' lands bought, but not paid for, may be sold; avails, how applied.
112. When such lands may be patented.
113. General provisions as to United States' lands patented, but not paid for.
114. When estate is insolvent, entry thereof to be made; suits afterwards brought against estate, to be at cost of creditor suing; when real estate is required to be sold, suit not to be brought, until avails are received; probate court may coerce application to circuit court for sale of real estate.
115. Classification of demands against estate; to be paid in their order; debts not exhibited in two years, barred, except other assets be found; rights of incompetent persons, saved until they become competent.
116. Manner of exhibiting claims.
117. If party suing estate be found indebted, judgment to be given against him, and execution awarded.
118. Claimants to give ten days' notice of presentation of claims; judgments, and notes of hand, how proved.
119. In what cases oath of claimants allowed; court may require oath, &c.
120. Debts, when allowed, in what order paid.
121. Claims of executors and administrators, how adjusted and allowed.
122. Court to list and class demands; claim paid before it is allowed, to be proved.
123. Administrators and executors, how often to exhibit accounts for settlement.

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124. On each settlement, court to ascertain amount of debts and assets; assets to be paid out *pro rata*; subsequent payments.
125. When personal estate is insufficient, abstract of debts and assets to be made out and presented to the circuit court for order to sell real estate; *avails* to be applied in payment of debts.
126. Executor or administrator, how punished for not paying over money; suit on bond; what considered a breach.
127. Legacies, when may be paid.
128. Heir to be charged with money received by him.
129. Distributees to give bond to refund, if debts subsequently appear against estate.
130. If it be necessary for distributees to refund, apportionment to be made among them by court of probate; in case of refusal to refund, for sixty days, suit may be brought on bond; or, if there be no bond, in an action of debt.
131. In what case executors may have suit against each other; when executor be residuary legatee, his remedy; other legatees; order of payment, to be made before suit.
132. Actions of trover, detinue and replevin may survive for and against executors and administrators.
133. Executor or administrator of deceased mortgagee, on receiving payment, may discharge mortgage.
134. Executors or guardians may mortgage estate; for what time.
135. Lands not to be mortgaged, until permission of probate court is had; *avails*, how applied; bond to be given.
136. Compensation of executors and administrators.
137. Suit on bond, may be brought against them for breach thereof.
138. Appeals allowed to circuit and supreme courts.
139. Power of probate court to enforce its orders, &c.; may attach, fine and imprison.
140. Duty of sheriff to attend court when required, to execute writs, keep order; fees, how allowed and taxed.
141. Executors and administrators, heretofore appointed, to be bound by provisions of this chapter.
142. Court of probate may order claim, &c., to be compounded, &c., upon suggestion of executor or administrator; *proviso*; further *proviso*.
143. If claim compounded, executor chargeable, &c.
144. When probate of will is refused by probate justice, and appeal taken to circuit court, how will may be supported.

[Approved March 3, 1845. Rev. Stat. 1845, p. 534.]

(1.) SECTION I. 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.

(2.) SEC. II. 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

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145. When act shall be in force.
146. Administrators of intestates' estates in other States may prosecute suits in this State; *proviso*.
147. Executor proving will of deceased person in other States, may also prosecute suits in this State; *proviso*.
148. Construction of act. When resident administrator may be substituted for non-resident administrator in suit commenced by latter.
149. When act shall take effect.
150. Intestate, leaving widow, what property she may retain additional to that allowed by former act.
151. In case no such property be left, *right of widow*.
152. Administrator to set apart property of widow, when not otherwise done.
153. If there be no widow, allowance to the children.
154. If property of deceased person leaving a will be deemed insufficient to pay debts, &c., allowance to widow reserved.
155. When act to take effect.
156. Absolute allowances to widow and family.
157. Additional allowance.
158. Duty of appraisers.
159. Widow may take other articles.
160. Repealing clause.
161. Construction of the word "dower."
162. Securities may be released, when; duty of probate court.
163. Executor, &c., may resign; *proviso*, as to construction of the acceptance of resignation.
164. Additional powers conferred upon probate courts.
165. When act shall take effect.
166. Non-resident executors authorized to execute wills in this State; *proviso*; further *proviso*.
167. Conveyances by such executors may be confirmed by probate or county court, upon notice.
168. Appeals allowed.
169. Application of act.
170. Descent of property of bastard dying intestate.
171. Said property not to revert to State, except.
172. Condition of appeal, &c., in case of administrators.
173. When act to be in force.
174. Wills executed out of State, admitted to probate within the State, how.
175. When act to take effect.
176. When administrator shall die before execution of judgment, duty of administrator *de bonis non*.
177. Not necessary to obtain a new judgment.
178. When act shall take effect.

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 and 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 justice 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.

(3.) SEC. III. 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.

(4.) SEC. IV. 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 probate justice 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 hereto, 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.

(5.) SEC. V. In all cases wherein a probate justice of the peace, or such other person as may be authorized by law to grant probate of wills and testaments, may and shall have become a witness to any will or testament which is required by law to be proved before him as such probate justice of the peace, or person authorized to grant probate as aforesaid, and the testimony of such witness is necessary to the proof of the same, then, and in such case, it shall be his duty to go before the circuit court of the county in which such will is to be admitted to record, and make proof of



the execution of the same, in the same manner that probate of wills is required to be made in other cases. And it shall be the duty of the clerk of the circuit court aforesaid, forthwith to certify such will, proven as aforesaid, to the probate court of the county; and said will shall, thereupon, have the same force and effect that it would have had if it had been proven by one credible witness before the court of probate; and if there are other witnesses to said will, the court of probate shall take their evidence in support of said will, as in other cases.

(6.) SEC. VI. 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 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, *femes covert*, persons absent from 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 witnesses at the time of the first probate, shall be admitted as evidence, and have such weight as the jury shall think it may deserve.

(7.) SEC. VII. 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 probate justice, 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.

(8.) SEC. VIII. 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.

(9.) SEC. IX. 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 probate justice in like manner as other wills are directed to be recorded by this chapter: *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.

(10.) SEC. X. 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 show cause, if any they have, why such letters testamentary should not be granted; and if no sufficient cause be shown, letters shall be granted thereon as in other cases.

(11.) SEC. XI. 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 chapter; 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.

(12.) SEC. XII. 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.

(13.) SEC. XIII. 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 devise 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.

(14.) SEC. XIV. 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.

(15.) SEC. XV. No will, testament or codicil shall be revoked, otherwise 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.

(16.) SEC. XVI. All original wills, after probate thereof, shall be recorded, and remain in the office of the probate justice of the proper county; and authenticated copies thereof, certified under the hand and seal of said probate justice, shall be admitted as evidence in any court of law or equity in this State.

(17.) SEC. XVII. 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.

(18.) SEC. XVIII. Any person or persons who may have in his or her possession, any last will 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 attachment, 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 willfully 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.

(19.) SEC. XIX. 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.

(20.) SEC. XX. 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 and 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.

(21.) SEC. XXI. 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 their 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.

(22.) SEC. XXII. The executor of an executor shall not, in consequence thereof, be executor of the first testator.

(23.) SEC. XXIII. 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.

(24.) SEC. XXIV. 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 nowise 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.

(25.) SEC. XXV. Where two or more executors are appointed in and 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.

(26.) SEC. XXVI. 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 court 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 probate justice, and be attached to and form a part of the probate of said will.

(27.) SEC. XXVII. 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 executorship 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—.

The condition of the above obligation is such, that if the above bounden 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 fulfill the duties enjoined on him in and by the said will; and shall, moreover, 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, and attested by the probate justice, and filed in his office.

(28.) SEC. XXVIII. 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; but if the court of probate shall see cause, from its 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.

(29.) SEC. XXIX. 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.

(30.) SEC. XXX. In all cases in which, by the division of any county in this State, the administrator or administratrix, to whom letters of administration may have been granted by the probate court of such county, shall, by such division, be placed beyond the limits of the county in which such letters may have been granted, then and in all such cases, the probate court of such county shall be authorized to proceed and settle the estate upon which letters of administration may have been so granted, in the same manner as if no such division had occurred.

(31.) SEC. XXXI. Courts 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 pretense of being a creditor of the estate upon which administration has been or may be granted, or upon any other false pretense whatever.

(32.) SEC. XXXII. In all controversies arising under this chapter, the court 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.

(33.) SEC. XXXIII. In all cases where any court of probate shall hereafter revoke any letters of administration, it shall proceed to grant the same to such person or persons as may be entitled thereto.

(34.) SEC. XXXIV. When any administrator shall resign his office in writing, and such resignation shall be accepted, the probate justice shall have power to appoint another administrator; but the acceptance of such resignation shall not be construed to exonerate any such administrator or his securities, from liabilities incurred previous to such acceptance.

(35.) SEC. XXXV. 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.

(36.) SEC. XXXVI. The form of the letters to be granted to the person or persons so appointed to collect and preserve the estate of the decedent 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., probate justice, in and for the said county of \_\_\_\_\_, at his office in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

G. H., Probate Justice. [SEAL.]"

(37.) SEC. XXXVII. 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:

"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 probate justice 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 probate justice and filed in his office.

(38.) SEC. XXXVIII. 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 court 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 court 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 probate justice before whom the same shall be taken.

(39.) SEC. XXXIX. 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 appraisalment 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 appraisalment as aforesaid.

(40.) SEC. XL. Every collector appointed as aforesaid shall have power to commence suits for debts due to the decedent, 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.

(41.) SEC. XLI. 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 court 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 decedent.

(42.) SEC. XLII. All such estate, both real and personal, as is not devised or bequeathed in the last will and testament of any person, 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.

(43.) SEC. XLIII. 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.

(44.) SEC. XLIV. 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.

(45.) SEC. XLV. 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.

(46.) SEC. XLVI. 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 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, as provided by law.

(47.) SEC. XLVII. When any *feme covert* shall die intestate, leaving no child or children, or descendants of a child or children, then the one-half of the real estate of the decedent shall descend and go to her husband, as his exclusive estate forever.

(48.) SEC. XLVIII. The widow, in all cases, shall be allowed to have and retain, as her sole and separate property, one bed and bedding, the wear-

ing 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; and also, the same amount and species of property as is or may be by law exempt from execution; 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.

(49.) SEC. XLIX. 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 preceding section; or in case the intestate shall not leave any or all of the articles specified, she shall be entitled to other property, or the value of the same in money; and it shall be the duty of the administrator or court 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.

(50.) SEC. L. The right of a widow to her separate property, shall in no case be affected by her renouncing, or failing to renounce, the benefit of the provisions made for her in the will of her husband or otherwise, as provided in chapter thirty-four of the Revised Statutes.

(51.) SEC. LI. 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.

(52.) SEC. LII. 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.

(53.) SEC. LIII. 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.

(54.) SEC. LIV. 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.

(55.) SEC. LV. 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 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 belief.

(56.) SEC. LVI. 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.

(57.) SEC. LVII. Whenever any person shall die intestate, in any county in this State, or when any non-resident shall die intestate, leaving goods and chattels, rights 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.

(58.) SEC. LVIII. 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.

(59.) SEC. LIX. 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, to the best of my knowledge and abilities: so help me God."

Which said oath shall be taken before the probate justice of the proper county, reduced to writing and subscribed by the public administrator, and filed in the office of the said justice.

(60.) SEC. LX. It shall be the duty of the probate justice, upon granting letters of administration to public administrators, to take bond in the same manner as other administrators. And if any 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 probate justice of such fact, the governor shall fill such vacancy.

(61.) SEC. LXI. 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 chapter, 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.

(62.) SEC. LXII. 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.

(63.) SEC. LXIII. 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.

(64.) SEC. LXIV. 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 probate justice may proceed to grant letters to such applicant or applicants, or any other person or persons, as he may think fit.

(65.) SEC. LXV. All letters testamentary, to be hereafter issued to executors under this law, shall be in the following form, to wit:

"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 Illinois, 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 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 fulfill 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., probate justice of the said county of —, at his office in —, this — day of —, A. D. 18—. E. F., *Probate Justice.* [SEAL.]"

(66.) SEC. LXVI. The form of letters of administration hereafter to be issued in this State, shall, as near as may be, be as follows, to wit:

"STATE OF ILLINOIS, }  
County of —, } ss *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 Illinois, 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., probate justice in and for the said county of —, at his office in —, this — day of —, A. D. 18—. E. F., *Probate Justice.* [SEAL.]"

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.

(67.) SEC. LXVII. 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 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 probate justice, and filed in his office.

(68.) SEC. LXVIII. Each and every administrator, except as is herein-before provided for, shall, before entering upon the duties of his office, 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 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—. 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 probate justice, 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 chapter, 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.

(69.) SEC. LXIX. 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 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.

(70.) SEC. LXX. 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*.

(71.) SEC. LXXI. 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.

(72.) SEC. LXXII. 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.

(73.) SEC. LXXIII. 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 show 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.

(74.) SEC. LXXIV. 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.

(75.) SEC. LXXV. 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 its 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 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.

(76.) SEC. LXXVI. All the provisions in this chapter, 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 it is not otherwise directed.

(77.) SEC. LXXVII. 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.

(78.) SEC. LXXVIII. 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 or 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 hereinbefore 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.

(79.) SEC. LXXIX. 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 court 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 show cause against such petition; and may thereupon dismiss the 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 testa-

mentary 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.

(80.) SEC. LXXX. 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 bounden 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—, or 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.

(81.) SEC. LXXXI. 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 sperate, doubtful or desperate; which said inventory shall be returned to the office of the probate justice within three months from the date of the said letters testamentary or of administration as aforesaid.

(82.) SEC. LXXXII. 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 deceased, known to them, or to be shown 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 of Illinois, 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., probate justice for the said county of —, at his office in —, this — day of —, A. D. 18—.

L. M., Probate Justice. [SEAL.]"

For which said warrant the probate justice 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.

(83.) SEC. LXXXIII. The appraisers, before they proceed to the appraisement of the estate, shall take the following oath, (or affirmation,) to be annexed to or indorsed 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.

(84.) SEC. LXXXIV. 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 probate justice, within three months from the date of his letters testamentary or of administration.

(85.) SEC. LXXXV. 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.

(86.) SEC. LXXXVI. 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 in the inventory and bill of appraisement as aforesaid, an account or inventory of the same shall be returned to the office of the probate justice, appraised by three disinterested sworn appraisers as aforesaid, within three months after discovery shall be made of the same.

(87.) SEC. LXXXVII. Each and every appraiser appointed under this chapter, 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 court of probate, and paid upon its order by the executor or administrator, and charged to the account of the estate.

(88.) SEC. LXXXVIII. 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 for 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.

(89.) SEC. LXXXIX. 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 debt; 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 probate justice, as is required in other cases by this chapter.

(90.) SEC. XC. If any executor or administrator, or other person interested in any estate, shall state upon oath to any court of probate, that he believes 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 it by citation, and may examine him 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 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 shall comply with the order of the court therein.

(91.) SEC. XCI. The books of account of any deceased person shall be subject to the inspection of all persons interested therein.

(92.) SEC. XCII. 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.

(93.) SEC. XCIII. 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 when 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.

(94.) SEC. XCIV. 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 court 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 person 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 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 person or persons entitled, as in other cases.

(95.) SEC. XCV. 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 said decedent, 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 the 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.

(96.) SEC. XCVI. The executor or administrator shall, as soon as convenient, after making the inventory or 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 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 purchases 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.

(97.) SEC. XCVII. 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.

(98.) SEC. XCVIII. In all public sales of property, made in pursuance of this chapter 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 executor 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.

(99.) SEC. XCIX. 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 probate justice in the like time as is required in cases of inventories and appraisements.

(100.) SEC. C. 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 chapter, 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.

(101.) SEC. CI. 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.

(102.) SEC. CII. 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 be brought within one year next after such executor or administrator shall have settled his accounts with the court of probate.

(103.) SEC. CIII. When any executor or administrator, whose testator or intestate shall have died seized of any real estate in this State, shall discover 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 show cause why it should not be sold for the purposes aforesaid.

(104.) SEC. CIV. 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 estate, from time to time, as 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.

(105.) SEC. CV. 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.



(106.) SEC. CVI. 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 chapter, 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 offense 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.

(107.) SEC. CVII. 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.

(108.) SEC. CVIII. 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, appraisal bill, and sale bill, in the office of the probate justice; 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.

(109.) SEC. CIX. 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.

(110.) SEC. CX. When any real estate shall, at any time, be ordered to be sold, the moneys arising from such sale 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.

(111.) SEC. CXI. 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 decedent 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.

(112.) SEC. CXII. 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 decedent 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 nowise interfere with the provisions of any last will or testament as aforesaid.

(113.) SEC. CXIII. In all cases where the lands, or certificate 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 made 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 scrip, 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 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 scrip 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.

(114.) SEC. CXIV. Whenever any estate is found to be insolvent, it shall be so entered of record by the probate justice, 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 chapter. 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.



(115.) SEC. CXV. 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. 2nd. 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. 3rd. 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.

(116.) SEC. CXVI. 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 court of probate.

(117.) SEC. CXVII. 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 court of probate to give judgment therefor, and issue an execution, or any other final process, which a justice of the peace might issue in like cases.

(118.) SEC. CXVIII. Persons having claims against estates, 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 shown to the contrary, shall be deemed duly proved.

(119.) SEC. CXIX. No person making a claim against the estate of any testator or intestate, shall be permitted to prove the same by his or her own oath, except in cases specified in section ninety-five hereof; but said court may, in its discretion, before giving judgment against any executor or administrator, 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.

(120.) SEC. CXX. 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 chapter, 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.

(121.) SEC. CXXI. 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 defense 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.

(122.) SEC. CXXII. 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 chapter; 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.

(123.) SEC. CXXIII. 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 required, until the duties of their administration be fully completed.

(124.) SEC. CXXIV. Upon each and every settlement of the accounts of any executor or administrator, as provided by this chapter, 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 chapter; 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.

(125.) SEC. CXXV. 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.

(126.) SEC. CXXXVI. 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 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.

(127.) SEC. CXXVII. 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.

(128.) SEC. CXXVIII. Where any heir of any 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 heir who has received from the intestate more than his share, shall in no case be required to refund.

(129.) SEC. CXXIX. 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.

(130.) SEC. CXXX. When, 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.

(131.) SEC. CXXXI. Where there are two or more executors or administrators of an estate, and any one of them takes all or a greater part of such estate, and refuses to pay the debts of the testator or intestate, or refuses 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 execu-

tor, 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.

(132.) SEC. CXXXII. 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.

(133.) SEC. CXXXIII. 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.

(134.) SEC. CXXXIV. 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.

(135.) SEC. CXXXV. 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.

(136.) SEC. CXXXVI. 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 same, as shall be reasonable.

(137.) SEC. CXXXVII. If any executor or administrator shall fail to comply with the provisions of this chapter, or shall fail to comply with any or all of the covenants in his bond, an action may be forthwith instituted 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.

(138.) SEC. CXXXVIII. 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.

(139.) CXXXIX. 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 any 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: *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.

(140.) SEC. CXL. For the purpose of enabling the courts of probate respectively, to execute the powers vested in them by this chapter, it shall be the duty of the sheriff of each county in which such courts shall be held, when required by the court 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 court 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.

(141.) SEC. CXLI. In all cases where executors and administrators have been heretofore appointed, and who shall not have completed their respective administrations or executorships, before this chapter takes effect, such executors or administrators shall be deemed to be within the provisions of this chapter, 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, whenever the provisions of this chapter 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.

An Act to facilitate the Collection of Debts by Executors and Administrators, in desperate Cases.

[Approved March 1, 1845. App. Rev. Stat. 1845, p. 595.]

(142.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That upon suggestion made by an executor or administrator, to the court of probate, that any claim, debt or demand whatever, belonging to the estate in his hands to be administered, and accruing in the lifetime of the decedent represented by such executor or administrator, is desperate on account of the insolvency or doubtful solvency of the person or persons owning the same; or on account of the debtor having availed himself of the late bankrupt law of the United States; or on account of some legal or equitable defense which such person or persons may allege against the same; or for the cause that the smallness of such claim, debt or demand, and the difficulty of finding the debtors, owing to the

remoteness of their residence, or such executor's or administrator's ignorance of the same, the said court may order such claim, debt or demand, to be compounded or sold, or to be filed in the said court for the benefit of such of the heirs, devisees or creditors of such decedent, as will sue for or recover the same, giving the creditors the preference, if they or any of them apply for the same before the final settlement of such estate: *Provided*, That no order for the sale or compounding of any such debts, claims or demands, or any of them, shall be made until four weeks' public notice shall have been given to all whom it may concern, of the time and place, when the said order will be applied for; which notice shall be given by the administrator or executor, in some public newspaper, printed in the county where such application shall be made, if any there be, and if no such newspaper shall be printed in said county, then by posting up such notices in some public places in said county, not less than three, of which one shall be the door of the office of the said probate justice of the peace; which said notices shall be for four weeks, as aforesaid, previous to the time of said application: *And Provided, further*, That the said executor or administrator, as the case may be, shall report to the said probate justice of the peace, the terms upon which he has settled or disposed of any such claim, debt or demand, for his approval.

(143.) SEC. II. And if such claim be compounded or sold, such executor or administrator shall be chargeable with the avails of such compounding; and if the same be taken by any of the said creditors, heirs or devisees aforesaid, he, she or they may maintain an action for the recovery thereof in the name of such executor or executors or administrators, for his, her or their own use; and upon recovering the same or any part thereof, he, she or they shall be chargeable therewith, after deducting his claim or distributive share, with reasonable compensation for collecting the same; and upon such suits, the executor or administrator shall not be liable for costs.

An Act respecting the Probate of Wills.

[Approved Feb. 25, 1845. App. Rev. Stat. 1845, p. 596.]

(144.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter, when probate of any will and testament shall have been refused by any probate justice of the peace, and an appeal shall have been taken from the order or decision of the said probate justice refusing to admit the said will to probate, into the circuit court of the proper county, as now provided by law, it shall be competent for the party seeking probate of the said will, to support the same on hearing, in the said circuit court, by any evidence which would be competent, in case probate of said will had been allowed and the same were afterwards contested under the fifth section of "An act relative to wills and testaments, executors and administrators, and the settlement of estates," approved February 3, 1829; and the said will, having been so proved, upon said appeal, shall be admitted to probate, liable, however, to be subsequently contested, as is now provided in case of wills admitted to probate in the first instance.

(145.) SEC. II. This act shall be in force from and after its passage.

An Act authorizing Administrators and Executors from other States to prosecute Suits in this State.

[Approved March 3, 1845. App. Rev. Stat. 1845, p. 598.]

(146.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That when any person or persons have obtained or may obtain administration on the estate of any intestate, in any one of the United States, or territories thereof, such person or persons shall be enabled to prosecute suits in any court in this State, in the same manner as if administration had been granted to such person or persons by virtue of the laws of this State: *Provided,* That such person or persons shall produce a copy of the letters of administration, authenticated in the manner which has been prescribed by the laws of Congress of the United States for authenticating the records or judicial acts in any one State, in order to give them validity in other States, and that such letters of administration had been granted in pursuance of and agreeably to the laws of the State or territory in which such letters of administration were granted: *Provided,* That said administrator, executor or other representative, shall give a bond for costs, as in case of other non-residents.

(147.) SEC. II. When any executor or executors have proved or may prove the last will and testament of any deceased person, and take on him or themselves, the execution of said will, in any State in the United States, or in any territory thereof, such person or persons shall be enabled to prosecute suits in any court in this State, in the same manner as if letters testamentary had been granted to him or them, under the provisions of the laws of this State: *Provided,* That such executor or executors shall produce a certified copy of the letters testamentary, under the seal of the court where the same were obtained; and a certificate of the presiding officer of such court, that the clerk's certificate is in due form, and that such letters had been granted in pursuance of and agreeably to the laws of the State or territory in which such letters testamentary were granted.

(148.) SEC. III. That nothing in this act contained, shall be so construed as to apply to cases where administration had been or may be obtained upon the estate of any intestate, by virtue of or under the provisions of the laws of this State in relation to administrations, nor where letters testamentary may be or may have been granted in accordance thereto. And when, after any suit or suits commenced or to be commenced by any administrator or administrators, executor or executors, under the provisions of the first and second sections of this act, and pending the same, and before final judgment thereon, administration shall be had, or execution undertaken within this State, under the laws of the same, upon the estate of any decedent, upon suggestion of such fact, entered of record, the said resident administrator or administrators, executor or executors, shall, upon motion, be substituted as parties to said suit or suits; and thereupon, the court shall proceed to hear and determine the same, as if it or they had been originally instituted in the name of the said resident administrator or administrators, executor or executors; and the benefits of said judgment or judgments shall enure to him or them, and be assets in his or their hands.

(149.) SEC. IV. That this act shall take effect and be in force from and after its passage.

An Act to amend an Act relative to Wills and Testaments, Executors and Administrators, and the Settlement of Estates.

[Approved Feb. 21, 1845. App. Rev. Stat. 1845, p. 597.]

(150.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That when any person shall die intestate, leaving a widow, said widow, in addition to the property described in the forty-fourth section of the act to which this is an amendment, shall be allowed to retain, as her sole and separate property, one pair of cards, two spinning-wheels, one weaving loom and its appendages, one stove and the necessary pipe therefor: *Provided,* The same shall be in use, or put up for ready use, in any house occupied by such widow; also, two heads of sheep for each member of her family under twenty-one years of age, and the fleeces of the said sheep, together with all the yarn and cloth that may be manufactured from the same; which said property shall be set apart to the widow, by the administrator, and shall in no case be subject to the debts of her deceased husband.

(151.) SEC. II. In all cases where the intestate, at his death, shall leave no property of the kind and description mentioned in the first section of this act, the widow shall be entitled to retain other property of equal value, 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 to be set apart to the widow of any intestate, either in money or other personal property, at her election, any law to the contrary notwithstanding.

(152.) SEC. III. *Be it further enacted,* That when, at the time of the passage of this act, the property described in the forty-fourth section of the act to which this is an amendment, shall not have been set apart to the widow, it shall be the duty of every and any administrator to set apart to her the same, or the value thereof, together with the property mentioned in the first section of this act, or the value of the same, as by this act directed.

(153.) SEC. IV. When any person dying intestate shall, at the time of his death, be a housekeeper, the head of a family, and shall leave no widow, there shall be allowed to the children of the intestate, residing with him (including all males under eighteen years of age, and all females,) at the time of his death, the same amount of property as is allowed to the widow by this act, and the act to which this is an amendment.

(154.) SEC. V. *Be it further enacted,* That where any person shall die, leaving a will, and it shall be suspected by the probate justice, that the estate will be insufficient for due payment of debts, or only sufficient for that purpose, so that the legacies in said will cannot be paid, the property allowed to the widow and family of an intestate shall be, on order of the probate justice, reserved from the payment of debts for one year; and if, at or before the expiration of that time, the widow or family, (as described in the foregoing section,) of the deceased, shall prefer to take the property allowed the widow and family, by this and the act to which this is an amendment, and relinquish the provision made for them in said will, she or they shall have the right to do so, by filing with the probate justice a writing, signifying such choice.

(155.) SEC. VI. This act to take effect and be in force from and after its passage.

An Act to amend an Act concerning Wills.

[Approved Feb. 11, 1847. Laws, 1847, p. 168.]

(156.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That widows, living in this State, of persons whose estates are administered upon in this State, shall be allowed in all cases, in exclusion of creditors, as their sole and exclusive property forever, necessary beds, bedsteads and bedding for themselves and families, necessary household and kitchen furniture, one spinning wheel, one loom and its appendages, one pair of cards, one stove and the necessary pipe therefor, the wearing apparel of themselves and families, one Milch cow and calf for every four persons in the family, one horse of the value of forty dollars, one woman's saddle and bridle of the value of fifteen dollars, provisions for themselves and families for one year, two sheep for each member of the family, and the fleeces taken from the same, food for the stock above described for six months, fuel for themselves and families for three months, and sixty dollars' worth of other property.

(157.) SEC. II. In addition to the above, widows of persons who have or may die intestate, shall be entitled to the one-third of the personal estate of their deceased husbands, after the payment of debts, as their property forever.

(158.) SEC. III. The appraisers shall make out and certify to the court of probate, an estimate of the value of each article of specific property herein allowed to the widow.

(159.) SEC. IV. In case the widow shall desire to take other property in lieu of that above specified, she shall take the same at the value affixed by the appraisers.

(160.) SEC. V. The forty-eighth section of the law concerning wills, approved March third, one thousand eight hundred and forty-five, and the first section of the act numbered thirty-seven in the appendix to the revised laws of one thousand eight hundred and forty-five, approved twenty-first February, one thousand eight hundred and forty-five, are hereby repealed, and the remaining sections of said act, numbered thirty-seven, shall relate to the provisions of this act.

(161.) SEC. VI. The word "dower," as used in the forty-sixth section of the one hundred and ninth chapter of the Revised Statutes, entitled "WILLS," shall be construed to include a saving to the widows of persons dying intestate, of one-third of the personal estate forever, after the payment of debts.

An Act to amend the Law in relation to the Securities of Guardians.

[Approved Feb. 19, 1847. Laws, 1847, p. 53.]

(162.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter, whenever the security or securities of any guardian, in this State, may conceive themselves in danger of suffering by the mismanagement of such guardian, and shall petition the court of probate having jurisdiction of the matters involved, for relief, in writing, setting forth the cause of such apprehension, the said court shall examine such petition, and if the court shall deem the causes therein stated and set forth sufficient to entitle such petitioner or petitioners to relief, if true, he shall summon such guardian to show cause against such petition, and shall

thereupon proceed in all respects, as courts of probate are required to proceed in regard to executors and administrators, by the seventy-ninth section of the chapter of the Revised Statutes in regard to wills, approved March the third, one thousand eight hundred and forty-five; and revoke such guardian's letters of guardianship, or release such security or securities, and require others to be given, or to dismiss such petition and application, as to said court may seem right: *Provided,* The party aggrieved may have an appeal as in other cases.

An Act authorizing the Resignation of certain Officers.

[Approved Feb. 10, 1849. Laws, 1849, p. 100.]

(163.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any executor or executrix, administrator or administratrix, or guardian testamentary, or by appointment of a probate court, may resign in writing, to the probate court having settlement or adjustment of his, her or their accounts, his, her or their office or offices; and when such resignation is accepted by such court, the person or persons so resigning shall be discharged from the further exercise of his, her or their office or offices: *Provided, always,* That the acceptance of such resignation shall be by a written order of said court, and shall not be construed to exonerate any executor or executrix, administrator or administratrix, or guardian, or his, her or their executors, from liabilities incurred previous to such acceptance; and no such resignation shall be accepted until such administrator or administratrix, executor or executrix, or guardian, shall have given notice of such intention by publication, as required in cases of final settlement, and shall make and render a complete settlement of all matters in his hands as such administrator or administratrix, executor or executrix, or guardian, up to the time of his or her resignation, and shall deliver into court all evidences of property, papers, money, and choses in action, in his or her hands.

An Act to amend the Laws in relation to the Settlement of Estates.

[Approved Feb. 17, 1851. Laws, 1851, p. 183.]

(164.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in addition to the powers conferred upon courts of probate by the act entitled "An act to facilitate the collection of debts by executors and administrators in desperate cases," approved on the first day of March, one thousand eight hundred and forty-five, courts having probate jurisdiction are hereby vested with power to order claims, debts and demands due at so remote a period as to prevent their collection within the time required for the final settlement of estates, and the collection or disposition of which is necessary to the payment of the debts against the estate, to be compounded or sold, in the same manner and upon the same conditions as though such claims, debts or demands were desperate or doubtful: *Provided,* That no claim, debt or demand shall be sold or compounded for less than ten per cent. below the par value thereof.

(165.) SEC. II. This act shall take effect from and after its passage.

An Act in relation to Conveyances of Real Estate by Non-resident Executors.

[Approved Feb. 8, 1853. Laws, 1853, p. 239.]

(166.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That when any non-resident executor or executors shall have proved the last will and testament of any deceased person, and taken on him or them the execution of such will in any State, district or territory of the United States, such non-resident executor or executors shall be authorized to execute such will in this State in the same manner as though such executor or executors had qualified in this State: *Provided,* That before such executor or executors shall sell, dispose of or convey any real estate in this State, he or they shall produce such will or a copy thereof, and of the letters testamentary, or other authority to execute the same, under the seal of the court or proper officer where such will was proved or admitted to probate, and of such letters or authority granted, accompanied by a certificate of the judge or clerk of said court or other proper officer, that such letters or authority had been granted in pursuance of and agreeably to the laws of the State, district or territory in which such letters testamentary or authority were granted and filed, and have the same recorded in the probate or county court of the county in which the property, or some part thereof, of which the testator died seized may be situated, and the county judge or judge of probate of such county shall certify that such will was duly authenticated under the provisions of this act: *Provided, further,* That said county judge or judge of probate shall require bond from such non-resident executor or executors, or some responsible persons in their behalf, to the people of the State of Illinois, in such penalty as such judge shall deem necessary, for the faithful appropriation of the effects of such testator in this State, and for the application of the proceeds thereof, in the first instance, to the payment of all such debts, (if any) as may be allowed by such court against the estate of such testator, within two years from the filing of such bond; and this provision shall be incorporated in the condition of the bond herein provided for. And such bond shall be signed by some responsible person in this State, either as principal or surety, to be approved by said court.

(167.) SEC. II. The acts of non-resident executors heretofore had in selling or conveying any real estate in this State, may be approved and confirmed by the probate or county court of any county where such real estate may be situated, upon petition by any person interested therein, sixty days' notice being given by publication in a newspaper published in such county, (and if no paper be published in such county, then in some newspaper published in the nearest county to that where such real estate may be situated,) of the intention to present such petition, and the time and place of such presentation; and upon such approval and confirmation, such sales and conveyances heretofore made shall be as valid and effectual as if made under the provisions of this act. But before such court shall make such approval or confirmation, it shall require and receive satisfactory evidence that such sales or conveyances were made in good faith, and that the interests of creditors of the testator in this State will not be prejudiced by such approval and confirmation.

(168.) SEC. III. Appeals shall be allowed from the order of said court approving and confirming such sales and conveyances as in other cases,

by any person who may claim an interest in the premises thus sold or conveyed.

(169.) SEC. IV. The provisions of this act shall not apply to any case where letters of administration shall have been granted upon the estate of such testator in this State, unless such letters shall first be revoked, or the administrator shall die or resign.

An Act concerning the Descent of Property in this State.

[Approved Feb. 12, 1853. Laws, 1853, p. 255.]

(170.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the rule of descent of all property, of whatsoever kind or nature, real and personal, of any bastard or illegitimate person dying intestate in this State, or leaving property and effects therein, shall be as follows, to wit: On the death of any such person intestate, his or her property, estate and effects shall descend to and vest in the widow, or surviving husband and children, as the property and effects of other persons in like cases. In case of the death of any such illegitimate person, leaving no children or descendant of a child or children, then the whole property and estate, rights, credits and effects shall descend to and vest in the widow or surviving husband. In case of the death of any such illegitimate person, leaving no widow, surviving husband or descendants, then the property and estate of such person shall descend to and vest in the mother and her children and their descendants; to the mother one-half, and the other half to be equally divided between her children and their descendants; the descendants of a child, taking the share of their deceased parent or ancestor. In case of the death of any such illegitimate person, leaving no heirs as above provided, then the property and effects, of whatsoever kind or nature, shall pass to and vest in the next of kin to the mother of such illegitimate person, in the same manner as the estate of a legitimate person would by the laws now in force pass to the next of kin.

(171.) SEC. II. No property of any illegitimate person hereafter dying intestate in this State shall escheat to the State, except in default of heirs as in this act provided.

An Act to regulate Appeals in certain Cases.

[Approved Feb. 8, 1853. Laws, 1853, p. 257.]

(172.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases where administrators or executors may hereafter desire to prosecute an appeal from the judgment, decree or order of any court or justice of the peace to the circuit or supreme court, or where they [may] prosecute writs of error or *certiorari*, the appeal, *certiorari*, or supersedeas bond, shall be conditioned to pay the judgment or decree, with costs, in due course of administration; in all other respects said bonds shall be in the form prescribed by law in other cases.

(173.) SEC. II. This act to be in force from and after its passage.

An Act to amend Chapter CIX, of the Revised Statutes, entitled "Wills."

[Approved Feb. 14, 1855. Laws, 1855, p. 44.]

(174.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all wills, testaments and codicils,



which heretofore have been or shall hereafter be made, executed and published out of this State, may be admitted to probate in any county in this State in which the testator may have been seized of lands, or other real estate, at the time of his death, in the same manner and upon like proof as if the same had been made, executed and published in this State, whether such will, testament or codicil, has first been probated in the State, territory or county in which it was made and declared, or not.

(175.) SEC. II. This act to take effect and be in force from and after its passage.

An Act conferring additional Power upon Administrators *de bonis non*, and for other Purposes.

[Approved Feb. 14, 1855. *Private Laws*, 1855, p. 731.]

(176.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That when the administrator of any intestate or the executor of any testator having obtained a judgment in his own name as such administrator or executor, in any court of this State, shall die before execution of such judgment, it shall and may be lawful for the administrator *de bonis non* or *cum testamento annexo* to revive such judgment in his own name, by a writ of *scire facias* in the same manner as an executor or administrator may revive the judgments of his testator or intestate. And it shall further be lawful for such administrator *de bonis non* or *cum testamento annexo*, to avail himself of all such remedies, both legal or equitable, for the collection of such judgments, as the original administrator or executor might or could have done if still living.

(177.) SEC. II. The provisions of the foregoing section shall apply as well to judgments already obtained by executors or administrators, as to those which may be hereafter obtained. And in no case shall it be necessary for the administrator *de bonis non* or *cum testamento annexo*, where a judgment has been already obtained against a debtor of his testator or intestate, to obtain a new judgment in his own name upon the original indebtedness, before he can entitle himself to all or any of the legal or equitable remedies against such debtor, but such second administrator shall have full power and authority by virtue of said office as such second administrator, to enforce such judgment already obtained, in any court of law or equity in this State, in the same manner and to the same extent that the original administrator or executor might or could do, if living.

(178.) SEC. III. This act shall take effect and be in force from and after its passage.

PRIOR LAWS. An act to regulate administrations, and the descent of intestates' estates, and for other purposes; approved March 23, 1819. *Laws*, 1819, p. 223.

An act to authorize executors and administrators to sell real estate in certain cases; approved Jan. 28, 1823. *Laws*, 1823, p. 90.

An act to amend an act entitled "An act regulating administrations, and the descent of intestates' estates, and for other purposes;" approved Feb. 12, 1823. *Laws*, 1823, p. 127.

An act to authorize executors and administrators to sell real estate in certain cases; in force June 1, 1827. *Laws*, 1827, p. 200.

An act relative to wills and testaments, executors and administrators, and the settlement of estates; in force July 1, 1829. *Rev. Laws*, 1833, p. 611.

An act supplemental to an act relative to wills and testaments; in force June 1, 1835. *Laws*, 1835, p. 35.

An act to provide for the probate of wills, in certain cases; approved March 2, 1839. *Laws*, 1839, p. 259.

An act authorizing administrators to settle estates in particular cases; approved Feb. 17, 1841. *Laws*, 1841, p. 22.

An act to amend "An act relative to wills and testaments, executors and administrators, and the settlement of estates," approved Jan. 23, 1829; approved March 6, 1843. *Laws*, 1843, p. 319.

DECISIONS. The act of Feb. 12, 1823, regulating administrations, &c., does not apply to the estates of those who died before its passage. By that act, judgments obtained against the deceased in his lifetime, are to be first paid. *Jones' Administrators v. Bond*, Breese, 223; *Woodworth v. Paine's Administrators*, Breese, 294.

Under the act of Jan. 23, 1829, relative to wills, &c., courts of probate have power to revoke letters of administration fraudulently obtained, as an incident to their power to "hear and determine the rights of administration." *Marston v. Wilcox*, 1 S. 60.

Under the statute of wills, of July, 1829, an action may be maintained for a breach in the condition of an executor's bond, against any one or more of the obligors; and a *devastavit* need not be first established. The statute also gives the action, in cases of neglect or refusal to comply with either of the provisions of law which regulate the conduct of executors, as well as in cases of a violation of one or more of the covenants in the bond. *The People v. Miller et al.*, 1 S. 83.

The statute of wills, of 1829, does not empower a court of probate to render a judgment, or issue execution, in favor of heirs or devisees, against an executor or administrator, for failing or refusing to pay over to such heirs or devisees their portions of the estate of the deceased. The remedy for failing to pay over, after order of the court to do so, is by attachment for contempt. *Piggott v. Rainey et al.*, 1 S. 145.

Under the statute of wills, an administrator is not bound to set off a debt or demand belonging to an estate, against a claim of a creditor of the estate; and such debt or demand is not barred by his failing to do so. *Morton v. Bailey et al.*, 1 S. 213.

The act of 1827, unlike the act of 1829, on the subject of wills, does not require the application for the sale of real estate of a deceased person to be made to the circuit court of the county where administration is granted. Under the former act, it may be made to the circuit court of the county where the land lies. The act of 1827 requires that when an order of sale is made, the conveyance shall set forth such order at large, and a recital of the substance of the order is not sufficient. A court cannot direct a sale of such estate to be made for any other funds than the legal currency of the State. *Smith et al. v. Hieman*, 1 S. 223.

The statute of wills, &c., of Jan. 1829, does not delay the suing out of a *scire facias* to foreclose a mortgage on a decedent's estate for one year after the taking out of letters of administration. *Menard v. Marks*, 1 S. 25.

Under the statute of wills, of 1829, the appeal bond in appeals from the probate to the circuit court, must be made payable to the people of the State of Illinois; the statute does not provide for amending such bond, or filing a new one, and a motion to do so is addressed to the discretion of the court. *Crain v. Bailey et al.*, 1 S. 321.

By the statute of wills, of 1829, the trial in the circuit court, on appeal from the probate court, is *de novo*; and on appeal from a decision in relation to the probate of a will, the trial may be had before a jury, and no testimony as to the sanity of the testator can be introduced, except that of the subscribing witnesses to the will, who must concur in the opinion that the testator was of sound mind, in order to admit the will to probate. *Walker v. Walker*, 2 S. 291.

Judgment against an executor can only be rendered against the "goods and chattels" of the testator, in the hands of the executor to be administered, against the "rights and credits, lands and tenements" of the testator. *Greenwood v. Spiller*, 2 S. 502. See also, *McCowell v. Wight*, 4 S. 403.

Under the act of March 4, 1837, respecting probate justices of the peace, appeals from their judgments should be taken in the same manner as appeals from justices of the peace. *Gibbons v. Johnson*, 3 S. 61.

Under the act to facilitate the collection of judgments by executors, &c., of Feb. 19, 1841, only administrators appointed in this State are included; foreign administrators cannot sue in our courts. *The People v. Peck*, 3 S. 118.

By the statute of wills, of Jan. 1829, an executor or administrator may relinquish part, and patent the residue of any lands of his testator or intestate upon which full payment has not been made, when it can be done under the acts of Congress; and may sell or assign a certificate of purchase of lands partly paid for, when necessary to pay the debts of the deceased. *Prevo v. Walters et al.*, 4 S. 35.

The statute of wills, of 1829, empowers a party to devise real estate, acquired after the making the devise. *Willis et al. v. Watson et al.*, 4 S. 64.

Appeals may be taken from the decisions of probate justices of the peace, in all cases, except those included in sections 3 and 4 of the act of March 4, 1837, in the manner provided in the statute of wills for appeals from the old probate court; that is, by tendering a bill of exceptions, and giving bond within ninety days. The proceedings of the probate justice in allowing claims against an estate, must be reported to the circuit court at its first term thereafter; but this is only directory as to time, and the report may be made at a subsequent term. When made, the circuit court is only to examine it, determine whether it be in due form, and shows decisions properly made upon the

class of cases required to be reported, and then approve or reject it. The effect of approval is to make it matter of record, when as such it may be certified, but the court cannot refuse to examine it. *Scott v. Crow et al.*, 4 S. 183.

No application of an administrator to sell the real estate of his intestate, to pay debts still due, will be sustained, after the expiration of one year from the final settlement of the accounts of the estate in the probate court, except under peculiar circumstances. *Dorman et ux. v. Lane, Administrator*, 1 G. 143.

Under the statute of wills, of 1829, a widow is entitled to one-third of the real estate of her deceased husband, for life, and to one-third, forever, of his personal estate which may remain after the payment of just debts. *Sisk v. Smith, Administrator*, 1 G. 503.

The granting letters testamentary, and of administration, and the taking bonds from executors and administrators, by probate courts, are ministerial and not judicial acts. *Pritchett et al. v. The People*, 1 G. 525.

Under a will, directing how the real estate of the testator should be disposed of by the executor, but not naming any executor, an administrator, with the will annexed, was appointed by the probate court: *Held*, that such administrator, under the statute of wills, of 1829, had no authority to sell the land of the testator, and execute a deed therefor, without the aid of the court. *Hall v. Irwin et al.*, 2 G. 176.

Under the act of March, 1819, regulating administrators, &c., the probate of a will is a ministerial act; and in order to make a will valid for the purpose of passing the title to land, it should be proven by two subscribing witnesses, signed by the testator in their presence, and signed by them in each other's presence, and his. *Ferguson et al. v. Hunter*, 2 G. 657.

An administrator may give a general notice of his intention to apply for leave to sell lands, without naming particular persons as defendants. In such a notice, where certain heirs are unknown, the words "State of Illinois," were omitted in connection with the county; the appearance of the only known heir cured that defect. A decree for the sale of the whole land, or so much as would pay the debts, is sufficient, and it need not state the particular interest of the deceased in the land. The provisions of the statute of wills, of March 1, 1833, are not restricted to resident decedents, but embrace all persons. The proper county, of a non-resident decedent, who leaves land in this State, is the county where such lands or a part of them lie; and there administration should be granted. *Bowles' Heirs v. Rouse, Administrator*, 3 G. 409.

The 95th section of the statute of wills, of March 3, 1845, requires administrators to fix on a term of the probate court, for the settlement of claims against estates, and provides that such estate shall be liable for costs on all claims presented at or before such time, but not on claims presented afterwards. On appeal from the probate court, the circuit court may enter a judgment against the estate of a decedent, but cannot award execution. *Welch, Administrator, v. Wallace*, 3 G. 490.

The law in force at the time of the death of a testator or intestate, controls the distribution of his estate; and in such distribution, judgments and simple contracts stand on the same footing. *Paschall v. Hailman*, 4 G. 285.

The probate court may allow a claim against an estate, filed more than two years after the granting of letters of administration, to be paid out of assets subsequently discovered. There is no conflict between the 102nd and 115th sections of statute of wills, of 1845. *Thorn v. Watson, Administrator*, 5 G. 26.

A public administrator can have no control over an estate until he has given bonds and taken out letters of administration. *Thomas, Administrator, v. Adams*, 5 G. 319.

An administrator can assign a promissory note, payable to his intestate, so as to vest the legal title thereto in the assignee. *Makepeace v. Moore*, 5 G. 474.

If a demand against an estate is not exhibited within the two years limited by the statute, it will only be satisfied out of subsequently discovered estate. *Judy et al. v. Kelley*, 11 Ill. 211.

When a court of probate of any county has obtained full jurisdiction of an estate, it retains it till the estate is fully administered. Creditors of an estate, not included under the saving clause of the 115th section, Rev. Stat. 1845, respecting wills, and who do not present their claims within two years after the granting letters of administration, can only collect them out of assets thereafter discovered; and it is a sufficient presentation of a claim to file it, or a copy thereof, in the probate court. *The People v. White et al.*, 11 Ill. 341.

An order for the sale of the real estate of a decedent will not be made, unless it be shown that debts exist against the estate. *Dorman et ux. v. Tost et al.*, 13 Ill. 127.

Under the statute of wills, of 1845, claims against estates of decedents should be presented, either on the notice of the executor or administrator, or on that of the claimant, and if not decided on at the time fixed for hearing, should either be withdrawn or continued to a day certain, that the executor or administrator may appear and contest them. If such claims be allowed, without notice to the executors or administrators, it will not bind the estate. *Probst v. Meadows*, 13 Ill. 157.

By the statute of wills, of 1845, the lands of an intestate are held subject to the payment of his debts. Where the personal estate is exhausted, the administrator should obtain an order to sell real estate sufficient to pay the debts, and the proceeds of such sale are assets in his hands. Creditors are not bound to pursue lands into the hands of the heir, but only to establish their claims against the administrator. In effect, the statute reserves a lien on the lands of intestates, for the payment of such indebtedness as the personal estate will not satisfy. The real estate descends to the heirs

with this charge upon it, and the heir cannot encumber or alien it to the prejudice of creditors. *Vansyckle et al. v. Richardson et al.*, 13 Ill. 171.

The act of March 3, 1845, Appendix to Rev. Stat. p. 596, authorizes foreign administrators to maintain suits in our courts, and regulates the character of the proof of such administrative authority, when questioned by the pleadings. *Collins v. Ayers*, 13 Ill. 358.

The statute of wills of 1845, does not change the law, that rent falling due after the death of a testator or intestate, descends to the heir as a chattel real. *Green v. Massie*, 13 Ill. 263.

The statute regulating dower does not repeal that part of the statute of wills, of 1845, which declares that the widow of an intestate, leaving no descendants, inherits, as heir of the intestate, one-half the real and all the personal estate of which the intestate died seized, which remains after the payment of his debts; and that she is also entitled to dower. *Tyson et ux. v. Postlethwaite et al.*, 13 Ill. 727.

Claims against the estate of a decedent, except where the claimant comes within the saving clause of the statute of wills, must be presented within two years after granting letters of administration, or they can receive no share of the estate before that time inventoried or accounted for. An administrator *de bonis non* has control only over that portion of the estate unadministered, and cannot call on the first administrator, or his personal representative, for an account of assets already administered on. *Rowan v. Kirkpatrick et al.*, 14 Ill. 1. See also, *Newhall v. Turney*, 14 Ill. 338.

By the statute of wills, of 1845, and the act amendatory thereof, of Feb. 21, 1845, the widow of an intestate is entitled to certain articles of the estate, or their value, as her sole and separate property; and the children of such, dying intestate, a housekeeper and the head of a family, take the same property as if the intestate were a widower. *Lesher v. Wirth*, 14 Ill. 39.

Under our laws, the presumption is that a person dying intestate, has left heirs capable of succeeding to his estate, and such presumption must be rebutted by proof. *Harvey v. Thornton*, 14 Ill. 217.

In a suit to recover a demand accruing to an administrator, after the death of the intestate, the defendant cannot set off a debt from the intestate in his lifetime. *Newhall v. Turney*, 14 Ill. 338.

Demands against an estate must be presented within two years from the grant of administration, and a creditor, free from the statute exception, who does not present his claim within that time, will receive no part of the personal estate previously inventoried or accounted for. An executor or administrator may insist on this limitation of two years, but not heirs or devisees. Judgment against heirs or devisees should not be enforced till the assets in the hands of the administrator or executor are found insufficient, and then for the deficiency only. *Ryan v. Jones*, 15 Ill. 1.

Where an administrator did not, within two years from the grant of administration, inventory the real estate of the intestate, a creditor, claiming after the two years, is entitled equally with other creditors, to the proceeds of such real estate. *Sloo v. Pool*, 15 Ill. 47.

An order of the probate court, directing an administrator to pay money in his hands, to an heir, is conclusive, and if complied with, entitles the heir to recover on the administrator's bond, both against principal and security. If the security on such bond, think the order of such probate court unjust, his remedy is by appeal therefrom to the circuit court; but in the action on the bond, the propriety of the order of the probate court cannot be inquired into, except for fraud. *Ralston v. Wood*, 15 Ill. 159.

An administrator *de bonis non*, who succeeds an administrator whose letters are revoked, can require such removed administrator to account fully for his administration, and make him answerable in damages for mal-administration. It is otherwise, when a former administrator dies. The acceptance of the resignation of an administrator, is equivalent to a revocation of his letters; and if there are other administrators, the duty of administration devolves on them; and each administrator is liable for the acts of each of the others, while all are in office. The refusal of an administrator to fulfil the duties of his trust, is good cause for revoking his authority. *Marsh et al. v. The People*, 15 Ill. 234.

An administrator or executor must conform strictly to the order of court directing the manner of sale of the real estate of a decedent, or the sale will be invalid. *Reynolds v. Wilson et al.*, 15 Ill. 394.

## CHAPTER CXI.

[CHAPTER CX. REVISED STATUTES, 1845.]

## WOLVES.

## SECTION

1. County commissioners' courts may allow bounties on wolf scalps; certificates thereof receivable for taxes due the county from the county commissioners' court, from which it issued.

## SECTION

2. Act repealed; commissioners' courts to determine bounties to be paid.  
3. Clerk or justice to issue certificate.  
4. Clerks of county courts to keep record.  
5. When act shall be in force.

[Approved March 3, 1845. Rev. Stat. 1845, p. 565.]

(1.) SECTION I. The county commissioners' court of any county in this State, may hereafter allow such bounty on the big wolf and prairie wolf, of six months old and upwards, as said court may deem reasonable; said bounty to be paid out of the treasury of the county wherein said wolf or wolves may be taken and killed, upon the certificate of the county commissioners' court; and said certificate shall be receivable by the collector of the county wherein such allowance of bounty may have been made, for any taxes due said county.

An Act to amend "An Act authorizing Counties to give a Bounty on Wolf Scalps;" approved February fifteenth, one thousand eight hundred and forty-three.

[Approved Feb. 25, 1845. App. Rev. Stat. 1845, p. 599.]

(2.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That so much of the first section of "An act authorizing counties to give a bounty on wolf scalps," approved February fifteenth, one thousand eight hundred and forty-three, as limits the payment of bounties on wolf scalps to the age of the wolf, be and the same is hereby repealed; and that hereafter, the county commissioners' courts of the several counties in this State, may determine, as now provided by law, what bounties shall be paid for wolf scalps taken from wolves of any age.

(3.) SEC. II. Hereafter, upon the proper oath being made before the clerk of the county commissioners' court, or justice of the peace of the proper county respectively, the said clerk or justice of the peace shall issue their certificates to the persons entitled thereto, which certificates, when issued, shall be received by the collector of the proper county for county taxes.

(4.) SEC. III. It shall be the duty of the several clerks of the county commissioners' courts to keep a true and perfect record of the amount of certificates issued as a premium for wolf scalps, to whom, and at what date, and lay the same before their respective courts at each regular meeting thereof.

(5.) SEC. IV. This act shall be in force from and after its passage.

PRIOR LAWS. An act to encourage the destruction of wolves; in force Jan. 28, 1823. Laws, 1823, p. 86. Repealed May 1, 1825.

An act to encourage the killing of wolves; in force May 1, 1825. Laws, 1825, p. 116.

An act to encourage the killing of wolves; in force March 2, 1837. Laws, 1837, p. 334.

An act to amend an act entitled "An act to encourage the killing of wolves," approved Feb. 15, 1837; in force Dec. 10, 1839. Laws, 1839, p. 155.

An act authorizing counties to give a bounty on wolf scalps; in force Feb. 15, 1843. Laws, 1843, p. 319.

## CHAPTER CXII.

## MISCELLANEOUS LAWS.

## SECTION

1. Appeals allowed.  
2. Appeal not to be dismissed on account of informality in bond.  
3. Application of act.  
4. When act to take effect.  
5. Division of State into senatorial districts.  
6. Representative districts.  
7. Clerks in senatorial districts, and in certain representative districts, to canvass votes.  
8. Consent of State to erection of armory at Fort Massac, by United States.  
9. Duty of quarter-master-general in relation to State arms.  
10. Governor and auditor to examine accounts of quarter-master-general.  
11. Quarter-master-general to report to governor.  
12. Appropriation for building State arsenal: *proviso*.  
13. Third section of certain act amended. When act to be in force.  
14. Description of lands used as burying grounds, to be certified to county court.  
15. Section six of chapter seventy-seven, Revised Statutes, amended.  
16. When act to take effect.  
17. Colleges, &c., exempted from taxation; *proviso*.  
18. Conflicting laws repealed.  
19. Proceedings to discharge persons committed for contempt.  
20. Persons desirous to do so, may organize masonic lodges, &c.  
21. Proceedings to obtain incorporation.  
22. Power of incorporated association; *proviso*.  
23. May make rules, by-laws, &c.  
24. Secretary shall keep record of proceedings.  
25. Corporation may acquire property; *proviso*, as to amount.  
26. To give notice of change of place of holding meetings.  
27. When act to be in force; act to be public.  
28. On failure of county treasurer to execute bond, office vacated, and successor appointed.  
29. When act shall take effect.  
30. Treasurers to be elected in November, 1851, and biennially thereafter.  
31. Acts repealed.  
32. Election of judge, &c., in Cook county.  
33. Returns, &c., made as in other elections.  
34. Person elected, to take oath; clerk and attorney to give bond.  
35. Fees to be paid to clerk of court, by plaintiff, on commencing suit.  
36. Fees on entering judgment.  
37. Duties of justices of the peace in city of Chicago.  
38. Powers conferred.  
39. Clerk may be removed; *proviso*.  
40. Vacancies, how filled.  
41. Contested election, how tried.  
42. Act repealed. When act to take effect.  
43. When person, &c., causing death, liable for damages.  
44. In favor of whom actions to be brought; *proviso*.  
45. When act shall take effect.  
46. Governor to invest dividend upon surplus revenue from general government.  
47. Time extended.  
48. Time of making dividend.  
49. Appropriations for agencies.  
50. Dogs killing sheep or other animals, owner liable.  
51. When persons authorized to kill such dogs.  
52. When act to take effect.  
53. Exceptions taken to decisions of circuit courts, allowed.  
54. When act to take effect.  
55. Sections re-enacted.  
56. Application of act.  
57. When person taking up estray may sell same.

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58. Town clerk to register estrays in book.  
59. Any person taking up estray, to register same within five days.  
60. When act to take effect.  
61. Fees of jurors, witnesses, &c. Fees for recording deeds, &c.  
62. Conflicting acts repealed.  
63. When act to take effect.  
64. Fees of county clerk.  
65. Fees of county judge.  
66. Conflicting acts repealed.  
67. When act to take effect.  
68. Agents of insurance companies to file statement with auditor, under oath; what it shall contain. Auditor to issue certificate to company.  
69. Unlawful to transact business without certificate.  
70. Agents to file statement with county clerk.  
71. Statement to be renewed annually.  
72. Agent to retain possession of funds.  
73. Certified copies to be received as evidence.  
74. Penalty for violating provisions of act.  
75. Only one statement required.  
76. Creditor to pay jail fees; *proviso*.  
77. Creditor to advance jail fees; *proviso*.  
78. Amount to be indorsed on writ.  
79. When act shall take effect.  
80. Duty of sheriff when jail is insufficient.  
81. Conflicting section repealed.  
82. When act shall take effect.  
83. Governor authorized to appoint agents to restore to liberty persons kidnapped.  
84. Duty of agents.  
85. Expenses, how paid.  
86. When act shall take effect.  
87. Contracts, &c., made for the sale, &c., of public lands, valid.  
88. Construction of certain act.  
89. Governor authorized to receive from United States' treasury certain moneys.  
90. Sale of State lands suspended.  
91. Right of pre-emption on State lands extended; *proviso*.  
92. When act shall take effect.  
93. Portion of thirteenth section of certain act repealed; funds, how disposed of.  
94. When act to take effect.  
95. Certain swamp lands not to be sold by county, until selection approved by secretary of the interior, and certified by auditor.  
96. When act to take effect.  
97. Board of supervisors of Adams county authorized to value and sell swamp lands.  
98. Act public; when to be in force.  
99. Jurisdiction over land for construction of light-houses within this State, ceded to United States; condition.  
100. Application of previous section to certain light houses named.  
101. Jurisdiction of certain land in Chicago ceded to United States.  
102. United States may change location, if desired.  
103. Jurisdiction limited to five acres.  
104. Portion of street in Port Clinton vacated.  
105. If general government cannot agree with owner as to damages, may apply to judge of court of record; judge to appoint commissioners.  
106. Act not construed as to hinder process.  
107. Laws establishing lotteries in this State, repealed.  
108. Laws authorizing selling lottery tickets, also repealed.  
109. Penalty for keeping lottery office.  
110. Penalty for vending lottery tickets.  
111. When act to take effect.  
112. Circuit court have power to change name of person applying for that purpose.

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113. Application to give notice in State paper previous to application; new name to be stated in notice.
114. Act to apply to minors as well as adults.
115. On trials of impeachments, &c., before the senate, speaker may administer oaths.
116. State of Illinois to have concurrent jurisdiction with Kentucky over the Ohio river.
117. Counties lying upon said river, to have same jurisdiction.
118. Construction of act.
119. Fees allowed to sheriff for conveying convicts to penitentiary.
120. Acts repealed.
121. When act shall take effect.
122. County courts in Peoria county to have concurrent jurisdiction with the circuit court.
123. Manner of process; judgments to be a lien upon real estate.
124. Writs of error may be prosecuted from final orders to the supreme court.
125. Appeals from police magistrates to county court.
126. Court always to remain open.
127. Fees of jurors and other officers.
128. General powers and rules of the court.
129. Persons may apply for change of venue to the circuit court.
130. The clerk to tax and collect a docket fee.
131. Jurisdiction of justices of the peace and magistrates in Peoria county extended.
132. To have jurisdiction in certain actions, where amount claimed not over three hundred dollars.
133. Further jurisdiction.
134. Act public; when to be in force.
135. Process, how served.
136. When act to take effect.
137. Limited partnerships lawful.
138. Of whom composed.
139. Who may transact business.
140. Certificate; contents thereof.
141. Certificate to be acknowledged.
142. And filed in office of county clerk.
143. Affidavit to be also filed.
144. Partnership not considered formed till certificate filed.
145. Terms of partnership to be published.
146. Printer to file affidavit of notice.
147. On renewal of partnership, certificate required.
148. Business, how conducted.
149. Restrictions upon partners.
150. Further restrictions.
151. Suits, how prosecuted.
152. When dissolution may take place.
153. Partners to account to each other.
154. Prohibition.
155. Clerk's fee.
156. On receipt of copies of certain work named, secretary of State to give certificate.
157. Auditor to pay.
158. Books, how distributed.
159. May pay for books as fast as received.
160. Contents of books declared to be legal evidence.
161. Fines, &c., to be paid into county treasury; *proviso*.
162. To be paid in specie to school commissioners.
163. Application of act.
164. City of Chicago to pay fees, &c.
165. When act shall be in force.
166. Religious society may purchase and hold real estate for camp meeting purposes.
167. Title held by trustees. When act to take effect.
168. All gifts, grants, deeds, &c., made by Catholic bishops, valid and sufficient in law; *proviso*; further *proviso*.
169. Conveyances, &c., by bishop of Protestant Episcopal church, declared valid; *proviso*; further *proviso*.
170. Punishment for assaults, &c.
171. For violently causing person to leave State.
172. For mock trial.

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173. For violence against jurors, &c.
174. For threatening violence, &c.
175. Person under arrest for offense, may offer bail.
176. When act shall be in force.
177. How long act to be in force.
178. Eighth section of certain act repealed.
179. When act to go into effect.
180. When new county established, commissioners of school fund to apportion amount of funds.
181. Basis to remain till next census.
182. Bucks not to run at large.
183. Duty of persons to take up; *proviso*.
184. Section of certain act fixing State's attorneys' salaries repealed.
185. Amount of their salary; to be paid quarter-yearly.
186. When act to take effect.
187. Governor to receive bonds; execution; certificates to be issued, and to bear interest.
188. To pay interest, certificates to be issued; when redeemable.
189. How signed and where payable. No coupons.
190. Registration; duty of governor.
191. Exchange, where effected; appropriation.
192. Papers filed. Governor to issue certificates.
193. Appoint agents. Certificates transferable.
194. Interest, how paid.
195. Canal bonds declared internal improvement bonds.
196. Bonds to be funded.
197. Certain stockholders not to be relieved from payment of excess.
198. Surplus funds.
199. Auditor to issue warrants; governor to purchase indebtedness.
200. Governor to file duplicates with the auditor.
201. Indebtedness to be canceled; *proviso*.
202. When act shall take effect.
203. Act repealed.
204. Treasurer to make payments of interest; *proviso*.
205. Land fund and surplus revenue.
206. Interest to be apportioned.
207. When act to take effect.
208. Appropriation of surplus revenue, &c.
209. When act to take effect.
210. Master, &c., of steamboat, taking wood from wood yard, &c., penalty therefor. When act to take effect.
211. Boats liable for acts of master as above.
212. Duty of clerk of county court in relation to road tax.
213. Duty of collectors. Duty of supervisors.
214. Application of act.
215. Clerk to make out list.
216. When act shall take effect.
217. Sections repealed; duty of county court; *proviso*.
218. Collector refusing to refund, penalty. When act to take effect.
219. Assessments legalized; *proviso*.
220. When act to take effect.
221. Rule of assessment.
222. When act to be in force.
223. Duty of auditor where tax has been omitted to be levied and collected in any county.
224. Counties authorized to levy and collect tax; *proviso*.
225. When act shall take effect.
226. How tenants in common may pay their taxes.
227. Redemption of interest.
228. Term of office of police magistrates in towns; vacancies, how filled.
229. When act shall take effect.
230. No sum of money contracted to be paid out of treasury, by officer, unless authorized by law.
231. Governor to have same control over contingent fund as heretofore.
232. Jurisdiction of justices extended over actions of trespass, when amount claimed does not exceed hundred dollars.
233. Repeal of laws which punish crimes by whipping. When act to be in force.

## APPEALS.

An Act in relation to Appeals from Justices of the Peace.

[Approved Feb. 9, 1853. Laws, 1853, p. 125.]

(1.) SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That in all cases where jurisdiction has been heretofore or shall be hereafter given to any justice of the peace, mayor of a city, or other officer in this State, over any fine or penalty imposed for the violation of any law of this State, appeals shall be allowed, and may be taken to the circuit court of the county in the same manner that appeals are by law authorized to be taken and prosecuted from judgments of justices of the peace in other cases.*

(2.) SEC. II. That in all cases of appeals from justices of the peace, mayor of city, or other officers, no appeal shall be dismissed for any informality in the appeal bond. But it shall be the duty of the court before whom the appeal may be pending, to allow the party to amend the same, so that a trial may be had on the merits of the case.

(3.) SEC. III. This act shall apply as well to appeals now pending as to appeals which may be taken hereafter.

(4.) SEC. IV. This act to take effect and be in force from and after its passage.

## APPORTIONMENT.

An Act to apportion the Senators and Representatives in this State in the General Assembly.

[Approved Feb. 27, 1854. Laws, 1854, p. 3.]

(5.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That until the next census and apportionment, as provided by the constitution, the State shall be divided into senatorial and representative districts as follows, viz.:*

1st. The county of Cook shall constitute the first senatorial district, and be entitled to one senator.

2nd. The counties of Lake and McHenry shall constitute the second senatorial district, and be entitled to one senator.

3rd. The counties of Boone, Winnebago, Ogle and Carroll shall constitute the third senatorial district, and be entitled to one senator.

4th. The counties of Jo Daviess and Stephenson shall constitute the fourth senatorial district, and be entitled to one senator.

5th. The counties of Kane, De Kalb, Lee and Whiteside shall constitute the fifth senatorial district, and be entitled to one senator.

6th. The counties of Will, Du Page, Kendall, Iroquois and Kankakee shall constitute the sixth senatorial district, and be entitled to one senator.

7th. The counties of La Salle, Grundy, Livingston and Bureau shall constitute the seventh senatorial district, and be entitled to one senator.

8th. The counties of Peoria, Marshall, Putnam and Woodford shall constitute the eighth senatorial district, and be entitled to one senator.

9th. The counties of Knox, Warren, Mercer, Rock Island, Henry and Stark shall constitute the ninth senatorial district, and be entitled to one senator.

10th. The counties of Fulton and McDonough shall constitute the tenth senatorial district, and be entitled to one senator.

11th. The counties of Schuyler, Henderson and Hancock shall constitute the eleventh senatorial district, and be entitled to one senator.

12th. The counties of Adams and Brown shall constitute the twelfth senatorial district, and be entitled to one senator.

13th. The counties of Pike, Calhoun and Scott shall constitute the thirteenth senatorial district, and be entitled to one senator.

14th. The counties of Greene, Macoupin and Jersey shall constitute the fourteenth senatorial district, and be entitled to one senator.

15th. The counties of Sangamon and Morgan shall constitute the fifteenth senatorial district, and be entitled to one senator.

16th. The counties of Champaign, De Witt, Piatt, Macon, Moultrie, Christian, Shelby and McLean shall constitute the sixteenth senatorial district, and be entitled to one senator.

17th. The counties of Cass, Menard, Logan, Mason and Tazewell shall constitute the seventeenth senatorial district, and be entitled to one senator.

18th. The counties of Vermilion, Coles, Cumberland and Edgar shall constitute the eighteenth senatorial district, and be entitled to one senator.

19th. The counties of Clark, Fayette, Effingham, Jasper, Lawrence and Crawford shall constitute the nineteenth senatorial district, and be entitled to one senator.

20th. The counties of Jefferson, Wayne, Edwards, Wabash, Marion, Clay and Richland shall constitute the twentieth senatorial district, and be entitled to one senator.

21st. The counties of Madison, Bond and Montgomery shall constitute the twenty-first senatorial district, and be entitled to one senator.

22nd. The counties of Monroe and St. Clair shall constitute the twenty-second senatorial district, and be entitled to one senator.

23rd. The counties of Williamson, Saline, White, Hamilton and Franklin shall constitute the twenty-third senatorial district, and be entitled to one senator.

24th. The counties of Randolph, Washington, Clinton, Perry and Jackson shall constitute the twenty-fourth senatorial district, and be entitled to one senator.

25th. The counties of Alexander, Union, Johnson, Pulaski, Massac, Pope, Hardin and Gallatin shall constitute the twenty-fifth senatorial district, and be entitled to one senator.

(6.) SEC. II. The State shall be divided into representative districts as follows:

1st. The counties of Alexander, Pulaski and Union shall constitute the first representative district, and be entitled to one representative.

2nd. The counties of Pope, Hardin and Massac shall constitute the second representative district, and be entitled to one representative.

3rd. The counties of Williamson and Johnson shall constitute the third representative district, and be entitled to one representative.

4th. The counties of Gallatin and Saline shall constitute the fourth representative district, and be entitled to one representative.

5th. The counties of Franklin and Jackson shall constitute the fifth representative district, and be entitled to one representative.

6th. The county of Randolph shall constitute the sixth representative district, and be entitled to one representative.

7th. The counties of Washington and Perry shall constitute the seventh representative district, and be entitled to one representative.

8th. The counties of Jefferson, Marion and Hamilton shall constitute the eighth representative district, and be entitled to two representatives.

9th. The counties of Wabash and White shall constitute the ninth representative district, and be entitled to one representative.

10th. The counties of Wayne and Edwards shall constitute the tenth representative district, and be entitled to one representative.

11th. The county of Monroe shall constitute the eleventh representative district, and be entitled to one representative.

12th. The county of St. Clair shall constitute the twelfth representative district, and be entitled to two representatives.

13th. The counties of Clinton and Bond shall constitute the thirteenth representative district, and be entitled to one representative.

14th. The county of Madison shall constitute the fourteenth representative district, and be entitled to two representatives.

15th. The counties of Fayette and Effingham shall constitute the fifteenth representative district, and be entitled to one representative.

16th. The counties of Clay, Richland and Jasper shall constitute the sixteenth representative district, and be entitled to one representative.

17th. The counties of Lawrence and Crawford shall constitute the seventeenth representative district, and be entitled to one representative.

18th. The county of Clark shall constitute the eighteenth representative district, and be entitled to one representative.

19th. The counties of Cumberland and Shelby shall constitute the nineteenth representative district, and be entitled to one representative.

20th. The counties of Montgomery and Christian shall constitute the twentieth representative district, and be entitled to one representative.

21st. The county of Macoupin shall constitute the twenty-first representative district, and be entitled to one representative.

22nd. The counties of Jersey and Calhoun shall constitute the twenty-second representative district, and be entitled to one representative.

23rd. The county of Greene shall constitute the twenty-third representative district, and be entitled to one representative.

24th. The county of Edgar shall constitute the twenty-fourth representative district, and be entitled to one representative.

25th. The counties of Coles and Moultrie shall constitute the twenty-fifth representative district, and be entitled to one representative.

26th. The county of Sangamon shall constitute the twenty-sixth representative district, and be entitled to two representatives.

27th. The counties of Morgan and Scott shall constitute the twenty-seventh representative district, and be entitled to two representatives.

28th. The counties of Pike and Brown shall constitute the twenty-eighth representative district, and be entitled to two representatives.

29th. The county of Adams shall constitute the twenty-ninth representative district, and be entitled to two representatives.

30th. The county of Schuyler shall constitute the thirtieth representative district, and be entitled to one representative.

31st. The county of Hancock shall constitute the thirty-first representative district, and be entitled to one representative.

32nd. The county of McDonough shall constitute the thirty-second representative district, and be entitled to one representative.

33rd. The county of Fulton shall constitute the thirty-third representative district, and be entitled to two representatives.

34th. The counties of Cass and Menard shall constitute the thirty-fourth representative district, and be entitled to one representative.

35th. The counties of Mason and Logan shall constitute the thirty-fifth representative district, and be entitled to one representative.

36th. The counties of Macon and De Witt, Piatt and Champaign shall constitute the thirty-sixth representative district, and be entitled to one representative.

37th. The county of Vermilion shall constitute the thirty-seventh representative district, and be entitled to one representative.

38th. The county of McLean shall constitute the thirty-eighth representative district, and be entitled to one representative.

39th. The county of Tazewell shall constitute the thirty-ninth representative district, and be entitled to one representative.

40th. The counties of Henderson and Warren shall constitute the fortieth representative district, and be entitled to one representative.

41st. The counties of Peoria and Stark shall constitute the forty-first representative district, and be entitled to two representatives.

42nd. The counties of Marshall, Woodford and Putnam shall constitute the forty-second representative district, and be entitled to one representative.

43rd. The counties of La Salle, Livingston and Grundy shall constitute the forty-third representative district, and be entitled to two representatives.

44th. The county of Kendall shall constitute the forty-fourth representative district, and be entitled to one representative.

45th. The counties of Iroquois, Will, Du Page and Kankakee shall constitute the forty-fifth representative district, and be entitled to three representatives.

46th. The counties of Kane and De Kalb shall constitute the forty-sixth representative district, and be entitled to two representatives.

47th. The county of Bureau shall constitute the forty-seventh representative district, and be entitled to one representative.

48th. The counties of Mercer, Henry and Rock Island shall constitute the forty-eighth representative district, and be entitled to one representative.

49th. The counties of Lee and Whiteside shall constitute the forty-ninth representative district, and be entitled to one representative.

50th. The county of Ogle shall constitute the fiftieth representative district, and be entitled to one representative.

51st. The counties of Carroll and Jo Daviess shall constitute the fifty-first representative district, and be entitled to two representatives.

52nd. The county of Stevenson shall constitute the fifty-second representative district, and be entitled to one representative.

53rd. The county of Winnebago shall constitute the fifty-third representative district, and be entitled to one representative.

54th. The counties of Boone and McHenry shall constitute the fifty-fourth representative district, and be entitled to two representatives.

55th. The county of Lake shall constitute the fifty-fifth representative district, and be entitled to one representative.

56th. The towns of South Chicago, Lyons, Lake, Lamonte, Palos, Worth, Orland, Bremen, Thornton, Rich and Bloom, in the county of Cook, shall constitute the fifty-sixth representative district, and be entitled to two representatives.

57th. The towns of West Chicago, North Chicago, Jefferson, Leyden, Ridgeville, Niles, Main, Elk Grove, Shaumburg, Harver, Northfield, Wheeling, Palatine, Barrington, Proviso and New Trier, in the county of Cook, shall constitute the fifty-seventh representative district, and be entitled to two representatives.

58th. The county of Knox shall constitute the fifty-eighth representative district, and be entitled to one representative.

(7.) SEC. III. Until the General Assembly shall otherwise provide, the clerk of the county courts in each of the aforesaid senatorial districts, and in such representative districts as may be composed of more than one county, shall meet at the county seat of the county in said district which had the largest population by the census of 1850, within thirty days next and after any election for senator or representative therein, for the purpose of comparing and canvassing the votes given at such election, and said clerks shall in all other respects conform to all the laws on the subject now in force.

#### ARMORY.

An Act granting to the General Government the Right to establish an Armory at Fort Massac.

[Approved Dec. 11, 1844. App. Rep. Stat. 1845, p. 607.]

WHEREAS, The President of the United States, acting under the authority of law, has selected Fort Massac, in the county of Massac, in the State of Illinois, as a suitable site for the erection of a national armory; AND WHEREAS, it may be advisable, for the removal of all doubts as to the right of the general government to acquire real estate, and establish public buildings within the limits of independent States, without the consent of such States; therefore,

(8.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the consent of the State of Illinois be and is hereby given to the government of the United States, for the erection of an armory at Fort Massac, in the said county of Massac; and that the said government of the United States be and hereby is authorized to acquire and hold forever so much land within the State of Illinois at said Fort Massac, as shall be requisite and necessary for the uses and purposes of an armory.

#### ARMS—STATE.

An Act to preserve the State Arms.

[Approved March 1, 1847. Laws, 1847, p. 18.]

(9.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* The quarter-master-general is hereby required to cause all of the small State arms and accoutrements, at Alton,



and other places where they may be found, to be removed to Springfield, and to employ some person to clean and put in order said arms for their preservation, and cause them to be put in suitable boxes and deposited in a dry room, in the State house; and to remove the State cannon and appendages, to such place or places, for safe-keeping, as the commander-in-chief may direct, causing them also to be cleaned and kept housed and dry, and in charge of some responsible person or persons.

(10.) SEC. II. The governor and auditor shall examine the account and charges of the quarter-master-general, for the labor and expenses incurred in the performance of the duty imposed on him by the foregoing section, and shall allow a reasonable and fair compensation for the same; upon which the auditor shall [issue] his warrants upon the treasurer, who shall pay the same out of any moneys not otherwise appropriated.

(11.) SEC. III. It shall be the duty of the quarter-master-general to report to the commander-in-chief the number and condition of the different kinds of arms so found, in whose charge they are placed, and the expenses incurred, who shall lay the same before the next General Assembly, at the commencement of its session.

#### ARSENAL.

An Act to provide for the Building of a State Arsenal.

[Approved Feb. 14, 1855. Laws, 1855, p. 150.]

(12.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the sum of seven thousand dollars be and the same is hereby appropriated out of any moneys in the treasury not otherwise appropriated, to be expended by the governor in the purchase of a suitable piece of ground, in or near the city of Springfield, and building thereon an arsenal for the safe-keeping and preservation of the state arms: *Provided,* The plan of said house shall be so fixed that this appropriation shall cover the whole expense thereof.

#### AUDITOR'S WARRANTS.

An Act to provide for Canceling Auditor's Warrants.

[Approved Feb. 18, 1845. App. Rev. Stat. 1845, p. 569.]

(13.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the third section of an act to amend an act entitled "An act to consolidate the acts relative to the auditor and treasurer, and election of attorney general," approved March 2, 1833, be so amended, that hereafter the warrants required to be deposited as in said act required, shall be canceled with a canceling hammer, by striking the same upon the face of each warrant, instead of the canceling required by said act. This act to be in force from and after its passage.

#### BURYING GROUNDS.

An Act in relation to Burying Grounds, Church Yards, and Lands used by Literary Institutions.  
[Approved March 2, 1843. App. Rev. Stat. 1845, p. 614.]

(14.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of societies and corporations owning, using and appropriating lands, not exceeding ten acres, for burying grounds, church grounds, and grounds for the use of literary institutions, to cause to be certified to the county commissioners' court of the proper county, by some credible person under oath, a full description of the lands by metes and bounds, in whom the title is, and for what purpose and use the land is held; and if it shall appear to said court that such land is not subject to taxation according to the revenue laws of this State, then that part shall be certified by said court to the auditor of public accounts, and the land shall remain exempt from taxation so long as it continues to be used exclusively for the purposes aforesaid.

#### CLERKS.

An Act to amend Section Six, Chapter LXXVII of the Revised Statutes, entitled "Officers."

[Approved Feb. 12, 1853. Laws, 1853, p. 257.]

(15.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That section six of chapter seventy-seven of the Revised Statutes, be so amended as to read "that all clerks of courts of record in this State may appoint deputies, who shall severally take an oath for the faithful discharge of the duties of their offices, and for whose conduct the principal clerk shall in all cases be responsible."

(16.) SEC. II. This act to take effect from and after its passage.

#### COLLEGES AND SCHOOLS.

An Act to exempt the Property of Colleges and Common Schools from Taxation for a limited Period.

[Approved March 6, 1843. App. Rev. Stat. 1845, p. 615.]

(17.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all colleges and seminaries of learning incorporated, or which may hereafter be incorporated, by any act or acts of the General Assembly of this State, be and the same are hereby exempted from taxation for State, county, or other incorporation purposes, upon all college and seminary buildings, libraries, philosophical and chemical, or other scientific apparatus, and the lands on which such institutions are located, not exceeding one hundred and sixty acres: *Provided,* That the property thus exempted shall be devoted exclusively to the purposes of education.

(18.) SEC. II. All laws of this State for the collection of revenue, or for other purposes, so far as they conflict with the provisions of this act, are hereby repealed.

## CONTEMPTS.

An Act to amend the Law relating to Contempts of Court.

[Approved June 22, 1852. Laws, 1852, p. 123.]

(19.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases where any person is or shall be imprisoned for any contempt of court, for the non-performance of any order or decree for the payment of money, the person so committed may present a petition to the circuit court in the circuit where he is imprisoned or committed in term time, or the judge thereof in vacation, setting forth his inability to comply with such order or decree, or to endure the confinement, and thereupon said court or judge shall issue a writ of *habeas corpus*, causing the person so imprisoned to be brought before such court or judge; and if it appear, upon full examination of such prisoner and such witnesses, and other evidence as may be adduced, that he is unable to comply with the order or decree under which he is imprisoned, or to endure the confinement, and that the person or persons interested in said decree have had reasonable notice of the time and place of trial, the judge may, in his discretion, discharge such person from imprisonment; but no such discharge shall operate to release the lien of such order or decree, but the same shall be enforced against the property of such person by execution.

## CORPORATIONS.

An Act to incorporate Masonic and Odd Fellows' Lodges, Divisions of the Sons of Temperance and other Benevolent Societies.

[Approved Feb. 15, 1855. Private Laws, 1855, p. 735.]

(20.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any number of persons, not less than three, may voluntarily associate themselves together for either of the following purposes: To organize Masonic and Odd Fellows' lodges, subordinate to their several general lodges, and also divisions of the Sons or Daughters of Temperance, or any other charitable or benevolent institutions, associations or orders.

(21.) SEC. II. Any such order, lodge or society that may wish to become incorporated under and by the provisions of this act, shall file in the office of the clerk of the county court in which said association, lodge, order or society shall be or is now organized and located, a certificate in writing, setting forth the name of such association, the objects of the same, the place where the meetings of such society are held, which certificate shall be signed by the presiding officer of said association, the secretary and treasurer, and attested by the seal of the association; and such association, after having filed the certificate, as required by this act, shall be deemed and held a body corporate and politic, and under the name and style stated in such certificate may sue and be sued, plead and be impleaded in all courts of law and equity in this State, and shall have power to contract and be contracted with, and have and use a common seal.

(22.) SEC. III. That any such association incorporated under this act may take, by purchase, grant, devise, gift or otherwise, any town lots or tracts of land, and may sell and dispose of the same and execute deeds of

conveyance, signed by the presiding officer and secretary, and attested by the corporate seal of the association: *Provided, however,* That such association shall at no time hold real estate exceeding in value thirty thousand dollars.

(23.) SEC. IV. Any such association, when organized and incorporated as aforesaid, may make and establish all such rules, by-laws and regulations necessary to carry out and enforce the objects of such association, not inconsistent with the constitution and laws of this State or of the United States.

(24.) SEC. V. The secretary of every such association shall keep a fair record of the proceedings thereof in a book provided for that purpose, and such record or copies duly certified and attested by such secretary, with the seal of said corporation, may be read in evidence in any of the courts of law or equity of this State where the interests of such corporation are concerned.

(25.) SEC. VI. Any such corporation may acquire and possess personal property, and sell and dispose of the same: *Provided,* They hold or possess no greater amount than the value of five thousand dollars at any one time.

(26.) SEC. VII. If at any time the said association shall change the place of holding their regular meetings, they shall give notice of the same by filing in the office of the clerk where the said certificate is filed, a notice in writing, of the place where their said meetings are to be held, and in failure to do so within five days after changing the same, all the privileges herein granted shall be and they are hereby forfeited.

(27.) SEC. VIII. This act to be in force and take effect from and after its passage, and be deemed a public act.

## COUNTY TREASURER.

An Act requiring County Treasurers to give additional Bonds in certain Cases.

[Approved Feb. 1, 1851. Laws, 1851, p. 15.]

(28.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the failure or refusal of any person heretofore or hereafter elected or appointed to the office of county treasurer, to execute any bond required by any law passed before or subsequent to the election, shall vacate the office, and a successor shall be appointed, in counties having adopted township organization, by the board of supervisors, and in other counties, by the county courts; such successor to execute bond or bonds and execute the duties of the office as though he had been originally elected or appointed to that office.

(29.) SEC. II. This act shall take effect on its passage.

An Act to amend the several Acts relating to the Election of County Treasurer.

[Approved Feb. 17, 1851. Laws, 1851, p. 144.]

(30.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That county treasurers shall hereafter be elected on the first Tuesday after the first Monday in November, A. D. eighteen hundred and fifty-one, and every two years thereafter.

(31.) SEC. II. So much of any and all laws now in force as provides that county treasurers shall hold their offices for the term of four years, is hereby repealed.

## COURTS.

An Act to provide for the Election of certain Officers therein named.

[Approved Feb. 6, 1849. Laws, 1849, p. 69.]

(32.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That on the first Monday of April, in the year of our Lord one thousand eight hundred and forty-nine, and every fourth year thereafter, an election shall be held in Cook county, at which election there shall be chosen one judge of the court, created by an act entitled "An act to establish the Cook county court," approved February 21, 1845; also a clerk of said court, and a prosecuting attorney, to perform the duties provided for in said act, who shall each hold their respective offices for the term of four years, and until their successors shall be elected and qualified.

(33.) SEC. II. The said election shall be conducted and the returns thereof made, in all respects, as in other elections for county officers. The person receiving the greatest number of votes for either of said offices shall be declared duly elected, and shall be commissioned by the governor.

(34.) SEC. III. Before entering upon the duties of their respective offices, the person so chosen shall take the usual oath of office; and the clerk and prosecuting attorney shall each execute a bond in the manner prescribed in the act creating said court.

(35.) SEC. IV. Upon the commencement of every suit on the law side of said court, the plaintiff in such suit, before process shall be issued, shall pay to the clerk of said court the sum of one dollar and fifty cents; and upon the taking of each appeal from the decision of any justice of the peace within the limits of the city of Chicago, whether bond is filed with the justice of the peace or clerk of the court, the sum of fifty cents shall first be paid by the party taking the appeal before the same shall be allowed; and upon the commencement of each chancery suit, before process shall be issued, there shall be paid by the complainant to the clerk the sum of two dollars and fifty cents; which said amounts shall be taxed against the losing party as other costs are. The above fees shall be reserved and paid to the judge of said court at the expiration of each quarter, during each year.

(36.) SEC. V. That before any judgment shall be entered in said court by confession and without the issuing of any process, if the amount of such judgment shall be for a less sum than one hundred dollars, there shall be paid to the clerk of said court, fifty cents; if the judgment shall be for a sum exceeding one hundred dollars and not more than five hundred dollars, there shall be [paid] to the clerk of said court, one dollar; if the judgment shall be for a sum exceeding five hundred dollars, there shall be paid to the clerk of said court, one dollar and fifty cents; which said amounts shall be taxed against the losing party as in other cases; which sums so paid shall be by the clerk of said court paid over to the judge of said court at the expiration of each quarter during each year.

(37.) SEC. VI. That it shall be the duty of each justice of the peace within the limits of the city of Chicago; to make out and furnish to the judge of said court, on the first day of each term of said court, a list of the appeals granted by him to the said court, and he shall at the same time pay over the sums by him received on the granting of each appeal.

(38.) SEC. VII. All the powers, rights, duties and obligations conferred

or imposed upon the said judge, clerk, prosecuting attorney, or either of them, in and by the said act creating the said court, are hereby conferred and imposed upon the said officers, and each of them to be elected by authority of this act. And all process hereafter issued out of said court shall be tested in the name of the clerk of said court.

(39.) SEC. VIII. That the judge of said court shall have power to remove the clerk thereof, and to appoint another in his place, who shall hold his office until the next general election, to be held under the authority of this act: *Provided,* That the reasons for the removal of any clerk shall be by the judge entered at length upon the records of said court.

(40.) SEC. IX. That when any vacancy shall occur in the office of judge or prosecuting attorney for said circuit, it shall be the duty of the governor to issue his writ of election to the sheriff of said county, commanding said sheriff to give twenty days' notice of an election to fill such vacancy; whereupon an election shall be held in the manner directed for other county elections.

(41.) SEC. X. In all cases where the election of any person, to act as the judge of the said court, shall be contested, the same proceedings and trial shall be had in every respect as is provided by laws for contesting the election of any judge of any circuit court in this State; and in all cases where the right of any person to act as clerk or prosecuting attorney shall be contested, the same proceeding shall be had as in other contested elections for county officers; but such contest shall be heard and tried in the circuit court for the county of Cook.

(42.) SEC. XI. So much of the act mentioned in the first section of this act as conflicts herewith, be and the same is hereby repealed. This act to take effect and be in force from and after its passage.

## DEATH.

An Act requiring Compensation for causing Death by wrongful Act, Neglect or Default.

[Approved Feb. 12, 1853. Laws, 1853, p. 97.]

(43.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or company or corporation, which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

(44.) SEC. II. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such damages as they shall deem a

fair and just compensation, with reference to the pecuniary injuries resulting from such death to the wife and next of kin of such deceased person, not exceeding the sum of five thousand dollars: *Provided*, That every such action shall be commenced within two years after the death of such person.

(45.) SEC. III. This act shall take effect immediately.

#### DEBT.

An Act concerning the Public Debt.  
[Approved Feb. 12, 1849. *Laws*, 1849, p. 70.]

(46.) SEC. I. *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 invest the annual dividend upon the surplus revenue due [from] the general government, (which dividend is derivable under the fifteenth article of the constitution,) and also such sums of money as may be received from the general government, due the school fund of this State, in Illinois bonds; and the same, when so purchased, shall be canceled and filed with the treasurer, and the amount of such bonds and interest shall be entered upon the books of the auditor of State, and reported to the legislature at each session in a separate item with the school fund.

(47.) SEC. II. That the time limited by law within which the creditors of the State are required to present their bonds and indebtedness for funding, be and the same is hereby extended, and made subject only to limitation on notice given by the *ex officio* fund commissioner.

(48.) SEC. III. That hereafter the following order shall be preserved in carrying into effect the 15th article of the constitution of this State, viz.: The annual dividend shall be made on the first day of January, provided it shall not come on Sunday, in which case the second day of January, and the amount which shall appear due upon each bond, under such dividend, shall be paid over to the proper parties in ten days after such dividend shall have been struck.

(49.) SEC. IV. That the sum of \$1,500 yearly is hereby appropriated, or so much thereof as shall be found necessary, to defray the expenses of the interest and transfer agencies of this State in the city of New York.

#### DOGS.

An Act providing for the Payment of Damages done by Dogs.  
[Approved Feb. 11, 1853. *Laws*, 1853, p. 124.]

(50.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the owner of any dog or dogs shall be liable in an action on the case for all damages that may accrue to any person or persons in this State, by reason of such dog or dogs killing, wounding or chasing any sheep or other domestic animal belonging to such other person or persons; and when the amount of such damages does not exceed one hundred dollars, the same may be recovered by an action before a justice of the peace.

(51.) SEC. II. If any person shall discover any dog or dogs in the act of killing, wounding or chasing sheep in any portion of this State, or shall

discover any dog or dogs under such circumstances as to satisfactorily show that such dog or dogs has or have been recently engaged in killing or chasing sheep, for the purpose of killing them, such person is authorized to immediately pursue and kill such dog or dogs.

(52.) SEC. III. This act to take effect from and after its passage.

#### EJECTMENT.

An Act to amend Chapter XXXVI of the Revised Statutes, entitled "Ejectment."  
[Approved Feb. 10, 1849. *Laws*, 1849, p. 132.]

(53.) SEC. I. *Be it enacted by the People of the State of Illinois represented in the General Assembly*, That exceptions taken to opinions or decisions of the circuit courts overruling motions for new trial, and to set aside defaults, under the thirtieth and thirty-first sections of the act to which this is an amendment, shall be allowed by the said courts, and the party excepting may assign for error in the supreme court any opinion or decision so excepted to, as aforesaid.

(54.) SEC. II. This act to take effect and be in force from and after its passage.

#### ESTRAYS.

An Act to revive a Part of a certain Act therein named.  
[In force Jan. 2, 1849. *Laws*, 1849, p. 75.]

(55.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That sections one, two, three, four and five of the act entitled "An act concerning water crafts found adrift, lost goods, and stray animals," approved January thirty-first, one thousand eight hundred and twenty-seven, and in force June first, one thousand eight hundred and thirty-three, be and the same are hereby revised and revived, as well as all other parts of said act which apply to lost goods.

(56.) SEC. II. The act which is hereby revived shall apply to certain property which was placed in the possession and custody of Bradly Rust, a justice of the peace of Monroe county; and no action shall be maintained against said Rust, for proceeding in the disposition of said property in accordance with the act hereby revised, the same as though said act had been in force at the time said property was placed in his possession. This act to be in force 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 said bill not having been returned, with the objection of the council on the first day of the present session of the General Assembly, the same has become a law.

January 2, 1849. H. S. COOLEY, *Secretary of State*.

An Act to amend Chapter XXXIX of the Revised Statutes, entitled "Estrays."  
[Approved Feb. 15, 1851. *Laws*, 1851, p. 116.]

(57.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That it shall be lawful for any person taking up an stray or fattened hog, between the first of November and first

of March, after complying with the provisions of sections one and three of the act to which this is an amendment, and stating on oath that he believes said estray has strayed from some drove, if no owner shall appear to prove said estray within the time specified in said notice, to sell said estray to the highest bidder, after giving public notice of such sale ten days previous thereto; the proceeds to be disposed of as now provided by law in other cases.

An Act to amend Chapter XXXIX, of the Revised Statutes, entitled "Estrays."

[Approved Feb. 15, 1855. Laws, 1855, p. 175.]

(58.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in the counties which have adopted or shall hereafter adopt township organization, the town clerk of every town thereof shall provide a book for the purpose of registering the mark, brands and color of any animals enumerated in chapter thirty-nine of the Revised Statutes, taken up as an estray; which book shall be open at all times to inspection by all persons interested therein, and shall be deemed a part of the records of said town.

(59.) SEC. II. Any person who shall take up any estray, according to the provisions of the act to which this is an amendment, shall cause to be registered in the book required to be provided in the foregoing act, the marks, brands and color of said estray, within five days from the time of such taking up.

(60.) SEC. III. This act to take effect and be in force from and after its passage.

#### FEEES AND SALARIES.

An Act to amend an Act entitled "An Act to amend the Act entitled 'Fees and Salaries,' Chapter XLI, Revised Statutes," approved Feb. 12, 1849.

[Approved Feb. 14, 1855. Laws, 1855, p. 181.]

(61.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter the clerks of the circuit courts of each county in this State shall be allowed the following fees, viz.:

For swearing jurors, witnesses and all other persons in criminal cases, 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 the payment of costs, the clerk shall receive from the county in which he is clerk, forty dollars per annum, to be paid quarterly.

For recording all deeds, mortgages, powers of attorney, or other instruments of writing, for every one hundred words, ten cents. For copy of same, for every one hundred words, ten cents. For each certificate to a deed, mortgage or other instrument recorded, twenty-five cents.

(62.) SEC. II. All laws and parts of laws that come in conflict with the provisions of this act, be and the same are hereby repealed.

(63.) SEC. III. This act to take effect and be in force from and after its passage.

An Act to amend an Act entitled "Fees and Salaries," Chapter XLI, Revised Statutes.

[Approved Feb. 14, 1855. Laws 1855, p. 180.]

(64.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That section thirty-seven of chapter forty-one, of the Revised Statutes, entitled "FEES AND SALARIES," be and the same is hereby repealed. That hereafter the clerks of the several county courts in this State shall not charge any fees for issuing writs of election, comparing election returns, issuing certificates of allowances made to individuals by the courts, or for any other service rendered the county, but the courts shall allow the respective clerks such reasonable compensation as they may think right, as an ex-officio fee, not exceeding one hundred dollars per annum, exclusive of a per diem allowance not exceeding three dollars per day for their attendance in the courts in term time, during county or probate business. For each marriage license and recording certificate of marriage, one dollar. For each official bond, fifty cents. For each certificate and seal of office, thirty-five cents. For examining and approving each inventory, sale bill, and account current filed by executors or administrators, fifty cents. The same fees shall be allowed for each guardian bond and issuing letters of guardianship and recording the same, as are now allowed by law for administrators' bonds and issuing and recording letters of administration. The same fees shall be allowed for computing and extending the tax on each person's personal property and for copying the same, as is now allowed by law for like services on each tract of land.

(65.) SEC. II. There shall be allowed to each county judge of this State for each day engaged in holding courts or probate courts, the sum of three dollars.

(66.) SEC. III. That so much of "An act to amend the act entitled 'FEES AND SALARIES,' in chapter forty-one, Revised Statutes," approved Feb. 12, 1849, and also "An act establishing county courts, and providing for the election of justices of the peace and constables, and for other purposes," approved Feb. 12, 1849, as conflicts with this act, be and the same is hereby repealed.

(67.) SEC. IV. This act to take effect and be in force from and after its passage.

#### INSURANCE COMPANIES.

An Act to Regulate the Agencies of Insurance Companies not incorporated by the State of Illinois.

[Approved Feb. 14, 1855. Laws 1855, p. 46.]

(68.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall not be lawful for any agent or agents of any insurance company, incorporated by any other State than the State of Illinois, directly or indirectly, to take risks or transact any business of insurance in this State, without first producing a certificate of authority from the auditor of State; and before obtaining such certificate, such agent or agents shall furnish the said auditor with a statement, under the oath of the president or secretary of the company for which he or they may act, which statement shall show,

1st. The name and locality of the company.

2nd. The amount of its capital stock.

3rd. The amount of capital stock paid up.

4th. The assets of the company, including, 1. The amount of cash on hand, and in the hands of agents or other persons; 2. The real estate unencumbered; 3. The bonds owned by the company, and how they are secured, with the rate of interest thereon; 4. Debts of the company, secured by mortgage; 5. Debts otherwise secured; 6. Debts for premiums; 7. All other securities.

5th. The amount of liabilities, due or not due, to banks or other creditors, by the company.

6th. Losses adjusted and due.

7th. Losses adjusted and not due.

8th. Losses unadjusted.

9th. Losses in suspense, waiting for further proof.

10th. All other claims against the company.

11th. The greatest amount insured in any one risk.

12th. The greatest amount allowed by the rules of the company to be insured in any one city, town or village.

13th. The greatest amount allowed to be insured in any one block.

14th. The act of incorporation of such company.

Which statement shall be filed in the office of said auditor, together with a written instrument, under the seal of the company, signed by the president and secretary, authorizing such agent to acknowledge service of process, for and in behalf of such company, consenting that service of process upon such agent shall be taken and held to be as valid as if served upon the company, according to the laws of this State or any other State, and waiving all claim of error, by reason of such service. And no insurance company, or agent or agents of any insurance company incorporated by any other State, shall transact any business of insurance in this State, unless such company is possessed of at least one hundred thousand dollars of actual capital, invested in stocks of at least par value, or in bonds or mortgages of real estate, with double the amount for which the same is mortgaged. And upon the filing of the aforesaid statement and instrument with the auditor of State, and furnishing him with satisfactory evidence of such investment, as aforesaid, it shall be the duty of said auditor to issue a certificate thereof, with authority to transact business of insurance, to the agent or agents applying for the same.

(69.) SEC. II. It shall be unlawful for any agent or agents of any company, incorporated by any foreign government other than a State of this Union, to transact any business of insurance in this State, without procuring a certificate of authority from the auditor of State, such agent or agents having first filed, under oath, in the office of said auditor, a statement, setting forth the charter or act of incorporation of the company for which he or they may act, and the matters required to be specified by the first section of this act, and the written authority therein mentioned, and furnished evidence to the satisfaction of the auditor of State that such company has invested in stocks of some one or more of the States of this Union, or of the United States, the amount of one hundred thousand dollars, and that such stocks are held by citizens of the United States. And the said agent or agents of such company, filing said statement and furnishing evidences of investment as aforesaid, shall be entitled to a certificate of authority in like manner as is provided for in the first section of this act.

(70.) SEC. III. It shall be the duty of the agent or agents, in either of the foregoing sections mentioned, before taking any risks, or transacting any business of insurance in this State, to file in the office of the clerk of the county court of the county in which he or they may desire to establish an agency for any such company, a copy of the statement required to be filed with the auditor of State as aforesaid, together with the certificate of said auditor, which shall be carefully preserved for public inspection by said clerk; and also to cause said statement and certificate to be published in some newspaper of general circulation in the cities of Chicago, Peoria and Springfield, not less than one month.

(71.) SEC. IV. The statement and evidences of investment required by this act shall be renewed annually, in the month of January in each year; the first statement to be made in the month of March next; and the auditor of State, on being satisfied that the capital, securities and investments remain secure, shall furnish a renewal of certificate as aforesaid; and the company, agent or agents obtaining such certificate, shall file the same, together with the statement upon which it was obtained or renewed, in the office of the clerk of the county court of the county in which such agent resides.

(72.) SEC. V. Whenever any loss shall occur, of any property insured by any company authorized to take risks under this act, it shall be the duty of the agent by whom the insurance was made, to retain in his possession all moneys belonging to such company which may then be, or which may thereafter come into his possession, until such loss is adjusted and paid: *Provided*, That if suit shall be commenced by the party insured against such company, the officer or agent may give such satisfactory security to the court in double the amount of the claim, to abide the event of the suit; or if the party insured shall not commence suit within ninety days after the agent shall have given written notice to such party that the loss would not be paid, the agent may thereafter pay over to persons entitled, the money of said company; and if any person insured by such company, meeting with a loss, shall notify any other agent of such company thereof, it shall be the duty of such agent to return all the moneys belonging to such company which may then be or may thereafter come into his possession, as hereinbefore required of the agent with whom the insurance was effected.

(73.) SEC. VI. That copies of all papers required by this act to be deposited in the office of the auditor of State, certified under the hand of such auditor to be true and correct copies of such papers, shall be received as evidence in all courts and places in the same manner and have the same force and effect as the originals would have, if produced.

(74.) SEC. VII. Any person or persons violating the provisions of this act, shall, upon conviction thereof in any court of competent jurisdiction, be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not more than thirty days, and fed on bread and water only, or both, at the discretion of the court. Violations of the provisions of this act may be prosecuted by information filed by the prosecuting attorney of the proper county, or by indictment of the grand jury.

(75.) SEC. VIII. Any insurance company complying with the requirements of this act and receiving the certificate from the auditor, or from any of its agents, shall not be required to furnish but the single statement and



evidence required hereby, which being filed with the auditor of State, shall be deemed a sufficient compliance for its free transaction of business in this State.

#### JAILS.

An Act in relation to Committals to Jail upon Writs of *Ca. Sa.*

[Approved Feb. 12, 1853. Laws, 1853, p. 258.]

(76.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in cases where any person shall be committed to the jail of any county upon any writ of *capias ad respondendum*, or *capias ad satisfaciendum*, issued in a civil suit, it shall be the duty of the creditor in such writ to pay the keeper of the jail the fees of the jailer or sheriff for receiving the same, and his board for one week at the time the debtor shall be committed to such jail, and before the jailer shall be bound to receive the debtor, and in default of such payment, such debtor may be discharged from arrest: *Provided,* That the officer having such debtor in charge shall give reasonable notice to the creditor or his attorney that such debtor is about to be committed to jail on such writ.

(77.) SEC. II. Should such debtor be detained in jail under such writ for more than one week, it shall be the duty of such creditor at the commencement of each week to advance and pay to such jailer or sheriff the board of such debtor for each succeeding week that such debtor may be detained in such jail, and in default of such payment in advance, said debtor may be discharged by such jailer or sheriff: *Provided,* That in case such debtor shall not be detained in such jail for any week for which his board may have been paid in advance, the sheriff or jailer shall return to such creditor or his attorney the amount so advanced for and unexhausted in boarding. The discharge of any debtor under the provisions of this act shall be no discharge or satisfaction of the debt, damages or costs named in any such writ; but the same shall be in full force against the property and effects of said debtor.

(78.) SEC. III. The amount paid by any creditor under the provisions of this act to the jailer or sheriff, shall be indorsed by the same on the writ, and shall be charged against and collected of the debtor as part of the costs in the suit in which such writ issued, in the same manner as the debt, damages and other costs named in such writ.

(79.) SEC. IV. This act shall take effect and be in force from and after its passage.

An Act to amend Chapter LV of the Revised Statutes, entitled "Jails and Jailers."

[Approved Feb. 15, 1855. Laws, 1855, p. 198.]

(80.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be lawful for the sheriff of any county in this State, where there shall happen to be no jail, or where 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 sufficient jail of some other county; 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 of the circuit from which such process or order of commitment was issued, or till otherwise discharged by due process of law.

(81.) SEC. II. So much of section twelve of the chapter to which this is an amendment, as is in conflict with this act, is hereby repealed.

(82.) SEC. III. This act shall take effect and be in force from and after its passage.

#### KIDNAPPERS.

An Act to reclaim Persons who have been decoyed or kidnapped and taken away beyond the Boundaries of this State.

[Approved Feb. 15, 1855. Laws, 1855, p. 186.]

(83.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever the governor of this State shall receive information satisfactory to him, that any inhabitant of this State has been decoyed, kidnapped or transported away from this State into any other State or territory of the United States, for the purpose of restraining such person in his or her liberty, or reducing such person to slavery, or any other unlawful purpose, or that such person is wrongfully seized, imprisoned or held in slavery in any of the States or territories of the United States, on the allegation or pretense that such person is a slave, or by color of any usage or rule of law prevailing in said State or territory is deemed or taken to be a slave, or not entitled of right to the personal liberty of an inhabitant of this State, it shall be the duty of said governor to take such measures as he shall deem necessary to procure such person to be restored to his or her liberty, and returned to this State. The governor is hereby authorized to appoint such agent or agents as he shall deem necessary to effect the restoration and return of such person, and shall furnish said agent with such credentials and instructions as will be likely to accomplish the object of his appointment. The governor may determine the compensation to be allowed such agent for his services and necessary expenses.

(84.) SEC. II. Such agent shall proceed to collect the proper proof to establish the right of such person to his or her freedom, and shall perform such journeys, take such measures, institute and procure to be prosecuted such legal proceedings, under the direction of the governor, as shall be necessary to procure such person to be restored to his or her liberty, and returned to this State.

(85.) SEC. III. The accounts for all services and expenses incurred in carrying this act into effect, shall be audited by the auditor of public accounts, and paid by the treasurer, on his warrant, out of any moneys in the treasury of this State not otherwise appropriated. The treasurer may advance, on the warrant of the auditor, to such agent such sum or sums as the governor shall certify to be reasonable, to enable him to accomplish the purposes of his appointment, for which advance such agent shall account on the first audit of his account.

(86.) SEC. IV. This act shall take effect and be in force from and after its passage.

## LANDS.

An Act to provide for the Collection of Demands growing out of Contracts for Sales of the Possession of the Public Lands.

[In force Feb. 2, 1839. App. Rev. Stat. 1845, p. 617.]

(87.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all contracts, promises, assumpsits or undertakings in writing, which shall hereafter be made in good faith and without fraud, collusion or circumvention, for sale, purchase or payment to be made for the possession of claimed lands owned by the government of the United States, shall be deemed valid in law and equity, and may be sued for and recovered as in other cases.

(88.) SEC. II. That the act entitled "An act to provide for the collection of demands growing out of contracts for sales of improvements on public lands," approved February fifteenth, eighteen hundred and thirty-one, be hereafter construed to apply as well to contracts, promises, assumpsits or undertakings, made subsequent, as to those made previous to the purchase of said lands from the government of the United States.

This bill having remained with the council of revision ten days, and the General Assembly being in session, it has become a law this second day of February, eighteen hundred and thirty-nine.

A. P. FIELD, Secretary of State.

An Act to provide for the Receipt of the Distributive Share of this State of the Proceeds of the Sale of the Public Lands.

[Approved Feb. 21, 1843. App. Rev. Stat. 1845, p. 616.]

(89.) SEC. I. *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, by himself, or by his accredited agent, to receive from the treasury of the United States any and all sum or sums of money now due or which may become due to this State, under the provisions of an act of the Congress of the United States of America, entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September fourth, one thousand eight hundred and forty-one; and to execute any needful and proper voucher therefor.

An Act to suspend the Sale of Lands owned by the State.

[Approved Feb. 7, 1851. Laws, 1851, p. 23.]

(90.) SEC. I. *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, all lands owned and held by the State shall be suspended from sale, anything in the act entitled "An act to provide for the sale of public property and the payment of the public debt," in force March 4, 1843, to the contrary notwithstanding.

An Act amendatory of an Act entitled "An Act to provide for the Sale of the State Lands and Liquidation of State Indebtedness, and to grant the Right of Pre-emption to Settlers on State Lands," in force February 14, 1853.

[Approved Feb. 10, 1855. Laws, 1855, p. 45.]

(91.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the right of pre-emption to State lands, as provided for in the eighth section of the above recited act, be and

it is hereby continued in full force and virtue for the further period of one year from and after the thirteenth day of February, of the year one thousand eight hundred and fifty-five, subject, however, to regulations and restrictions prescribed by the said section: *Provided, always*, That the owners of improvements, at the time of the passage of the act to which this is an amendment, made on any forty or eighty acre tract of said lands, shall be entitled to purchase and have said tract, not exceeding eighty acres, at the sum of three dollars and fifty cents per acre.

(92.) SEC. II. This act shall take effect and be in force from and after its passage.

## LANDS—SWAMP.

An Act to amend an Act entitled "An Act to dispose of the Swamp and Overflowed Lands, and to pay the Expenses of selling the Same," passed June 22, 1852.

[Approved Feb. 12, 1855. Laws, 1855, p. 150.]

(93.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That so much of the thirteenth section of said act as provides for the drainage of swamp lands in the counties of Lawrence, Richland, Clay and Jasper, be and the same is hereby repealed, and that the funds arising from the sale of swamp and overflowed lands, sold or to be sold in said counties, be paid by the drainage commissioners of said counties, under an order of the county commissioners' court of said counties, to such persons and for such uses and purposes as the said several courts may direct.

(94.) SEC. II. This act to take effect and be in force from and after its passage.

An Act to amend an Act approved March 4, 1854, in relation to Swamp Lands.

[Approved Feb. 15, 1855. Laws, 1855, p. 146.]

(95.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That no lands heretofore entered at any land office in this State, and which may have been selected as swamp or overflowed lands, lying within six miles of the line of the "Illinois Central Railroad," shall be sold by the county authorities of the counties in which the same shall be situated, till said selection shall have been approved by the secretary of the interior, or other proper officer of the general government, and so certified by the auditor of public accounts, in the manner now provided by law.

(96.) SEC. II. This act to take effect from and after its passage.

An Act to amend the several Laws of this State in relation to Swamp Lands.

[Approved Feb. 15, 1855. Laws, 1855, p. 176.]

(97.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the board of supervisors of the county of Adams, be and are hereby authorized and empowered to value the swamp lands in said county, remaining unsold, and to proceed to sell the same at any time hereafter, in the manner now provided for by law, anything in the laws of this State, in relation to swamp lands, to the contrary notwithstanding.

(98.) SEC. II. This act shall be deemed a public act, and be in force from and after its passage.

#### LIGHT HOUSES.

An Act to cede Jurisdiction to the United States over Lands to be occupied as Sites of Light Houses within this State.

[Approved Jan. 11, 1849. Laws, 1849, p. 99.]

(99.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That jurisdiction is hereby ceded to the United States over so much land as may be necessary for the construction and maintenance of light-houses within this State, not to exceed ten acres of land for each; the same to be selected by an authorized officer of the United States, approved by the governor, and the boundaries of the land selected, with such approval indorsed thereon, and a map thereof being filed in the office of the secretary of State of this State, and by him recorded: *Provided always,* And the assent aforesaid is granted upon this express condition, that this State shall retain a concurrent jurisdiction with the United States in and over the several tracts aforesaid, so far as that all civil and such criminal process as may issue under authority of this State, against any person or persons charged with crimes committed without the bounds of said tract, may be executed therein in the same manner as though this assent had not been granted.

(100.) SEC. II. That the foregoing shall be applicable only to such land as shall be selected and approved as aforesaid, and a survey thereof filed and recorded as above provided, for the construction of the following light-houses, to wit: at Chicago, at Littlefort [Waukegan,] at the mouth of the Calumet river, in Cook county.

An Act to cede Jurisdiction over Lands occupied by the United States for Light-Houses, Custom Houses, and for other Purposes.

[Approved Feb. 13, 1855. Laws, 1855, p. 139.]

(101.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That exclusive jurisdiction and legislation is hereby granted and ceded to the United States of America over land situate in the south-east corner of block one hundred and nineteen, in the school section addition to the town of Chicago, being one hundred and twenty feet fronting on Monroe Street, and running north one hundred and forty feet the same width, and fronting one hundred and forty feet, on a forty foot street taken off from the west side of block one hundred and forty two, in the aforesaid school section, called Dearborn Street, which tract of land has been selected by the United States as a site for a building or buildings, to be occupied for a post-office, custom house, United States court-rooms, and steamboat inspector's office; and the right of taxation or assessment of said tract is hereby relinquished to the United States.

(102.) SEC. II. *Be it further enacted,* That in case the United States shall at any time desire to make a change in the location of the building or buildings recited in the first section of this act, then and in that case the like jurisdiction and relinquishment from taxation and assessment, as is provided for in the first section of this act, shall be granted over any land, not ex-

ceeding in area the land described in the first section of this act, upon the filing of a description of the same, with the design of such appropriation, by the United States district attorney, in the office of the recorder of the county of Cook.

(103.) SEC. III. *Be it further enacted,* That the provisions of an act entitled "An act to cede jurisdiction over lands to be occupied as sites of light-houses within this State, approved January 11, 1849, shall apply to such lands or lots, not exceeding five acres in any one place, as may be selected, purchased or otherwise obtained, to be occupied by the United States, within this State, for light-houses, beacon lights and temporary lights, at or near Port Clinton, at or near Taylorport, and at or near Waukegan.

(104.) SEC. IV. *Be it further enacted,* That so much of the street called Lake street, in the town of Port Clinton, as interferes with the erection of the light-house at that point, on the ground already selected, is hereby vacated.

(105.) SEC. V. *Be it further enacted,* That in case of failure of the United States to agree with the owner or owners of any such lands as the United States may deem necessary to occupy for light-houses within this State, it shall be lawful for the United States to apply for the condemnation of such land, not exceeding five acres in any one place, by petition to any judge of a court of record of this State, in or nearest to the county where the land may be situated, either in term time or vacation, notice of the time and place of such application having been first duly given by publication for thirty days prior to the day of such publication, in some newspaper published in the county where the land lies, or by personal service upon the owner or owners of such land, at least twenty days prior to such application; and thereupon it shall be lawful for the said judge to appoint three disinterested freeholders of the county where such land lies, as commissioners, and having been first duly sworn to well and truly appraise the damages due the owner or owners of said land so proposed to be taken, they shall report in writing such damages to the said judge, the amount of damages to be paid to the owner or owners of said land; which report, upon confirmation by said judge, shall be held final and binding upon such owner or owners: and upon the amount of such damages being paid to the owner or owners of said land, the title of such land shall vest in the United States, and exclusive jurisdiction and right of assessment and taxation is hereby ceded to the United States over any lands acquired by this method of condemnation, or by acquirement of the owner or owners thereof; and the right of taxation and assessment is hereby relinquished over any and all lands acquired in the manner prescribed in this section, and over the buildings or property of the United States situated thereon.

(106.) SEC. VI. *Be it further enacted,* That this act shall not be construed in such a manner as to debar or hinder the process of any court or judge of this State from running within the boundaries of the land so acquired by the United States, or to continue the authority of the United States over any part of such land for any longer time than the said lands shall be used for the purposes aforesaid.

## LOTTERIES.

An Act in relation to Lotteries, and to prohibit the Vending and Selling of Lottery Tickets.

[Approved Feb. 26, 1847. Laws, 1847, p. 58.]

(107.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all laws or parts of laws establishing any lottery or lotteries in this State, for any purpose whatever, be and the same are hereby repealed.

(108.) SEC. II. All laws or parts of laws authorizing the selling or vending of lottery tickets are hereby repealed.

(109.) SEC. III. If any person or persons shall hereafter keep an office, room or place for the sale or other disposition of lottery tickets in this State, he or they shall be liable to indictment; and on conviction for such offense, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, with costs of prosecution.

(110.) SEC. IV. If any person shall vend, sell or otherwise dispose of any lottery ticket in this State, he, she or they shall be liable to indictment, and on conviction thereof fined in a sum not less than one hundred dollars nor more than five hundred dollars, and shall stand convicted until the fine and costs are paid.

(111.) SEC. V. This act shall take effect on the first day of May next.

## NAMES.

An Act in relation to Change of Names.

[Approved Feb. 25, 1847. Laws, 1847, p. 58.]

(112.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any resident of this State, by application to the circuit court of the county where he or she resides, may, if no cause appear to the contrary, by order of said circuit court, change his or her name.

(113.) SEC. II. Before making said application, the applicant shall give notice, at least six weeks previous to the time of making said application, in the State paper, for four consecutive weeks; which notice shall be signed by the applicant, and specify the name he desires to assume, and the term of the proper circuit court at which he or she will make such application.

(114.) SEC. III. This act shall apply to cases where the applicant is a minor, as well as to adults.

## OATHS.

An Act relating to the Administering of Oaths in Cases of the Trial of Impeachments, or other Trials before the Senate.

[Approved Jan. 18, 1833. App. Rev. Stat. 1845, p. 616.]

(115.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be lawful, in all cases or 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.

## OHIO RIVER.

An Act concerning the Jurisdiction of the State of Illinois over the Ohio River.

[Approved Feb. 9, 1849. Laws, 1849, p. 124.]

(116.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter the jurisdiction of the State of Illinois shall be considered as extending, and as being concurrent with the State of Kentucky, over the Ohio river.

(117.) SEC. II. Each of the several counties of this State, lying on the Ohio river and bounded thereby, are hereby invested with concurrent jurisdiction over the said river, in all cases occurring on said river, and opposite to each of the said counties.

(118.) SEC. III. Nothing herein contained shall be so construed as to extend the jurisdiction of said State over any islands in said river included within the corporate limits of any county in the said State of Kentucky.

## PENITENTIARY.

An Act to amend Revised Statutes, Chapter LXXXI, entitled "Penitentiary."

[Approved Feb. 15, 1851. Laws, 1851, p. 123.]

(119.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter sheriffs shall be allowed, as a compensation for their services in carrying convicts to the penitentiary from any county in this State, the following fees, payable out of the State treasury, viz.: Where only one convict is conveyed, at and after the rate of thirty-five cents for each and every mile necessarily traveled in going to the penitentiary from the place of conviction; where two convicts, tried and convicted at the same term, and conveyed by the said sheriff, he shall receive at and after the rate of thirty-five cents per mile for the first, and twenty cents per mile for the second convict; where more than two are convicted at the same time, and conveyed to the penitentiary by the sheriff as aforesaid, he shall be allowed thirty-five cents per mile for the first, twenty cents per mile for the second, and fifteen cents per mile for each of the residue.

(120.) SEC. II. All laws coming in conflict with the provisions of this act, are hereby repealed.

(121.) SEC. III. This act shall take effect and be in force from and after its passage.

## PEORIA COUNTY.

An Act to extend the Jurisdiction of the County Court of Peoria County.

[Approved Feb. 9, 1855. Laws, 1855, p. 194.]

(122.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the jurisdiction of the county court of Peoria county is hereby so extended that said court shall have concurrent

jurisdiction with the circuit courts in this State of all matters, suits and proceedings at common law, or by statute, in civil cases, (except actions in ejectment,) within said county, and shall have concurrent jurisdiction of all misdemeanors punishable by fine only, not exceeding one hundred dollars, commenced otherwise than by indictment.

(123.) SEC. II. The process of said court shall be issued and executed in the same manner as now provided by law, and said court shall have power to prescribe and make all necessary rules, regulations, practice and proceedings in said court not herein otherwise provided for; and all orders, judgments and decrees of said court shall have the same lien, force and effect upon the real and personal estate, and shall be enforced and collected in the same manner as orders, judgment or decrees rendered or made in circuit courts of this State.

(124.) SEC. III. Appeals and writs of error may be prosecuted from all final orders, judgments and decrees of said court to the supreme court, in the same manner that appeals and writs of error are prosecuted from the circuit courts of this State.

(125.) SEC. IV. All appeals from the decisions of police magistrates and justices of the peace made or rendered in said county shall be taken to said county court.

(126.) SEC. V. Said court shall always remain open for the transaction of business, within the jurisdiction whereof it is hereby invested, and all such other business as said court is by law authorized to transact.

(127.) SEC. VI. The clerk, jurors, sheriff and other officers of said court shall receive the several fees and compensation that now or hereafter may be allowed for similar services in the circuit courts of this State, to be received, collected and paid in like manner as such fees now or hereafter shall be.

(128.) SEC. VII. Said court shall have power to prescribe rules and regulations for the selection, summoning and empanneling jurors for the trial of all cases provided for in this act.

(129.) SEC. VIII. Any person or party to any suit or proceeding in said court may apply for a change of venue to the circuit court of said county, on filing a petition, supported by affidavit, that the county judge is prejudiced against him or them; and the provisions of this section shall apply as well to corporations, civil or municipal, as to persons; and upon such filing, the said judge shall grant a change of venue to the circuit court of said county; and said cause shall thereupon be set down for trial in said circuit court the same as if originally commenced therein.

(130.) SEC. IX. The clerk of said county court shall tax and collect a docket fee of one dollar and fifty cents in each suit or proceeding heard and determined in said court under the authority of this act, and when collected, shall be paid over to the judge thereof, as an additional compensation to that now provided by law.

An Act to extend the Jurisdiction of the Justices of the Peace and Police Magistrates of the County of Peoria.

[Approved Feb. 14, 1855. Laws, 1855, p. 154.]

(131.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the several justices of the peace*

and police magistrates in the county of Peoria, shall have jurisdiction to hear and determine all complaints, suits and prosecutions mentioned and described in section seventeen of chapter forty-nine, (entitled "JUSTICES OF THE PEACE AND CONSTABLES,") of the Revised Statutes, in which the amount claimed to be due does not exceed three hundred dollars.

(132.) SEC. II. Said justices of the peace and police magistrates shall have jurisdiction to hear and determine all complaints, suits and proceedings, for all debts, penalties or demands, in which the action of debt, assumpsit, trover or trespass on personal property, will lie, in which the amount claimed to be due does not exceed three hundred dollars.

(133.) SEC. III. Said justices of the peace and police magistrates shall have jurisdiction to hear and determine all actions on the case, (except libel and slander,) in which the amount claimed to be due does not exceed three hundred dollars.

(134.) SEC. IV. This act shall be taken to be a public act, and be in force from and after its passage.

#### PROCESS.

An Act to amend Chapter LXXXIII, Revised Statutes, entitled "Practice."

[Approved Feb. 8, 1853. Laws, 1853, p. 258.]

(135.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That in all cases where suit has been or may hereafter be brought against any incorporated company, process shall be served upon the president of such company, if he reside in the county in which suit is brought, and if such president be absent from the county, or does not reside in the county, then the summons shall be served by the proper officer by leaving a copy thereof with any clerk, cashier, secretary, engineer, conductor or any agent of such company found in the county, at least five days before the trial, if suit be brought before a justice of the peace, and at least ten days [when] suit is brought in the circuit court.*

(136.) SEC. II. This act to take effect from and after its passage.

#### PARTNERSHIPS.

An Act in relation to limited Partnerships.

[Approved Feb. 23, 1847. Laws, 1847, p. 60.]

(137.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That hereafter it shall be lawful to form limited partnerships within this State, according to the provisions of this act.*

(138.) SEC. II. Limited partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible, as general partners now are by law; and of one or more persons who shall contribute a specific amount of capital in cash, or other property at cash value, to the common stock, who shall be special partners, and who shall not be liable for the debts of the partnership beyond the amount of the fund so contributed by them respectively to the capital stock, except as hereinafter provided.

(139.) SEC. III. The general partners only shall be authorized to transact business, to sign for the partnership, and to bind the same.

(140.) SEC. IV. The persons desirous of forming such partnership, shall make and severally sign a certificate, which shall contain,

1st. The name or firm under which the partnership is to be conducted;

2nd. The general nature of the business to be transacted;

3rd. The names of the general and special partners therein, distinguishing which are general and which are special partners, and their respective places of residence;

4th. The amount of capital stock which each special partner shall have contributed to the common stock; and

5th. The period at which the partnership is to commence, and the period when it will terminate.

(141.) SEC. V. Such certificate shall be acknowledged by the several persons signing the same, before some officer authorized by law to take the acknowledgment of deeds; and such acknowledgment shall be made and certified in the manner provided by law for the acknowledgment of deeds for the conveyance of land.

(142.) SEC. VI. The certificate so acknowledged and certified, shall be filed in the office of the clerk of the county in which the principal place of business shall be situated, and shall be recorded at large by the clerk in a book to be kept by him; and such book shall be subject, at all reasonable hours, to the inspection of all persons who may choose to inspect the same. If the partnership shall have places of business situated in different counties, a transcript of such certificate, and of the acknowledgment thereof, duly certified by the clerk in whose office it shall have been filed, under his official seal, shall be filed and recorded, in like manner, in the office of the clerk of every such county; and the books containing such records shall be subject to inspection, in the manner above directed.

(143.) SEC. VII. At the time of filing the original certificate, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the amount in money, or other property at cash value, specified in the certificate to have been contributed by each of the special partners to the common stock, has been, actually and in good faith, contributed and applied to the same.

(144.) SEC. VIII. No such partnership shall be deemed to have been formed until such certificate, acknowledgment and affidavit shall have been filed as above directed; and if any false statement shall be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

(145.) SEC. IX. The partners shall publish the terms of partnership, when recorded, for at least six weeks, immediately after recording the same, in some newspaper, to be designated by the clerk with whom such records shall be made; such newspaper to be one printed in the county in which the business is to be carried on, or in the county nearest thereto in which a newspaper shall be published; and if such publication be not made, the partnership shall be deemed general.

(146.) SEC. X. Affidavits of publication of such notices by the printers of the newspaper in which the same has been published, may be filed with the clerk directing the same, and shall be evidence of the fact therein contained.

(147.) SEC. XI. Upon the renewal or continuance of a limited partnership beyond the time for which it was first created, a certificate shall be made, acknowledged, recorded and published, in like manner as is provided in this act for the formation of limited partnerships; and the affidavit of one or more of the general partners, as above provided, shall also be filed with the proper county clerk, as aforesaid; and every such partnership which shall not be renewed or continued, in conformity with the provisions of this section, shall be deemed a general partnership.

(148.) SEC. XII. The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, without the addition of the word "Company," or any other general term; and the general partners only shall transact the business; and if the name of any special partner shall be used in the said firm, with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership, with any person except the general partners, he shall be deemed and treated as a general partner.

(149.) SEC. XIII. During the continuance of the partnership under the provisions of this chapter [act,] no part of the capital stock shall be withdrawn, nor any division of interest or profit be made, so as to reduce such capital stock below the sum stated in the certificate above mentioned; but in case it should subsequently appear that such receiving of interest was a withdrawing of original capital, the special partner or partners shall be bound to refund the same with lawful interest.

(150.) SEC. XIV. That it shall not be lawful for any such partnership, nor any member thereof, in contemplation of bankruptcy or insolvency, and with the intention and for the purpose of paying or securing any one or more of their or his creditors in preference to any other of their or his creditors, to make any sale, conveyance, gift, transfer or assignment of their or his property or effects, or to confess any judgment, or to create any lien whatsoever upon their or his property or effects; and every such conveyance, gift, transfer or assignment, involving such judgment or other lien, shall be and the same is hereby declared to be utterly void.

(151.) SEC. XV. All suits respecting the business of such partnership, shall be prosecuted by and against the general partners only, except in those cases in which provision is made in this chapter [act,] that the special partnership may be deemed general partnership; in which cases all the partners deemed general partners may join or be joined in such suit; and excepting, also, those cases where special partners shall be held severally responsible, on account of any sum by them received or withdrawn from the common stock as above provided.

(152.) SEC. XVI. No dissolution of a limited partnership shall take place except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the registry in which such certificate was recorded, and in every other registry where a copy of such certificate was recorded, and unless such notice shall also be published six weeks successively, in some newspaper printed in the county where the certificate of the formation of such partnership was recorded; and if no newspaper shall, at the time of such dissolution, be printed in such county, then the said notice of such dissolution shall be published in some newspaper printed in an adjoining county, or at the seat of government.



(153.) SEC. XVII. That the general partners in every such partnership shall be liable to account to the special partners, and to each other, for the management of the joint concern, according to the law of partnership as now subsisting.

(154.) SEC. XVIII. That in case of bankruptcy or insolvency of partnership, no special partner shall be considered or allowed to claim as a creditor under any circumstance.

(155.) SEC. XIX. For performing the duties required of him by this act, the clerk shall be entitled to demand and have one dollar for each registry.

#### REAL ESTATE STATUTES.

An Act in relation to a certain Book, entitled "A Compilation of all the General Laws concerning Real Estate and the Title thereto in the State of Illinois, including all such Laws as relate to Descents, Limitations, Judgments and Executions, Partitions, Dower, Conveyance and Revenue, from the Organization of the Territory north-west of the Ohio to the present time; by N. H. Purple, late one of the Justices of the Supreme Court of the State of Illinois; December, 1848."

[Approved Feb. 10, 1849. Laws, 1849, p. 94.]

(156.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That upon the delivery to him of two hundred and fifty copies of the work in the title of this act mentioned, the secretary of State shall give to N. H. Purple, the compiler of the same, or to his order, a certificate that the said number of copies of said work has been so delivered.

(157.) SEC. II. That on the presentation of the said certificate to the auditor of public accounts, he shall draw his warrant on the treasurer for such sum as the said two hundred and fifty volumes shall amount to, at the price for which the said books shall be sold to individuals: *Provided*, The same shall not exceed three dollars per volume.

(158.) SEC. III. The secretary of State shall distribute the said books in the manner following, to wit: One copy to each of the judges of the supreme and circuit courts of this State, one copy to each of the State's attorneys, one copy to each clerk of each court of record in this State, one copy to each county judge, and one copy to each executive officer of this State, who is required to keep his office at the seat of government; and shall also deliver five copies to each clerk of each division of the supreme court of this State, for the use of said court; and the residue of the said five [three] hundred copies he shall retain in his office for the use of the State.

(159.) SEC. IV. The secretary may give his certificate, and thereupon the auditor may draw his warrant upon the treasurer for any number of copies less than five [three] hundred, as fast as the same may be delivered at and for the price above mentioned.

(160.) SEC. V. The several acts and parts of acts compiled and copied in said book shall be deemed and taken in all courts of justice in this State *prima facie* evidence of what the law was at the several times when by the dates therein contained they purport to have been passed, and for the period of time which by the dates therein contained they purport to have continued unrepealed; unless it shall be made to appear that some error has been committed in the date or compilation of the said acts, or some one of them;

and in case an error or errors as aforesaid shall be made to appear in some one or more of the said act or acts as aforesaid, the same shall in no way affect as evidence the residue of the said work.

#### RECOGNIZANCES.

An Act to provide for forfeited Recognizances.

[Approved Feb. 23, 1847. Laws, 1847, p. 74.]

(161.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all fines, penalties and forfeitures that heretofore may have been, or hereafter shall be, assessed, imposed or incurred in any criminal proceeding in any of the circuit courts of this State, shall be paid into the treasury of the county in which such fine, penalty or forfeiture occurred or is taken: *Provided*, That in cases of recognizances growing out of changes of venue, the county that by law is compelled to bear the expenses of the prosecution shall be entitled to all moneys arising from any fines, penalties or forfeitures; if both counties have incurred expenses and costs, then those expenses and costs are to be paid *pro rata* out of such fines and forfeitures.

(162.) SEC. II. The fines, penalties and forfeitures collected under the first section of this act, shall be collected in specie funds, and paid by the county treasurer, if the county commissioners making [make] an order upon the records of their court to that effect, on the first Mondays of April and September in each and every year, to the school commissioners of the proper county, who shall receipt for the same, and distribute the amount among the school townships of the county for the use and support of common schools as other school funds are distributed.

(163.) SEC. III. Nothing in this act contained shall apply to any fines, penalties and forfeitures collected in any district court of this State.

#### RECORDER'S COURT.

An Act to amend the Act entitled "An Act to establish the Recorder's Court of the City of Chicago."

[Approved Feb. 28, 1854. Laws, 1854, p. 150.]

(164.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the city of Chicago shall pay all fees, expenses and charges for dieting, committing, discharging and retaining in custody, any and all persons committed or convicted of any offense within the limits of the city of Chicago, and over which said court may have jurisdiction.

(165.) SEC. II. This act shall be in force and take effect from and after its passage.

#### RELIGIOUS SOCIETIES.

An Act to amend "An Act in relation to Religious Societies."

[Approved March 2, 1889. App. Rev. Stat. 1845, p. 615.]

(166.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter it may be lawful for any

religious society in this State, to purchase, or receive by a donation, and hold any real estate, not exceeding forty acres, for the purpose of camp-meeting ground, and the lots necessary for the same.

(167.) SEC. II. The title to said real estate shall be held by trustees appointed by said society; and the same may become incorporated according to the provisions of "An act concerning religious societies," in force March 1, 1835. This act to take effect from and after its passage.

An Act authorizing certain Persons holding Property in trust for the use of the Catholic Church, and Societies thereof, in the State of Illinois, to convey the same.

[Approved Feb. 24, 1845. Laws, 1845. p. 322.]

WHEREAS certain lands, tenements, and other property in this State have been heretofore conveyed to the Right Reverend Celestine Guynemer de la Hailandiere, bishop of Vincennes, and to the Right Reverend Peter Richard Kenrick, bishop of St. Louis, and to other persons upon the trust expressed or implied, to hold and transmit the same to the successors of said bishops in the State of Illinois, for the use and benefit of various religious congregations of Roman Catholics, and for the religious, charitable and literary purposes of such congregations; AND WHEREAS, since the making of the said conveyances, the State of Illinois, a part of which was heretofore included in the diocese of St. Louis, and the residue in the diocese of Vincennes, has been erected into a distinct and separate diocese by the name of the diocese of Chicago, and the Right Reverend William Quarter has been appointed bishop thereof, which latter diocese is entitled in equity and justice to said lands, tenements, and other property, so conveyed as aforesaid; AND WHEREAS doubts have arisen whether the said bishops of Vincennes and St. Louis, and the other persons before mentioned, can well and sufficiently convey such lands, tenements and other property to the said Right Reverend William Quarter, bishop of Chicago, and his successors, and also whether the successors of the said Right Reverend William Quarter can take and hold the legal title of and to the same; AND WHEREAS, there is great danger of loss to said church and societies, unless said bishop of Chicago and his successors be authorized to take, hold and convey real estate for such religious and charitable uses; therefore,

(168.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all gifts, grants, deeds, wills and other conveyances, wherein or whereby any lands, tenements or other property within this State, have been given, devised or granted, or in any manner conveyed, by any person or persons whatever, unto any person by the name, style or title of Roman Catholic bishop of Vincennes, or Catholic bishop of Vincennes, and his successors, or Catholic bishop of St. Louis, or Roman Catholic bishop of St. Louis, and his successors, or to the Roman Catholic bishop of Chicago, or Catholic bishop of Chicago, and his successors, or to any other person upon the trust expressed or implied, to take, hold and receive the same for the use and benefit of any religious congregation of Roman Catholics, or for the support, aid and maintenance of any hospital, almshouse, seminary, church, parsonage, or for burial grounds, or other religious or charitable purposes within this State, and all such gifts, grants, deeds, wills and other conveyances which may hereafter be made, are hereby confirmed and declared to be good, sufficient and effectual in law to vest the

legal title or estate in fee simple, of, in and to the said lands and tenements, and other property in such grantee or devisee, and in such persons as shall be in future the successors of the said Catholic bishop of Chicago, forever, and in no other person or persons whatsoever: *Provided, however,* That it shall be necessary in relation to all gifts, grants, deeds, wills and other conveyances, heretofore made as aforesaid, that the persons to whom the same were made, or such persons as they have conveyed to, if living, shall release their estate and interest therein, to the said bishop of Chicago: *And Provided, further,* That nothing in this act shall be taken or construed to give or grant to the said Catholic bishop of Chicago, or his successors, the right to hold real estate in trust for any religious society, except for charitable, religious, and literary purposes, or for burial grounds, as provided for by this act.

An Act authorizing certain Persons holding Property in Trust for the use of the Protestant Episcopal Church in the State of Illinois, to convey the same.

[Approved Jan. 24, 1853. Laws, 1853. p. 482.]

WHEREAS certain lands, tenements and other property in this State have been heretofore conveyed to the Right Reverend Philander Chase, bishop of the Protestant Episcopal church in the diocese of Illinois, or bishop of Illinois, and to other persons, upon the trust, expressed or implied, to hold and transmit the same to the successors of said bishop in the State of Illinois, for the use and benefit of various religious congregations of the Protestant Episcopal church, and for the religious, charitable and literary purposes of said church; AND WHEREAS certain land in the city of Chicago has been conveyed to the Right Reverend Henry John Whitehouse, the present bishop of the Protestant Episcopal church in Illinois, for the purpose of erecting thereon a cathedral, church, dwelling-house, schools and other buildings, on the same trust, expressed or implied, to hold and transmit the same to his successors; AND WHEREAS doubts may arise whether the said bishop and other persons before mentioned can well and sufficiently hold and convey said lands, tenements, and other property, and also whether the successors of the Right Reverend Henry John Whitehouse can take and hold the legal title to the same; AND WHEREAS there is danger of loss to said church and societies unless the said bishop of Illinois and his successors are legally authorized to take, hold and convey real estate for such religious and charitable uses; therefore,

(169.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all gifts, grants, deeds, wills and other conveyances wherein or whereby any lands, tenements or other property within this State have been given, devised or granted, or in any manner conveyed, by any person or persons whatever, unto any person, by the name, style or title of bishop of the Protestant Episcopal church, in the State or diocese of Illinois, or Bishop of Illinois, and his successors, or to any other person upon the trust, expressed or implied, to take, hold and receive the same, for the use and benefit of any religious congregation of Protestant Episcopalians, or for the support, aid or maintenance of the cathedral church, of any hospital, almshouse, seminary, church, parsonage, or for burial grounds or other religious or charitable purposes, within this State; and all such gifts, grants, deeds, wills and other conveyances which may hereafter be made, are hereby confirmed and declared to be good,

sufficient and effectual in law to vest the legal title and estate in fee simple of, in and to the said lands and tenements and other property in such grantee or devisee, and in such persons as shall be in future the successors of the said bishop of Illinois, forever, and in no other person or persons whatsoever: *Provided, however,* That it shall be necessary, in relation to all gifts, grants, deeds, wills and other conveyances heretofore made as aforesaid, that the persons to whom the same were made, or such persons as they may have conveyed to, if living, shall release their interest and estate therein to the said bishop of Illinois: *And Provided further,* That nothing in this act shall be taken or construed to give or grant to the said bishop of Illinois, or his successors, the right to hold real estate in trust for any religious society, except for charitable, religious and literary purposes, or for burial grounds, as provided for in this act.

#### RIOTS.

An Act to suppress Riots and regulating Companies, and maintain the Supremacy of the Laws.

[Approved Feb. 26, 1847. *Laws, 1847, p. 84.*]

(170.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That if two or more persons shall commit an assault and battery on, or shall imprison another within this State, for the purpose of obtaining a confession or revelation tending to criminate the person assaulted, or any other person, or shall assault and batter, or imprison another on account of a refusal of such person to make such confession or revelation, the persons so offending, on conviction thereof, shall be punished by confinement in the penitentiary for a term of not less than one year, nor more than three years.

(171.) SEC. II. If two or more persons shall actually do an unlawful act, with force or violence, against the person or property of another, with an intent in them thereby to cause such person to leave the State or county against his or her will, the person so offending, on conviction thereof, shall be punished by confinement in the penitentiary for a term of not less than one year, nor more than three years.

(172.) SEC. III. If two or more persons shall assemble and try another for any real or pretended offense, or for being a person of bad repute, without any authority of law in them so to do, the persons so offending, on conviction thereof, shall be punished by confinement in the penitentiary for a term of not less than one year, nor more than three years.

(173.) SEC. IV. If two or more persons shall actually do an unlawful act, with force or violence, against the person or property of any grand or petit juror, witness, or member of a *posse comitatus*, on account of any act done by him in obedience to a duty required of him by law, or to prevent the performance of any such act, the persons so offending, on conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than three years.

(174.) SEC. V. If one or more persons shall threaten violence to the person or property of another for the purpose of obtaining a confession of crime, or for the purpose of causing such person to leave the State, or shall threaten violence to the person or property of any grand or petit juror,

witness, or member of a *posse comitatus*, on account of any act done by him in obedience to a duty required of him by law, or to prevent the performance of any such act, the person or persons so offending shall, on conviction thereof, be severally fined not exceeding one hundred dollars, or imprisoned in the county jail not more than three months.

(175.) SEC. VI. Whenever any person under arrest on a charge of any offense punishable, by law, by confinement in the penitentiary, shall offer bail to any officer required by law to take and judge the sufficiency of bail, and such bail shall be unknown in person and circumstances to such officer, it shall be lawful for such officer to defer the taking of such bail as long as may be necessary, not exceeding five days, that he may inquire into the solvency of such bail: *Provided,* That the person under arrest shall be permitted to offer other bail; and in all cases where such officer shall entertain doubts of the sufficiency of such bail from all the evidence adduced before him, he shall receive or reject the same accordingly.

(176.) SEC. VII. This act shall be in force from the end of ten days after its passage; and five hundred copies thereof shall be printed immediately on its passage, and distributed to the different post-offices of Massac county.

(177.) SEC. VIII. This act to be in force two years from and after its passage, and no longer.

An Act to amend an Act entitled "An Act to suppress Riots and regulating Companies, and maintain the Supremacy of the Laws," approved Feb. 26, 1847.

[Approved Jan. 25, 1848. *Laws, 1849, p. 131.*]

(178.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the eighth section of the act approved February 26, 1847, entitled "An act to suppress riots and regulating companies, and maintain the supremacy of the laws," be and the same is hereby repealed, and that the remainder of said act be continued in full force.

(179.) SEC. II. This act shall go into effect from and after its passage.

#### SCHOOL FUND.

An Act to apportion the Interest on the School Fund to New Counties.

[Approved Feb. 15, 1855. *Laws, 1855, p. 192.*]

(180.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever a new county is established, it shall be the duty of the commissioners of the school fund to divide the amount of interest, the school, college and seminary fund, due to the counties out of which such new county was formed, according to the last census, between the new county and the counties from which it was formed, in proportion to the highest number of votes given in such counties at the first election after the formation of such new county for members of the legislature or any county officer.

(181.) SEC. II. When a basis shall have been fixed as provided in the preceding section, it shall so remain until the taking of the next census.

## S H E E P.

An Act for the Improvement of Sheep, and to promote their Increase.

[Approved Feb. 10, 1849. Laws, 1849, p. 183.]

(182.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be unlawful for the owner or owners of any buck or bucks, or male sheep over the age of six months, to permit such buck or bucks or male sheep to run at large in any highway or uninclosed grounds or commons in this State, or without the inclosure of said owner or owners, between the fifteenth day of June and the fifteenth day of November in each year hereafter.

(183.) SEC. II. *And be it further enacted,* That it shall be the duty of any person or persons finding any such sheep running at large as aforesaid, to take up and confine the same, and notify the owner or owners, if known, and in case such owner or owners are not known, then such person, so taking up, shall give notice thereof in writing by posting up notices in three public places within the precinct or neighborhood where said sheep are so taken up, within four days after such taking up, describing all plain marks that may be on said sheep, and the owner or owners of such sheep shall be entitled to the same by proving property and paying, or agreeing to pay, all reasonable charges, and such damages as the sheep may have done: *Provided,* Such charges and damages shall not exceed the value of the sheep, and if the owner or owners shall not comply with the above requisitions within the term of six months from the date of such notice, then in that case the sheep shall be forfeited, and become the property of the person so taking up the same: *Provided,* That if the inhabitants of any county in this State shall think themselves aggrieved by the provisions of this act, the county commissioners or county court of such county shall have power to suspend the operation of this law in such county or counties for a convenient time, by an order of said court, posted on the court-house door of said county, and in some public place in each of the several precincts of such county.

## S T A T E ' S   A T T O R N E Y S .

An Act to amend Section First of an Act to amend the Act entitled "Fees and Salaries," Chapter XXI, Revised Statutes.

[Approved Feb. 11, 1853. Laws, 1853, p. 95.]

(184.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That so much of section one as fixes the salaries of the State's attorneys at two hundred and fifty dollars per annum, be and the same is hereby repealed.

(185.) SEC. II. That the salaries of State's attorneys shall be five hundred dollars per annum, which shall be paid to the persons entitled thereto in quarter-yearly installments, on the warrant of the auditor, out of any moneys in the treasury not otherwise appropriated.

(186.) SEC. III. This act to take effect and be in force from and after its passage.

## S T A T E   D E B T .

An Act to authorize the Refunding of the State Debt.

[Approved Feb. 23, 1847. Laws, 1847, p. 161.]

WHEREAS the State of Illinois has at various times issued a large number of internal improvement bonds of different classes, yet bearing the same numbers, and having interest coupons attached thereto, similar in number and description, thereby causing great confusion, opening a wider door for fraud, and rendering it extremely difficult to pay the interest to those justly entitled thereto; AND WHEREAS also, from the want of a full and perfect record of the classes, numbers and description of the bonds so issued, it is impossible at the present time to determine the precise amount of the indebtedness of the State, its character, and when payable; AND WHEREAS it is of the highest importance that the actual amount and character of the present State debt should be actually ascertained at the earliest possible period, preparatory to a more united and vigorous exertion for its payment, and to enable the convention for altering the constitution, about to assemble, to make some adequate constitutional provision for the payment of the principal when due, the accruing interest, and interest in arrear; therefore,

(187.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the governor be authorized and directed to receive from the holders willing to surrender the same, the internal improvement bonds, scrip, and all other evidences of State indebtedness heretofore issued, and now outstanding against the State, (not including the McAlister and Stebbins bonds, nor any canal bonds, scrip or other indebtedness incurred in behalf of the Illinois and Michigan canal,) and shall thereupon, in exchange for, and in lieu of such bonds, scrip or other evidences of indebtedness so surrendered, issue to said holders other certificates of indebtedness, equal in amount with the amount surrendered; which said new certificates shall, from the date thereof, bear like interest, and be made payable at the same time, with the evidences of indebtedness so surrendered, and shall be denominated "new internal improvement stock of the State of Illinois." No certificate shall be issued of a less denomination than one thousand dollars, except interest certificates, as hereinafter mentioned: *Provided,* That all bonds, scrip, &c., which shall not be surrendered up, in conformity with the provisions of this act, within eighteen months after notice given of a readiness on the part of the State to exchange as aforesaid, shall thereafter not be entitled to the benefit of any law which may be passed to pay interest on the State debt.

(188.) SEC. II. For the interest now in arrear, certificates shall be issued at the time of making the exchange provided in the foregoing section, which said certificates shall not be of a less denomination than five hundred dollars, shall bear interest at the rate of six per centum per annum, from and after the first day of January, one thousand eight hundred and fifty-seven, and shall be redeemable, at the pleasure of the State, at any time after the year one thousand eight hundred and seventy-seven.

(189.) SEC. III. All the certificates hereby authorized to be issued shall be signed by the governor and countersigned by the treasurer, and shall be made payable in dollars and cents in the city of New York. The interest to be paid semi-annually. No interest coupons shall be attached to the new

certificates, but the rate of interest and the time of payment thereof, shall be expressly set forth in the body of the certificate.

(190.) SEC. IV. Before the delivery of any certificates authorized to be issued by the foregoing sections of this act, the governor shall cause to be prepared two sets of books, in one of which he shall cause, at the time of making the exchange hereinbefore provided, to be carefully entered a brief and accurate description of each and all of the bonds, scrip and other evidences of indebtedness, to be surrendered as hereinbefore provided; and in the other set there shall be in like manner carefully entered, a precise and accurate description of the number, date and amount of each certificate, the persons to whom, and the purpose for which, the same are issued, and whatever else may be necessary to preserve a full and true account of the same.

(191.) SEC. V. The exchange authorized by this act to be made, may be effected in Springfield, Illinois, or in the city of New York, as the governor shall judge best; and for the purpose of accomplishing the object of this act, a sum not exceeding two thousand five hundred dollars is hereby appropriated out of any money in the treasury not otherwise previously appropriated.

(192.) SEC. VI. Whenever any bond, scrip or other evidences of indebtedness shall be surrendered to the governor, and a description thereof duly entered as hereinbefore provided, it shall be the duty of the governor to cause the same to be canceled, and to file the same in the office of the treasurer of the State, to be preserved as vouchers, and be subject to the future order of the General Assembly. The governor shall receive from Lyon and Howard, the internal improvement commissioners' drafts now held by them, and issue to them new certificates of stock as hereinbefore provided, instead of the internal improvement scrip which he is now directed by law to issue to them.

(193.) SEC. VII. The governor is hereby authorized and empowered to call to his aid such agent or agents as may in his judgment be necessary for carrying into effect the provisions of this act; and the faith of the State is hereby pledged for the payment of the certificates, both principal and interest, authorized to be issued by the foregoing sections of this act. All certificates issued under and by virtue of this act shall be transferable, and books of transfer shall be kept in the cities of Springfield and New York, respectively, by such persons as the governor may appoint.

(194.) SEC. VIII. The holders of any scrip below the sum of one thousand dollars, may present said scrip to the governor, who shall register and mark it genuine; and the interest and principal of said scrip shall be paid at the time and times provided by the provisions of this act, for the payment of the State debt.

An Act to provide for the funding of certain Bonds therein named.

[Approved Feb. 14, 1851. Laws, 1851, p. 88.]

(195.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That so many of the canal bonds handed or paid over by the governor of this State to the fund commissioner, and by him applied to the completion of the Northern Cross railroad, from Jacksonville to Springfield, in pursuance of an act entitled "An act to provide

for the completion of that part of the Northern Cross railroad from Springfield to Jacksonville, and for other purposes," approved February twenty-sixth, one thousand eight hundred and forty-one, as are now outstanding, shall be deemed and considered internal improvement bonds.

(196.) SEC. II. The governor is hereby authorized and required to receive said bonds when they shall be presented, and fund the same, in pursuance of the provisions of the act entitled "An act authorizing the refunding of the State debt," approved February twenty-eighth, one thousand eight hundred and forty-seven; and all the provisions of said last mentioned act are hereby made applicable to said bonds.

(197.) SEC. III. Nothing in this act contained shall be so construed as to relieve the stockholders in the Sangamon and Morgan railroad from the payment of the excess of the earnings of said road, over and above six per centum per annum, upon the cost of purchase and repair of said road, toward the interest of the uncanceled canal bonds used for the completion of said road, (including the bonds issued under the provisions of this act,) agreeably to the tenth section of an act entitled "An act to provide for the sale of a part of the Northern Cross railroad," approved February sixteenth, A. D. one thousand eight hundred and forty-seven.

An Act to provide for reducing the State Debt.

[Approved Feb. 12, 1853. Laws, 1853, p. 200.]

(198.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any unappropriated and surplus funds in the treasury, or which may hereafter be received from any sources of revenue, or from the sale of State lands or other property, shall be applied and used in the purchase of the indebtedness of the State bearing interest, except such indebtedness as may not have been fully recognized by the laws of the State, in the manner and upon the terms herein provided.

(199.) SEC. II. Upon the requisitions of the governor, the auditor shall from time to time issue warrants upon the treasury for sums not exceeding thirty thousand dollars, of the funds referred to in the foregoing section, to be used in the purchase of the State indebtedness of the description aforesaid; and the governor is hereby vested with power to use and apply the funds aforesaid in the purchase of State indebtedness, of the description aforesaid, at the lowest price or least sum for which the same can be obtained, and he is also vested with power to use all lawful ways and means in the executing the provisions of this act.

(200.) SEC. III. Upon the investment of such sum of thirty thousand dollars, received as aforesaid, the governor shall make out duplicate statements of the indebtedness purchased, setting forth the proper description of such indebtedness, the name of the person from whom it was purchased, and the amount paid for each bond or certificate, and the total amount invested; one of which statements shall be filed with the State treasurer, and the other with the auditor of public accounts.

(201.) SEC. IV. The said indebtedness so purchased, shall be canceled by the governor and delivered to the auditor at the time of filing the statement aforesaid; and the auditor shall indorse on the face of each bond or certificate, the words "paid out of the surplus revenue," and sign his name thereto; and said indebtedness shall then be registered by him in a proper

book kept for that purpose, and then filed with the treasurer, who shall enter the proper credit, with the cost thereof: *Provided*, That in no case after the issuing of the warrants for the first thirty thousand dollars, as provided for by this act, shall the auditor issue warrants for any additional sum until the requirements of this section are fully complied with, to the end that a greater sum than thirty thousand dollars shall at no one time be paid out and remain unaccounted for.

(202.) SEC. V. This act shall take effect from and after its approval by the governor.

An Act to regulate Payments of Interest on the Public Debt, and the Purchase of State Bonds.

[Approved Feb. 15, 1855. *Laws*, 1855, p. 180.]

(203.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That so much of all laws as authorize the employment of a State agent in the city of New York to pay interest on the bonds of this State, be and the same is hereby repealed.

(204.) SEC. II. Hereafter all payments of interest on the public debt shall be made by the State treasurer, at the treasury, on the warrant of the auditor, except such interest as the State has contracted to pay in New York, the installments upon which shall be paid by the treasurer, in New York, and except the installment upon the interest payable in London. And the treasurer shall make such arrangements as may be necessary for the payments of the installments of interest made payable in London: *Provided*, That the money applicable to the payment of such interest shall not be withdrawn from the treasury more than thirty days before the time fixed for such payment.

(205.) SEC. III. Hereafter no part of the proceeds of the sale of State lands or surplus revenue shall be paid out of the treasury, for the purchase of State indebtedness, unless the bonds or other indebtedness are filed ready to be canceled at the time the payment is made.

(206.) SEC. IV. Hereafter all moneys applicable to the payment of interest received into the public treasury prior to the 15th day of June and December in each year, shall be apportioned and paid out on the first days of July and January, respectively, ensuing.

(207.) SEC. V. This act to take effect and be in force from and after its passage.

An Act to provide for the Payment of the Installment of Interest upon the State Debt, payable January 1st, 1855.

[Approved Feb. 15, 1855. *Laws*, 1855, p. 153.]

(208.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That that portion of the surplus revenue, and the fund received or to be received for the sale of State land, which by existing laws is appropriated to the purchase of the indebtedness of the State in the market, be and the same is hereby appropriated to the payment of the installment of interest which should have been made in New York on the 1st day of January, 1855, and for the payment of which provision was made by the State; and said fund shall be applied to no other purpose until said installment of interest shall have been paid.

(209.) SEC. II. This act to take effect and be in force from and after its passage.

## STEAM BOATS.

An Act to protect Owners of Wood Yards against the illegal Acts of Steamboat Masters and Officers.

[Approved Feb. 28, 1845. *App. Rev. Stat.* 1845, p. 606.]

(210.) SEC. II. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, If any master, captain or other officers of a steamboat, shall stop at any wood yard in this State, and shall take cord wood therefrom, without the consent of the owner thereof; or having the consent of the owner, shall refuse to pay the price agreed on; or depart without paying for the same; or shall pay for less than the quantity taken, and depart; such captain, master or other officer so offending, and the owner of such boat, shall be liable to pay to such owner of such wood taken without consent, or not paid for, three times the value of said wood, to be recovered before any court having jurisdiction thereof; or before any justice of the peace of the county, where said suit may be brought, when the amount claimed does not exceed one hundred dollars. This act to take effect and be in force from and after its passage.

An Act to amend an Act entitled "An Act to protect Owners of Wood Yards against the illegal Acts of Steamboat Masters and Officers," approved Feb. 28, 1845.

[Approved Feb. 12, 1853. *Laws*, 1853, p. 166.]

(211.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That in all cases arising under the act to which this is an amendment, the steamboat or boats shall be and is hereby made liable for all the acts of the master, captain or other officers arising under the provisions of said act to which this is an amendment.

## TAXES.

An Act regulating the Collection of the Road Tax.

[Approved Feb. 12, 1849. *Laws*, 1849, p. 152.]

(212.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That hereafter the clerk of the county court shall not include in the lists required to be made out for the supervisors of roads, any road tax on lands and town lots which have not been listed by residents of the county; but shall charge the same, together with the revenue and other special tax, on the tax list made out for the collector.

(213.) SEC. II. The collector shall collect the road tax aforesaid, and pay the same into the county treasury, to be disbursed and paid over to the supervisors of the several road districts, in proportion to the amount of property assessed in said districts upon which said tax was levied. The supervisors of the several road districts shall disburse the amount of tax received by them as aforesaid, and make return in the same manner as other road tax collected by them.

(214.) SEC. III. The provisions of this act shall apply to the assessment made in the current year (1849,) and subsequent years.

(215.) SEC. IV. The clerk shall make out the list of resident road tax from the assessment of the previous year, which shall be delivered to each



supervisor, on or before the first day of May in each year, including the current year, (1849.)

(216.) SEC. V. This act shall take effect from and after its passage.

An Act to authorize the Auditor of Public Accounts and County Courts to refund the Taxes on Real Estate sold in error.

[Approved Nov. 7, 1849. Laws, 1849, (2nd Sess.) p. 8.]

(217.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That sections ninety and one hundred and eleven of chapter eighty-nine of the Revised Statutes, be and the same are hereby repealed, and hereafter the county court shall cause to be refunded the county tax on any real estate that may be erroneously sold for taxes, and shall cause to be delivered to the purchaser, or his assignee, a certificate showing a description of the property sold in error, year's tax for which sold, the amount of the State tax sold for, and the cause of error; and upon the presentation of said certificate to the auditor of public accounts, he shall issue his warrant on the treasurer for the amount of State tax due as aforesaid: *Provided,* That said property was not taxable, or was double assessed; but if the property was properly assessed, the county and State shall not refund as above provided for, but the collector who received the tax before sale, shall refund double the amount so received.

(218.) SEC. II. If any collector shall refuse or neglect to refund, as above required, upon proper demand being made by the claimant, he shall be liable to an action of debt in any court having jurisdiction of the amount. This act to take effect and be in force from and after its passage.

An Act to legalize Assessments heretofore and hereafter to be made.

[Approved Feb. 15, 1851. Laws, 1851, p. 119.]

(219.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That where any county or township assessor has heretofore failed, or shall hereafter fail to complete or finish his assessment in the time required by law, such failure shall not vitiate such assessment, but the same shall be as legal and valid as if the same had been completed in the time required by law: *Provided,* That this act shall not release any such assessor of any county or township from any liability imposed by law for the non-fulfillment of his duty.

(220.) SEC. II. This act to take effect and be in force from and after its passage.

An Act delaring certain Lands exempt from Taxation.

[Approved June 23, 1852. Laws, 1852, p. 205.]

(221.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That assessors are hereby required to take into consideration the diminution in value of lands occasioned by any public road, railroad, canal or its feeders, embankment, or earth dug or thrown therefrom, in estimating the value of the same, and that the owners of lands thus occupied or encumbered shall only be required to pay taxes on the same, deducting the loss occasioned by said encumbrances.

(222.) SEC. II. This act to be in force from and after its passage.

An Act regulating the Assessment and Collection of certain Taxes omitted in former Assessments.

[Approved Feb. 12, 1853. Laws, 1853, p. 250.]

(223.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all cases where any tax for State or special purposes has been omitted to be levied and collected in any county in this State, the auditor shall charge said county with the amount of such tax, together with six per cent. interest thereon, from the time such tax should have been paid, and shall notify the collector thereof, stating the amount so charged; and it shall be the duty of said collector to pay the same into the treasury when he pays the State tax for the year 1853.

(224.) SEC. II. The counties failing to levy and collect taxes as aforesaid, are hereby authorized and empowered to levy and collect an amount of tax equal to the sum that they are required by this act to pay into the State treasury: *Provided,* That if such taxes have been levied on the assessment for the year 1852, then such tax shall be paid over by the collector when he settles for the taxes of said year 1852; and in all cases when such tax has been advanced and paid into the State treasury by the collector, the auditor shall direct the amount so advanced, and the interest thereon, [to] be refunded and paid to the collector who may have advanced and paid the same.

(225.) SEC. III. This act shall take effect and be in force from and after its passage.

#### TENANTS IN COMMON.

An Act in relation to Tenants in Common.

[Approved Feb. 16, 1847. Laws, 1847, p. 188.]

(226.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter tenants in common of any real estate in this State, shall be and they are hereby authorized to pay their respective individual shares of any taxes accruing upon the same, according to their individual interests therein.

(227.) SEC. II. That tenants in common shall hereafter, in all cases where the lands, tenements or hereditaments so holden in common have been sold for taxes, and the time for the redemption of the same as now provided by law has not expired, be and they are hereby allowed to redeem their individual interest in such lands, tenements and hereditaments, by the payment of tax, interest, and costs accruing upon said interest, as in other cases.

#### TOWNS AND CITIES.

An Act to amend an Act entitled "An Act for the better Government of Towns and Cities, and to amend the Charters thereof," approved Feb. 27, 1854.

[Approved Feb. 15, 1855. Laws, 1855, p. 34.]

(228.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all police magistrates, when elected, shall severally hold their offices for the term of four years, and until others are elected and qualified; and in case of the death, resignation, or removal from the town or city, of any of the said police magistrates, their offices

shall be deemed thereby vacated, and such vacancies shall be filled by special elections for that purpose, notified and conducted in the same manner as is now provided by law for special elections for justices of the peace.

(229.) SEC. II. This act shall take effect and be in force from and after its passage.

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TRESPASS.

An Act to extend the Jurisdiction of Justices of the Peace.

[Approved Feb. 15, 1855. Laws, 1855, p. 139.]

(232.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the jurisdiction of justices of the peace be and the same is hereby extended so as to include all actions for trespass upon real estate, where the sum claimed does not exceed one hundred dollars.

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WHIPPING.

An Act to repeal certain Laws therein named.

[Approved Feb. 12, 1853. Laws, 1853, p. 181.]

(233.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all laws and parts of laws of this State which provide for the punishment of crimes and offenses against the law by whipping, shall be and the same are hereby repealed. This act to be in force from and after its passage.

# APPENDIX.

## ACTS OF CONGRESS.

### CHAPTER I.

#### AUTHENTICATION OF STATUTES, RECORDS, &c.

SECTION	SECTION
1. Acts of State legislatures and records of courts, how authenticated, &c.	2. Records of public offices, how proved.
	3. Application of act.

An Act to prescribe the Mode in which the Public Acts, Records and Judicial Proceedings, in each State, shall be authenticated so as to take effect in every other State.

[Approved May 26, 1790.]

(1.) SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the acts of the legislatures of the several States shall be authenticated by having the seal of their respective States affixed thereto: That the records and judicial proceedings of the courts of any State shall be proved or admitted, in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have, by law or usage, in the courts of the State from whence the said records are or shall be taken.

An Act supplementary to the Act entitled "An Act to prescribe the Mode in which the Public Acts, Records and Judicial Proceedings, in each State, shall be authenticated so as to take effect in every other State."

[Approved March 27, 1804. App. Rev. Stat. 1845, p. 624.]

(2.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That from and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office of any State, not appertaining to a court, shall be proved or admitted in any other court or office in any other State, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, or with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept; or of the governor, the secretary of State, the chancellor or the keeper of the general seal of the State, that the said attestation is in due form, and by the proper officer;

and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of State, the chancellor or keeper of the great seal, it shall be under the great seal of the State in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the State from whence the same are or shall be taken.

(3.) SEC. II. That all the provisions of this act, and the act to which this is a supplement, shall apply, as well to the public acts, records, office books, judicial proceedings, courts and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts and offices of the several States.

## CHAPTER II.

### DONATIONS

#### TO HEADS OF FAMILIES AND FOR RAIL ROADS.

SECTION	SECTION
1. Four hundred acres of land granted to each head of a family in 1783.	9. Right of way granted for railroad and branches, with privilege of using the materials found; <i>proviso</i> .
2. Heads of families in 1783 entitled, notwithstanding removal.	10. Alternate sections of land granted; pre-emption rights secured.
3. Lands formerly possessed by Piankeshaws, given to the actual possessors.	11. Price of lands remaining to the United States.
4. Confirmation of title to lands under certain grants, to those who have improved them.	12. Lands granted to be used only for the purposes aforesaid. Railroads to be free for use of government of United States.
5. Appropriation of commons for the inhabitants of Vincennes, Cohos, and Prairie du Pont.	13. If not completed within ten years, Illinois to pay the United States the amount received on sale of lands by that State.
6. Grant of one hundred acres of land to each militia man of August, 1790, who has not obtained a donation.	14. Transportation of United States mail.
7. Grant of two lots to P. Gibault; and a tract to St. Jam Beouvais.	15. All the rights, &c., herein conferred on Illinois, shall be granted to Alabama to aid in constructing a railroad from Mobile to the Ohio river.
8. Donation of lands to be laid out according to act of Congress of June 20th, 1783.	

#### TO HEADS OF FAMILIES.

An Act for granting Lands to the Inhabitants and Settlers of Vincennes, and the Illinois Country, in the Territory north-west of the Ohio, and for confirming them in their Possessions.

[Approved March 3, 1791.]

(1.) SECTION I. *Be it enacted, &c.*, That four hundred acres of land be given to each of those persons, who, in the year one thousand seven hundred and eighty-three, were heads of families at Vincennes, or in the Illinois country, on the Mississippi, and who, since that time, have removed from one of the said places to the other. And the governor of the territory north-west of the Ohio is hereby directed to cause the same to be laid out for them, at their own expense, either at Vincennes, or in the Illinois country, as they shall severally select.

(2.) SEC. II. That the heads of families at Vincennes, or in the Illinois country, in the year one thousand seven hundred and eighty-three, who afterwards removed without the limits of the said territory, are, notwithstanding, entitled to the donation of four hundred acres of land made by the resolve of Congress, of the twenty-ninth of August, one thousand seven hundred and eighty-eight; and the governor of the said territory, upon application made to him for that purpose, is hereby directed to cause the same to be laid out for such heads of families or their heirs; and shall also cause to be laid off and confirmed to such persons, the several tracts of land which they may have possessed, and which, before the year one thousand seven hundred and eighty-three, may have been allotted to them according to the laws and usages of the government under which they had respectively settled: *Provided, nevertheless*, That if such persons, or their heirs, do not return and occupy the said lands within five years, such lands shall be considered as forfeited to the United States.

(3.) SEC. III. That one hundred and fifty acres of land, heretofore in possession of the Piankeshaw Indians, and now under actual improvement, and constituting a part of the village of Vincennes, be given to the persons who are severally in possession of the said land.

(4.) SEC. IV. That where lands have been actually improved and cultivated at Vincennes, or in the Illinois country, under a supposed grant of the same, by any commandant or court claiming authority to make such grant, the governor of the said territory be, and he hereby is, empowered to confirm to the persons who made such improvements, their heirs or assigns, the lands supposed to have been granted as aforesaid, or such parts thereof as he, in his discretion, may judge reasonable, not exceeding four hundred acres to any one person.

(5.) SEC. V. That a tract of land, containing about five thousand four hundred acres, which, for many years, has been fenced and used by the inhabitants of Vincennes as a common, also a tract of land including the villages of Cohos and Prairie du Pont, and heretofore used by the inhabitants of the said village as a common, be, and the same are hereby, appropriated to the use of the inhabitants of Vincennes, and of the said village, respectively, to be used by them as a common, until otherwise disposed of by law.

(6.) SEC. VI. That the governor of the said territory be authorized to make a grant of land, not exceeding one hundred acres, to each person who hath not obtained any donation of land from the United States, and who, on the first day of August, one thousand seven hundred and ninety, was enrolled in the militia at Vincennes, or in the Illinois country, and has done militia duty, the said land to be laid out at the expense of the grantees, and in such form and place as the said governor shall direct: *Provided, nevertheless*, That no claim founded upon purchase or otherwise, shall be admitted within a tract of land heretofore occupied by the Kaskaskia nation of Indians, and including their village, which is hereby appropriated to the use of the said Indians.

(7.) SEC. VII. That two lots of land, heretofore in the occupation of the priests at Cahokia, and situated near that village, be, and the same is hereby, granted in fee to P. Gibault; and that a tract of land at Kaskaskia, formerly occupied by the Jesuits, be laid off and confirmed to St. Jam Beouvais, who claims the same in virtue of a purchase thereof.

(8.) SEC. VIII. That so much of the act of Congress of the twenty eighth of August, one thousand seven hundred and eighty-eight, as refers to the locations of certain tracts of land directed to be run out and reserved for donations, to the ancient settlers in the Illinois country, be and the same is hereby repealed, and the governor of the said territory is directed to lay out the same, agreeably to the act of Congress of the twentieth of June, one thousand seven hundred and eighty-eight.

## FOR RAIL ROADS.

An Act granting the Right of Way, and making a Grant of Land to the States of Illinois, Mississippi and Alabama, in aid of the Construction of a Railroad from Chicago to Mobile.

[Approved Sept. 20, 1850]

(9.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the right of way through the public lands, be and the same is hereby granted to the State of Illinois for the construction of a railroad from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same to Chicago on Lake Michigan, and another via the town of Galena in said State, to Dubuque in the State of Iowa, with the right, also, to take necessary materials of earth, stones, timber, &c., for the construction thereof: *Provided,* That the right of way shall not exceed one hundred feet on each side of the length thereof: and a copy of the survey of said road and branches made under the direction of the legislature, shall be forwarded to the proper local land offices respectively, and to the general land office at Washington city, within ninety days after the completion of the same.

(10.) SEC. II. *And be it further enacted,* That there be and is hereby granted to the State of Illinois for the purpose of aiding in making the railroad and branches aforesaid, every alternate section of land designated by even numbers, for six sections in width on each side of said road and branches; but in case it shall appear that the United States have, when the line or route of said road and branches is definitely fixed by the authority aforesaid, sold any part of any section hereby granted, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State, to select, subject to the approval aforesaid, from the lands of the United States most contiguous to the tier of sections above specified, so much land in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or to which the right of pre-emption has attached as aforesaid, which lands, being equal in quantity to one-half of six sections in width on each side of said road and branches, the State of Illinois shall have and hold to and for the use and purpose aforesaid: *Provided,* That the lands to be so located shall in no case be further than fifteen miles from the line of the road: *And Provided further,* The construction of said road shall be commenced at its southern terminus at or near the junction of the Ohio and Mississippi rivers, and its northern terminus upon the Illinois and Michigan canal simultaneously, and continued from each of said points until completed, when said branch roads shall be constructed according to the survey and location thereof: *Provided further,* That the lands hereby granted shall be applied in the construction of said road and branches respectively in quantities correspond-

ing with the grant for each, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatever: *And Provided further,* That any and all lands reserved to the United States by the act entitled "An act to grant a quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of lake Michigan, approved March second, eighteen hundred and twenty-seven, be and the same are hereby reserved to the United States from the operations of this act.

(11.) SEC. III. *And be it further enacted,* That the sections and parts of sections of land, which, by such grant, shall remain to the United States, within six miles on each side of said road and branches, shall not be sold for less than double the minimum price of the public lands when sold.

(12.) SEC. IV. *And be it further enacted,* That the said lands hereby granted to the said State, shall be subject to the disposal of the legislature thereof, for the purposes aforesaid and no other; and the said railroad and branches shall be and remain a public highway, for the use of the government of the United States, free from toll or other charge, upon the transportation of any property or troops of the United States.

(13.) SEC. V. *And be it further enacted,* That if the said railroad shall not be completed within ten years, the said State of Illinois shall be bound to pay to the United States the amount which may be received upon the sale of any part of said lands by said State, the title to the purchasers under said State remaining valid; and the title to the residue of said lands shall re-invest in the United States, to have and hold the same in the same manner as if this act had not been passed.

(14.) SEC. VI. *And be it further enacted,* That the United States mail shall at all times be transported on the said railroad under the direction of the post-office department, at such price as the Congress may by law direct.

(15.) SEC. VII. *And be it further enacted,* That in order to aid in the continuation of said central railroad from the mouth of the Ohio river to the city of Mobile, all the rights, privileges and liabilities hereinbefore conferred on the State of Illinois shall be granted to the States of Alabama and Mississippi respectively, for the purpose of aiding in the construction of a railroad from said city of Mobile to a point near the mouth of the Ohio river, and that public lands of the United States to the same extent in proportion to the length of the road, on the same terms, limitations and restrictions in every respect, shall be and is hereby granted to said States of Alabama and Mississippi respectively.

CHAPTER III.  
ENCOURAGEMENT OF LEARNING.

SECTION 1. Secretary of treasury to pay three per cent. of proceeds of sale of certain lands by general government for purposes of education.

An Act to provide for paying the State of Illinois Three Per Cent. of the net Proceeds arising from the Sale of the Public Lands within the Same.

[Approved Dec. 12, 1820.]

(1.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the secretary of the treasury, shall from time to time, and whenever the quarterly accounts of public moneys of the several land offices shall be settled, pay three per cent. of the net proceeds of the lands of the United States, lying within the State of Illinois, which, since the first day of January one thousand eight hundred and nineteen, have been or hereafter may be sold by the United States, after deducting all expenses incidental to the same, to such person or persons as may be authorized by the legislature of said States to receive the same; which sums thus paid shall be applied to the encouragement of learning within said State, in conformity to the provisions on this subject contained 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," approved April eighteenth, one thousand eight hundred and eighteen, and to no other purpose; and an annual account of the application of the same shall be transmitted to the secretary of the treasury by such officer of the State as the legislature thereof shall direct, and in default of such return being made, the secretary of the treasury is hereby required to withhold the payment of any sums that may then be due or which may thereafter become due, until a return shall be made as herein required.

CHAPTER IV.

FUGITIVES FROM LABOR AND JUSTICE.

SECTION

1. Whenever fugitive from justice is demanded by executive of any State or territory, duty of governor.
2. Agent shall be empowered to carry back fugitive. Penalty for rescuing fugitive.
3. Person owing service in one State, escaping into another, what proceedings may be had.
4. Penalty for hindering claimant, &c., how recovered.
5. Commissioners appointed by circuit courts, &c., to exercise certain powers.
6. To be appointed by superior court of each territory.
7. Courts authorized to enlarge the number of commissioners.
8. Jurisdiction of commissioners concurrent with that of judges.
9. Duty of marshals and deputies. Penalty for refusing to execute warrants.

SECTION

10. Fugitives from service may be reclaimed for the owner or authorized agent, by warrant of court, judge or commissioner for apprehension. Duties of court, judge or commissioner in cases of trial. Testimony of fugitive not admitted.
11. Any person knowingly hindering the arrest of a fugitive, &c., shall be fined and imprisoned.
12. Fees for services of marshals, deputies, &c. Commissioners' fees. Fee for executing process.
13. When claimant or his agent apprehends a rescue, the officer making the arrest is to remove the fugitive to the State whence he fled. Compensation of officer.
14. Evidence necessary to obtain arrest and delivery of fugitives.

An Act respecting Fugitives from Justice, and Persons escaping from the Service of their Masters.  
[Approved Feb. 12, 1793.]

(1.) SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the executive authority of any State in the Union, or of either of the territories north-west or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such State or territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found, or an affidavit made, before a magistrate of any State or territory as aforesaid, charging the person so demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the State or territory from whence the person so charged fled, it shall be the duty of the executive authority of the State or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear; but if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses, incurred in the apprehending, securing, and transmitting such fugitive to the State or territory making such demand, shall be paid by such State or territory.

(2.) SEC. II. That any agent appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the State or territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty, or rescue the fugitive from such agent while transporting as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

(3.) SEC. III. That when a person held to labor in any of the United States, or in either of the territories on the north-west or south of the river Ohio, under the laws thereof, shall escape into any other of the said States or territories, the person to whom such labor may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the State, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or territory, that the person so seized or arrested doth, under the laws of the State or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor, to the State or territory from which he or she fled.

(4.) SEC. IV. That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor; or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared; or shall harbor or conceal such person, after notice



that he or she was a fugitive from labor as aforesaid, shall, for either of the said offenses, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labor or service, his right of action for or on account of the said injuries, or either of them.

An Act to amend, and supplementary to, the Act entitled "An Act respecting Fugitives from Justice, and Persons escaping from the Service of their Masters," approved Feb. 12, 1793.

[Approved Sept. 18, 1850.]

(5.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the persons who have been or may hereafter be appointed commissioners, in virtue of any act of Congress, by the circuit courts of the United States, and who, in consequence of such appointment, are authorized to exercise the powers that any justice of the peace, or other magistrate of any of the United States may exercise in respect to offenders for any crime or offense against the United States, by arresting, imprisoning, or bailing the same under and by virtue of the thirty-third section of the act of the twenty-fourth of September, seventeen hundred and eighty-nine, entitled "An act to establish the judicial courts of the United States," shall be and are hereby authorized and required to exercise and discharge all the powers and duties conferred by this act.

(6.) SEC. II. *And be it further enacted,* That the superior court of each organized territory of the United States shall have the same power to appoint commissioners to take acknowledgments of bail and affidavits, and to take depositions of witnesses in civil causes, which is now possessed by the circuit court of the United States; and all commissioners who shall hereafter be appointed for such purposes by the superior court of any organized territory of the United States, shall possess all the powers and exercise all the duties conferred by law upon the commissioners appointed by the circuit courts of the United States for similar purposes, and shall moreover exercise and discharge all the powers and duties conferred by this act.

(7.) SEC. III. *And be it further enacted,* That the circuit courts of the United States, and the superior courts of each organized territory of the United States, shall from time to time enlarge the number of commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

(8.) SEC. IV. *And be it further enacted,* That the commissioners above named shall have concurrent jurisdiction with the judges of the circuit courts of the United States, in their respective circuits and districts within the several States, and the judges of the superior courts of the territories, severally and collectively, in term time and vacation; and shall grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the State or territory from which such persons may have escaped or fled.

(9.) SEC. V. *And be it further enacted,* That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should

any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall on conviction thereof be fined in the sum of one thousand dollars to the use of such claimant, on the motion of such claimant, by the circuit or district court for the district of such marshal; and after arrest of such fugitive by such marshal or his deputy or whilst at anytime in his custody under the provisions under this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable on his official bond to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive in the State, territory or district whence he escaped. And the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or *posse comitatus* of the proper county, when necessary to insure a faithful observance of the clause of the constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid for that purpose, and said warrants shall run, and be executed by said officers anywhere in the State, within which they are issued.

(10.) SEC. VI. *And be it further enacted,* That when a person held to service or labor in any State or territory of the United States, has heretofore or shall hereafter escape into another State or territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized, by power of attorney, in writing, acknowledged and certified under the seal of some legal officer or court of the State or territory in which the same may be executed, may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking, or causing such person to be taken, forthwith before such court, judge or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit in writing, to be taken and certified by such court, judge or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the State or territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so

arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or territory in which such service or labor was due, to the State or territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the State or territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first section mentioned, shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the State or territory from which he escaped, and shall prevent all molestation of such persons by any process issued by any court, judge, magistrate or other person whomsoever.

(11.) SEC. VII. *And be it further enacted*, That any person who shall knowingly and willingly obstruct, hinder or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid; or shall rescue, or attempt to rescue, such fugitive from service or labor, from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared; or shall aid, abet or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall for either of said offenses, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the district court of the United States for the district in which such offense may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized territories of the United States; and shall, moreover forfeit and pay, by way of civil damages, to the party injured by such illegal conduct, the sum of one thousand dollars, for each fugitive so lost as aforesaid, to be recovered by action of debt, in any of the district or territorial courts aforesaid, within whose jurisdiction the said offense may have been committed.

(12.) SEC. VIII. *And be it further enacted*, That the marshals, their deputies, and the clerks of the said district and territorial courts shall be paid for their services the like fees as may be allowed to them for similar services as in other cases; and where such services are rendered exclusively in the arrest, custody and delivery of the fugitive to the claimant, his or her agent or attorney, or where such supposed fugitive may be discharged out of custody for the want of sufficient proof as aforesaid, then such fees are to be paid in the whole by such claimant, his agent or attorney; and in all cases where the proceedings are before a commissioner, he shall be entitled

to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his or her agent or attorney; or a fee of five dollars in cases where the proof shall not, in the opinion of such commissioner, warrant such certificate and delivery, inclusive of all services incident to such arrest and examination, to be paid, in either case, by the claimant, his or her agent or attorney. The person or persons authorized to execute the process to be issued by such commissioners for the arrest and detention of fugitives from service or labor as aforesaid, shall also be entitled to a fee of five dollars each for each person he or they may arrest and take before any such commissioner as aforesaid, at the instance and request of such claimant, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them, such as attending at the examination, keeping the fugitive in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner; and in general for performing such other duties as may be required by such claimant, his or her attorney or agent, or commissioner in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agents or attorneys, whether such supposed fugitives from service or labor be ordered to be delivered to such claimants by the final determination of such commissioners, or not.

(13.) SEC. IX. *And be it further enacted*, That upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent or attorney. And to this end, the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require; the said officer and his assistants, while so employed, to receive the same compensation, and to be allowed the same expenses, as are now allowed by law for the transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the treasury of the United States.

(14.) SEC. X. *And be it further enacted*, That when any person held to service or labor in any State or territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said court, being produced in any other State, territory or district in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the

United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence, if necessary, either oral or by affidavit, in addition to what is contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved, to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or territory from which he escaped: *Provided*, That nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid. But in its absence the claim shall be heard and determined upon other satisfactory proofs, competent in law.

## CHAPTER V.

## MILITARY BOUNTIES.

## SECTION

1. Military establishment to be completed.
2. Soldiers to be paid bounty in money and land.
3. Additional troops to be raised, &c.
4. Non-commissioned officers and soldiers to be paid a bounty in money, and 160 acres of land.
5. Bounty lands, quantity, location, &c. How surveyed and divided. Reservations.
6. Secretary of war to issue warrants. Warrants not transferable.
7. Lands to be drawn by lot, &c.
8. Claims not assignable till after patent has issued, nor liable to execution for debt.
9. Non-commissioned officer, &c., may make election to serve through the war or for five years; same bounty allowed.
10. Same bounty allowed in all cases.
11. Fourteen regiments of infantry enlisted for one year may be enlisted for the term of five years, or the war.
12. Bounty, pay and emoluments in money and land.
13. Larger bounty allowed.
14. Bounty to Canadian volunteers.
15. Secretary of war to issue warrants.
16. Soldiers' bounties.
17. Two additional millions of acres appropriated.
18. Transfers invalid unless patent has issued.
19. Military land warrants to be issued in certain cases.
20. Cases of lost military land warrants provided for.
21. Cases of omissions as to discharges of "faithful services," provided for.
22. Bounty lands to be surveyed in Illinois and Missouri instead of Michigan. Reservations.
23. Quarter sections to be drawn by lot by those entitled to them.
24. Canadian volunteers not to receive bounties unless they have served six months.
25. Warrants to be located on lands that have been offered for sale.
26. Bounty lands to officers.
27. Acts repealed.
28. Act to continue one year.

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29. Time for issuing land warrants extended.
30. Time extended for applying for military land warrants.
31. Military bounty lands exempt from taxes for three years from date of patents.
32. Portions of the acts of May 6, 1812, and December 10, 1814, revived.
33. Time allowed by act of March 9, 1813, extended to March 4, 1821, &c.
34. Authority of secretary of war to issue warrants, revived and continued.
35. Soldiers or their heirs to whom bounty lands have been patented in Arkansas, unfit for cultivation, to receive in exchange other lands.
36. Certain act continued for five years.
37. Acts of May 26th, 1834, and of February 24th, 1819, revived.
38. Time extended to January 1st, 1840.
39. Persons to whom bounty land warrants were issued, which now remain unsatisfied, may enter land, &c.
40. Acts of 27th January, 1835, continued for five years.
41. Mode of issuing patents to the heirs of persons entitled to bounty lands.
42. One regiment of dragoons and nine regiments of infantry to be raised.
43. Term of enlistment.
44. One additional major to each regiment authorized.
45. A regimental quartermaster allowed to each regiment.
46. The officers and privates authorized by this act to be discharged at the close of the war.
47. One surgeon and two assistant surgeons allowed to each regiment.
48. Chaplains, how to be appointed. Their pay and allowances.
49. Two additional surgeons and twelve assistant surgeons to be appointed in the regular army.
50. Non-commissioned officers, musicians and privates, under certain circumstances, to receive a warrant for one hundred and sixty acres of land.
51. President to appoint four quartermasters.

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52. Allowance of bounty to certain non-commissioned officers, &c.
53. In all cases of applications for bounty land warrants, the honorable discharge of the applicant, how proved.
54. Who considered "relatives," as term used in certain act.
55. Benefits of said act shall not be forfeited by privates who have been promoted.
56. Enlisted men of the ordnance corps to be entitled to pensions when disabled in service.
57. Bounty lands granted to those who have served in Mexico.
58. The officers, non-commissioned officers, &c., who served in war with Mexico, placed, as to bounty land and other remuneration, on a footing with the regular army.
59. Non-commissioned officers of the marine corps to be entitled to bounty for re-enlistment.
60. Location of certain military land warrants authorized.
61. Widows or minor children of certain officers entitled to lands in proportion to service.
62. The period during which any officer or soldier was a prisoner to the enemy, to be added to his time of actual service.
63. Those entitled to land under this act to receive a certificate from the department of the interior for land, which may be located at any land office of the United States.
64. All sales, mortgages, and letters of attorney, affect-

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- ing any title to land warrants, if made before the issue of said warrants, to be void.
65. No land bounty for military services to be satisfied out of public land not in market.
66. Military bounty land warrants and locations, under existing or future laws, made assignable. How located.
67. Compensation of registers and receivers.
68. How paid for former services.
69. Military bounty land act of Sept. 28, 1850, extended.
70. Length of service, how computed.
71. Bounty lands of soldiers in late war with Great Britain, may be surrendered if unfit for cultivation, and re-located.
72. Acts of 1836 and 1842 respecting bounty lands, continued in force.
73. Additional grant of bounty lands to soldiers, sailors, &c.
74. Provision for widows and children.
75. Fourteen days' services required, except where claimant was in a battle.
76. Warrants, &c., made assignable.
77. Where warrants may be located.
78. Pay of registers and receivers, for locating said warrants.
79. Indians included.
80. Revolutionary soldiers included.
81. Also volunteers at Plattsburg, King's Mountain, and Nickojock.
82. Also to chaplains.
83. Also to the volunteers at Lewistown, Delaware.

An Act for completing the present Military Establishment.

[Approved Dec. 24, 1811.]

(1.) SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the military establishment, as now authorized by law, be immediately completed.

(2.) SEC. II. That there be allowed and paid to each effective, able-bodied man, recruited or enlisted for that service, for the term of five years, unless sooner discharged, the sum of sixteen dollars; but the payment of one-half of the said bounty shall be deferred until he shall be mustered, and shall have joined the corps in which he is to serve; and when any non-commissioned officer or soldier shall be discharged from the service, who shall have obtained from the commanding officer of his company, battalion or regiment, a certificate that he had faithfully performed his duty whilst in service, he shall moreover be allowed and paid, in addition to the aforesaid bounty, three months' pay, and one hundred and sixty acres of land; and the heirs and representatives of those non-commissioned officers or soldiers who may be killed in action, or die in the service of the United States, shall likewise be paid and allowed the said additional bounty of three months' pay, and one hundred and sixty acres of land, to be designated, surveyed and laid off at the public expense, in such manner and upon such terms and conditions, as may be provided by law.

Sections One and Twelve of an "Act to raise an additional Military Force."

[Approved Jan. 11, 1812.]

(3.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That there be immediately raised ten regiments of infantry, two regiments of artillery and one regiment of light dragoons, to be enlisted for the term of five years, unless sooner discharged.

(4.) SEC. XII. That there be allowed and paid to each effective, able-bodied man, recruited as aforesaid, to serve for the term of five years,

a bounty of sixteen dollars; but the payment of eight dollars of the said bounty shall be deferred until he shall be mustered, and shall have joined some military corps of the United States for service. And when any non-commissioned officer or soldier shall be discharged from the service, who shall have obtained from the commanding officer of his company, battalion or regiment, a certificate that he had faithfully performed his duty whilst in service, he shall moreover be allowed and paid, in addition to the said bounty, three months' pay, and one hundred and sixty acres of land; and the heirs and representatives of those non-commissioned officers or soldiers, who may be killed in action, or die in the service of the United States, shall likewise be paid and allowed the said additional bounty of three months' pay and one hundred and sixty acres of land, to be designated, surveyed and laid off at the public expense, in such manner and upon such terms and conditions as may be provided by law.

An Act to provide for designating, surveying and granting the Military Bounty Lands.

[Approved May 6, 1812.]

(5.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be and he is hereby authorized to cause to be surveyed a quantity of the public lands of the United States fit for cultivation, not otherwise appropriated, and to which the Indian title is extinguished, not exceeding in the whole six millions of acres, two millions to be surveyed in the territory of Michigan, two millions in the Illinois territory, north-west of the Illinois river, and two millions in the territory of Louisiana, between the river St. Francis and the river Arkansas; the said lands to be divided into townships, and subdivided into sections and quarter sections, (each quarter section to contain, as near as possible, one hundred and sixty acres,) in the manner prescribed by law for surveying and subdividing the other public lands of the United States; the same price to be allowed for surveying, as is fixed for surveying the other public lands in the same territory. And the lands thus surveyed, with the exception of the salt springs and lead mines therein, and of the quantities of land adjacent thereto, as may be reserved for the use of the same by the President of the United States, and the section number sixteen, in every township to be granted to the inhabitants of such township for the use of public schools, shall be set apart and reserved for the purpose of satisfying the bounties of one hundred and sixty acres, promised to the non-commissioned officers and soldiers of the United States, their heirs and legal representatives, by the act entitled "An act for completing the existing military establishment," approved the twenty fourth day of December, one thousand eight hundred and eleven, and by the act entitled "An act to raise an additional military force," approved the eleventh day of January, one thousand eight hundred and twelve.

(6.) SEC. II. That the secretary for the department of war for the time being, shall, from time to time, issue warrants for the military land bounties, to the persons entitled thereto, by the two last mentioned acts, or either of them: *Provided, always,* That such warrants shall be issued only in the names of the persons thus entitled, and be by them or their representatives applied for within five years after the said persons shall have become entitled thereto; and the said warrants shall not be assignable or transferable in any manner whatever.

(7.) SEC. III. That every person in whose favor such warrants shall have been issued, shall, on delivery of the same at the office of the secretary of the treasury, or of such other officer as may at the time have, by law, the superintendence of the general land office of the United States, at the seat of government, be entitled to draw by lot in such manner as the officer at the head of the land office, under the direction of the President of the United States, may prescribe, one of the quarter sections surveyed by virtue of the first section of this act, in either of the said territories which the person in whose favor such warrant has issued, may designate. And a patent shall thereupon be granted to such person, for such quarter section, without requiring any fee therefor.

(8.) SEC. IV. That no claim for the military land bounties aforesaid shall be assignable or transferable in any manner whatever, until after patent shall have been granted in the manner aforesaid. All sales, mortgages, contracts or agreements of any nature whatever, made prior thereto, for the purpose or with intent of alienating, pledging or mortgaging any such claim, are hereby declared and shall be held null and void; nor shall any tract of land, granted as aforesaid, be liable to be taken in execution or sold on account of such sale, mortgage, contract or agreement, or on account of any debt contracted prior to the date of the patent, either by the person originally entitled to the land, or by his heirs or legal representatives, or by virtue of any process, or suit at law, or judgment of court against a person entitled to receive his patent as aforesaid.

Section Three of an "Act increasing the Pay of the Non-commissioned Officers, Musicians, Privates and others of the Army, and for other Purposes."

[Approved Dec. 12, 1812.]

(9.) SEC. III. *And be it further enacted,* That every non-commissioned officer, musician and private, who shall, after the promulgation of this act, be recruited in the regular army of the United States, may at his option, to be made at the time of enlistment, engage to serve during the present war with Great Britain instead of the term of five years; and shall, in case he makes such option, be entitled to the same bounty in money and land, and to all other allowances, and be subject to the same rules and regulations as if he had enlisted for the term of five years.

Section Two of an "Act to amend the Act in addition to the Act entitled 'An Act to raise an additional Military Force, and for other Purposes.'"

[Approved July 5, 1813.]

(10.) SEC. II. *And be it further enacted,* That each man recruited under the authority of this act, be allowed the same bounty in money and land as is allowed by law to men enlisted for five years or for the war; and that the officers, non-commissioned officers, musicians and privates, shall receive the same pay, clothing, subsistence and forage, be entitled to the same benefits, be subject to the same rules and regulations, and be placed in every respect on the same footing as the other regular troops of the United States.

An Act authorizing the President of the United States to cause certain Regiments therein mentioned to be enlisted for Five Years, or during the War.

[Approved Jan. 28, 1814.]

(11.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be and he hereby is authorized and empowered to cause to be enlisted for the term of five years, or during the war, the fourteen regiments of infantry which are now by law authorized to be enlisted for the term of one year, or such number of them, or of the troops composing the same, as in his opinion will best promote the public service.

(12.) SEC. II. *And be it further enacted,* That each man enlisted under the authority of this act, shall be allowed the same bounty in money and land as is now by law allowed to men enlisted for five years or during the war, and that the officers, non-commissioned officers, musicians and privates shall receive the same pay, clothing, subsistence and forage, be entitled to the same benefits, be subject to the same rules and regulations, and be placed in every respect on the same footing as the other regular troops of the United States.

Section Four of an "Act making further Provision for filling the Ranks of the Army of the United States."

[Approved Dec. 10, 1814.]

(13.) SEC. IV. That in lieu of the bounty of one hundred and sixty acres of land, now allowed by law, there shall be allowed to each non-commissioned officer and soldier hereafter enlisted, when discharged from service, who shall have obtained from the commanding officer of his company, battalion or regiment, a certificate that he had faithfully performed his duty whilst in service, three hundred and twenty acres of land, to be surveyed, laid off and granted under the same regulations, and in every respect in the same manner now prescribed by law; and the widow and children, and if there be no widow nor child, the parents of every non-commissioned officer and soldier enlisted according to law, who may be killed or die in the service of the United States, shall be entitled to receive the three hundred and twenty acres of land as aforesaid; but the same shall not pass to collateral relations, any law heretofore passed to the contrary notwithstanding.

Sections One and Two of an "Act granting Bounties in Land and extra Pay to certain Canadian Volunteers."

[Approved March 5, 1816.]

(14.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all such persons as had been citizens of the United States, anterior to the late war, and were at its commencement inhabitants of the province of Canada, and who, during the said war, joined the armies of the United States, as volunteers, and were slain, died in service or continued therein, till honorably discharged, shall be entitled to the following quantities of land respectively, viz.: Each colonel, nine hundred and sixty acres; each major to eight hundred acres; each captain, six hundred and forty acres; each subaltern officer to four hundred and eighty acres; each non-commissioned officer, musician or private, to three hundred and twenty acres; and the bounties aforesaid shall extend to the medical and other staff, who shall rank

according to their pay. And it shall be lawful for the said persons to locate their claims in quarter sections, upon any of the unappropriated lands of the United States, within the Indiana territory, which shall have been surveyed prior to such location, with the exception of salt springs and lead mines therein, and of the quantities of land adjacent thereto, which may be reserved for the use of the same, by the President of the United States, and the section number sixteen in every township, to be granted to the inhabitants of such township, for the use of public schools; which location shall be subject to such regulations, as to priority of choice and the manner of location, as the President of the United States shall prescribe.

(15.) SEC. II. That the secretary of the department of war, for the time being, shall, from time to time, under such rules and regulations as to evidence as the President of the United States shall prescribe, issue to every person coming within the description aforesaid, a warrant for such quantity of land as he may be entitled to by virtue of the aforesaid provision; and in case of the death of such person, then such warrant shall be issued to his widow, or if there be no widow, to his child or children.

Sections Three, Four and Five of an "Act making further Provision for Military Services, during the late War, and for other Purposes."

[Approved April 16, 1816.]

(16.) SEC. III. That all soldiers who have been enlisted to serve for five years, or during the war, and were above the age of forty-five, or under the age of eighteen years, who have faithfully served during the late war, and have been regularly discharged, and the representatives of such soldiers as shall have died whilst in the service of the United States, and all soldiers who have been enlisted, and have faithfully served during the late war, until they have been promoted to the rank of commissioned officers, who, if they had served during the war under their enlistment, and been regularly discharged, would have been entitled to a bounty in land, shall be entitled to one hundred and sixty or three hundred and twenty acres of land, according to the term of enlistment; the warrants and patents to issue in the same manner as in the case of soldiers enlisted of proper age, and discharged under similar circumstances.

(17.) SEC. IV. That for the purpose of carrying the provisions of this act into effect, and other acts giving bounty lands to soldiers of the regular army, the President of the United States is hereby authorized to cause to be surveyed and laid off in one or more surveys, two millions of acres not otherwise appropriated, in addition to the appropriations of land by the act of May the sixth, one thousand eight hundred and twelve, for designating, surveying and granting military bounty lands, according to the provisions of said act.

(18.) SEC. V. That no transfer of land, granted in virtue of this or any other law, giving bounties of land to the non-commissioned officers, musicians and privates enlisted during the late war, shall be valid, unless the contract or agreement therefor, or letter of attorney, giving power to sell or convey, shall have been executed after the patents shall be issued, and delivered to the persons entitled thereto.

Section One of an "Act further extending the Time for issuing and locating Military Land Warrants, and for other Purposes."

[Approved April 16, 1816.]

(19.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the secretary of war be authorized to issue military land warrants to such persons as have or shall, before the first day of March, one thousand eight hundred and eighteen, produced to him satisfactory evidence of the validity of their claims; which warrants, with those heretofore issued and not yet satisfied, shall and may be located in the name of the holders or proprietors thereof, prior to the first day of October, one thousand eight hundred and eighteen, on any unlocated parts of the fifty quarter townships, and the fractional quarter townships, reserved by law for original holders of military land warrants. And patents shall be granted for the land located under this act, in the same manner as is directed by former acts for granting military lands.

An Act providing for cases of lost Military Land Warrants, and discharges for Faithful Services.

[Approved April 27, 1816.]

(20.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That when any soldier of the regular army having obtained a military land warrant, shall have lost or shall hereafter lose the same, or the said warrant shall have been or may be by accident destroyed, every such soldier shall, upon proof thereof to the satisfaction of the secretary of war, be entitled to a patent in like manner as if the said warrant was produced.

(21.) SEC. II. *And be it further enacted,* That in all cases of discharges from the military service of the United States, of any soldier of the regular army, when it shall appear to the satisfaction of the secretary of war, that a certificate of faithful service has been omitted by the neglect of the discharging officer, by misconstruction of the law, or by any other neglect or casualty, such omission shall not prevent the issuing of the warrant and patent as in other cases. And when it shall be proven as aforesaid, that any soldier of the regular army has lost his discharge and certificate of faithful service, the secretary of war shall cause such papers to be furnished such soldier of the regular army as will entitle him to his land warrant and patent: *Provided,* Such measure be justified by the time of his enlistment, the period of service and the report of some officer of the corps to which he was attached.

An Act to authorize the Survey of Two Millions of Acres of the Public Lands, in lieu of that quantity heretofore authorized to be surveyed, in the Territory of Michigan, as Military Bounty Lands.

[Approved April 29, 1816.]

(22.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That so much of the "Act to provide for designating, surveying and granting the military bounty lands," approved the sixth day of May, one thousand eight hundred and twelve, as authorizes the President of the United States to cause to be surveyed two millions of acres of the lands of the United States, in the territory of Michigan, for the purpose of satisfying the bounties of land

promised to the non-commissioned officers and soldiers of the United States, be and the same is hereby repealed; and in lieu of the said two millions of acres of land, the President of the United States be and he is hereby authorized to cause to be surveyed, of the lands of the United States fit for cultivation, not otherwise appropriated, and to which the Indian title is extinguished, one million five hundred thousand acres, in the Illinois territory, and five hundred thousand acres, in the Missouri territory, north of the river Missouri. The said lands shall be divided into townships, and subdivided into sections and quarter sections, (each quarter section to contain, as near as possible, one hundred and sixty acres,) in the manner prescribed by law for surveying and subdividing the other lands of the United States; and the lands thus surveyed, with the exception of the salt springs and lead mines therein, and of the quantities of land adjacent thereto as may be reserved for the use of the same by the President of the United States, and the section number sixteen in every township, to be granted to the inhabitants of such township for the use of public schools, shall, according to the provisions of the above recited act, be set apart for the purpose of satisfying the bounties of land promised to the non-commissioned officers and soldiers of the late army of the United States, their heirs and legal representatives, by the act entitled "An act for completing the existing military establishment," approved the twenty-fourth day of December, one thousand eight hundred and eleven, and by the act entitled "An act to raise an additional military force," approved the eleventh day of January, one thousand eight hundred and twelve.

(23.) SEC. II. *And be it further enacted,* That every person in whose favor any warrant for military land bounty is issued, shall be and is hereby authorized to draw by lot one of the quarter sections surveyed by virtue of this act, and shall obtain a patent therefor, in the same manner, in every respect, as is or shall be provided by law for patents to issue for other military land bounties, or as is provided by the act first above recited for patents to issue for such lands.

An Act to amend the Act entitled "An Act granting Bounties in Land and extra Pay to certain Canadian Volunteers," passed the fifth of March, one thousand eight hundred and sixteen.

[Approved March 3, 1817.]

(24.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the passing of this act, no bounty in land shall be given to any Canadian volunteer, except where it shall appear that the full term of six months' service shall have been performed in some corps in the United States' service, and whose name shall appear upon the muster roll of such corps: *Provided,* That where it shall appear that the said term of service had not been performed by reason of wounds received in battle, or other disabilities, occasioned by the performance of his duty while in such corps, such claimant shall be considered as having performed the full term of service for which he had engaged.

(25.) SEC. II. That all warrants issued in pursuance of the act entitled "An act granting bounties in land and extra pay to certain Canadian volunteers," and which have not been located, and those which shall be issued in pursuance of this act, shall be located on such lands as have been offered at public sale according to law, and no other.



(26.) SEC. III. That instead of the bounty given in the act hereby amended, the following rates shall be given: For a colonel, four hundred and eighty acres; for a major, four hundred and eighty acres; for a captain, three hundred and twenty acres; for a subaltern, three hundred and twenty acres; to a non-commissioned officer, musician or private, one hundred and sixty acres; and to the medical and other staff, in proportion to their pay.

(27.) SEC. IV. That all such parts of the act hereby amended, as shall be inconsistent with or contravene the provisions of this act, are hereby repealed.

(28.) SEC. V. That this act, together with the act hereby amended, shall continue and be in force for the term of one year, and no longer.

An Act supplementary to the Act entitled "An Act further extending the Time for issuing and locating Military Land Warrants, and for other purposes."

[Approved March 9, 1818.]

(29.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the time limited by the act, passed on the sixteenth day of April, one thousand eight hundred and sixteen, and to which this is a supplement, for issuing military land warrants, shall be extended to the first day of March, one thousand eight hundred and nineteen; and the time limited by the said act, for the location of unlocated land warrants, shall be extended to the first day of October, one thousand eight hundred and nineteen.

An Act extending the Time for obtaining Military Land Warrants in certain Cases.

[Approved March 27, 1818.]

(30.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the provision of the second section of the act entitled "An act to provide for designating, surveying, and granting the military bounty lands," passed on the sixth day of May, one thousand eight hundred and twelve, which limits the time within which persons entitled to military bounty lands shall make their application for a land warrant to five years from and after such person shall become entitled thereto, shall not be construed to apply to, affect or bar, any application for a military land warrant, which may be made by the heirs and representatives of a deceased person, who was entitled thereto by services performed in the late war, or application by the heirs and representatives of any non-commissioned officer or soldier killed in action, or who died in the actual service of the United States, and entitled by existing laws to a bounty in lands; but the heirs and representatives of such persons shall be allowed to make their applications therefor at any time before the first day of May, one thousand eight hundred and twenty; any act to the contrary notwithstanding.

Part of Section Eleven of an Act establishing a Territorial Government in the southern part of the Territory of Missouri.

[Approved March 2, 1819.]

(31.) SEC. XI. *And be it further enacted,* 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 from all taxes, for the term of three years from and after the date of the patents respectively.

An Act allowing further Time to complete the issuing and locating of Military Land Warrants.

[Approved Feb. 24, 1819.]

(32.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the authority granted to the secretary for the department of war, by the second section of the act to provide for designating, surveying and granting the military bounty lands, approved the sixth day of May, one thousand eight hundred and twelve, and by the fourth section of the act making further provision for filling the ranks of the army of the United States, approved December tenth, one thousand eight hundred and fourteen, to issue warrants for the military land bounties to persons entitled thereto, shall be revived, and continue in force for the term of five years from and after the fourth day of March next.

(33.) SEC. II. That the time limited by the act supplementary to the act further extending the time for issuing and locating military land warrants, and for other purposes, approved March ninth, one thousand eight hundred and eighteen, for issuing military land warrants, shall be extended to the fourth day of March, one thousand eight hundred and twenty-one, and the time limited by the said act for the location of unlocated military land warrants, shall be extended to the first day of October thereafter.

An Act to allow further Time to complete the issuing and locating of Military Land Warrants.

[Approved May 26, 1824.]

(34.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the authority granted to the secretary of the department of war, by an act approved the twenty-fourth day of February, one thousand eight hundred and nineteen, to issue warrants for military land bounties, to persons entitled thereto, shall be revived and continued in force for the term of five years.

An Act authorizing certain Soldiers in the late War to surrender the Bounty Lands drawn by them, and to locate others in lieu thereof.

[Approved May 22, 1826.]

(35.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall and may be lawful for any soldiers in the late war, or their heirs, to whom bounty lands have been patented, or may hereafter be patented, in the territory of Arkansas, and which land is unfit for cultivation, and who have removed, or shall hereafter remove, to the said territory, with a view to actual settlement on the lands by them drawn—in all such cases, where it shall be made to appear, in such manner as the commissioner of the general land office shall direct, to the satisfaction of the register and receiver of the proper district, that the land patented to them is unfit for cultivation, and on the surrender of the patent to them granted, accompanied with such a release of their interest as the commissioner of the general land office shall prescribe, such soldier, or his heirs, may locate and enter with the register of the land office, for the proper district, in the territory of Arkansas,

according to the sectional and divisional lines, the like quantity on any of the unappropriated public lands in the military district in said territory; and upon such entry and location being made, it shall be the duty of the register to issue to the person so locating, a certificate specifying the quarter or half section of land so located and entered; and it shall be the duty of the commissioner of the general land office, if he is satisfied such certificate was fairly obtained, to issue a patent for the lands so located, whenever the certificate aforesaid shall be presented to him for that purpose: *Provided*, That before such certificate of location shall be granted, the applicant shall satisfy the register and receiver that his interest in the land originally patented to him, has not been divested, either by his own acts, or by the operation of law, for taxes, or otherwise: *And Provided also*, That such surrender and relocation shall be made on or before the first day of January, eighteen hundred and thirty. But if said interest shall have been divested in either mode above mentioned, no title shall be acquired to the land subsequently patented.

An Act to continue in force "An Act authorizing certain Soldiers in the late War to surrender the Bounty Lands drawn by them, and to locate others in lieu thereof," and for other Purposes.

[Approved March 23, 1830.]

(36.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the act of the twenty-second of May, one thousand eight hundred and twenty-six, entitled "An act authorizing certain soldiers in the late war to surrender the bounty lands drawn by them, and to locate others in lieu thereof," be and the same is hereby continued in force for the term of five years. And the provisions of the above recited act shall be and are hereby extended to those having like claims in the States of Illinois and Missouri.

An Act to allow further Time to complete the issuing and locating of Military Land Warrants during the late War.

[Approved Jan. 27, 1835.]

(37.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the act entitled "An act to allow further time to complete the issuing and locating of military land warrants," approved the twenty-sixth day of May, one thousand eight hundred and twenty-four, and also the operations of the act approved the twenty-fourth day of February, one thousand eight hundred and nineteen, which, by said act of one thousand eight hundred and twenty-four is revived, be and the said acts are hereby extended and continued in force for the term of five years from and after the twenty-six day of May last.

An Act to extend the Time of issuing Military Land Warrants to the Officers and Soldiers of the Revolutionary Army.

[Approved Jan. 27, 1835.]

(38.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the time allowed for issuing military land warrants to the officers and soldiers of the revolutionary army shall be extended to the first day of January, eighteen hundred and forty.

An Act to provide for satisfying Claims for Bounty Lands, for Military Services in the late War with Great Britain, and for other Purposes.

[Approved July 27, 1842.]

(39.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases of warrants for bounty lands for military services in the war of eighteen hundred and twelve with Great Britain, which remain unsatisfied at the date of this act, it shall be lawful for the person in whose name such warrant shall have issued, his heirs or legal representatives, to enter at the proper land office in any of the States or territories in which the same may lie, the quantity of the public lands subject to private entry to which said person shall be entitled in virtue of such warrant in quarter sections: *Provided*, Such warrants shall be located within five years from the date of this act.

(40.) SEC. II. *And be it further enacted*, That the terms prescribed for the issuing warrants by the secretary of the department of war, under the act entitled "An act to allow further time to complete the issuing and locating of military land warrants during the late war," and under the act entitled "An act to extend the time of issuing military land warrants to the officers and soldiers of the revolutionary army," both of which acts were approved January twenty-seventh, eighteen hundred and thirty-five, be and the same are hereby, respectively, renewed and continued in force for the term of five years from and after the date of this act; and all cases which shall not, within the time aforesaid, be finally disposed of, shall be thereafter forever barred from the benefits of all claim to bounty land for services performed within the spirit and meaning of said acts: *Provided*, That warrants issued under the provisions of this section may be located as is provided for warrants under the first section of this act: *And Provided further*, That the certificate of location obtained under the provisions of this act, shall not be assignable, but the patent shall in all cases issue in the name of the person originally entitled to the bounty land, or to his heirs or legal representatives.

Joint Resolution relating to Patents for Bounty Lands.

[Approved March 3, 1843.]

(41.) SEC. I. *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases where an officer or soldier of the revolutionary war, or a soldier of the last war, who was entitled to bounty land, has died before obtaining a patent for the land, and where application is made by a part only of the heirs of such deceased officer or soldier for such bounty land, it shall be the duty of the proper officers of the war department to issue the warrant or patent in the name of the heirs of such deceased officer or soldier, without specifying each; and the patent so issued in the name of the heirs, generally, shall inure to the whole, in such portions as they are severally entitled to by the laws of descent in the State or territory where the officer or soldier belonged at the time of his death.

An Act to raise, for a limited Time, an additional Military Force, and for other Purposes.

[Approved Feb. 11, 1847.]

(42.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That in

addition to the present military establishment of the United States, there shall be raised and organized, under the direction of the President, for and during the war with Mexico, one regiment of dragoons and nine regiments of infantry, each to be composed of the same number and rank of commissioned and non-commissioned officers, buglers, musicians and privates, &c., as are provided for a regiment of dragoons and infantry respectively, under existing laws, and who shall receive the same pay, rations and allowances, according to their respective grades, and be subject to the same regulations, and to the rules and articles of war: *Provided*, That it shall be lawful for the President of the United States alone to appoint such of the commissioned officers authorized by this act below the grade of field officers, as may not be appointed during the present session: *Provided*, That one or more of the regiments of infantry authorized to be raised by this section, may, at the discretion of the President, be organized and equipped as voltigeurs, and as foot riflemen, and be provided with a rocket and mountain howitzer battery.

(43.) SEC. II. *And be it further enacted*, That during the continuance of the war with Mexico, the term of enlistment of the men to be recruited for the regiments authorized by this act, shall be during the war, unless sooner discharged.

(44.) SEC. III. *And be it further enacted*, That the President of the United States be and he is hereby authorized, by and with the advice and consent of the senate, to appoint one additional major to each of the regiments of dragoons, artillery, infantry and riflemen, in the army of the United States, who shall be taken from the captains of the army.

(45.) SEC. IV. *And be it further enacted*, That to each of the regiments of dragoons, artillery, infantry and riflemen, there shall be allowed a regimental quartermaster, to be taken from the subalterns of the line, who shall be allowed ten dollars additional pay per month, and forage for two horses.

(46.) SEC. V. *And be it further enacted*, That the said officers, musicians and privates authorized by this act, shall immediately be discharged from the service of the United States at the close of the war with Mexico.

(47.) SEC. VI. *And be it further enacted*, That it shall and may be lawful for the the President of the United States, by and with the advice and consent of the senate, to appoint one surgeon and two assistant surgeons to each regiment raised under this act.

(48.) SEC. VII. *And be it further enacted*, That during the war with Mexico it shall be lawful for the officers composing the councils of administration of the several regiments constituting a brigade, either regular or volunteer, in the service of the United States, to employ some proper person to officiate as chaplain to such brigade, and the person so employed shall upon the certificate of the commander of the brigade, receive for his services seven hundred and fifty dollars, one ration and forage for one horse, per annum, provided that the chaplains now attached to the regular army, and stationed at the different military posts may, at the discretion of the secretary of war, be required to repair to the army in Mexico, whenever a majority of the men at the posts where they are respectively stationed shall have left them for service in the field; and should any of the said chaplains refuse or decline to do this, when ordered so to do by the adjutant general, the office of such chaplain shall be deemed vacant, and the pay and emoluments thereof be stopped.

(49.) SEC. VIII. *And be it further enacted*, That the President be and he is hereby authorized, by and with the advice and consent of the senate, to appoint two additional surgeons and twelve additional assistant surgeons in the regular army of the United States, subject to the provisions of an act entitled "An act to increase and regulate the pay of the surgeons and assistant surgeons of the army," approved June 30, 1834; and that the officers whose appointment is authorized by this section, shall receive the pay and allowances of officers of the same grades respectively; and that the rank of the officers of the medical department of the army shall be arranged upon the same basis which at present determines the amount of their pay and emoluments: *Provided*, That the medical officers shall not in virtue of such rank be entitled to command in the line or other staff departments of the army.

(50.) SEC. IX. *And be it further enacted*, That each non-commissioned officer, musician or private enlisted or to be enlisted in the regular army, or regularly mustered in any volunteer company, for a period of not less than twelve months, who has served or may serve during the present war with Mexico, and who shall receive an honorable discharge, or who shall have been killed or died of wounds received or sickness incurred in the course of such service, or who shall have been discharged before the expiration of his term of service in consequence of wounds received or sickness incurred in the course of such service, shall be entitled to receive a certificate or warrant from the war department for the quantity of one hundred and sixty acres, and which may be located by the warrantee, or his heirs at law, at any land office of the United States, in one body, and in conformity to the legal subdivisions of the public lands, upon any of the public lands in such district then subject to private entry; and upon return of such certificate or warrant, with evidence of the location thereof having been legally made, to the general land office, a patent shall be issued therefor. That in the event of the death of any such non-commissioned officer, musician or private during service, or after his discharge, and before the issuing of a certificate or warrant as aforesaid, the said certificate or warrant shall be issued in favor, and inure to the benefit of his family or relatives, according to the following rules: first, to the widow and to his children; second, his father; third, his mother. And in the event of his children being minors, then the legally constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, upon being duly authorized by the orphans' or other court having probate jurisdiction, have power to sell and dispose of such certificate or warrant for the benefit of those interested. And all sales, mortgages, powers, or other instruments of writing, going to affect the title or claim to any such bounty right, made or executed prior to the issue of such warrant or certificate, shall be null and void to all intents and purposes whatsoever, nor shall such claim to bounty right be in anywise affected by, or charged with or subject to the payment of any debt or claim incurred by the soldier prior to the issuing of such certificate or warrant: *Provided*, That no land warrant issued under the provisions of this act shall be laid upon any lands of the United States to which there shall be a pre-emption right, or upon which there shall be an actual settlement and cultivation: *Provided further*, That every such non-commissioned officer, musician and private who may be entitled, under the provisions of this act, to receive

a certificate or warrant for one hundred and sixty acres of land, shall be allowed the option to receive such certificate or warrant, or a treasury scrip for one hundred dollars, and such scrip, whenever it is preferred, shall be issued by the secretary of the treasury to such person or persons as would be authorized to receive such certificates or warrants for lands; said scrip to bear an interest of six per cent. per annum, payable semi-annually, redeemable at the pleasure of the government. And that each private, non-commissioned officer and musician, who shall have been received into the service of the United States, since the commencement of the war with Mexico, for less than twelve months, and shall have served for such term or until honorably discharged, shall be entitled to receive a warrant for forty acres of land, which may be subject to private entry, or twenty-five dollars in scrip, if preferred; and in the event of the death of such volunteer during his term of service, or after an honorable discharge, but before the passage of this act, then the warrant for such land or scrip shall issue to the wife, child or children, if there be any, and if none, then to the father, and if there be no father, then to the mother of such deceased volunteer: *Provided*, That nothing contained in this section shall be construed to give bounty land to such volunteers as were accepted into service, and discharged without being marched to the seat of war.

(51.) SEC. X. *And be it further enacted*, That it shall and may be lawful for the President, by and with the advice of the senate, to appoint from the officers of the army four quartermasters of the rank of major, and ten assistant quartermasters with the rank of captain.

Section Fifteen of an Act making Provisions for an additional number of General Officers, and for other Purposes.

[Approved March 3, 1847.]

(52.) SEC. XV. That the non-commissioned officers, musicians and privates of the regiment of dragoons authorized to be raised by an act entitled "An act to raise, for a limited time, an additional military force, and for other purposes," shall receive the same bounty as is allowed to the non-commissioned officers, musicians and privates of the other regiments authorized to be raised by said act.

Joint Resolution relative to the Evidence which shall be considered satisfactory in Applications for Bounty Land.

[Approved March 24, 1848.]

(53.) SEC. I. *Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases of application for bounty land warrants under the act approved February eleventh, eighteen hundred and forty-seven, the honorable discharge of the applicant, showing the same was predicated on a surgeon's certificate of disability, shall be considered as satisfactory evidence to the commissioner of pensions that the disability was incurred in the course of service.

An Act explanatory of the Act entitled "An Act to raise, for a limited time, an additional Military Force, and for other Purposes," approved February eleventh, eighteen hundred and forty-seven.

[Approved May 27, 1848.]

(54.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the term

"relatives," as used in the ninth section of the act entitled "An act to raise, for a limited time, an additional military force, and for other purposes," approved February eleventh, eighteen hundred and forty-seven, shall be considered as extending to the brothers and sisters of those persons whose services, under that act, may have entitled them to the land therein provided: the order or priority of right, however, shall remain as declared in that act; and those failing, the right shall accrue, fourthly, to the brother or sister, or in equal proportions to the brothers and sisters of the deceased, as the case may be.

(55.) SEC. II. *And be it further enacted*, That the benefits of the said act of February eleventh, eighteen hundred and forty-seven, shall not be construed as forfeited by the privates and non-commissioned officers who have been or may be promoted to the grade of commissioned officers during their service in Mexico, and who shall have subsequently fulfilled the condition of their engagements: *Provided*, Such promotion shall have been made subsequent to the original organization of the company, corps, or regiment to which such privates and non-commissioned officers may have belonged.

An Act to extend the Provisions of existing Pension Laws to enlisted Men of the Ordnance Corps of the United States Army.

[Approved July 10, 1848.]

(56.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the acts of Congress granting pensions to soldiers disabled by wounds or otherwise while in the line of their duty in public service, shall be construed to apply to the enlisted men of the ordnance department who have been or may be disabled, in the same manner as to non-commissioned officers, artificers, musicians and privates of other corps of the army, subject to the limitation that in no such case shall the pension exceed the rate of eight dollars per month.

(57.) SEC. II. *And be it further enacted*, That those enlisted men of the ordnance department who have served or may serve in Mexico during the war with that country, shall be entitled to and shall receive the same bounty in land as is or may be allowed by law to other regular troops in the service of the United States, and under like limitations and restrictions.

Joint Resolution concerning certain Portions of the Marine and Ordnance Corps.

[Approved August 10, 1848.]

(58.) SEC. I. *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the officers, non-commissioned officers, privates and musicians of the marine corps, who have served with the army in the war with Mexico, and also the artificers and laborers of the ordnance corps serving in said war, be placed, in all respects as to bounty land and other remuneration, in addition to ordinary pay, on a footing with the officers, non-commissioned officers, privates and musicians of the army: *Provided*, That this remuneration shall be in lieu of prize money and all other extra allowances.

(59.) SEC. II. *And be it further enacted*, That the non-commissioned officers of the marine corps shall be entitled to the same bounty for re-enlistment as is now or may hereafter be received by the non-commissioned officers of the army.

An Act in relation to Military Land Warrants.

[Approved August 14, 1848.]

(60.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any non-commissioned officer, musician or private, or his widow or heirs, who shall receive and hold in his own right a land warrant, issued by the government of the United States for military service, may locate the same in [on] legal subdivision, on any public land subject to private entry, taking said land at the price at which the same is subject to private entry, and reckoning the warrant at one dollar and twenty-five cents per acre for the number of acres therein contained, and paying the balance, if any, in money; but no claim shall exist on the government to pay for any balance on said warrant in money.

An Act granting Bounty Land to certain Officers and Soldiers who have been engaged in the Military Service of the United States.

[Approved Sept. 28, 1850.]

(61.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That each of the surviving, or the widow or minor children of deceased commissioned and non-commissioned officers, musicians or privates, whether of regulars, volunteers, rangers or militia, who performed military service in any regiment, company or detachment in the service of the United States, in the war with Great Britain, declared by the United States on the eighteenth day of June, eighteen hundred and twelve, or in any of the Indian wars since seventeen hundred and ninety, and each of the commissioned officers who were engaged in the military service of the United States, in the late war with Mexico, shall be entitled to lands, as follows: Those who engaged to serve twelve months, or during the war, and actually served nine months, shall receive one hundred and sixty acres, and those who engaged to serve six months, and actually served four months, shall receive eighty acres, and those who engaged to serve for any or an indefinite period, and actually served one month, shall receive forty acres: *Provided,* That whenever any officer or soldier was honorably discharged in consequence of disability in the service before the expiration of his period of service, he shall receive the amount to which he would have been entitled if he had served the full period for which he had engaged to serve: *Provided,* The person so having been in service shall not receive said land or any part thereof, if it shall appear by the muster-rolls of his regiment or corps, that he deserted, or was dishonorably discharged from service, or if he has received, or is entitled to any military land bounty under any act of Congress heretofore passed.

(62.) SEC. II. *And be it further enacted,* That the period during which any officer or soldier may have remained in captivity with the enemy, shall be estimated and added to the period of his actual service, and the person so detained in captivity shall receive land under the provisions of this act in the same manner that he would be entitled in case he had entered the service for the whole term made up by the addition of the time of his captivity, and had served during such time.

(63.) SEC. III. *And be it further enacted,* That each commissioned and non-commissioned officer, musician or private, for whom provision is made

by the first section hereof, shall receive a certificate or warrant from the department of the interior for the quantity of land to which he may be entitled, and which may be located by the warrantee or his heirs at law, at any land office of the United States in one body and in conformity to the legal subdivisions of the public lands, upon any of the public lands in such district then subject to private entry; and upon the return of such certificate or warrant, with evidence of the location thereof having been legally made, to the general land office, a patent shall be issued therefor. In the event of the death of any commissioned or non-commissioned officer, musician or private, prior or subsequent to the passage of this act, who shall have served as aforesaid, and who shall not have received bounty land for said services, a like certificate or warrant shall be issued in favor, and inure to the benefit of his widow, who shall receive one hundred and sixty acres of land in case her husband was killed in battle, but not to her heirs: *Provided,* She is unmarried at the date of her application: *Provided, further,* That no land warrant, issued under the provisions of this act, shall be laid upon any land of the United States to which there shall be a pre-emption right, or upon which there shall be an actual settlement and cultivation, except with the consent of such settler, to be satisfactorily proven to the proper land officer.

(64.) SEC. IV. *And be it further enacted,* That all sales, mortgages, letters of attorney or other instruments of writing, going to affect the title or claim to any warrant or certificate issued, or to be issued, or any land granted or to be granted, under the provisions of this act, made or executed prior to the issue, shall be null and void to all intents and purposes whatsoever; nor shall such certificate or warrant, or the land obtained thereby, be in anywise affected by, or charged with, or subject to the payment of any debt or claim incurred by such officer or soldier, prior to the issuing of the patent: *Provided,* That the benefits of this act shall not accrue to any person who is a member of the present Congress: *Provided, further,* That it shall be the duty of the commissioner of the general land office, under such regulations as may be prescribed by the secretary of the interior, to cause to be located, free of expense, any warrant which the holder may transmit to the general land office, for that purpose, in such State and land district as the said holder or warrantee may designate, and upon good farming land so far as the same can be ascertained from the maps, plats and field-notes of the surveyor, or from any other information in the possession of the local office, and upon the location being made as aforesaid, the secretary shall cause a patent to be transmitted to such warrantee: *And Provided, further,* That no patent issued under this act shall be delivered upon any power of attorney or agreement dated before the passage of this act, and that all such powers of attorney or agreements be considered and treated as null and void.

Part of Section One of an Act making Appropriations for the Civil and Diplomatic Expenses of Government for the Year ending the thirtieth of June, eighteen hundred and fifty-two, and for other Purposes.

[Approved March 3, 1851.]

(65.) *Provided,* That no land bounty for military service granted by the act of twenty-eighth of September, eighteen hundred and fifty, entitled "An act granting bounty land to certain officers and soldiers who have engaged in the military service of the United States," or by virtue of any other act

of Congress heretofore passed, granting land bounties for military services, shall be satisfied out of any public lands not heretofore brought into market, and now subject to entry at private sale under existing laws.

An Act to make Land Warrants assignable, and for other Purposes.  
[Approved March 22, 1852.]

(66.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all warrants for military bounty lands which may have been or may hereafter be issued under any law of the United States, and all valid locations of the same, which have been or may hereafter be made, are hereby declared to be assignable, by deed or instrument of writing made and executed after the taking effect of this act, according to such form and pursuant to such regulations as may be prescribed by the commissioner of the general land office, so as to vest the assignee with all the rights of the original owner of the warrant or location: *Provided,* That any person entitled to pre-emption right to any land shall be entitled to use any such land warrant in payment for the same, at the rate of one dollar and twenty-five cents per acre, for the quantity of land therein specified: *Provided,* That the warrants which have been or may hereafter be issued in pursuance of said laws or of this act, may be located according to the legal subdivisions of the public lands in one body upon any lands of the United States, subject to private entry at the time of such location, at the minimum price. *Provided further,* That when said warrant shall be located on lands which are subject to entry at a greater minimum than one dollar and twenty-five cents per acre, the locator of said warrants shall pay to the United States in cash the difference between the value of such warrants, at one dollar and twenty-five cents per acre, and the tract of land located on.

(67.) SEC. II. *And be it further enacted,* That the registers and receivers of the land offices shall hereafter be severally authorized to charge and receive for their services in locating all military bounty land warrants issued since the eleventh day of February, eighteen hundred and forty-seven, the same compensation or per centage to which they are entitled by law for sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre, the said compensation to be hereafter paid by the assignees or holders of such warrants.

(68.) SEC. III. *And be it further enacted,* That registers and receivers, whether in or out of office at the passage of this act, or their legal representatives in case of death, shall be entitled to receive from the treasury of the United States, for services heretofore performed in locating military bounty land warrants, the same rate of compensation provided in the preceding section for services hereafter to be performed, after deducting the amount already received by such officers under the act entitled "An act to require the holders of military land warrants to compensate the land officers of the United States for services in relation to the location of those warrants," approved May seventeenth, eighteen hundred and forty-eight: *Provided,* That no register or receiver shall receive any compensation out of the treasury for past services, who has charged and received illegal fees for the location of such warrants; *And Provided further,* That no register or receiver shall receive for his services during any year a greater compensation than the maximum now allowed by law.

(69.) SEC. IV. *And be it further enacted,* That in all cases where the militia or volunteers, or State troops of any State or territory, were called into military service, and whose services have been paid by the United States subsequent to the eighteenth June, eighteen hundred and twelve, the officers and soldiers of such militia, volunteers or troops, shall be entitled to all the benefits of the act entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," approved September twenty-eighth, eighteen hundred and fifty, and shall receive lands for their services according to the provisions of said act, upon proof of length of service as therein required, and that the last proviso of the ninth section of the act of the eleventh of February, eighteen hundred and forty-seven, be and the same is hereby repealed: *Provided,* That nothing herein contained shall authorize bounty land to those who have heretofore received or become entitled to the same.

(70.) SEC. V. *And be it further enacted,* That where any company, battalion or regiment, in an organized form, marched more than twenty miles to the place where they were mustered into the service of the United States, or were discharged more than twenty miles from the place where such company, battalion or regiment was organized; in all such cases, in computing the length of service of the officers and soldiers of any such company, battalion or regiment, with a view to determine the quantity of land any officer or soldier is entitled to under said act, approved twenty-eighth September, eighteen hundred and fifty, there shall be allowed one day for every twenty miles from the place where the company, battalion or regiment was organized, to the place where the same was mustered into the service of the United States; and also one day for every twenty miles from the place where such company, battalion or regiment was discharged, to the place where it was organized, and from whence it marched to enter the service.

An Act authorizing certain Soldiers of the late War with Great Britain to surrender the Bounty Lands drawn by them, and to locate others in lieu thereof.

[Approved Jan. 7, 1853.]

(71.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall and may be lawful for any soldier in the late war with Great Britain, to whom bounty land has been allotted and patented in any State of the Union, by virtue of the laws of the United States passed prior to the year 1850, which was and is unfit for cultivation, to surrender said patent, and to receive in lieu thereof the same quantity of any of the public land subject to private entry at the minimum price as he may select: *Provided,* That before receiving such new land, it shall be proved to the satisfaction of the commissioner of the general land office, that the land so allotted and patented to said soldier is unfit for cultivation, and that said soldier has never disposed of his interest in said land by any sale of his own, and that the same has not been taken or disposed of for his debts due to any individual, and that he shall release all his interest in the same to the United States in such way as said commissioner shall prescribe; and such surrender and location shall be made within five years from the passage of this act.



An Act giving further Time for Satisfying Claims for Bounty Lands, and for other Purposes.

[Approved Feb. 8, 1854.]

(72.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the act entitled "An act to provide for satisfying claims for bounty lands for military services in the late war with Great Britain, and for other purposes," approved July twenty-seven, eighteen hundred and forty-two, and also the two acts approved January twenty-seventh, eighteen hundred and thirty-five, therein and thereby revived, shall be and the same are hereby revived and continued in force for five years, to be computed from the twenty-sixth day of June, one thousand eight hundred and fifty-three.

An Act in Addition to certain Acts granting Bounty Land to certain Officers and Soldiers who have been engaged in the Military Service of the United States.

[Approved March 3, 1855.]

(73.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That each of the surviving commissioned or non-commissioned officers, musicians, and privates, whether of regulars, volunteers, rangers or militia, who were regularly mustered into the service of the United States, and every officer, commissioned or non-commissioned, seaman, ordinary seaman, flotilla-man, marine, clerk, and landsman in the navy, in any of the wars in which this country has been engaged since seventeen hundred and ninety, and each of the survivors of the militia, or volunteers, or State troops of any State or territory, called into military service, and regularly mustered therein, and whose services have been paid by the United States, shall be entitled to receive a certificate or warrant from the department of the interior for one hundred and sixty acres of land; and where any of those who have so been mustered into service and paid shall have received a certificate or warrant, he shall be entitled to a certificate or warrant for such quantity of land as will make, in the whole, with what he may have heretofore received, one hundred and sixty acres to each such person having served as aforesaid: *Provided,* The person so having been in service shall not receive said land warrant if it shall appear by the muster-rolls of his regiment or corps that he deserted, or was dishonorably discharged from service: *Provided, further,* That the benefits of this section shall be held to extend to wagon-masters and teamsters who may have been employed, under direction of competent authority in time of war in the transportation of military stores and supplies.

(74.) SEC. II. *And be it further enacted,* That in case of the death of any person who, if living, would be entitled to a certificate or warrant as aforesaid under this act, leaving a widow, or, if no widow, a minor child or children, such widow, or, if no widow, such minor child or children, shall be entitled to receive a certificate or warrant for the same quantity of land that such deceased person would be entitled to receive under the provisions of this act, if now living: *Provided,* That a subsequent marriage shall not impair the right of any such widow to such warrant, if she be a widow at the time of making her application: *And Provided further,* That those shall be considered minors who are so at the time this act shall take effect.

(75.) SEC. III. *And be it further enacted,* That in no case shall any

such certificate or warrant be issued for any service less than fourteen days, except where the person shall actually have been engaged in battle, and unless the party claiming such certificate or warrant shall establish his or her right thereto by record evidence of said service.

(76.) SEC. IV. *And be it further enacted,* That said certificates or warrants may be assigned, transferred and located by the warrantees, their assignees or their heirs-at-law, according to the provisions of existing laws regulating the assignment, transfer and location of bounty land warrants.

(77.) SEC. V. *And be it further enacted,* That no warrant issued under the provisions of this act shall be located on any public lands, except such as shall at the time be subject to sale at either the minimum or lower graduated prices.

(78.) SEC. VI. *And be it further enacted,* That the registers and receivers of the several land offices shall be severally authorized to charge, and receive for their services, in locating all warrants under the provisions of this act, the same compensation or percentage to which they are entitled by law, for sales of the public lands, for cash, at the rate of one dollar and twenty-five cents per acre; the said compensation to be paid by the assignees or holders of such warrants.

(79.) SEC. VII. *And be it further enacted,* That the provisions of this act, and all the bounty land laws heretofore passed by Congress, shall be extended to Indians, in the same manner, and to the same extent, as if the said Indians had been white men.

(80.) SEC. VIII. *And be it further enacted,* That the officers and soldiers of the revolutionary war, or their widows or minor children, shall be entitled to the benefits of this act.

(81.) SEC. IX. *And be it further enacted,* That the benefits of this act shall be applied to and embrace those who served as volunteers at the invasion of Plattsburg, in September, eighteen hundred and fourteen; also at the battle of King's Mountain, in the revolutionary war, and the battle of Nickojoek, against the confederated savages of the South.

(82.) SEC. X. *And be it further enacted,* That the provisions of this act shall apply to the chaplains who served with the army, in the several wars of the country.

(83.) SEC. XI. *And be it further enacted,* That the provisions of this act be applied to those who served as volunteers at the attack on Lewistown, in Delaware, by the British fleet, in the war of eighteen hundred and twelve—fifteen.

## CHAPTER VI.

### NATURALIZATION.

#### SECTION

1. Any free white alien may become a citizen on the conditions mentioned, &c. Proceedings to be recorded by the clerk of the court.
2. Free white aliens arriving in the United States must, in order to become citizens, make registry and obtain certificates in the manner prescribed. Fees of clerk for registering said certificate.

#### SECTION

3. Every court of record, in any State, having common law jurisdiction, a seal, and clerk, &c., to be considered as a district court for the purposes of naturalization.
4. The children of persons duly naturalized under the laws of the United States, or under any State law prior to the passage of any law on the subject by

SECTION	SECTION
the general government, being under twenty-one, &c., to be considered as citizens.	person and a minor, may become a citizen of the United States.
5. All former acts respecting naturalization, repealed.	13. No certificate of citizenship or naturalization heretofore obtained from any court, to be deemed invalid.
6. Alien residing within limits of United States at certain time, may become a citizen, how.	14. Declaration required by the first section of the former act to be valid on certain conditions.
7. If such alien die before actually naturalized, widow and children to have same privileges on taking oath.	15. A declaration of intention made two years before his admission shall be sufficient.
8. Person to become a citizen must have resided five years in United States.	16. Second section of the act of 14th April, 1802, and 22d March, 1816, repealed.
9. Certain persons mentioned entitled to become citizens: <i>proviso</i> .	17. Any alien, being a free white person, who was residing within the limits, &c., of the United States between 14th April, 1802, and 18th June, 1812, to become a citizen.
10. Evidence to be exhibited by aliens to become citizens of the United States.	18. Repeal of clause requiring a continued residence of five years in the United States previous to naturalization.
11. Rights of persons heretofore settled in the United States, saved.	
12. Conditions on which an alien, being a free white	

An Act to establish an uniform Rule of Naturalization, and to repeal the Acts heretofore passed on that Subject.

[Approved April 14, 1802. Second Section repealed June 26, 1849.]

(1.) SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

1st. That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court of some one of the States, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty, whatever, and particularly, by name, the prince, potentate, State or sovereignty, whereof such alien may, at the time, be a citizen or subject.

2nd. That he shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State or sovereignty, whatever, and particularly by name, the prince, potentate, State or sovereignty, whereof he was before a citizen or subject: which proceedings shall be recorded by the clerk of the court.

3rd. That the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the State or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same: *Provided*, That the oath of the applicant shall, in no case, be allowed to prove his residence.

4th. That in case the alien applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or State from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, That no alien, who shall be a native citizen, denizen or subject of any country, State or sovereign, with

whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States: *Provided, also*, That any alien who was residing within the limits and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least, within and under the jurisdiction of the United States, and one year at least, immediately preceding his application, within the State or territory where such court is at the time held; and on his declaring, on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, State or sovereignty, whatever, and particularly by name, the prince, potentate, State or sovereignty, whereof he was before a citizen or subject; and moreover, on its appearing to the satisfaction of the court, that during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or State from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission; all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof: *And Provided, also*, That any alien who was residing within the limits and under the jurisdiction of the United States, at any time between the said twenty-ninth day of January, one thousand seven hundred and ninety-five, and the eighteenth day of June, one thousand seven hundred and ninety-eight, may, within two years after the passing of this act, be admitted to become a citizen, without a compliance with the first condition above specified.

(2.) SEC. II. That in addition to the directions aforesaid, all free white persons, being aliens, who may arrive in the United States after the passing of this act, shall, in order to become citizens of the United States, make registry and obtain certificates, in the following manner, to wit: Every person desirous of being naturalized, shall, if of the age of twenty-one years, make report of himself; or if under the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master or mistress to the clerk of the district court of the district where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the territorial districts of the same, or of a particular State; and such report shall ascertain the name, birth-place, age, nation and allegiance of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement; and it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate under his hand and seal of office, of such report and registry; and for receiving and registering each report of an individual or family, he shall receive fifty cents; and for each certificate, granted pursuant to this act, to an individual or family, fifty cents: and such certificate shall be exhibited to the court by every alien who may

arrive in the United States, after the passing of this act, on his application to be naturalized, as evidence of the time of his arrival within the United States.

(3.) SEC. III. *And whereas*, doubts have arisen whether certain courts of record, in some of the States, are included within the description of district or circuit courts; *Be it further enacted*, That every court of record in any individual State, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien, who may have been naturalized in any such court, shall enjoy, from and after the passing of this act, the same rights and privileges as if he had been naturalized in a district or circuit court of the United States.

(4.) SEC. IV. That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any of the said States, under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered a citizen of the United States; and the children of persons who now are or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: *Provided*, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States: *Provided also*, That no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the late war, shall be admitted a citizen as aforesaid, without the consent of the legislature of the State in which such person was proscribed.

(5.) SEC. V. That all acts heretofore passed respecting naturalization, be and the same are hereby repealed.

An Act in addition to an Act entitled "An Act to establish an uniform Rule of Naturalization, and to repeal the Acts heretofore passed on that Subject."

[Approved March 26, 1804.]

(6.) SEC. I. *Be it enacted, &c.*, That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States, at any time between the eighteenth of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without a compliance with the first condition specified in the first section of the act entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

(7.) SEC. II. That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Section Twelve of an Act for the Regulation of Seamen on board the public and private Vessels of the United States.

[Approved March 3, 1813. Repeated June 26, 1848.]

(8.) SEC. XII. That no person who shall arrive in the United States, from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not for the continued term of five years next preceding his admission as aforesaid, have resided within the United States, without being at any time during the said five years out of the territory of the United States.

An Act supplementary to the Acts heretofore passed on the subject of an uniform Rule of Naturalization.

[Approved July 30, 1813.]

(9.) SEC. I. *Be it enacted, &c.*, That persons resident within the United States or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration according to law, of their intentions to become citizens of the United States, or who, by the existing laws of the United States, were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies, at the times and in the manner prescribed by the laws heretofore passed on the subject: *Provided*, That nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

An Act relative to Evidence in Cases of Natralization.

[Approved March 22, 1813.]

(10.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the certificate of report and registry, required as evidence of the time of arrival in the United States, according to the second section of the act of the fourteenth of April, one thousand eight hundred and two, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject;" and also a certificate from the proper clerk or prothonotary, of the declaration of intention, made before a court of record, and required as the first condition, according to the first section of said act, shall be exhibited by every alien on his application to be admitted a citizen of the United States, in pursuance of said act, who shall have arrived within the limits and under the jurisdiction of the United States since the eighteenth day of June, one thousand eight hundred and twelve, and shall each be recited at full length, in the record of the court, admitting such alien; otherwise he shall not be deemed to have complied with the conditions requisite for becoming a citizen of the United States; and any pretended admission of an alien, who shall have arrived within the limits and under the jurisdiction of the United States, since the said eighteenth day of June, one thousand eight hundred and twelve, to be a citizen after the promulgation of this act, without such recital of each certificate at full length, shall be of no validity or effect under the act aforesaid.

(11.) SEC. II. *Provided, and be it enacted*, That nothing herein con-

tained shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to the act of the twenty-sixth of March, one thousand eight hundred and four, entitled "An act in addition to an act entitled 'An act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.'" Whenever any person without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

An Act in further addition to "An Act to establish an uniform Rule of Naturalization, and to repeal the Acts heretofore passed on that Subject."

[Approved May 26, 1824.]

(12.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition, three years previous to his admission: *Provided,* Such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the *bona fide* intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.

(13.) SEC. II. *And be it further enacted,* That no certificate of citizenship, or naturalization, heretofore obtained from any court of record within the United States, shall be deemed invalid, in consequence of an omission to

comply with the requisition of the first section of the act entitled "An act relative to evidence in cases of naturalization," passed the twenty-second day of March, one thousand eight hundred and sixteen.

(14.) SEC. III. *And be it further enacted,* That the declaration required by the first condition specified in the first section of the act to which this is in addition, shall, if the same has been *bona fide* made before the clerks of either of the courts in the said condition named, be as valid as if it had been made before the said courts, respectively.

(15.) SEC. IV. *And be it further enacted,* That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition; anything in the said act, or in any subsequent act, to the contrary notwithstanding.

An Act to amend the Acts concerning Naturalization.

[Approved May 24, 1828.]

(16.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the second section of the act entitled "An act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," which was passed on the fourteenth day of April, one thousand eight hundred and two, and the first section of the act entitled "An act relative to evidence in cases of naturalization," passed on the twenty-second day of March, one thousand eight hundred and sixteen, be and the same are hereby repealed.

(17.) SEC. II. *And be it further enacted,* That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: *Provided,* That whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

An Act to amend the Act entitled "An Act for the regulation of Seamen on board the public and private Vessels of the United States," passed March third, eighteen hundred and thirteen.

[Approved June 26, 1848.]

(18.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the last clause of the twelfth section of the act hereby amended, consisting of the following words, to wit: "without being at any time during the said five years out of the territory of the United States," be and the same is hereby repealed.

## CHAPTER VII.

### PRE-EMPTIONS.

#### SECTION

1. Persons inhabiting and cultivating tracts of land in the Illinois territory, &c., entitled to a preference in becoming purchasers, &c.
2. Persons claiming a preference, to deliver notice in writing to the register of the land office.
3. Certain decisions, made by commissioners in favor of land claims confirmed.
4. All the claims contained in a list transmitted, &c., confirmed.
5. Tract of land within prescribed boundary, set apart to satisfy certain claims.
6. Persons residing within the tract reserved, who, &c., entitled to pre-emption.
7. Duty of the register of the land office for the district of Kaskaskia.
8. After October 1st, 1814, the owners of unlocated confirmed claims may enter with the register of Kaskaskia district, not exceeding one quarter section more, &c.
9. The register to make out certificates of confirmation, &c. Compensation for making out certificate.
10. Patents to be obtained as provided by law for other public lands.
11. The western boundary of the Illinois territory extended to the middle of the Mississippi, &c.
12. The proviso contained in the 4th section of the act referred to, repealed so far, &c.
13. Persons who settled on and improved any of the lands in the Illinois territory, reserved for schools, before the 5th of February, 1813, entitled to the pre-emption of the like quantity of other land, &c.
14. Persons entitled to the pre-emption of lands under the 5th section of the act referred to, who failed to locate their claims, entitled, &c.
15. Persons entitled to pre-emption under this act to conform to the provisions of the act, &c.
16. The register for the district of Kaskaskia to give notice.
17. The locations of any confirmed claim, made, &c., confirmed.
18. The register and receiver at Kaskaskia allowed the same commission on confirmed claims, as, &c.
19. Ann Gilham may locate any unappropriated quarter section within the Illinois territory.
20. Persons who were settled on and had improved any tract of land reserved for schools, &c., allowed until October 1st to enter the same for purchase, &c.
21. The register, &c., authorized to select any vacant lands within the tract set apart in lieu of the lands formerly reserved, &c.
22. The provisions of the act of 27th Feb., 1815, to extend to other settlers.
23. Claims filed, not exceeding 400 acres, bearing date the 29th of March, 1815, confirmed to the original claimants.

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24. Claimants allowed till 1st October, 1816, to register claims.
25. Persons entitled to right of pre-emption, &c., allowed to make their entries with the register until six months after the lands have been surveyed.
26. Persons whose claims to lands in the Illinois territory are confirmed, &c., to receive a certificate from the register of Kaskaskia, whenever, &c.
27. Persons entitled to a preference in becoming purchasers at private sale, of tracts of land in Louisiana, Missouri and Illinois, according to the provisions of an act of 5th Feb., 1813, and the 5th section of an act of 12th April, 1814, settled, &c., to have the privilege, &c.
28. Where two or more persons are entitled to right of pre-emption, &c., each person authorized, &c.
29. Persons who would have been entitled to right of pre-emption, under act of 5th Feb., 1813, had said act been so construed, &c., to be entitled to certificate for the excess paid above two dollars per acre, &c.
30. Persons who would have been entitled, &c., who were not purchasers, allowed till 1st Sept., 1820, to prove, &c.
31. The right of pre-emption to one quarter section of land granted to the several counties of each State, &c.
32. Parts of other acts repealed.
33. Lands which have reverted to United States under relief laws, may be redeemed in three ways specified.
34. Purchasers in possession of lands relinquished under relief laws, &c., to have right of pre-emption.
35. On failure to comply with provisions of this act, lands to be offered for sale.
36. All agreements or acts having for object to prevent any one from bidding upon or purchasing public lands, prohibited.
37. All agreements to the effect that one person shall pay to another a premium of any kind upon the price at which lands of the United States may be bid off by the latter, to be null and void.
38. Certain settlers may enter quarter section.
39. Where two or more settlers are on same quarter section.
40. Proof of settlement.
41. Act not to delay the sale of public lands, &c.
42. How long act to be in force.
43. Persons purchasing lands under certain act, may assign and transfer certificates.
44. All public lands offered at private sale may be purchased in fractions of sections, &c.
45. All occupants and settlers upon the public lands, entitled to pre-emption, &c., who have not been or shall not be enabled to make proof and enter, &c., shall be permitted to enter the said lands on

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- the same conditions, &c., within one year after survey, &c.
46. Occupants upon fractions to be permitted to enter in like manner, &c.
47. Settlers prior to May 1, 1832, &c., who were prevented from making entries by, &c., may enter within one year after, &c.
48. Act of May 29, 1830, revived, and extended to those who settled on and cultivated land in 1833.
49. Choice of quarter sections allowed.
50. Persons settled on public lands prior to 1829, may enter a quarter section at the minimum price.
51. Confirmation of entries and sales of certain public lands.
52. Entries made under pre-emption laws, pursuant to certain instructions, confirmed.
53. Qualifications necessary to entitle settlers to the benefits and privileges of act of 29th May, 1830.
54. In cases of residence on one quarter section, and cultivation of land on another, election section may be made of either, or legal sub-divisions of each, not to exceed one quarter section in all.
55. In case of improvements made by one person and leased or rented to another, the person who made the improvements shall be entitled to the right of pre-emption.
56. Certain settlers on lands not surveyed at the passage of the act to which this is supplemental, and since ascertained to be a sixteenth section set apart for schools, entitled to enter other land.
57. Persons who settled on any public land before its selection by any State for a seminary of learning, under any act of Congress, entitled to enter other land.
58. The act of the 22d June, 1838, continued till 22d June, 1842, and the right of pre-emption extended to all settlers on the public lands at the date of this act.
59. Certain States to be paid 10 per cent. on net proceeds of sales of public lands therein, in addition to what they are entitled by certain compacts.
60. After deducting said 10 per cent., and what is allowed by compacts aforesaid, residue of net proceeds of all public lands to be divided among the States, &c., of the Union; how.
61. Net proceeds of sales of public lands payable at the treasury, half-yearly, to whom.
62. Money due and payable by this act, to be first applied to payments of debts due United States.
63. How long act to continue.
64. Not less than \$150,000 to be appropriated annually for surveys.
65. Certain land districts and land offices may be continued notwithstanding there are not 100,000 acres of land unsold in said districts; when.
66. 500,000 acres of land to be granted to States specified in first section for internal improvements.
67. Said lands not to be sold for less than \$1.25 per acre.
68. After the passage of this act, certain persons, who have since 1st June, 1840, or shall hereafter, settle on certain lands, and inhabit the same, &c., authorized to enter 160 acres at the minimum price.
69. When more than one settler, right of pre-emption in the first.
70. Proof of settlement, &c., to be made to the register and receiver.
71. Oath required by persons claiming benefit of this act.

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72. Sale of lands not delayed by this act.
73. Persons who have, or may settle certain lands, with the intent to purchase under this act, required to file with the register a statement describing the land and declaring such intention, &c.
74. The two per cent. of the net proceeds of lands that that have been, or may be, sold by United States in Mississippi, since 1st December, 1817, and reserved for a road or roads leading to said State, relinquished to Mississippi—payable when.
75. The two per cent. of the net proceeds of lands sold by United States in Alabama, since 1st of September, 1819, and reserved for a road or roads leading to said State, relinquished to Alabama—payable when.
76. Patents to be issued for tracts entered under the pre-emption laws, but withheld on account of the quantity exceeding that specified in the law, and where the proof is not full as to all the facts, &c.
77. Agent to be appointed to investigate cases of alleged fraud in the Columbus land district. Mode of investigation.
78. In case of death of party entitled to pre-emption before consummating claim.
79. Settlers on certain lands, unsurveyed at the time of settlement, may enter other lands.
80. An individual filing a declaration for one tract, cannot file a second for another.
81. Claimants under late pre-emption law, for lands, not proclaimed for sale, to make known their claims.
82. Claimants not to suffer for non-compliance with pre-emption laws caused by vacancy of office of register or receiver.
83. Settlers residing on one quarter section and cultivating another, entitled to a choice.
84. In cases of two or more persons residing on one quarter section, and one or more of them cultivating other tracts.
85. Persons coming within sec. 10, act 4th September, 1841, entitled to pre-emption.
86. Where public lands are occupied as a town site, corporate authorities, &c., to enter the same in trust for the occupants. Execution of the trust, &c., to be regulated by the legislature. Any act of trustees not made agreeable to regulations, void.
87. Commissioner of general land office to determine all suspended entries, under regulations to be settled by secretary of treasury and attorney general.
88. Power and jurisdiction cease at the end of two years.
89. Decisions to be arranged into classes.
90. Patents to issue for lands in the first class, and lands in second class to revert to United States.
91. Commissioner to order into market lands of second class.
92. Manner in which the 5th section of the act of 4th September, 1841, "to appropriate the proceeds of the sales of the public lands," &c., shall be construed.
93. Act of 1846, chapter 78, respecting suspended pre-emption claims, revived for ten years.
94. Patents may be surrendered and new ones issued.
95. Pre-emption laws extended to sections reserved or to be reserved on lines of railroads.
96. Pre-emption rights on lands reserved on account of proposed railroads.
97. Graduation of price of public lands.
98. Pre-emption rights in lands affected by this act.
99. How entry is made. Penalty for perjury.

An Act giving the Right of Pre-emption in the purchase of Lands to certain Settlers in the Illinois Territory.

[Approved Feb. 5, 1813.]

(1.) SECTION I. *Be it enacted, &c.,* That every person, or legal representative of every person, who has actually inhabited and cultivated a tract of land, lying in either of the districts established for the sale of public lands in the Illinois territory, which tract is not rightfully claimed by any other person, and who shall not have removed from said territory; every such person, and his legal representatives, shall be entitled to a preference in becoming the purchaser from the United States of such tract of land at

private sale, at the same price, and on the same terms and conditions, in every respect, as are or may be provided by law for the sale of other lands sold at private sale in said territory, at the time of making such purchase: *Provided*, That no more than one quarter section of land shall be sold to any one individual in virtue of this act; and the same shall be bounded by the sectional and divisional lines run, or to be run, under the direction of the surveyor general for the division of the public lands: *Provided also*, That no lands reserved from sale by former acts, or lands which have been directed to be sold in town lots, and out lots, shall be sold under this act.

(2.) SEC. II. That every person claiming a preference in becoming the purchaser of a tract of land in virtue of this act, shall make known his claim, by delivering a notice in writing, to the register of the land office for the district in which the land may lie, wherein he shall particularly designate the quarter section he claims; which notice the register shall file in his office, on receiving twenty-five cents from the person delivering the same. And in every case where it shall appear, to the satisfaction of the register and receiver of public moneys of the land office, that any person, who has delivered his notice of claim, is entitled, according to the provisions of this act, to a preference in becoming the purchaser of a quarter section of land, such person, so entitled, shall have a right to enter the same, with the register of the land office, on producing his receipt from the receiver of public moneys for at least one-twentieth part of the purchase money, as in case of other public lands sold at private sale: *Provided*, That all lands to be sold under this act shall be entered with the register, at least two weeks before the time of the commencement of the public sales, in the district wherein the land lies; and every person having a right of preference in becoming the purchaser of a tract of land, who shall fail so to make his entry with the register within the time prescribed, his right shall be forfeited, and the land by him claimed shall be offered at public sale, with the other public lands in the district to which it belongs.

An Act confirming certain Claims to Land in the Illinois Territory, and providing for their Location

[Approved April 16, 1814.]

(3.) SEC. I. *Be it enacted, &c.*, That the decisions made by the commissioners (appointed in pursuance of the act entitled "An act for the revision of former confirmations, and for confirming certain claims to land in the district of Kaskaskia," passed the twentieth day of February, one thousand eight hundred and twelve,) where such decisions were in favor of the claims, and where the commissioners have reported specially, and have not rejected the claims; all such claims, as are entered in their report to the secretary of the treasury, bearing date the fourth day of January, one thousand eight hundred and thirteen, shall be, and the same are hereby, confirmed.

(4.) SEC. II. That all the claims contained in a list transmitted to the secretary of the treasury by Michael Jones, one of the commissioners aforesaid, bearing date the eighteenth day of January, one thousand eight hundred and thirteen, shall be and the same hereby are confirmed: *Provided*, That any person who may have received a military right, shall not receive, in addition thereto, more than three hundred acres of land by virtue of this

section; and it shall be the duty of the commissioner of the general land office to enter the list aforesaid of record in his office: *And Provided also*, That nothing in this act shall prevent or bar a judicial decision between persons claiming the same original title or claim.

(5.) SEC. III. That all that tract of land included within the following boundary, viz.: Beginning at the township line nearest to, and above, the mouth of Big Muddy river, on the Mississippi river; thence, east, to the meridian line running from the mouth of the Ohio river; thence, north, with the said meridian line to the north boundary line of township number five, north; thence, west, to the Mississippi river; thence, down the same, to the beginning; shall be and the same hereby is reserved and set apart to satisfy the unlocated claims of persons to land within the Illinois territory confirmed to them heretofore or by this act.

(6.) SEC. IV. That any person or persons residing within the tract reserved by this act, and who had actually cultivated or improved any tract of land therein, before the fifth day of February, one thousand eight hundred and thirteen, not rightfully claimed by any other person, shall be entitled to a pre-emption in the purchase of such tract of land, including the improvement: *Provided*, That the purchaser shall not enter less than one quarter section nor more than one section. And any person claiming a pre-emption in the purchase under this act, who may be the owner of any unlocated confirmed claim which may be located within the tract aforesaid, shall be and is hereby authorized to deliver to the receiver of public money, for the district within which the land lies, the evidences of his or their claim, which shall be received as payment for the quantity of land such person or persons would have been entitled to locate by virtue thereof; and in all cases where the land purchased shall not be completely paid for by the evidences of confirmed claims, the residue of the land shall be paid for at the same price, in the same manner, under the same restrictions, and liable to the same forfeiture, as other public lands sold at private sale.

(7.) SEC. V. That it shall be the duty of the register of the land office for the district of Kaskaskia, to give notice that all persons entitled to a pre-emption in the purchase of any tract of land by virtue of this act, may make such purchase, on application to him at his office, on or before the first day of October next; and any person failing or refusing to enter with the register of the land office the land by such person improved, on or before the first day of October next, shall lose the right of pre-emption given by this act.

(8.) SEC. VI. That, after the first day of October next, it shall be lawful for any person or persons, being the owner of any unlocated confirmed claim, to enter, with the register of the land office for the Kaskaskia district, any quantity of land within the reserved tract aforesaid, not exceeding one quarter section more than the quantity of acres contained in his claim or claims, and to deliver, to the receiver of public money, the evidence of his claim, which shall be received in payment for the number of acres specified therein; and the residue of the land thus entered, which may exceed the amount of confirmed claims thus paid in, shall be paid for at the same price and in like manner as the other public lands of the United States sold at private sale. And if two or more persons shall make applications, at the same time, to enter the same tract or tracts of land, the priority of right to



enter shall be decided by lot, in the presence of the register of the land office; and any person or persons failing or refusing to enter or locate his claim within the reserved tract aforesaid, according to the provisions of this act, on or before the first day of May, one thousand eight hundred and fifteen, shall forfeit all right or claim against the United States, derived from confirmations under this act or any former law.

(9.) SEC. VII. That it shall be the duty of the register of the land office for the Kaskaskia district, to make out a certificate of confirmation to each person whose claim or claims are confirmed by this act, or by any former law, within the territory of Illinois; and such certificate shall specify the quantity of land confirmed to the holder thereof, and shall be sufficient evidence of claim, within the meaning of this act, to entitle the owner or holder thereof to a credit with the receiver of public moneys, for the quantity of land mentioned in such certificate, within the reserved tract aforesaid; and the register of the land office shall receive the sum of seventy-five cents from the person demanding and receiving such certificate.

(10.) SEC. VIII. That patents shall be obtained for lands entered under this act, in the reserved tract aforesaid, in the same manner, and on the same terms, as are provided by law for other public lands of the United States.

An Act to amend and extend the Provisions of the Act of the sixteenth of April, one thousand eight hundred and fourteen, entitled "An Act confirming certain Claims to Land in the Illinois Territory, and providing for their Location."

[Approved Feb. 27, 1815.]

(11.) SEC. I. *Be it enacted, &c.*, That the western boundary of the tract of country set apart by the act of the sixteenth of April, one thousand eight hundred and fourteen, entitled "An act confirming certain claims to land in the Illinois territory, and providing for their location," be extended upon the river Mississippi, to the middle thereof, so as to include all islands in said river, between the middle and eastern margin, throughout the length of said line; and that all or any of the said islands shall be subject to be appropriated under the said recited act.

(12.) SEC. II. That the proviso contained in the fourth section of the before recited act be repealed, so far as it regards persons settled on fractions of sections or quarter sections, containing less than one hundred and sixty acres; and that such persons, under the like circumstances, shall be considered as entitled to all the rights, benefits and advantages, specified in the said fourth section, as those settled on sections or quarter sections, and also to any right, privilege or advantage secured by this act: *Provided, however*, That such persons shall not be permitted, in such cases, to take less than the whole quantity of such fractional quarter section on which they are respectively settled.

(13.) SEC. III. That every person or persons, who settled on and improved any of the lands in the said territory, reserved for the use of schools or seminaries of learning, before the fifth day of February, one thousand eight hundred and thirteen, and who would have had the right of pre-emption thereto had not the same been reserved as aforesaid, shall be entitled to the pre-emption of the like quantity of other land, upon the same terms, and under the same restrictions, provided by the fourth section of the

said recited act, to be located on any lands within the boundary specified in this and the said recited act, not otherwise appropriated; and such persons shall also be entitled to the benefit of, and subject to the restrictions contained in this act.

(14.) SEC. IV. That all and every person or persons entitled to the pre-emption of lands, under the fourth section of the before recited act, who failed to locate their claims within the time limited in said act, and which lands have been appropriated by others, shall be entitled to the pre-emption of the like quantity as they could have appropriated under the said act, or under the provisions of this act, to be located on any land within the boundary specified in this and the said recited act, not previously appropriated.

(15.) SEC. V. That all and every person or persons, entitled to the pre-emption of lands under the provisions of this act, shall conform to and be governed by the rules prescribed in the said recited act, in locating, proving and completing their titles respectively, except in cases where the same is changed by this act.

(16.) SEC. VI. That it shall be the duty of the register of the land office for the district of Kaskaskia, to give notice, by an advertisement inserted, for one month, in at least one newspaper published in the said territory, to all persons entitled to a pre-emption in the purchase of any tract of land, by virtue of this or the before recited act, that they may make such purchase, on application to him at his office, on or before the first day of May, in the year one thousand eight hundred and sixteen; and every person failing or refusing to enter, with the said register, the land to which the right of pre-emption is so secured, notice being given as before mentioned, within the time aforesaid, shall lose his, her or their right of pre-emption.

(17.) SEC. VII. That the locations of any confirmed claim, made by virtue of any authority given by the commissioners appointed to examine the claims of persons to land in the Illinois territory, shall be and the same are hereby confirmed: *Provided*, That the provisions of this section shall not be so construed as to extend to any locations made by any person or persons without any authority from the commissioners aforesaid; nor shall it affect the claims of any other person or persons.

(18.) SEC. VIII. That the register and receiver of public moneys of the land office at Kaskaskia, shall be allowed the same commissions, respectively, on the confirmed claims which have been or shall be received in payment for land entered at the said office, as they are now entitled to on moneys received in payment for lands sold, calculating the value of the confirmed claims at the rate of two dollars per acre.

(19.) SEC. IX. That it shall be lawful for Ann Gilham to locate any unappropriated quarter section within the Illinois territory; and whenever the said Ann Gilham shall enter, with the register of the land office at Kaskaskia, any unappropriated quarter section, it shall be the duty of the register to issue to the said Ann Gilham, a certificate specifying therein the quarter section so located; and it shall be the duty of the commissioner of the general land office to issue a patent for the land so located, whenever the certificate aforesaid shall be presented to him for that purpose.

An Act making further Provision for settling Claims to Land in the Territory of Illinois.

[Approved April 26, 1816.]

(20.) SEC. I. *Be it enacted, &c.*, That every person, and the legal representatives of every person who, before the fifth day of February, one thousand eight hundred and thirteen, settled on and improved any tract of land reserved for the use of schools or seminaries of learning, and who, had not the same been reserved, would have had the right to pre-emption within the tract of country set apart by the third section of the act of the sixteenth day of April, one thousand eight hundred and fourteen, entitled "An act confirming certain claims of land in the Illinois territory and providing for their location," to satisfy the unlocated claims to land in the said territory, shall be and they hereby are authorized and allowed, until the first day of October, one thousand eight hundred and sixteen, to enter the same for purchase, with the register and receiver of public moneys of the land office at Kaskaskia; and it shall be the duty of the register and receiver to enter the same for purchase, according to the provisions of this and the said recited act: *Provided*, That such person or persons shall not have entered, in right of pre-emption, other lands in lieu thereof, in virtue of the third section of an act to amend the aforesaid act, passed the twenty-seventh day of February, one thousand eight hundred and fifteen.

(21.) SEC. II. That the register and receiver of public money shall have power, and they are hereby authorized to select any other vacant and unappropriated lands, within the tract set apart to satisfy confirmed claims as aforesaid, in lieu of such of the lands formerly reserved for a seminary of learning and for the support of schools, as have been appropriated in satisfaction of ancient grants or confirmed improvement claims, or as shall be entered in right of pre-emption, according to the provisions of the preceding section of this act: *Provided*, That the lands thus to be selected shall be taken as near adjacent to those in lieu of which they are selected as an equal quantity of land of like quality can be obtained, and shall be reserved and appropriated for the same purpose.

(22.) SEC. III. That the provisions of the second section of an act, passed the twenty-seventh day of February, one thousand eight hundred and fifteen, respecting the settlers on the fractional section and quarter sections within the aforesaid reserved tract, shall extend to all other settlers on the fractional section or quarter sections within the Kaskaskia district.

(23.) SEC. IV. That all the claims filed in the name of the original claimants or their heirs, not exceeding four hundred acres, contained in a list transmitted to the commissioner of the general land office, by Michael Jones, register, and S. Bond, receiver of public moneys, of the land office for the district of Kaskaskia, bearing date the twenty-ninth day of March, one thousand eight hundred and fifteen, be and they hereby are confirmed to the original claimants or their heirs: *Provided*, That the said claims hereby confirmed, be and they hereby are deemed and taken to be unlocated claims, and they shall not in anywise defeat or interfere with locations made in virtue of other authorized claims on lands improved by the said claimants or others.

(24.) SEC. V. That the claimants whose claims are confirmed by virtue of the fourth section of this act, and all others lawfully holding confirmed

unlocated claims for lands within the tract reserved by the before recited act of the sixteenth day of April, one thousand eight hundred and fourteen, be allowed until the first day of October, one thousand eight hundred and sixteen, to register the same; and the said claims shall be receivable in payment for public lands, within the said reserved tract, conformably with the provisions of the last above mentioned act, and of the present act, any time prior to the first day of October, one thousand eight hundred and sixteen.

(25.) SEC. VI. That all persons or their legal representatives, entitled to the right of pre-emption of lands within the boundary specified in the before recited act of the sixteenth day of April, one thousand eight hundred and fourteen, which lands have not been surveyed under the authority of the United States, shall be and they hereby are allowed a further time for making their entries with the register of the land office, until the lands upon which they have respectively settled and improved, shall be surveyed by the United States, and until the expiration of six months thereafter.

(26.) SEC. VII. That every person, and the legal representative of every person, whose claim to a tract of land within the Illinois territory is confirmed by this or any former act, and who has not previously obtained a patent for the same, from the governor, either of the territory north-west of the Ohio or of the Indiana territory, shall, whenever his claim shall have been located and surveyed, be entitled to receive from the register of the land office at Kaskaskia, a certificate, stating that the claimant is entitled to receive a patent for such tract of land by virtue of this act, for which certificate the register shall receive one dollar; and which certificate shall entitle the party to a patent for the said tract, which shall issue in like manner as is provided by law for lands purchased of the United States.

An Act concerning Pre-emption Rights, given in the purchase of Lands, to certain Settlers in the State of Louisiana and in the Territories of Missouri and Illinois.

[Approved April 29, 1816.]

(27.) SEC. I. *Be it enacted, &c.*, That any person, and the legal representatives of any person, entitled to a preference in becoming the purchaser from the United States of a tract of land, at private sale, in the State of Louisiana and the territories of Missouri and Illinois, according to the provisions of the act entitled "An act giving the right of pre-emption, in the purchase of lands, to certain settlers in the Illinois territory," passed February fifth, one thousand eight hundred and thirteen, and the fifth section of the "Act for the final adjustment of land titles in the State of Louisiana and territory of Missouri," passed April twelfth, one thousand eight hundred and fourteen, who is settled on a fraction of a section or fractional quarter section, containing less than one hundred and sixty acres, shall have the privilege of purchasing one or more adjoining fractional quarter sections, or the adjoining quarter section including their improvements, or the fraction improved by them, at their option; and the provisions of the said recited acts are hereby made applicable to them so far as they are consistent with the provisions of this act.

(28.) SEC. II. That in cases where two or more persons entitled to the right of pre-emption shall be settled upon one quarter or fractional quarter section of land, each person shall be authorized to purchase one or more

quarter sections or fractional quarter sections of the section or fractional section of land upon which they are so settled; and the section or fractional section upon which such persons are settled shall be equally divided between them, in such manner as the register and receiver within whose district the land lies, shall determine and direct, so as to secure, so far as may be practicable, to every such persons their improvements, respectively; and where the improvement of such persons shall be upon two or more quarter sections, such persons shall be entitled to purchase the quarter sections upon which their improvement shall be.

An Act for the relief of certain Settlers in the State of Illinois, who reside within the Vincennes Land District.

[Approved May 11, 1820.]

(29.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every person who would have been entitled to the right of pre-emption according to the provisions of the act entitled "An act giving the right of pre-emption in the purchase of lands to certain settlers in the Illinois territory," passed February the fifth, one thousand eight hundred and thirteen, provided said act had been so construed as to embrace those who were living within the Vincennes land district, and who became the purchaser at public sale of the said land, to which the right of pre-emption would have so attached, at more than two dollars per acre, shall be entitled to a certificate for the amount so paid or to be paid, exceeding two dollars per acre, from the register of the land office at Vincennes; which certificate shall be receivable in payment of any debt due to the United States on account of the sale of public land: *Provided, however,* That it shall be the duty of every person claiming the benefit of this act to prove to the satisfaction of the register and receiver of the land office at Vincennes that they are entitled thereto, according to its true intent and meaning.

(30.) SEC. II. *And be it further enacted,* That every person who would have been entitled to the right of pre-emption in the said Vincennes district, according to the provisions of the said recited act, passed the fifth day of February, eighteen hundred and thirteen, had it been so construed as to embrace them, and who did not become the purchaser of any tract of land to which such right of pre-emption would have attached, shall be allowed till the first day of September next to prove to the satisfaction of the register and receiver at Vincennes that they would have been so entitled; and it shall be the duty of the register, when the satisfaction aforesaid shall be made, to grant a certificate to every such person, or their legal representatives, stating therein that such person would have been entitled to such right of pre-emption, and that he did not become the purchaser thereof, neither at public nor private sale. And every such person, or his legal representatives, shall, upon producing such certificate to the register of any land office in the State of Illinois, be allowed to enter one quarter section of land, each, at the minimum price fixed by the United States, of any land which may be surveyed previous to the first day of September next, whether the same shall have been offered at public sale or not.

An Act granting to the Counties or Parishes of each State and Territory of the United States, in which the Public Lands are situated, the Right of Pre-emption to Quarter Sections of Lands, for Seats of Justice, within the same.

[Approved May 25, 1824.]

(31.) SEC. I. *Be it enacted, &c.,* That there be granted to the several counties or parishes of each State or territory of the United States, where there are public lands, at the minimum price for which public lands of the United States are sold, the right of pre-emption to one quarter section of land, in each of the counties or parishes of said States and territories, in trust for said counties or parishes, respectively, for the establishing of seats of justice therein: *Provided,* That the proceeds of the sale of each of said quarter sections shall be appropriated for the purpose of erecting public buildings in the county or parish for which it is located, after deducting therefrom the amount originally paid for the same: *And Provided, further,* That the seat of justice for the said counties or parishes, respectively, shall be fixed previously to a sale of the adjoining lands within the county or parish for which the same is located.

(32.) SEC. II. That so much of such acts, heretofore passed, granting to States rights of pre-emption, for county or parish purposes, as require said seats of justice to be continued at or near the centre of each of said counties or parishes, be and the same is hereby repealed.

An Act for the relief of the Purchasers of Public Lands, and for the suppression of fraudulent Practices at the Public Sales of the Lands of the United States.

[Approved March 31, 1830.]

(33.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all purchasers, their heirs, or assignees of such of the public lands of the United States as were sold on a credit, and on which a further credit has been taken, under any of the laws passed for the relief of purchasers of public lands, and which lands have reverted to the United States, on account of the balance due thereon not having been paid or discharged agreeably to said relief laws, such persons may avail themselves of any one of the three following provisions contained in this section, to wit: 1st. They shall have a right of pre-emption of the same lands, until the fourth day of July, one thousand eight hundred and thirty-one, upon their paying into the proper office the sum per acre therefor, which shall, at the time of payment, be the minimum price per acre of the public lands of the United States, in addition to the amount heretofore paid thereon, and forfeited: *Provided,* That the price, including what has already been paid, and the amount to be paid, shall not, in any case, exceed three dollars and fifty cents per acre; 2nd. They shall have the right of completing the payment of said lands, by paying the balance of the principal debt due thereon, in cash, subject to a deduction of thirty-seven and a half per cent., as heretofore, at any time previous to the fourth day of July, one thousand eight hundred and thirty-one; 3rd. They shall have the right, within nine months from the passage of this act, in all cases where the price for which said lands were sold did not exceed two dollars and fifty cents per acre, to draw scrip for the amount paid thereon, in the manner prescribed in the act approved the twenty-third day of May, one thousand eight hundred and twenty-eight, entitled "An act for the relief of purchasers of public lands that have reverted for non-payment

of the purchase money ;" and which scrip shall be receivable in the same manner as directed by said act, except only that it shall not be taken in payment for lands hereafter bought at public sale.

(34.) SEC. II. *And be it further enacted*, That all purchasers, their heirs, or assignees, of such of the public lands of the United States as were sold on credit, and which lands have, by such persons, been relinquished under any of the laws passed for the relief of purchasers of public lands, and the amount paid thereon applied in payment of other lands retained by them, and which relinquished lands, or any part thereof, may now be in possession of such persons; or in case the certificate of purchase, and part payment of said lands, has been transferred by the persons now in possession of said lands, or part thereof, or the persons under whom the present occupants may hold such possession, to some other person not in possession thereof, and the payment made thereon applied by such other person, or his assignee, in payment for land held in his own name; in either case, the persons so in possession, shall have the right of pre-emption of the same lands, according to the legal subdivisions of sections, not exceeding the quantity of two quarter sections, in contiguous tracts, until the fourth day of July, one thousand eight hundred and thirty-one, upon their paying into the proper office, the sum per acre therefor, which shall, at the time of payment, be the minimum price per acre of the United States public lands; and in addition thereto, the same amount per acre heretofore paid thereon, and applied to other lands, subject to a deduction of thirty-seven and a half per cent., on the last mentioned sum: *Provided*, That the sum to be paid shall not, in any case, exceed three dollars and fifty cents per acre: *Provided, also*, That such persons only shall be entitled to the benefits of this section, who shall apply for the same, and prove their possession, to the satisfaction of the register and receiver of the district in which the land may lie, in the manner to be prescribed by the commissioner of the general land office, within nine months from the passage of this act; for which such register and receiver shall be entitled to receive from such applicants, the sum of fifty cents each: *And Provided, further*, That the provisions of this section shall not extend to any lands that have, in any manner, been disposed of by the United States.

(35.) SEC. III. *And be it further enacted*, That, on failure to apply for, and show a right of pre-emption, under the second section of this act, within the time allowed therefor; and also on failure to complete the payment on any of the lands, agreeably to the provisions of this act, within the period allowed for that purpose; in either case, the whole of such lands shall be forthwith offered for sale without delay.

(36.) SEC. IV. *And be it further enacted*, That if any person or persons shall, before or at the time of the public sale of any of the lands of the United States, bargain, contract or agree, or shall attempt to bargain, contract or agree with any other person or persons, that the last named person or persons shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or shall by intimidation, combination, or unfair management, hinder or prevent, or attempt to hinder or prevent, any person or persons from bidding upon or purchasing any tract or tracts of land so offered for sale, every such offender, his, her or their aiders and abettors, being thereof duly convicted, shall, for every such offense, be fined not

exceeding one thousand dollars, or imprisoned not exceeding two years, or both, in the discretion of the court.

(37.) SEC. V. *And be it further enacted*, That if any person or persons shall, before or at the time of the public sale of any of the lands of the United States, enter into any contract, bargain, agreement or secret understanding with any other person or persons, proposing to purchase such land, to pay or give to such purchasers for such land, a sum of money, or other article of property, over and above the price at which the land may or shall be bid off by such purchasers, every such contract, bargain, agreement or secret understanding, and every bond, obligation or writing of any kind whatsoever, founded upon or growing out of the same, shall be utterly null and void. And any person or persons being a party to such contract, bargain, agreement or secret understanding, who shall or may pay to such purchasers, any sum of money or other article of property, as aforesaid, over and above the purchase money of such land, may sue for and recover such excess from such purchasers in any court having jurisdiction of the same. And if the party aggrieved have no legal evidence of such contract, bargain, agreement or secret understanding, or of the payment of the excess aforesaid, he may, by bill in equity, compel such purchasers to make discovery thereof; and if in such case, the complainant shall ask for relief, the court in which the bill is pending, may proceed to final decree between the parties to the same: *Provided*, Every such suit, either in law or equity, shall be commenced within six years next after the sale of said land by the United States.

An Act to grant Pre-emption Rights to Settlers on the Public Lands.

[Approved May 29, 1830.]

(38.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That every settler or occupant of the public lands, prior to the passage of this act, who is now in possession, and cultivated any part thereof in the year one thousand eight hundred and twenty-nine, shall be and he is hereby authorized to enter, with the register of the land office, for the district in which such lands may lie, by legal subdivisions, any number of acres, not more than one hundred and sixty or a quarter section, to include his improvement, upon paying to the United States the then minimum price of said land: *Provided, however*, That no entry or sale of any land shall be made, under the provisions of this act, which shall have been reserved for the use of the United States, or either of the several States, in which any of the public lands may be situated.

(39.) SEC. II. *And be it further enacted*, That if two or more persons be settled upon the same quarter section, the same may be divided between the two first actual settlers, if, by a north and south, or east and west line, the settlement or improvement of each can be included in a half-quarter section; and in such case the said settlers shall each be entitled to a pre-emption of eighty acres of land elsewhere in said land district, so as not to interfere with other settlers having a right of preference.

(40.) SEC. III. *And be it further enacted*, That prior to any entries being made under the privileges given by this act, proof of settlement or improvement shall be made, to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to the rules to

be prescribed by the commissioner of the general land office for that purpose, which register and receiver shall each be entitled to receive fifty cents for his services therein. And that all assignments and transfers of the right of pre-emption given by this act, prior to the issuance of patents, shall be null and void.

(41.) SEC. IV. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States, beyond the time which has been or may be appointed for that purpose, by the President's proclamation; nor shall any of the provisions of this act be available to any person or persons who shall fail to make the proof and payment required before the day appointed for the commencement of the sales of lands, including the tract or tracts on which the right of pre-emption is claimed; nor shall the right of pre-emption, contemplated by this act, extend to any land, which is reserved from sale, by act of Congress, or by order of the President, or which may have been appropriated for any purpose whatsoever.

(42.) SEC. V. *And be it further enacted*, That this act shall be and remain in force for one year from and after its passage.

An Act supplementary to an Act to grant Pre-emption Rights to Settlers on Public Lands.

[Approved Jan. 23, 1832.]

(43.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the passage of this act, all persons who have purchased under an act entitled "An act to grant pre-emption rights to settlers on the public lands," approved the twenty-ninth of May, one thousand eight hundred and thirty, may assign and transfer their certificates of purchase, or final receipts, and patents may issue in the name of such assignee, anything in the act aforesaid to the contrary notwithstanding.

An Act supplementary to the several Laws for the Sale of Public Lands.

[Approved April 5, 1832.]

(44.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That from and after the first day of May next, all the public lands of the United States, when offered at private sale, may be purchased at the option of the purchaser, either in entire sections, half sections, quarter sections, half-quarter sections, or quarter-quarter sections; and in every case of a division of a half-quarter section, the line for the division thereof shall run east and west, and the corners and contents of quarter-quarter sections, which may thereafter be sold, shall be ascertained, as nearly as may be, in the manner and on the principles directed and prescribed by the second section of an act entitled "An act concerning the mode of surveying the public lands of the United States," passed on the eleventh day of February, eighteen hundred and five and fractional sections, containing fewer or more than one hundred and sixty acres, shall in like manner, as nearly as may be practicable, be subdivided into quarter-quarter sections, under such rules and regulations as may be prescribed by the secretary of the treasury: *Provided*, That this act shall not be construed to alter any special provision made by law for the sale of land in town lots: *And Provided, also*, That no person shall be permitted

to enter more than one half-quarter section of land under this act, in quarter-quarter sections, in his own name, or in the name of any other person, and in no case, unless he intends it for cultivation, or for the use of his improvement. And the person making application to make an entry under this act, shall file his or her affidavit, under such regulations as the secretary of the treasury may prescribe, that he or she makes the entry in his or her own name, for his or her own benefit, and not in trust for another: *Provided, further*, That all actual settlers, being house-keepers upon the public lands, shall have the right of pre-emption to enter, within six months after the passage of this act, not exceeding the quantity of one half-quarter section, under the provisions of this act, to include his or their improvements, under such regulations as have been or may be prescribed by the secretary of the treasury; and in cases where two persons shall live upon the same quarter section, subject to be entered under the provisions of this act, each shall have the right to enter that quarter-quarter section which included his improvements.

An Act supplemental to the "Act granting the Right of Pre-emption to Settlers on the Public Lands," approved the twenty-ninth day of May, eighteen hundred and thirty.

[Approved July 14, 1832.]

(45.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the occupants and settlers upon the public lands of the United States, who are entitled to a pre-emption according to the provisions of the act of Congress, approved the twenty-ninth day of May, eighteen hundred and thirty, and who have not been or shall not be enabled to make proof and enter the same within the time limited in said act, in consequence of the public surveys not having been made and returned, or where the land was not attached to any land district, or where the same has been reserved from sale on account of a disputed boundary between any State and territory, the said occupants shall be permitted to enter the said lands on the same conditions, in every respect, as are prescribed in said act, within one year after the surveys are made, or the land attached to a land district, or the boundary line established; and if the said lands shall be proclaimed for sale before the expiration of one year as aforesaid, then they shall be entered before the sale thereof.

(46.) SEC. II. *And be it further enacted*, That the occupants upon fractions shall be permitted, in like manner, to enter the same, so as not to exceed in quantity one quarter section; and if the fractions exceed a quarter section, the occupant shall be permitted to enter one hundred and sixty acres, to include his or their improvement, at the price aforesaid.

An Act to revive the Act entitled "An Act supplementary to the several Laws for the Sale of Public Lands."

[Approved March 2, 1833.]

(47.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases in which persons were settlers or occupants of the public land prior to the first day of May, one thousand eight hundred and thirty-two, and were authorized to enter under the provisions of the act entitled "An act

supplementary to the several laws for the sale of public lands," approved April fifth, one thousand eight hundred and thirty-two, and were prevented from making their entries, in consequence of the public surveys not having been made and returned, or where the land was not attached to any land district, or where the same has been reserved from sale in consequence of a disputed boundary between two States, or between a State and territory, the said occupants shall be permitted to enter the said lands on the same conditions, in every respect, as were prescribed in said act, within one year after the surveys are made, or the land attached to a land district, or the boundary line established; and if the land shall be proclaimed for sale before the expiration of one year as aforesaid, then the said settlers or occupants shall be permitted to enter before the sale thereof.

An Act to revive the Act entitled "An Act to grant Pre-emption Rights to Settlers on the Public Lands," approved May twenty-nine, one thousand eight hundred and thirty.

[Approved June 19, 1834.]

(48.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every settler or occupant of the public lands, prior to the passage of this act, who is now in possession, and cultivated any part thereof, in the year one thousand eight hundred and thirty-three, shall be entitled to all the benefits and privileges provided by the act entitled "An act to grant pre-emption rights to settlers on the public lands," approved May twenty-nine, one thousand eight hundred and thirty; and the said act is hereby revived and shall continue in force two years from the passage of this act, and no longer.

(49.) SEC. II. *And be it further enacted,* That where a person inhabits one quarter section and cultivates another, he shall be permitted to enter the one or the other at his discretion: *Provided,* Such occupant shall designate within six months from the passage of this act, the quarter section of which he claims the pre-emption under the same.

(50.) SEC. III. *And be it further enacted,* That all persons residing on the public lands, and cultivating the same, prior to the year eighteen hundred and twenty-nine, and who were deprived of the advantages of the law passed on the twenty-ninth May, eighteen hundred and thirty, by the constructions placed on said law by the secretary of the treasury, be and the same are hereby authorized to enter at the minimum price of the government one quarter section of the public lands, within said land district.

An Act to confirm the Sales of Public Lands in certain Cases.

[Approved July 2, 1836.]

(51.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where public lands taken from the bounds of a former land district, and included within the bounds of a new district, have been sold by the officers of such former district, under the pre-emption laws or otherwise, at any time prior to the opening of the land office in such new district, and in which the commissioner of the general land office shall be satisfied that the proceedings in other respects have been fair and regular, such entries and sales shall be and are hereby confirmed; and patents shall be issued thereupon, as in other cases.

(52.) SEC. II. *And be it further enacted,* That in all cases where any entry has been made under the pre-emption laws, pursuant to instructions sent to the register and receiver from the treasury department, and the proceedings have been in all other respects fair and regular, such entries and sales are hereby confirmed, and patents shall be issued thereon, as in other cases.

An Act to grant Pre-emption Rights to Settlers on the Public Lands.

[Approved June 22, 1838.]

(53.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every actual settler of the public lands, being the head of a family, or over twenty-one years of age, who was in possession and a housekeeper, by personal residence thereon, at the time of the passage of this act, and for four months next preceding, shall be entitled to all the benefits and privileges of an act entitled "An act to grant pre-emption rights to settlers on the public lands," approved May twenty-ninth, eighteen hundred and thirty, and the said act is hereby revived and continued in force two years: *Provided,* That where more than one person may have settled upon and cultivated any one quarter section of land, each one of them shall have an equal share or interest in the said quarter section, but shall have no claim, by virtue of this act, to any other land: *And Provided, always,* That this act shall not be so construed as to give a right of pre-emption to any person or persons, in consequence of any settlement or improvement made before the extinguishment of the Indian title to the land on which such settlement or improvement was made, or to the lands lately acquired by treaty with the Miami tribe of Indians, in the State of Indiana, of which proclamation was made by the President of the United States, on the twenty-second day of December, eighteen hundred and thirty-seven, or to any sections, or fractions of sections, of land included within the location of any incorporated town, or to the alternate sections or to other alternate sections granted to the use of any canal, railroad, or other public improvement, or to any portions of public lands, surveyed or otherwise, which have been actually selected as sites for cities or towns, lotted into smaller quantities than eighty acres, and settled upon and occupied for the purposes of trade, and not of agricultural cultivation and improvement, or to any land specially occupied or reserved for town lots, or other purposes, by authority of the United States: *And Provided, further,* That nothing herein contained shall be construed to affect any of the selections of public lands for the purposes of education, the use of salt springs, or for any other purpose, which may have been or may be made by any State, under existing laws of the United States; but this act shall not be so construed as to deprive those of the benefits of this act, who have inhabited, according to its provisions, certain fractions of the public lands within the land district of Palmyra, in the State of Missouri, which were reserved from sale in consequence of the surveys of Spanish and French grants, but are found to be without the lines of said grants. That before any person claiming the benefit of this law shall have a patent for the land which he may claim by having complied with its provisions, he shall make oath before some person authorized by law to administer the same, which oath, with the certificate of the person adminis-



tering it, shall be filed with the register of the proper land office when the land is applied for, and by said register sent to the office of the commissioner of public lands, that he entered upon the land which he claims, in his own right, and exclusively for his own use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatever, by which the title which he might acquire from the government of the United States should inure to the use or benefit of any one except himself, or to convey or transfer the said land, or the title which he may acquire to the same, to any other person or persons, whatever, at any subsequent time; and if such person, claiming the benefit of this law as aforesaid, shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, forfeit the money which he may have paid for the land, and all right and title to the said land, and any grant or conveyance which he may have made in pursuance of such agreement or contract, as aforesaid, shall be void, except in the hands of a purchaser in good faith, for a valuable consideration, without notice. And the certificate which shall be filed with the commissioner as aforesaid, shall be taken to be conclusive evidence that the oath was legally administered: *And Provided, further,* That it shall be the duty of the President of the United States to cause to be reserved from sale or entry, under the provisions of this or any other law of the United States, any tract or tracts of land reserved to any Choctaw, under the provisions of the treaty of Dancing Rabbit creek, of one thousand eight hundred and thirty, and also to reserve from sale or entry, a sufficient quantity of the lands acquired by said treaty, upon which no such settlement or improvement has been made, as would entitle the settler or improver to a right of pre-emption under this act, to satisfy the claims of such Indians as may have been entitled to reservations under the said treaty, and whose lands may have been sold by the United States, on account of any default, neglect or omission of duty on the part of any officers of the United States; such reservation from sale to continue until the claims to reservations under said treaty shall be investigated by the board of commissioners appointed for that purpose, and their report finally acted on by Congress.

An Act supplemental to the Act entitled "An act to grant Pre-emption Rights to Settlers on the Public Lands," approved June twenty-second, eighteen hundred and thirty-eight.

[Approved June 1, 1840.]

(54.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where a settler on the public lands may reside, or have his dwelling-house upon one quarter section, and cultivate land on another and different quarter section, such settler may make his election under the act to which this is a supplement, to enter either of said quarter sections, or legal subdivisions of each, so as not to exceed one quarter section in all.

(55.) SEC. II. *And be it further enacted,* That in all cases where an individual may have made an improvement on the public land, and had afterward leased or rented such improvement to another person, who was in possession of the same on the twenty-second of June, eighteen hundred and thirty-eight, and for the period of four months next preceding, or when the lessor and lessee, together, occupied such improvement during said four months, the person who made such improvement, and so rented or leased the

same, shall be entitled to the right of pre-emption, notwithstanding he may have been out of possession of his improvement during said four months, or any part thereof.

(56.) SEC. III. *And be it further enacted,* That every settler on the public lands, which were not surveyed at the passage of the act to which this is a supplement, and who, since the survey of such public lands, has been ascertained to have resided at the date of said act, and for four months preceding, on a sixteenth section, set apart for the support of schools in any township, shall be entitled to enter at the minimum price any other quarter section of the public lands lying in the same land district, to which no other person has the right of pre-emption, on making satisfactory proof of his or her residence as aforesaid on such sixteenth section, before the register and receiver of the land office of said district.

(57.) SEC. IV. *And be it further enacted,* That every person who may have been a settler, within the meaning of the act to which this is a supplement, on any public land before its selection by any State for the purposes of a seminary of learning, under any act of Congress authorizing such selection, on satisfactory proof of the facts before the register and receiver of the district in which his improvements were situated, shall be permitted to enter at, the minimum price, any other quarter section lying in the same land district, to which no other person has the right of pre-emption.

(58.) SEC. V. *And be it further enacted,* That the "Act to grant pre-emption rights to settlers on the public lands," approved June twenty-second, eighteen hundred and thirty-eight, be, and the same is hereby, continued in full force till the twenty-second day of June, eighteen hundred and forty-two; and the right of pre-emption, under its provisions, shall be and hereby is extended to all settlers on the public lands at the date of this act, with the same exceptions, whether general or special, and subject to all the limitations and conditions contained in the above-recited act, and with the explanatory provisions of the preceding sections of this act; and nothing in the last proviso of the act of twenty-second of June, eighteen hundred and thirty-eight, shall be so construed as to defeat any right of pre-emption accruing under said act, or under this act, or under any preceding act of Congress, nor shall said pre-emption claims be defeated by any contingent Choctaw location.

An Act to appropriate the Proceeds of the Sales of the Public Lands, and to grant Pre-emption Rights.

[Approved Sept. 4, 1841.]

(59.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-one, there be allowed and paid to each of the States of Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas and Michigan, over and above what each of the said States is entitled to by the terms of the compacts entered into between them and the United States, upon their admission into the Union, the sum of ten per centum upon the net proceeds of the sales of the public lands, which, subsequent to the day aforesaid, shall be made within the limits of each of said States respectively: *Provided,* That the sum so allowed to the said States,

respectively, shall be in nowise affected or diminished on account of any sums which have been heretofore, or shall be hereafter, applied to the construction or continuance of the Cumberland road, but that the disbursements for the said road shall remain, as heretofore, chargeable on the two per centum fund provided for by compacts with several of the said States.

(60.) SEC. II. *And be it further enacted*, That after deducting the said ten per centum, and what, by the compacts aforesaid, has heretofore been allowed to the States aforesaid, the residue of the net proceeds,—which net proceeds shall be ascertained by deducting from the gross proceeds all the expenditures of the year for the following objects: Salaries and expenses on account of the general land office; expenses for surveying public lands; salaries and expenses in the surveyor general's offices; salaries, commissions and allowances to the registers and receivers; the five per centum to new States, of all the public lands of the United States, wherever situated, which shall be sold subsequent to the said thirty-first day of December,—shall be divided among the twenty-six States of the Union and the District of Columbia, and the territories of Wisconsin, Iowa and Florida, according to their respective federal representative population as ascertained by the last census, to be applied by the legislatures of the said States to such purposes as the said legislature may direct: *Provided*, That the distributive share to which the District of Columbia shall be entitled, shall be applied to free school, or education in some other form, as Congress may direct: *And Provided, also*, That nothing herein contained shall be construed to the prejudice of future applications for a reduction of the price of the public lands, or to the prejudice of applications for a transfer of the public lands, on reasonable terms, to the States within which they lie, or to make such future disposition of the public lands, or any part thereof, as Congress may deem expedient.

(61.) SEC. III. *And be it further enacted*, That the several sums of money received in the treasury as the net proceeds of the sales of the public lands shall be paid at the treasury, half-yearly, on the first days of January and July in each year, during the operation of this act, to such person or persons as the respective legislatures of the said States and territories, or the governors thereof, in case the legislatures shall have made no such appointment, shall authorize and direct to receive the same.

(62.) SEC. IV. *And be it further enacted*, That any sum of money, which at any time may become due and payable to any State of the Union, or to the District of Columbia, by virtue of this act, as the portion of the said State or district, of the proceeds of the sales of the public lands, shall be first applied to the payment of any debt, due and payable from the said State or district to the United States: *Provided*, That this shall not be construed to extend to the sums deposited with the States under the act of Congress of twenty-third of June, eighteen hundred and thirty-six, entitled "An act to regulate the deposits of the public money," nor to any sums apparently due to the United States as balances of debts growing out of the transactions of the Revolutionary war.

(63.) SEC. V. *And be it further enacted*, That this act shall continue and be in force until otherwise provided by law, unless the United States shall become involved in war with any foreign power, in which event, from the commencement of hostilities, this act shall be suspended during the continuance of such war: *Provided, nevertheless*, That if, prior to the expiration

of this act, any new State or States shall be admitted into the Union, there be assigned to such new State or States, the proportion of the proceeds accruing after their admission into the Union, to which such State or States may be entitled, upon the principles of this act, together with what such State or States may be entitled to by virtue of compacts to be made on their admission into the Union.

(64.) SEC. VI. *And be it further enacted*, That there shall be annually appropriated for completing the surveys of said lands, a sum not less than one hundred and fifty thousand dollars; and the minimum price at which the public lands are now sold at private sale shall not be increased, unless Congress shall think proper to grant alternate sections along the line of any canal or other internal improvement, and at the same time to increase the minimum price of the sections reserved; and in case the same shall be increased by law, except as aforesaid, at any time during the operation of this act, then so much of this act as provides that the net proceeds of the public lands shall be distributed among the several States, shall, from and after the increase of the minimum price thereof, cease and become utterly null and of no effect, anything in this act to the contrary notwithstanding: *Provided*, That if, at any time during the existence of this act, there shall be an imposition of duties on imports inconsistent with the provisions of the act of March second, one thousand eight hundred and thirty-three, entitled "An act to modify the act of the fourteenth of July, one thousand eight hundred and thirty-two, and all other acts imposing duties on imports," and beyond the rate of duty fixed by that act, to wit: Twenty per cent. on the value of such imports, or any of them, then the distribution provided in this act shall be suspended and shall so continue until this cause of its suspension shall be removed, and when removed, if not prevented by other provisions of this act, such distribution shall be resumed.

(65.) SEC. VII. *And be it further enacted*, That the secretary of the treasury may continue any land district in which is situated the seat of government of any one of the States, and may continue the land office in such district, notwithstanding the quantity of land unsold in such district may not amount to one hundred thousand acres, when, in his opinion, such continuance may be required by public convenience, or in order to close the land system in such State at a convenient point, under the provisions of the act on that subject, approved twelfth June, one thousand eight hundred and forty.

(66.) SEC. VIII. *And be it further enacted*, That there shall be granted to each State specified in the first section of this act, five hundred thousand acres of land for the purposes of internal improvement: *Provided*, That to each of the said States which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received as aforesaid, make five hundred thousand acres, the selections in all of the said States, to be made within their limits respectively in such manner as the legislatures thereof shall direct; and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, which said locations may be made at any time after the lands of the

United States in said States respectively, shall have been surveyed according to existing laws. And there shall be and hereby is granted to each new State that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such State before its admission, and while under territorial government, for purposes of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid.

(67.) SEC. IX. *And be it further enacted*, That the lands herein granted to the States above named, shall not be disposed of at a price less than one dollar and twenty-five cents per acre, until otherwise authorized by a law of the United States; and the net proceeds of the sales of said lands shall be faithfully applied to objects of internal improvement within the States aforesaid, respectively, namely: Roads, railways, bridges, canals and improvement of water-courses, and draining of swamps; and such roads, railways, canals, bridges and water-courses, when made or improved, shall be free for the transportation of the United States mail, and munitions of war, and for the passage of their troops, without the payment of any toll whatever.

(68.) SEC. X. *And be it further enacted*, That from and after the passage of this act, every person being the head of a family, or widow, or single man, over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen, as required by the naturalization laws, who since the first day of June, A. D. eighteen hundred and forty, has made or shall hereafter make a settlement in person on the public lands to which the Indian title had been at the time of such settlement extinguished, and which has been, or shall have been, surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be and is hereby authorized to enter with the register of the land office for the district in which such land may lie, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price for such land, subject, however, to the following limitations and exceptions: No person shall be entitled to more than one pre-emptive right by virtue of this act, no person who is the proprietor of three hundred and twenty acres of land in any State or territory of the United States, and no person who shall quit or abandon his residence or his own land to reside on the public land in the same State or territory, shall acquire any right of pre-emption under this act; no lands included in any reservation, by any treaty, law or proclamation of the President of the United States, or reserved for salines, or for other purposes; no land reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement; no sections or fractions of sections included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for any city or town: no parcel or lot of land actually settled and occu-

pled for the purposes of trade and not agriculture; and no lands on which are situated any known salines or mines, shall be liable to entry under and by virtue of the provisions of this act. And so much of the proviso of the act of twenty-second of June, eighteen hundred and thirty-eight, or any order of the President of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing Rabbit creek, be and the same is hereby repealed: *Provided*, That such repeal shall not affect any title to any tract of land secured in virtue of said treaty.

(69.) SEC. XI. *And be it further enacted*, That when two or more persons shall have settled on the same quarter section of land, the right of pre-emption shall be in him or her who made the first settlement, provided such persons shall conform to the other provisions of this act; and all questions as to the right of pre-emption arising between different settlers, shall be settled by the register and receiver of the district within which the land is situated, subject to an appeal to and a revision by the secretary of the treasury of the United States.

(70.) SEC. XII. *And be it further enacted*, That prior to any entries made under and by virtue of the provisions of this act, proof of the settlement and improvement thereby required, shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the secretary of the treasury, who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

(71.) SEC. XIII. *And be it further enacted*, That before any person claiming the benefit of this act shall be allowed to enter such lands, he or she shall make oath before the receiver or register of the land district in which the land is situated, (who are hereby authorized to administer the same,) that he or she has never had the benefit of any right of pre-emption under this act; that he or she is not the owner of three hundred and twenty acres of land in any State or territory of the United States, nor hath he or she settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not, directly or indirectly, made an agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the government of the United States, should inure in whole or in part, to the benefit of any person except himself or herself; and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of *bona fide* purchasers, for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering such oath, to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the general land office, either of which shall be good and sufficient evidence that such oath was administered according to law.

(72.) SEC. XIV. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States beyond the

time which has been or may be appointed by the proclamation of the President, nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required before the day appointed for the commencement of the sales as aforesaid.

(73.) SEC. XV. *And be it further enacted*, That whenever any person has settled or shall settle and improve a tract of land, subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall, in the first case, within three months after the passage of the same, and in the last, within thirty days next after the date of such settlement, file with the register of the proper district, a written statement, describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act; and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

(74.) SEC. XVI. *And be it further enacted*, That the two per cent. of the net proceeds of the lands sold, or that may hereafter be sold, by the United States in the State of Mississippi, since the first day of December, eighteen hundred and seventeen, and by the act entitled "An act to enable the people of the western part of the Mississippi 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 all acts supplemental thereto reserved for the making of a road or roads leading to said State, be and the same is hereby relinquished to the State of Mississippi, payable in two equal installments; the first to be paid on the first of May, eighteen hundred and forty-two, and the other on the first of May, eighteen hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may accrue, after said period: *Provided*, That the legislature of said State shall first pass an act, declaring their acceptance of said relinquishment in full of said fund, accrued and accruing, and also embracing a provision, to be unalterable without the consent of Congress, that the whole of said two per cent. fund shall be faithfully applied to the construction of a railroad, leading from Brandon, in the State of Mississippi, to the eastern boundary of said State, in the direction, as near as may be, of the town of Selma, Cahaba and Montgomery, in the State of Alabama.

(75.) SEC. XVII. *And be it further enacted*, That the two per cent. of the net proceeds of the lands sold by the United States, in the State of Alabama, since the first day of September, eighteen hundred and nineteen, and reserved by the act entitled "An act to enable the people of Alabama 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," for the making of a road or roads leading to the said State, be and the same is hereby relinquished to the said State of Alabama, payable in two equal installments, the first to be paid on the first day of May, eighteen hundred and forty-two, and the other on the first day of May, eighteen hundred and forty-three, so far as the same may then have accrued, and

quarterly, as the same may thereafter accrue: *Provided*, That the legislature of said State shall first pass an act declaring their acceptance of said relinquishment, and also embracing a provision, to be unalterable without the consent of Congress, that the whole of said two per cent. fund shall be faithfully applied, under the direction of the legislature of Alabama, to the connection, by some means of internal improvement, of the navigable waters of the bay of Mobile with the Tennessee river, and to the construction of a continuous line of internal improvements, from a point on the Chattahoochee river, opposite West Point, in Georgia, across the State of Alabama, in a direction to Jackson, in the State of Mississippi.

An Act to confirm the Sale of Public Lands in certain Cases.

[Approved August 26, 1842.]

(76.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases when any entry has been made, under the pre-emption laws, of land which was public land, subject to sale at the date of such entry, and when patents for the same have not been issued from the general land office, because of the original tract claimed, or the float arising therefrom, exceeding the quantity specified in the law, or when the adjudication has been made by the receiver and the clerk of the register, acting in the stead of the register, or when the proof upon which the claim is founded is not in the form, nor full, as to all the facts required by law, but substantially so, such entries and sales are hereby confirmed, and patents shall be issued thereon, as in other cases: *Provided*, That the secretary of the treasury shall be satisfied that such entries have been in other respects fair and regular, and that the evidence sustains the claim; that they are not contested by other persons claiming the same, and that no fraud shall appear in them: *And Provided, also*, That the act of fourth September, eighteen hundred and forty-one, entitled "An act to appropriate the proceeds of the sales of public lands, and to grant pre-emption rights," shall be so construed as not to confer on any one a right of pre-emption by reason of a settlement made on a tract heretofore sold under a prior pre-emption law, or at private entry, when such prior pre-emption or entry has not been confirmed by the general land office, on account of any alleged defect therein, and when such tract has passed into the hands of an innocent and *bona fide* purchaser.

An Act to authorize the Investigation of alleged Frauds under the Pre-emption Laws and for other Purposes.

[Approved March 8, 1843.]

(77.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the commissioner of the general land office be and he hereby is authorized to appoint a competent agent, whose duty it shall be, under direction of said commissioner, to investigate, upon oath, the cases of fraud under the pre-emption laws, alleged to exist in the Columbus land district, in the State of Mississippi, referred to in the late annual report of said commissioner, communicated to Congress by letter of the secretary of the treasury, dated December the fifteenth, one thousand eight hundred and forty-two; and that such agent shall examine all witnesses who may be brought before him by

the individual or individuals alleging the fraud, as well as those witnesses who may be produced by the parties in interest, to sustain said claims; and that he be and is hereby invested with power to administer to such witnesses an oath to speak the truth in regard to any question which may be deemed necessary to the full examination of the cases so alleged to be fraudulent; and such testimony shall be reduced to writing, and subscribed by each witness, and the same returned to the commissioner, with the opinion of said agent on each claim; and any witness, so examined before the said agent, who shall swear willfully and falsely in regard to any matter or thing touching such examination, shall be subject, on conviction, to all the pains and penalties of perjury; and it shall be the duty of the commissioner, to decide the cases thus returned, and finally to settle the matter in controversy, subject alone to an appeal to the secretary of the treasury: *Provided*, That the power conferred by this section upon such agent is hereby limited to the term of one year from and after the date of this act; and the compensation paid to said agent shall not exceed three dollars per day for each day he may be necessarily engaged in the performance of the duties required by this section.

(78.) SEC. II. *And be it further enacted*, That in any case, where a party entitled to claim the benefits of any of the pre-emption laws shall have died before consummating his claim, by filing, in due time, all the papers essential to the establishment of the same, it shall be competent for the executor or administrator of the estate of such party, or one of the heirs, to file the necessary papers to complete the same: *Provided*, That the entry in such cases shall be made in favor of "the heirs" of the deceased pre-emptor, and a patent thereon shall cause the title to inure to said heirs, as if their names had been specially mentioned.

(79.) SEC. III. *And be it further enacted*, That every settler on section sixteen, reserved for the use of schools, or on other reserves or land covered by private claims of others, which was not surveyed at the time of such settlement, and who shall otherwise come within the provisions of the several pre-emption laws in force at the time of the settlement, upon proof thereof before the register of the proper land office, shall be entitled to enter, at the minimum price, any other quarter section, or fractional section, or fractional quarter section, in the land district in which such school section or reserve or private claim may lie, so as not to exceed one hundred and sixty acres, not reserved from sale, or in the occupancy of any actual *bona fide* settler: *Provided*, Such settlement was made before the date of the act of fourth September, eighteen hundred and forty-one, and after the extinguishment of the Indian title.

(80.) SEC. IV. *And be it further enacted*, That where an individual has filed, under the late pre-emption law, his declaration of intention to claim the benefits of said law for one tract of land, it shall not be lawful for the same individual at any future time, to file a second declaration for another tract.

(81.) SEC. V. *And be it further enacted*, That claimants under the late pre-emption law, for land not yet proclaimed for sale, are required to make known their claims, in writing, to the register of the proper land office, within three months from the date of this act, when the settlement has been already made, and within three months from the time of the settle-

ment when such settlement shall hereafter be made, giving the designation of the tract, and the time of settlement; otherwise his claim to be forfeited, and the tract awarded to the next settler, in the order of time, on the same tract of land, who shall have given his notice, and otherwise complied with the conditions of the law.

(82.) SEC. VI. *And be it further enacted*, That whenever the vacancy of the office either of register or receiver, or of both, shall render it impossible for the claimant to comply with any requisition of any of the pre-emption laws within the appointed time, such vacancy shall not operate to the detriment of the party claiming, in respect to any matter essential to the establishment of his claim: *Provided*, That such requisition is complied with within the same period after the disability is removed, as would have been allowed him had such disability not existed.

(83.) SEC. VII. *And be it further enacted*, That where a settler on the public lands may reside on a quarter section, a fractional quarter section, or a fraction of a section less than one hundred and sixty acres, and cultivated land on any other and different tract of either of the descriptions aforesaid, he or she shall be entitled, under the act of June twenty-two, one thousand eight hundred and thirty-eight, to the same privileges of a choice between two legal subdivisions of each, so as to include his or her house and farm, not to exceed one hundred and sixty acres in all, as is granted by the first section of that act, to settlers residing on a quarter section, and cultivating on another and different quarter.

(84.) SEC. VIII. *And be it further enacted*, That where two or more persons are residing on any of the species of tracts specified in section seven of this act, as required by the acts of the twenty-second of June, one thousand eight hundred and thirty-eight, and first of June, one thousand eight hundred and forty, and any one or more of said settlers may have cultivated land during the period of residence required by either of said acts, on another and different tract, or other and different tracts, the latter mentioned settlers shall be entitled to the option of entering the tract lived on, jointly with the other or others, or of abandoning the tract lived on to those who have not cultivated land as above required, and entering the tract or tracts cultivated, so as not to exceed one hundred and sixty acres to any one settler, who, by virtue of this section, is entitled to a separate entry; or such joint settlers may jointly enter the tract so jointly occupied by them, and in addition enter other contiguous unoccupied lands, by legal subdivisions, so as not to exceed one hundred and sixty acres in all to each of such joint settlers: *Provided*, That the extended privileges granted to pre-emptors by this act, shall not be construed to deprive any other actual settler of his or her previous and paramount right of pre-emption, or to extend to lands reserved for any purpose whatever.

(85.) SEC. IX. *And be it further enacted*, That all persons coming within the tenth section of the act of the fourth of September, eighteen hundred and forty-one, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," shall be entitled to the right of pre-emption under its provisions, notwithstanding such persons claiming the pre-emption shall have settled upon and improved the lands claimed before the same were surveyed: *Provided*, Such settlements were made before the date of the aforesaid act, and after the extinguishment of



the Indian title. And said act shall not be so construed as to preclude any person who may have filed a notice of intention to claim any tract of land by pre-emption under said act, from the right allowed by law to others to purchase the same by private entry after the expiration of the right of pre-emption.

An Act for the relief of the Citizens of Towns upon the Lands of the United States under certain circumstances.

[Approved May 23, 1844.]

(86.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever any portion of the surveyed public lands has been or shall be settled upon and occupied as a town site, and therefore not subject to entry under the existing pre-emption laws, it shall be lawful, in case such town or place shall be incorporated, for the corporate authorities thereof, and if not incorporated, for the judges of the county court for the county in which such town may be situated, to enter, at the proper land office, and at the minimum price, the land so settled and occupied, in trust, for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such rules and regulations as may be prescribed by the legislative authority of the State or territory in which the same is situated: *Provided,* That the entry of the land intended by this act be made prior to the commencement of the public sale of the body of land in which it is included, and that the entry shall include only such land as is occupied by the town, and be made in conformity to the legal subdivisions of the public lands authorized by the act of April twenty-fourth, one thousand eight hundred and twenty, and shall not, in the whole exceed, three hundred and twenty acres: *And Provided, also,* That any act of said trustees, not made in conformity to the rules and regulations herein alluded to, shall be void and of none effect: *And Provided, also,* That the corporate authorities of the town of Weston, in the county of Platte, State of Missouri, or the county court of Platte county, in said State, shall be allowed twelve months from and after the passage of this act, to enter at the proper land office, the lands upon which such town is situate.

An Act providing for the Adjustment of all suspended Pre-emption Land Claims in the several States and Territories.

[Approved August 3, 1846.]

(87.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the commissioner of the general land office be and he is hereby authorized and empowered to determine, upon principles of equity and justice, as recognized in courts of equity, and in accordance with general equitable rules and regulations, to be settled by the secretary of the treasury, the attorney general and commissioner, conjointly, consistently with such principles, all cases of suspended entries now existing in said land office, and to judge in what cases patents shall issue upon the same: *Provided, however,* That such adjudications shall be made within two years from the passage of this act, and be first approved by the secretary of the treasury and the attorney

general, and shall only operate to divest the United States of the title of the land embraced by such entries, without prejudice to the rights of conflicting claimants.

(88.) SEC. II. *And be it further enacted,* That the power and jurisdiction given by this act, to the commissioner of the general land office, shall cease and determine at the expiration of two years from the passage thereof, and such commissioner be and he is hereby directed to report to Congress at the first session after the said adjudications shall have been made, a list of the same, and under such classes as he may deem necessary, and of the principles upon which such class was determined.

(89.) SEC. III. *And be it further enacted,* That the said commissioner shall arrange his decisions into two classes; the first class to embrace all such cases of equity as may be finally confirmed by the board aforesaid, and the second class to embrace all such cases as the board reject and decide to be invalid.

(90.) SEC. IV. *And be it further enacted,* That for all lands covered by entries or sales which are placed in the first class, patents shall issue to the claimants; and all lands embraced by entries or sales placed in the second class, shall *ipso facto* revert to and become part of the public domain.

(91.) SEC. V. *And be it further enacted,* That it shall and may be lawful for the commissioner of the general land office to order into market, after due notice, without the formality and expense of proclamation of the President, all lands of the second class, though heretofore unproclaimed and unoffered, and such other isolated or disconnected tracts or parcels of unoffered lands, which in his judgment it would be proper to expose to sale in like manner: *Provided,* That public notice of at least thirty days shall be given by the land officers of the district in which such lands may be situated, pursuant to the directions of the commissioner aforesaid.

An Act in explanation of an Act entitled "An Act to appropriate the Proceeds of the Public Lands, and to grant Pre-emption Rights.

[Approved June 13, 1848.]

(92.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the fifth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved on the fourth day of September, one thousand eight hundred and forty-one, shall be so construed as to suspend only such portions of said act as precede said fifth section, (relative to the distribution of the proceeds of the sales of the public lands,) that being hereby declared to be the true intent and meaning of said fifth section of the act aforesaid.

An Act to revive and continue in force for a limited Time the Provisions of an Act relative to suspended Entries of Public Land.

[Approved March 3, 1853.]

(93.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the several provisions of the act approved August third, eighteen hundred and forty-six, entitled "An act providing for the adjustment of all suspended pre-emption land claims in the several States and territories," be and the



same are hereby revived and continued in force for the term of ten years from the date hereof; and those provisions are hereby declared applicable as well to cases which were inadvertently omitted to be acted on under said act, as to those of a like character and description which have arisen between the date of said act and the present time, and shall be regarded as applying to locations by bounty land warrants, as well as to ordinary entries or sales.

(94.) SEC. II. *And be it further enacted*, That in all cases where patents have been issued on entries which were entitled to be confirmed under said act, such patents may be surrendered, and the officers at the time of such surrender, who by said act are constituted the board of adjudication, are hereby authorized and empowered to confirm such entries; and upon the cancelling of the outstanding patent, the commissioner of the general land office is hereby authorized to issue a new patent, on such confirmation, to the persons who made such entries, to their heirs or to their assigns.

An Act to extend Pre-emption Rights to certain Lands therein mentioned.

[Approved March 3, 1853.]

(95.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the pre-emption laws of the United States, as they now exist, be and they are hereby extended over the alternate reserved sections of public lands along the lines of all the railroads in the United States wherever public lands have been or may be granted by acts of Congress; and that it shall be the privilege of the persons residing on any of said reserved lands to pay for the same in soldiers' bounty land warrants, estimated at a dollar and twenty-five cents per acre, or in gold and silver, or both together, in preference to any other person, and at any time before the same shall be offered for sale at auction: *Provided*, That no person shall be entitled to the benefit of this act who has not settled and improved, or shall settle and improve, such lands prior to the final allotment of the alternate sections to such railroads by the general land office: *And Provided, further*, That the price to be paid shall in all cases be two dollars and fifty cents per acre, or such other minimum price as is now fixed by law, or may be fixed upon lands hereafter granted; and no one person shall have the right of pre-emption to more than one hundred and sixty acres: *And Provided, further*, That any settler who has settled or may hereafter settle on lands heretofore reserved on account of claims under French, Spanish or other grants, which have been or shall be hereafter declared by the supreme court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by this act and the act of fourth of September, eighteen hundred and forty-one, entitled "An act to appropriate the proceeds of the public lands, and to grant pre-emption rights," after the lands shall have been released from reservation, in the same manner as if no reservation existed.

An Act for the relief of Settlers on Lands reserved for Railroad Purposes.

[Approved March 27, 1854.]

(96.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That every settler on public lands which have been or may be withdrawn from market in con-

sequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to pre-emption at the ordinary minimum to the lands settled on and cultivated by them: *Provided*, They shall prove up their rights according to such rules and regulations as may be prescribed by the secretary of the interior, and pay for the same before the day that may be fixed by the President's proclamation for the restoration of said lands to market.

An Act to graduate and reduce the Price of the Public Lands to actual Settlers and Cultivators.

[Approved August 4, 1854.]

(97.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all of the public lands of the United States which shall have been in market for ten years or upwards, prior to the time of application to enter the same under the provisions of this act, and still remaining unsold, shall be subject to sale at the price of one dollar per acre; and all of the lands of the United States that shall have been in market for fifteen years or upwards, as aforesaid, and still remaining unsold, shall be subject to sale at seventy-five cents per acre; and all of the lands of the United States that shall have been in market for twenty years or upwards, and still remaining unsold, shall be subject to sale at fifty cents per acre; and all of the lands of the United States that shall have been in market for twenty-five years and upwards, as aforesaid, and still remaining unsold, shall be subject to sale at twenty-five cents per acre; and all lands of the United States that shall have been in market for thirty years or more, shall be subject to sale at twelve-and-a-half cents per acre: *Provided*, This section shall not be so construed as to extend to lands reserved to the United States, in acts granting land to States for railroad or other internal improvements, or to mineral lands held at over one dollar and twenty-five cents per acre.

(98.) SEC. II. *And be it further enacted*, That upon every reduction in price under the provisions of this act, the occupant and settler upon the lands shall have the right of pre-emption at such graduated price, upon the same terms, conditions, restrictions and limitations, upon which the public lands of the United States are now subject to the right of pre-emption, until within thirty days preceding the next graduation or reduction that shall take place; and if not so purchased, shall again be subject to right of pre-emption for eleven months as before, and so on from time to time, as reductions take place: *Provided*, That nothing in this act shall be so construed as to interfere with any right which has or may accrue by virtue of any act granting pre-emption to actual settlers upon public lands.

(99.) SEC. III. *And be it further enacted*, That any person applying to enter any of the aforesaid lands shall be required to make affidavit before the register or receiver of the proper land office, that he or she enters the same for his or her own use, and for the purpose of actual settlement and cultivation, or for the use of an adjoining farm or plantation, owned or occupied by him or herself, and together with said entry, he or she has not acquired from the United States, under the provisions of this act, more than three hundred and twenty acres, according to the established surveys; and if any person or persons taking such oath or affidavit, shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury.

## CHAPTER VIII.

## SWAMP, STATE AND CANAL LANDS.

## SECTION

1. Illinois authorized to survey and mark, through public lands, the route of a canal, connecting Illinois river with the southern bend of lake Michigan; and 90 feet on each side reserved and vested in the State for a canal; on condition, &c.
2. Sections through which the canal passes, reserved until, &c.
3. A certain quantity of land to be allowed said State for opening a canal to unite the waters of the Illinois river with those of lake Michigan.
4. Duty of the governor of said State, when the canal is located.
5. Power given to the legislature.
6. The eighth section, act September 4, 1841, so far as relates to the selection of lands therein mentioned, modified.

## SECTION

7. Governor of Illinois authorized to cause lands to be selected, in lieu of others granted the Illinois and Michigan canal.
8. Selections to be reported to secretary of the treasury, and approved by the President.
9. Swamp and overflowed lands in State of Arkansas granted to State.
10. Secretary of the interior to make out list and plats of said land, and when requested, to grant a patent vesting the same in the State of Arkansas.
11. In making out list, what included.
12. Provisions of this act extended to other States possessing such lands.
13. Patents to issue for swamp lands, to purchasers and locators, prior to issuing of patent to the States.
14. Indemnity to the States when they lose swamp lands under this act.

An Act to authorize the State of Illinois to open a Canal through the Public Lands, to connect the Illinois River with Lake Michigan.

[Approved March 30, 1822.]

(1.) SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the State of Illinois be and is hereby authorized to survey and mark through the public lands of the United States, the route of the canal connecting the Illinois river with the southern bend of lake Michigan; and ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States, except in cases hereinafter provided for, and the use thereof forever shall be and the same is hereby vested in the said State for a canal, and for no other purpose whatever; on condition, however, that if said State does not survey and direct by law said canal to be opened, and return a complete map thereof to the treasury department, within three years from and after the passing of this act; or if the said canal be not completed, suitable for navigation, within twelve years thereafter; or if said ground shall ever cease to be occupied by and used for a canal suitable for navigation; the reservation and grant hereby made shall be void and of none effect: *Provided always, and it is hereby enacted and declared,* That nothing in this act contained, or that shall be done in pursuance thereof, shall be deemed or construed to imply any obligation on the part of the United States to appropriate any money to defray the expense of surveying or opening said canal: *Provided also, and it is hereby further enacted and declared,* That the said canal when completed shall be and forever remain a public highway for the use of the government of the United States, free from any toll or other charge whatever, for any property of the United States or persons in their service passing through the same.

(2.) SEC. II. *And be it further enacted,* That every section of land through which said canal route may pass, shall be and the same is hereby reserved from future sale, until hereafter specially directed by law; and the said State is hereby authorized and permitted, without waste, to use any materials on the public lands adjacent to said canal, that may be necessary for its construction.

An Act to grant a quantity of Land to the State of Illinois, for the purpose of aiding in opening a Canal to connect the Waters of the Illinois River with those of Lake Michigan.

[Approved March 2, 1827.]

(3.) SEC. I. *Be it enacted, &c.* That there be and hereby is granted to the State of Illinois, for the purpose of aiding the said State in opening a canal to unite the waters of the Illinois river with those of lake Michigan, a quantity of land equal to one-half of five sections in width, on each side of said canal, and reserving each alternate section to the United States, to be selected by the commissioner of the land office under the direction of the President of the United States, from one end of the said canal to the other; and the said lands shall be subject to the disposal of the legislature of the said State, for the purpose aforesaid and no other: *Provided, That* the said canal, when completed, shall be and forever remain a public highway for the use of the government of the United States free from any toll or other charge, whatever, for any property of the United States, or persons in their service, passing through the same: *Provided, That* said canal shall be commenced within five years, and completed within twenty years, or the State shall be bound to pay to the United States the amount of any lands previously sold, and that the title to purchasers under the State shall be valid.

(4.) SEC. II. That so soon as the route of the said canal shall be located and agreed on by the said State, it shall be the duty of the governor thereof, or such other person or persons as may have been or shall hereafter be authorized to superintend the construction of said canal, to examine and ascertain the particular sections to which the said State will be entitled under the provisions of this act, and report the same to the secretary of the treasury of the United States.

(5.) SEC. III. That the said State, under the authority of the legislature thereof, after the selection shall have been so made, shall have power to sell and convey the whole or any part of the said land, and to give a title in fee simple therefor to whomsoever shall purchase the whole or any part thereof.

An Act to authorize the Governors of the States of Illinois, Arkansas and Missouri to cause to be selected the Lands therein mentioned.

[Approved March 19, 1842.]

(6.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That so much of the eighth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emptions," approved September fourth, eighteen hundred and forty-one, as provides that the selections of the grants of lands made to the several States therein mentioned, for the purposes of internal improvement, shall be made, respectively, in such manner as the legislatures thereof shall direct, is so far modified as to authorize the governors of the States of Illinois, Arkansas and Missouri to cause the selections to be made for these States without the necessity of convening the legislatures thereof for that purpose.

Sections Two and Three of an "Act to authorize the States of Indiana and Illinois, to select certain quantities of Land, in lieu of like quantities heretofore granted to the said States, for the construction of the Wabash and Erie and the Illinois and Michigan Canals."

[Approved August 29, 1842.]

(7.) SEC. II. *And be it further enacted*, That the governor of the State of Illinois is hereby authorized to cause to be selected, from any of the unsold public lands in that State, not subject to the right of pre-emption, the quantity of five thousand seven hundred and sixty acres, in lieu of sections numbered three and nine, in township thirty-two north, of range three east; sections thirteen and twenty-one, in township thirty-four north, of range six east; sections twenty-five and thirty-three, in township thirty-three north, of range eleven east; and sections thirteen, nineteen and twenty-one, in township thirty-three north, of range eight east of the third principal meridian, heretofore selected by the said State under "An act to grant a quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of lake Michigan," but which had been sold and patented to individuals by the United States, before the location by the said State had been approved.

(8.) SEC. III. *And be it further enacted*, That the selections of lands made under this act shall be reported by the governors of the States respectively, to the secretary of the treasury, and approved by the President of the United States.

An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their Limits.

[Approved Sept. 23, 1850.]

(9.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation which shall remain unsold at the passage of this act, shall be and the same are hereby granted to said State.

(10.) SEC. II. *And be it further enacted*, that it shall be the duty of the secretary of the interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas; and at the request of said governor, cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the legislature thereof: *Provided, however*, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

(11.) SEC. III. *And be it further enacted*, That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

(12.) SEC. IV. *And be it further enacted*, That the provisions of this act be extended to and their benefits be conferred upon each of the other States of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated.

An Act for the relief of Purchasers and Locators of Swamp and Overflowed Lands.

[Approved March 2, 1855.]

(13.) SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States cause patents to be issued, as soon as practicable, to the purchaser or purchasers, locator or locators, who have made entries of the public lands, claimed as swamp lands, either with cash, or with land warrants, or with scrip, prior to the issue of patents to the State or States, as provided for by the second section of the act approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," any decision of the secretary of the interior, or other officer of the government of the United States, to the contrary notwithstanding: *Provided*, That in all cases where any State, through its constituted authorities, may have sold or disposed of any tract or tracts of said land to any individual or individuals, prior to the entry, sale or location of the same, under the pre-emption or other laws of the United States, no patent shall be issued by the President for such tract or tracts of land, until such State, through its constituted authorities, shall release its claim thereto, in such form as shall be prescribed by the secretary of the interior: *And Provided, further*, That if such State shall not, within ninety days from the passage of this act, through its constituted authorities, return to the general land office of the United States, a list of all the lands sold as aforesaid, together with the dates of such sale, and the names of the purchasers, the patents shall be issued immediately thereafter, as directed in the foregoing section.

(14.) SEC. II. *And be it further enacted*, That upon due proof, by the authorized agent of the State or States, before the commissioner of the general land office, that any of the lands purchased were swamp lands, within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the said State or States; and where the lands have been located by warrant or scrip, the said State or States shall be authorized to locate a quantity of like amount, upon any of the public lands subject to entry, at one dollar and a quarter per acre, or less, and patents shall issue therefor, upon the terms and conditions enumerated in the act aforesaid: *Provided, however*, That the said decisions of the commissioner of the general land office shall be approved by the secretary of the interior.

## CHAPTER IX.

### RAIL ROAD, CENTRAL.

#### SECTION

1. Name of corporation; privileges.
2. Construction of road.
3. Right of way.
4. Amount of capital stock.
5. Exercise of corporate powers.
6. First board of directors.
7. Power of president and directors.
8. By-laws; *proviso*.
9. Penalty.

#### SECTION

10. Power to cross streams, highways, &c.
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12. Conductors of trains. Mode of forming trains.
13. Precaution against accidents at crossings.
14. Profile of road and branches.
15. Grant of land and right of way. Conveyance to company; *proviso*. Deed of trust. Lien secured to the State of Illinois. Possession of tracks, lines.

SECTION  
 &c. Construction of road within six years. Part of land to be held free from incumbrance. Bonds.  
 18. Sale of lands.  
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 20. Vacancies of trustees.  
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SECTION  
 27. Act to be deemed public; when to be in force.  
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An Act to incorporate the Illinois Central Railroad Company.

[Approved Feb. 10, 1851. Laws, 1851, p. 61.]

WHEREAS, in the judgment of this General Assembly, the object of incorporating the Central Railroad company cannot be attained under general laws; therefore,

(1.) SECTION I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That Robert Schuyler, George Griswold, Gouverneur Morris, Franklin Haven, David A. Neal, Robert Rantoul, Jr., Jonathan Sturgis, George W. Ludlow, John F. A. Sanford, Henry Grinnell, William H. Aspinwall, Leroy Wiley, and Joseph W. Alsop, and all such persons as shall hereafter become stockholders in the company hereby incorporated, shall be a body politic and corporate, by the name and style of the "Illinois Central Railroad company," and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and equity, in all courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal, and alter or renew the same at pleasure; and by their said corporate name and style, shall be capable, in law, of contracting and being contracted with, shall be and are hereby invested with all the powers, privileges, immunities and franchises, and of acquiring, by purchase or otherwise, and of holding and conveying real and personal estate which may be needful to carry into effect fully the purposes and objects of this act.*

(2.) SEC. II. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain and operate a railroad, with one or more tracks or lines of rails, from the southern terminus of the Illinois and Michigan canal, to a point at the city of Cairo, with a branch of the same to the city of Chicago, on lake Michigan; and also a branch via the city of Galena, to a point on the Mississippi river, opposite the town of Dubuque, in the State of Iowa.

(3.) SEC. III. The said corporation shall have a right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, land, not exceeding two hundred feet in width through its entire length; may enter upon and take possession of, and use all and singular any lands, streams and materials of every kind, for the location of depots and stopping stages, for the purpose of constructing bridges, dams, embankments, excavations, station grounds, spoil banks, turn-outs, engine houses, shops and other buildings necessary for the construction, completing, altering, maintaining, preserving and complete operation of said road. All such lands, waters, materials and privileges belonging to the State, are hereby granted

to said corporation for said purposes; but when owned or belonging to any person, company or corporation, and cannot be obtained by voluntary grant or release, the same may be taken and paid for, if any damages are awarded, in the manner provided in "An act to provide for a general system of railroad incorporations," approved November fifth, one thousand eight hundred and forty-nine; and the final decision or award shall vest in the corporation hereby created, all the rights, franchises and immunities in said act contemplated and provided: *Provided*, That the appeal allowed by the provisions of the aforesaid act, approved the fifth of November, one thousand eight hundred and forty-nine, shall not affect the possession, by such company, of the land appraised, and when the appeal is made by others than the company, the same shall not be allowed, except on a stipulation of the party appealing that the said company may enter upon and use the lands described in the petition, for the uses and purposes in said petition set forth, upon said company giving bond and security, to be approved by the clerk of said court, that they will pay all costs and damages that may be awarded against said company, on hearing of said appeal: *Provided*, That nothing in this section contained shall be so construed as to authorize the said corporation to interrupt the navigation of said streams.

(4.) SEC. IV. The capital stock of said corporation shall be one million of dollars, which may be increased, from time to time, to any sum not exceeding the entire amount expended on account of said road, divided into shares of one hundred dollars each, which shall be deemed personal property, and may be issued and transferred in such manner and at such places as may be ordered and provided by the board of directors, who shall have power to require the payment of sums subscribed by stockholders, in such manner and on such terms as they may deem proper; and on refusal or neglect on the part of stockholders, or any of them, to make payment, on the requisition of the board of directors, the shares of such delinquents may, after thirty days' public notice, be sold at public auction, under such rules as said board of directors may adopt; the surplus money, if any remains, after deducting the payments due, with the interest and the necessary costs of sale, to be paid to such delinquent stockholders. The board of directors hereby appointed shall cause books to be opened for subscriptions to said stock, in such manner and at such time and places as they shall direct.

(5.) SEC. V. All the corporate powers of said company shall be vested in and be exercised by a board of directors, and such officers and agents as they shall appoint. The board of directors shall consist of not less than twelve stockholders, three of whom shall be chosen every year by the stockholders, each share having one vote, to be given in person or by proxy, and the governor of the State of Illinois, who shall be a director *ex officio*, perpetually, voting in person or by proxy; each director successively elected to continue in office until his successor is elected and qualified. Vacancies in the board may be filled by a vote of two-thirds of the directors remaining; such appointees to continue in office until the next regular election of directors; but no person shall be so elected who shall not have been openly nominated at a meeting of the directors, at least one week before the time appointed for such election. Other officers, agents and servants, whether members of the board or otherwise, may be appointed, employed, paid and dismissed, under such rules and regulations as the board of directors may, from time to time, adopt.

(6.) SEC. VI. The following named persons shall constitute the first board of directors, to wit: Robert Schuyler, George Griswold, Gouverneur Morris, Franklin Haven, David A. Neal, Robert Rantoul, Jr., Jonathan Sturgis, George W. Ludlow, John F. A. Sanford, Henry Grinnell, Joseph W. Alsop, Leroy Wiley, with the governor of the State of Illinois, for the time being, whose powers shall commence and be in full force from and after the day this act shall be accepted in the manner herein provided.

(7.) SEC. VII. The president and directors, for the time being, are hereby authorized and empowered, by themselves, their officers or agents, to execute all the powers herein granted, for the purpose of surveying, locating, constructing, completing, altering, maintaining, and operating said road and branches; and for the transportation upon the same of persons, goods, wares and merchandise, with all such powers and authority for the control and management of the affairs of said company, as may be necessary and proper to carry into full and complete effect the meaning and intent of this act.

(8.) SEC. VIII. The said company shall have power to make, ordain and establish all such by-laws, rules and regulations, as may be deemed expedient and necessary to fulfill the purposes and carry into effect the provisions of this act, and for the well ordering, regulating and securing the affairs, business and interests of the company: *Provided*, That the same be not repugnant to the constitution and laws of the United States or of this State, or repugnant to this act. The board of directors shall have power to establish such rates of toll for the conveyance of persons and property upon the same as they shall, from time to time, by their by-laws, direct and determine, and to levy and collect the same for the use of the said company. The transportation of persons and property, the width of track, the construction of wheels, the form and size of cars, the weight of loads, and all other matters and things respecting the use of said road, and the conveyance of passengers and property, shall be in conformity to such rules and regulations as said board of directors shall from time to time determine. Nothing in this act contained shall authorize said corporation to make a location of their track within any city, without the consent of the common council of said city.

(9.) SEC. IX. If any person shall carelessly, willfully, maliciously or wantonly delay, hinder or obstruct the passage of any carriage on said road or branches, or shall place, or cause to be placed, any material thereon, or in any way trespass upon, spoil, injure or destroy said road or branches, or any part thereof, or anything belonging or pertaining thereto, or employed or used in connection with its location, survey, construction or management, all persons committing, or aiding and abetting in the commission, of such trespass or offense, shall forfeit and pay to the said company treble such damages as shall be proved before any court of competent jurisdiction; and further, such offenders shall be liable to indictment in the county within whose jurisdiction the offense may be committed, and to pay a fine of not less than thirty nor more than one hundred dollars, to the use of the people of the State of Illinois, or may be imprisoned in the penitentiary for a term not exceeding five years, in the discretion of the court before whom the same shall be tried.

(10.) SEC. X. Said corporation may construct their said road and

branches over or across any stream of water, water-course, road, highway, railroad or canal, which the route of its road shall intersect, but the corporation shall restore the stream or water-course, road or highway, thus intersected, to its former state, or in a sufficient manner not to have impaired its usefulness. Whenever the track of said railroad shall cross a road or highway, such road or highway may be carried under or over said track, as may be found most expedient; and in case where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a more easy ascent or descent, the said company may take such additional lands for the construction of such roads or highway as may be deemed requisite by said corporation, unless the lands so taken shall be purchased, or voluntarily given for the purposes aforesaid. Compensation therefor shall be ascertained in the manner in this act provided, as nearly as may be, and duly made by said corporation to the owners and persons interested in such lands. The same when so taken or compensation made, to become a part of such intersecting road or highway, in such manner and by such tenure as the adjacent parts of the same highway may be held for highway purposes.

(11.) SEC. XI. And when the route of the said road, or either of its branches, as provided in this act, shall intersect, cross, or connect with, or run along or upon the line of any other railroad now constructing or now in process of construction, by any other company, the company to be formed under this act shall join with such other company in making all necessary turn-outs, sidelings and switches, and other conveniences necessary to further the objects of such connection; and when the route of any other company shall be occupied as aforesaid, just compensation shall be made to such other company for all expenditures made by them in the location of such road; and all railroads so constructed, or now in process of construction, intersected as aforesaid, and connections made with the roads authorized to be built by this act, shall be made, and facilities in the transshipment of freight and passengers, and interchange of cars afforded by each, over the respective roads, upon fair and equitable terms; and in case the said companies cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the transshipment of freight and passengers, and interchange of cars, the same shall be ascertained and determined by three commissioners, one to be chosen by each of said companies, and the two so chosen to choose a third, and in case they cannot agree upon the choice of a third person, he shall be appointed by the judge of the district court of the United States for the district of Illinois; and the decision of the three, when so chosen, shall be final: *Provided*, That this corporation shall not take and run on the road or line of any such company which is now being constructed, without the consent and agreement of the company whose road or line is proposed so to be used.

(12.) SEC. XII. Every conductor, baggage master, engineer, brakeman or other servant of said corporation, employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap, a badge which shall indicate his office, the initial letters or style of the corporation. No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll or ticket, or exercise any of the powers of his office, and no other of said officers or servants, without such badge, shall have any authority to meddle or interfere with any passenger, his

baggage or property. In forming passenger trains, baggage, or freight, or merchandise, or lumber cars shall not be placed in rear of passenger cars; and if they or any of them, shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor or engineer of the train, shall each and all be held guilty of a misdemeanor, and be punished accordingly.

(13.) SEC. XIII. A bell of at least thirty pounds weight, or a steam whistle, shall be placed upon each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where said road shall cross any road or street, and be kept ringing or whistling at intervals, until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation, one-half thereof to go to the informer, and the other half to the State, and to be liable for all damages which shall be sustained by any person by reason of such neglect. Said corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each public road or street where the same is crossed by the railroad, on such elevation as not to obstruct the travel, and to be easily seen by travelers, and on each side of said board shall be painted in capital letters, of at least the size of nine inches each, the words: "*Railroad crossing! Look out for the cars.*" But this provision shall not apply to streets in cities, or villages, unless the corporation be required to put up such boards by the officers having charge of such streets.

(14.) SEC. XIV. Said corporation shall, within a reasonable time after said road and branches shall have been located, cause to be made a map and profile thereof, and of the land taken and obtained for the use of such road and branches, and file the same in the office of the secretary of State, and also like maps of the parts thereof located in the different counties through which the same may pass, and cause the same to be recorded in the office for recording deeds in the county in which said parts of said road and branches shall lie.

(15.) SEC. XV. For the purpose of securing the construction of said road and branches, the right of way, and all the lands which may be selected along the lines of said road and branches within this State, under the grant made by the government of the United States to the State of Illinois, by virtue of "An act granting the right of way, and making a grant of land to the State of Illinois, Mississippi and Alabama, in aid of the construction of a railroad from Chicago to Mobile," passed September twentieth, (20,) eighteen hundred and fifty (1850;) and also the right of way which the State of Illinois has heretofore obtained along and on the line of said railroad and branches, as heretofore located and surveyed, for the uses of the same, as well as the lot of ground obtained by the State within the city of Cairo, for a depot, and all the grading, embankments, excavations, surveys, work, materials, personal property, profiles, plats and papers, constructed, procured, furnished, and done by or in behalf of the State of Illinois, for or on account of said road and branches, also the right of way over and through lands owned by the State, are hereby ceded and granted to said corporation, for the only and sole purpose of surveying, locating, constructing, completing, altering, maintaining and operating said road and branches, as in this act provided, and in the manner following, that is to say: Imme-

diately upon the organization of said company, and the presentation to the governor of the State of Illinois of a certificate, signed by the corporators hereinbefore named, and duly acknowledged, accepting of this act of incorporation, and certifying to the due organization of said corporation; to the subscription to the capital stock thereof by the corporators hereinbefore named and their associates, of the sum of one million of dollars, and the *bona fide* payment of twenty per cent. thereon to the treasurer of said company, verified by the affidavits of the president and treasurer of said company, (which said certificate shall be filed in the office of the secretary of State); and after three hundred thousand dollars of registered canal bonds or funded internal improvement bonds of the State of Illinois, or two hundred thousand dollars in specie, or two hundred thousand dollars of six per cent. United States stock, shall have been by the said corporation deposited with the treasurer of the State of Illinois, which shall be safely preserved and kept in the treasury of said State, upon the faith of the same, to be returned to or paid over to the said corporation, upon the full completion and operation of fifty miles of said railroad, by the said corporation, according to the provisions of their said charter; the said governor of the State of Illinois shall, in his official capacity, and in behalf of the State of Illinois, and under the great seal thereof, execute and deliver to the said company a deed, in fee simple, of all said lands granted by the government of the United States, under the act of Congress aforesaid, said depot lot at Cairo, right of way, grading, embankment, excavation, surveys, work, materials, profiles, plats and papers, hereinafter described and set forth, or in any way appertaining to said road and branches: *Provided*, That said company shall, simultaneously with the execution of said deed by said governor, execute a deed of trust to the persons and for the purposes hereinafter named and expressed: *And Provided, further*, that the deed in fee simple to be executed by the governor, as aforesaid, shall recite, at full length, the act of Congress aforesaid, this act, and the deed of trust aforesaid. Said deed of trust shall be executed to Morris Ketchum, John Moore and Samuel D. Lockwood, as trustees, and shall include and convey to said trustees and their successors, every thing included and conveyed in and by said deed in fee simple, and in addition thereto the railroad or railroads which may be built upon or along said track or tracks, line or lines, and materials for the construction thereof, with all and singular the buildings, shops, engine houses, turn-outs, stations and real estate, of every nature and description, belonging or to belong to or in anywise appertaining or to appertain to said road and branches, for the uses, trusts and purposes following, that is to say:

1st. To secure and guarantee to the State of Illinois the first and prior lien on everything conveyed by said deed of trust, of every name, character and description, for security, as follows: First, The constructing, completing and furnishing said road and branches, in the manner and time, and upon conditions in this act provided. Second, For the faithful application of all money or property arising from the sale of lands, or obtained upon the faith of the same, as hereafter authorized, to the constructing, completing, equipping and furnishing said road and branches, in accordance with the terms of this act and said act of Congress. Third, The indemnification of the State of Illinois against all and every claim of the United States government, for proceeds of sale of lands made by said company under the provisions of this



act, in the event said road and branches shall not be completed, as required by the act of Congress above referred to. Fourth, The lien hereby created shall take and have precedence of all demands, encumbrances, mortgages, bonds, judgments and decrees against said corporation or said property, except so far as the absolute power of selling said lands, or any portion thereof, is herein provided for: *Provided*, That in case fifty miles of said road shall not be constructed according to the provisions of this act, within two years from and after the date of the organization of the company, under the same, the bonds or money herein provided to be deposited with the treasurer of the State of Illinois, shall become forfeited to and become the property of the said State, subject to the disposition of the legislature thereof.

2nd. That on its organization, said company may enter upon, take and receive possession of the said tracks or lines, for the purpose of surveying, locating, working and constructing said road and branches, with the right of way, land, grading, embankments, excavations, surveys, work, materials, property, profiles, plats and papers aforesaid, to be occupied, used and employed for the purposes contemplated by this act, under whosoever control the same may be.

3rd. That said company shall proceed to locate, survey and lay out, construct and complete said road and branches, through the entire length thereof; the main trunk thereof, or central line, to run from the city of Cairo to the southern termination of the Illinois and Michigan canal, passing not more than five miles from the north-east corner of township twenty-one north, range two east of the third principal meridian, and nowhere departing more than seventeen miles from a straight line between said city of Cairo and said southern termination of said canal, with a branch running from the last mentioned point, upon the most eligible route, to the city of Galena; thence to a point on the Mississippi river opposite the city of Dubuque, in the State of Iowa; with a branch also diverging from the main track at a point not north of the parallel of thirty-nine and a half degrees north latitude, and running on the most eligible route into the city of Chicago, on lake Michigan. That the central road or main track shall be completed, with at least one line of rails, or single track, with the necessary turn-outs, stations, equipments and furnishings, within four years from the date of the execution of said deed of trust, and the branches within six years from said date. Said roads to be made equal in all respects to the road leading from Boston to Albany, usually known as the Great Western railway, with such improvements as experience shall have shown to be expedient; the central or main line to be first commenced, and be continued to completion.

4th. A portion of said lands so conveyed to said trustees, not exceeding one-fourth part thereof in value, to be designated by said company, shall be held by said trustees, free from all encumbrances, for purposes of sale, from time to time, on the requisition of said company, for the purpose of raising funds for the payment of interest on loans, in case of deficiency from other sources, and for such expenditures as the exigencies of the business of the company may require: *Provided*, That no portion of said fourth part of said lands shall be sold until said road and branches shall have been surveyed and located, and the work actually commenced on the main road: *Provided, further*, That no portion of said lands so held by said trustees, free from all encumbrance, for said purposes, shall be sold or offered for sale until

the said trustees shall be satisfied that a sum of money has been actually expended upon the construction of a section of at least fifty miles of said road, adjacent to said lands, equal in amount to the sum of money to be raised from the sale of such portion of said lands, or until a section of at least fifty miles of said road, adjacent to said lands, shall have been completed, when the lands on said section will be sold, and so on till the said road and branches shall be completed.

5th. For the purpose of raising funds from time to time, for the construction and completion of said road and branches, and the purchase of iron and other materials to be used thereon, said company may issue its bonds, countersigned by the said trustees, in sums of not less than five hundred nor more than one thousand dollars each, at rates of interest not higher than seven per cent. per annum, payable semi-annually; the principal of said bonds payable in the year one thousand eight hundred and seventy-five, or sooner, at the pleasure of the company, at such place as it shall designate. The payment of said bonds shall be secured by the deed of trust aforesaid, of said lands, roads and materials as hereinbefore provided; subject, nevertheless, to the prior lien of the State upon said lands and property, hereinbefore provided for; which said prior lien shall be referred to and recited in said bonds, so to be issued by said company: *Provided*, That the faith of the State is in nowise pledged for the redemption of said bonds to any extent.

(16.) SEC. XVI. When the said company shall have completed and put in running order fifty miles of said road, the said trustees, on the requisition of said company, may proceed to sell the lands lying along and adjacent to such section so completed, (and not reserved free from all encumbrances as aforesaid,) in such manner as the company may direct. Said lands shall be sold for cash in hand, or the bonds of said company at par. All bonds received on such sales shall be canceled by said trustees, and delivered to said company. The trustees shall invest all money received on such sales in the bonds of the company, which shall be in like manner canceled and returned. On canceling said bonds, and before returning them to the company, said trustees shall make a brief memorandum on each bond, specifying for or on what particular tract or tracts of land the same was received. On making such sales, and receiving the price of such lands in money or bonds as aforesaid, said trustees shall convey such tracts, by an absolute title in fee simple, to the purchasers; which conveyance shall operate as a release or an acquittance of the particular tract or tracts so sold, from all liability or encumbrance on account of said bonds, so specified in the preceding section, so as to vest in the purchasers a complete and indefeasible title. Before any sales shall be made of any of said lands, the said trustees shall make a complete record, describing each and every tract of land selected under said act of Congress, a copy of which record shall be filed in the office of the auditor of this State; and as sales of lands are made, as provided herein, from time to time, the said trustees shall make and keep a record as aforesaid of every and each tract of land so sold, together with the name of the person to whom, and the price for which, the same was sold; a copy of which record of sales shall be filed in said auditor's office semi-annually.

(17.) SEC. XVII. The trustees shall not at any time during the construction of said road and branches, sell or dispose of lands to an amount exceeding the sum which shall then have actually been expended upon the

said work; but may, at the request of the company, sell as the work progresses, so as to meet expenditures actually made on the sections of the road completed, as far as the receipts from said sales may go towards their liquidation. And all lands remaining unsold at the expiration of ten years after the completion of said road and branches, shall be offered at public sale annually until the whole is disposed of, and the avails applied to the payment of the outstanding bonds of the company as aforesaid; or, if no such bonds be outstanding, said avails shall be paid to said company.

(18.) SEC. XVIII. In consideration of the grants, privileges and franchises herein conferred upon said company for the purposes aforesaid, the said company shall, on the first Mondays of December and June, in each year, pay into the treasury of the State of Illinois five per centum on the gross or total proceeds, receipts or income derived from said road and branches, for the six months then next preceding. The first payment of such per centage on the main trunk of said road to commence four years from the date of said deed of trust, and on the branches, six years from the date aforesaid, unless said road and branches are sooner completed, then from the date of completion. And for the purpose of ascertaining the proceeds, receipts or income aforesaid, an accurate account shall be kept by said company, a copy whereof shall be furnished to the governor of the State of Illinois; the truth of which account shall be verified by the affidavits of the treasurer and secretary of such company. And for the purpose of verifying and ascertaining the accuracy of such account, full power is hereby vested in the governor of the State of Illinois, or any other person by law appointed, to examine the books and papers of said corporation, and to examine, under oath, the officers, agents and employees of said company, and other persons. And if any person, so examined by the governor or other authority, shall, knowingly and willfully, swear falsely, or if the other officers making such affidavits shall, knowingly and willfully, swear falsely, every such person shall be subject to the pains and penalties of perjury.

(19.) SEC. XIX. The selection of lands provided for in the act of Congress making the grant hereinbefore specified, shall be made by said company, or such agents as it may designate, under the appointment of the governor of this State, subject to the approval in said act specified. Said selection, as well as the survey, location and completion of said road and branches, and the compensation of such trustees, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Illinois. Said road and branches to be free for the use of the United States, and to be employed by the post office department as provided in said act of Congress.

(20.) SEC. XX. In case of the death, resignation, removal, or inability to act, of either or all of said trustees, the vacancy or vacancies shall be filled by the governor of the State of Illinois and said company, alternately; the governor filling the first vacancy that may occur.

(21.) SEC. XXI. The corporate authorities of any city or cities on the line of said road or branches, or at either terminus thereof, or any owner or owners of property in any such city, or any association of citizens duly authorized by any such corporation, shall have power to lay down or construct a track or railroad along any of the streets of any such cities, for the purpose of conveying property to and from said railroad, which may be

consigned to any of the warehousemen, in any of said cities, that said track or railroad (under the direction of said company,) may intersect the track of said railroad company at or near the main depot in said cities, respectively; and said company shall, at all times, permit the owners or consignees of property in such cities to take the cars containing the property to them consigned, to their respective warehouses upon said track: *Provided*, That any car so taken shall be returned without any unnecessary delay: *And Provided, further*, That whenever it shall be necessary, for the convenience of the public, or persons receiving or sending property by said railroad, the said company shall permit side tracks to intersect their main road at any depot on or along the line of said road; and that such persons shall be entitled to have any property taken from such side tracks, under the directions and regulations of said company, without unreasonable delay; and for the non-performance by said company of any act by this proviso required to be done, said company shall forfeit and pay the party aggrieved the sum of fifty dollars, in each case, to be recovered in an action of debt, before any justice of the peace, or any court having jurisdiction thereof.

(22.) SEC. XXII. The lands selected under said act of Congress, and hereby authorized to be conveyed, shall be exempt from all taxation under the laws of this State, until sold and conveyed by said corporation or trustees, and the other stock, property and effects of said company shall be in like manner exempt from taxation for the term of six years from the passage of this act. After the expiration of six years, the stock, property and assets belonging to said company shall be listed by the president, secretary, or other officer, with the auditor of State, and an annual tax for State purposes shall be assessed by the auditor upon all the property and assets of every name, kind and description belonging to said corporation. Whenever the taxes levied for State purposes shall exceed three-fourths of one per centum per annum, such excess shall be deducted from the gross proceeds or income herein required to be paid by said corporation to the State, and the said corporation is hereby exempted from all taxation of every kind, except as herein provided for. The revenue arising from said taxation, and the said five per cent. of gross or total proceeds, receipts or income aforesaid, shall be paid into the State treasury in money, and applied to the payment of interest-paying State indebtedness, until the extinction thereof: *Provided*, In case the five per cent. provided to be paid into the State treasury, and the State taxes to be paid by the corporation, do not amount to seven per cent. of the gross or total proceeds, receipts or income, then the said company shall pay into the State treasury the difference, so as to make the whole amount paid equal at least to seven per cent. of the gross receipts of said corporation.

(23.) SEC. XXIII. This act and all grants herein contained, shall cease and be void, unless accepted by said company within sixty days after the passage of this act; and immediately on such acceptance, made in manner above provided, the deed in fee simple, and the deed of trust aforesaid, shall be made as above provided. All the grants herein contained shall cease and be void unless said road and branches be surveyed and located, and work on the main trunk actually begun, before the first day of January, 1852.

(24.) SEC. XXIV. The State shall have a prior lien upon said road and branches, and all the appurtenances and stock thereof, for all penalties, taxes and dues, which may accrue to the State from said corporation, as

herein provided; which lien of the State shall take precedence of all demands, judgments or decrees against said corporation.

(25.) SEC. XXV. That each and every person, who, on the twentieth day of September, one thousand eight hundred and fifty, was the owner of any improvements made previous to that date, on any lot of land conveyed to the said company, and who became such owner with a view to a residence on, or occupation of such lot of land for agricultural purposes, shall have the right to purchase, at not exceeding two dollars and fifty cents per acre, a quantity of the lot so owned, to be bounded by the legal subdivisions, not exceeding one quarter section, to consist of the quarter-quarter, half-quarter or quarter section, which will include the improvement aforesaid: *Provided*, That any person claiming the right to purchase under the provisions of this act, shall, within three months from the date of selecting the lands, file in the clerk's office of the circuit court of the county in which the land claimed is situated, a notice to the said trustees and corporation, of his, her or their claims, describing the land by its numbers, accompanied with an affidavit, stating the date and object of the improvement, the time and manner when and how he, she or they became the owner thereof, and also the affidavits of at least two residents of the county, proving the facts in relation to such claim: *And Provided, further*, That the right of way upon and across any lot of land sold under the provisions of this section, not exceeding two hundred feet in width, shall be reserved and retained for the passage of the road, as the same may be located and constructed, and any person claiming the right to purchase as aforesaid, shall, within twelve months from the date of commencing work on the road within the county in which the land is situated, pay the said trustees or the corporation the consideration money for the land claimed; which payment shall entitle him, her or them, to a deed conveying an estate in fee; but in case of failure to make such payment, the right to make the purchase shall cease. When two or more persons claim the right to purchase the same lot of land, and file the proof of ownership as herein required, the person proving the first residence by himself, or those under whom he claims the improvement, shall have the right to make the purchase, but no sale or conveyance of any lot of land under the provisions of this section shall affect the rights or equities of parties claiming the same, as between each other.

(26.) SEC. XXVI. In case the persons incorporated by this act shall fail or neglect to accept the provisions of the same, and comply with its conditions, within the time and in the manner herein prescribed, then the same may be accepted by any other company which shall be approved of by the governor, auditor and treasurer of this State; who, upon complying with the terms and conditions of this act, shall be vested with all the rights, powers and immunities conferred upon the corporators herein named, and shall be subject to all the liabilities in the said act set forth, in as full, ample and complete a manner as if their names were inserted as corporators in this act.

(27.) SEC. XXVII. This act shall be deemed a public act, and shall be favorably construed for all purposes therein expressed, and declared in all courts and places whatsoever, and shall be in force from and after its passage.

An Act to extend the Time for the Completion of a Portion of the Central Railroad.

[Approved June 23, 1852. Laws, 1852, p. 208.]

(28.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the time for the completion of so much of the main track of the central railroad as lies between the city of Galena and the Mississippi river, opposite Dubuque, in the State of Iowa, be and the same is hereby extended for the term of four years, in addition to the time specified in the charter of said central railroad company.

An Act to amend the Charter of the Illinois Central Railroad Company.

[Approved June 22, 1852. Laws, 1852, p. 130.]

(29.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the Illinois central railroad company be and is hereby empowered and authorized to locate, construct and operate a lateral branch or track from its eastern branch, as now located at or near Twelfth street in the city of Chicago, to the south branch of the Chicago river, on such terms and conditions and in such manner as may be stipulated between the common council of said city of Chicago and the said company.

(30.) SEC. II. That it shall be lawful for said company, in any case or suit of law or equity, or upon any issue between the said company and any individuals or parties, to read the certificate made and signed by the corporators of said company, under the fifteenth section of the act incorporating the same, as evidence of the facts therein stated, and the said certificate shall have the same force and effect as if the same had been duly acknowledged and executed in strict accordance with the provisions of said section, and the rights of said company shall not be prejudiced or affected by reason of any defect or informality in said certificate; and the said company shall commence the work upon the main trunk of said road between Cairo and the junction of the Chicago branch therewith, and shall prosecute the same with the like good faith, as upon other parts of the line of said road: *Provided*, Nothing herein contained shall authorize the company to construct the said road in any manner contrary to the provisions of the original charter of the company.

(31.) SEC. II. This act to take effect from and after its passage.

An Act to amend the Act incorporating the Illinois Central Railroad Company.

[Approved Feb. 27, 1854. Private Laws, 1854, p. 192.]

(32.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That so much of section sixteen of the act incorporating the said company as requires that lands in said section mentioned to be sold for cash in hand or bonds of the said company at par, be and the same is hereby repealed, and the said lands may be disposed of upon such credit as may be deemed expedient by contracts for sale and conveyance: *Provided, however*, No conveyance of the title of any such lands shall be made until the whole purchase money agreed to be paid therefor shall be made either in cash or the bonds of the company at par.

(33.) SEC. II. That whenever it has been found necessary, from any cause, to deviate in the construction of the road of said company, or of the branches thereof, from the line originally designated, the line upon which

said road is in process of construction shall be deemed and taken to be the line authorized by its charter, and all the acts and contracts of said company touching the same, and all payments made for the right of way, shall be as valid and effectual as if the said road had been originally located in every respect upon the present line of construction.

(34.) SEC. III. In case it shall so happen, from any causes not now foreseen, that the said company should be unable and fail to complete its main line within the period fixed by its charter, it shall not be taken and deemed to be any cause of forfeiture of the franchises and charter of said company, but it shall have the right to complete the said road within six months after the expiration of said time, and thereupon all its corporate rights shall be and remain as if the said road had been completed within the period originally fixed by its charter.

(35.) SEC. IV. The capital stock of said company shall be fixed and limited at seventeen millions of dollars, and the certificates therefor may be issued as shall be deemed expedient by the board of directors.

(36.) SEC. V. In any action at law for any trespass upon any of the lands granted by the State to the said company, or for any other cause wherein it may become necessary to prove the interest of said company or the trustees in said lands, the certificate of the commissioner of the general land office of the United States, or other proper certifying officer, that the lands in question have been selected and confirmed to the State, or said company, or said trustees, as the case may be, shall be sufficient *prima facie* evidence of title in all courts of this State for the maintenance of said actions.

(37.) SEC. VI. This act shall take effect when accepted by a resolution of the board of directors of said company.

An Act to amend an Act entitled "An Act supplementary to an Act entitled 'An Act to incorporate the Illinois Central Railroad Company,'" approved February 17, 1851.

[Approved Feb. 14, 1855. Private Laws, 1855, p. 283.]

(38.) SEC. I. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That so much of said act as provides that the said railroad company shall not be permitted to lay out any towns on or near the line of their said railroad, be and the same is hereby repealed: *Provided, however,* That the said company shall in nowise be permitted to lay out directly or indirectly any town on or near the line of their said road, except at such points on the same where their depots are already located and established.

(39.) SEC. II. This act to be in force from and after its passage.

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