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J. M. Martin



ACTS
OF
A GENERAL NATURE,
Enacted, revised and ordered to be re-printed,
AT THE FIRST SESSION
OF THE
Twenty-Second General Assembly
OF THE
STATE OF OHIO,
BEGUN AND HELD IN THE TOWN OF COLUMBUS,
DECEMBER 1, 1823;
AND IN THE TWENTY-SECOND YEAR OF SAID STATE

VOL. XXII,

PUBLISHED BY AUTHORITY.

COLUMBUS:

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1824.

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CONSTITUTION
OF THE
UNITED STATES.

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

ARTICLE I.

Sec. 1. ALL legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sec. 2. The House of Representatives shall be composed of members chosen every second year, by the people of the several states: and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

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

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

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

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

Sec. 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

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

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

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

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

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

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

Sec. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law, make or alter such regulations, except as to the places of choosing senators.

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

Sec. 5. Each house shall be the judge of the elections, returns and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its

members for disorderly behavior, and with the concurrence of two thirds, expel a member.

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

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

Sec. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

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

Sec. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

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

Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the

senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 8. The congress shall have power—

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

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

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

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

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

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

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

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

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

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

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings—And

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

Sec. 9. The migration or importation of such persons as any of the

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

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.

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

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

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

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

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

Sec. 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

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

ARTICLE II.

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

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress;

but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

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

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

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

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

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive within that period, any other emolument from the United States, or any of them.

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

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my

ability, preserve, protect and defend the constitution of the United States."

Sec. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

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

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

Sec. 3. He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sec. 4. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery or other high crimes and misdemeanors.

ARTICLE III.

Sec. 1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sec. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens

of different states; between citizens of the same state, claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens or subjects.

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

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

Sec. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

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

ARTICLE IV.

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

Sec. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

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

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

Sec. 3. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

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

Sec. 4. The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against

invasion; and on application of the legislature or of the executive (when the legislature, cannot be convened) against domestic violence.

ARTICLE V.

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

ARTICLE VI.

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

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

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

ARTICLE VII.

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

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

GEORGE WASHINGTON, *President*

ATTEST.

WILLIAM JACKSON, *Secretary*

The conventions of a number of the states, having at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, congress at the session begun and held at the city of New York, on Wednesday, the 4th of March, 1789, proposed to the legislatures of the several states twelve amendments, ten of which only were adopted. They are the ten first following.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

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

ARTICLE II.

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

ARTICLE III.

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

ARTICLE IV.

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

ARTICLE V.

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

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have

been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

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

ARTICLE VIII.

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

ARTICLE IX.

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

ARTICLE X.

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

ARTICLE XI.

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

ARTICLE XII.

The electors shall meet in their respective states and vote, by ballot, for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of government of the United States, directed to the president of the senate; the president of the senate, shall in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president if such number be a majority of the whole number of electors appointed, and if no person have such majority, then from the persons having the highest number not exceeding three, on the list of those voted for as president, the

house of representatives shall choose immediately, by ballot, the president; but in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purposes shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president; a quorum for the purpose shall consist of two thirds of the whole number of senators; and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

ARTICLE XIII

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

[*Note.* The 11th article of the amendments to the constitution, was proposed at the second session of the third congress: the 12th article, at the first session of the eighth congress; and the 13th article, at the second session of the eleventh congress.]

CONSTITUTION

OF THE

STATE OF OHIO.

WE the people of the eastern division of the territory of the United States north west of the River Ohio, 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 one thousand seven hundred and eighty seven, and the law of congress, entitled "An act to enable the people of the eastern division of the territory of the United States north west of the river Ohio, 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 ourselves and our posterity, do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent state, by the name of the *State of Ohio*.

ARTICLE I.

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. Within one year after the first meeting of the general assembly and within every subsequent term of four years, an enumeration of all the white male inhabitants above twenty one years of age, shall be made in such manner as shall be directed by law. The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature and apportioned among the several counties, according to the number of white male inhabitants above twenty one years of age in each, and shall never be less than twenty four, nor greater than thirty six, until the number of white male inhabitants above twenty one years of age, shall be twenty two thousand, and after that event, at such ratio that the whole number of representatives shall never be less than thirty six, nor exceed seventy two.

Sec. 3. The representatives shall be chosen annually, by the citizens of each county respectively, on the second Tuesday of October.

Sec. 4. No person shall be a representative, who shall not have attained the age of twenty five years, and be a citizen of the United States and an inhabitant of this state; shall also have resided within the limits of the county in which he shall be chosen, one year next preceding

his election, unless he shall have been absent on the public business of the United States or of this state, and shall have paid a state or county tax.

Sec. 5. The senators shall be chosen biennially by the qualified voters for representatives; and on their being convened in consequence of the first election, they 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 first year, and of the second class at the expiration of the second year, so that one half thereof, as near as possible may be annually chosen forever thereafter.

Sec. 6. The number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the legislature, and apportioned among the several counties or districts to be established by law, according to the number of white male inhabitants of the age of twenty one years in each, and shall never be less than one third, nor more than one half of the number of representatives.

Sec. 7. No person shall be a senator who has not arrived at the age of thirty years and is a citizen of the United States; shall have resided two years in the county or district immediately preceding the election, unless he shall have been absent on the public business of the United States, or of this state, and shall moreover have paid a state or county tax.

Sec. 8. The senate and house of representatives, when assembled, shall each choose a speaker and its other officers, be judges of the qualifications and elections of its members, and sit upon its own adjournments; two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

Sec. 9. 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. 10. Any two members of either house shall have liberty to dissent from and protest against any act or resolution which they may think injurious to the public or any individual, and have the reasons of their dissent entered on the journals.

Sec. 11. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two thirds, expel a member; but not a second time for the same cause, and shall have all other powers necessary for a branch of the legislature of a free and independent state.

Sec. 12. When vacancies happen in either house, the governor, or the person exercising the power of the governor, shall issue writs of election to fill such vacancies.

Sec. 13. 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. 14. Each house may punish by imprisonment during their 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. 15. 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. 16. Bills may originate in either house, but may be altered, amended or rejected by the other.

Sec. 17. 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.

Sec. 18. The style of the laws of this state shall be,
"Be it enacted by the General Assembly of the State of Ohio."

Sec. 19. The legislature of this state shall not allow the following officers of government greater annual salaries than as follows, until the year one thousand eight hundred and eight, to wit: The governor not more than one thousand dollars; the judges of the supreme court, not more than one thousand dollars each; the presidents of the courts of common pleas, not more than eight hundred dollars each; the secretary of state, not more than five hundred dollars; the auditor of public accounts not more than seven hundred and fifty dollars; the treasurer not more than four hundred and fifty dollars; no member of the legislature shall receive more than two dollars per day, during his attendance on the legislature, nor more for every twenty-five miles he shall travel in going to and returning from the general assembly.

Sec. 20. 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. 21. No money shall be drawn from the treasury, but in consequence of appropriations made by law.

Sec. 22. An accurate statement of the receipts and expenditures of the public money, shall be attached to and published with the laws annually.

Sec. 23. The house of representatives shall have the sole power of impeaching, but a majority of all the members 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.

Sec. 24. The governor and all other civil officers under this state, shall be liable to impeachment for any misdemeanor in office, but judg-

ment in such cases shall not extend further than 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. 25. The first session of the general assembly shall commence on the first Tuesday of March next, and forever after the general assembly shall meet on the first Monday of December, in every year, and at no other period, unless directed by law, or provided for by this constitution.

Sec. 26. No judge of any court of law or equity, secretary of state, attorney general, register, clerk of any court of record, sheriff or collector, member of either house of congress, or person holding any office under the authority of the United States, or any lucrative office under the authority of this state (provided that appointments in the militia or justices of the peace shall not be considered lucrative offices,) shall be eligible as a candidate for, or have a seat in the general assembly.

Sec. 27. No person shall be appointed to any office within any county, who shall not have been a citizen and inhabitant therein, one year next before his appointment, if the county shall have been so long erected, but if the county shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

Sec. 28. No person who heretofore hath been or hereafter may be, a collector or holder of public monies, shall have a seat in either house of the general assembly, until such person shall have accounted for and paid into the treasury, all sums for which he may be accountable or liable.

ARTICLE II.

Sec. 1. The supreme executive power of this state shall be vested in a governor.

Sec. 2. The governor shall be chosen by the electors of the members of the general assembly, on the second Tuesday of October, at the same places and in the same manner that they shall respectively vote for members thereof. The returns of every election for governor shall be sealed up and transmitted to the seat of government by the returning officers, directed to the speaker of the senate, 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 shall be equal and highest in votes, one of them shall be chosen governor by joint ballot of both houses of the general assembly. Contested elections for governor 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, one thousand eight hundred and five, and until another governor shall be elected and qualified to office, and forever after the

governor shall hold his office for the term of two years, and until another governor shall be elected and qualified, but he shall not be eligible more than six 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 twelve years, and an inhabitant of this state four years next preceeding his election.

Sec. 4. He shall, from time to time, give to 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 the power to grant reprieves and pardons after conviction, except in cases of impeachment.

Sec. 6. The governor shall at stated times, receive for his services, a compensation 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, 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 legislature.

Sec. 9. He may, on extraordinary occasions convene the general assembly by proclamation, and shall state to them, when assembled, the purposes 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. In case of disagreement between the two houses, with respect to the time of adjournment, the governor shall have the power to adjourn the general assembly to such time as he thinks proper, provided, it be not a period beyond the annual meeting of the legislature.

Sec. 12. In case of the death, impeachment, resignation or removal of the governor from office, the speaker of the senate shall exercise the office of governor, until he be acquitted or another governor shall be duly qualified. In case of the impeachment of the speaker of the senate, or his death, removal from office, resignation or absence from the state, the speaker of the house of representatives shall succeed to the office and exercise the duties thereof, until a governor shall be elected and qualified.

Sec. 13. No member of Congress or person holding any office under the United States, or this state, shall execute the office of governor.

Sec. 14. There shall be a seal of this state, which shall be kept by the governor and used by him officially, and shall be called "THE GREAT SEAL OF THE STATE OF OHIO."

Sec. 15. All grants and commissions shall be in the name and by the authority of the state of Ohio, sealed with the seal, signed by the governor, and countersigned by the secretary.

Sec. 16. A secretary of state shall be appointed by a joint ballot of the senate and house of representatives, who shall continue in office three years, if he shall so long behave himself well; he shall keep a fair register of all the official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before either branch of the legislature, and shall perform such other duties as shall be assigned him by law.

ARTICLE III.

Sec. 1. The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, in courts of common pleas for each county, in justices of the peace, and in such other courts as the legislature may, from time to time establish.

Sec. 2. The supreme court shall consist of three judges, any two of whom shall be a quorum. They shall have original and appellate jurisdiction, both in common law and chancery, in such cases as shall be directed by law: *Provided*, That nothing herein contained shall prevent the general assembly from adding another judge to the supreme court after the term of five years, in which case the judges may divide the state into two circuits, within which any two of the judges may hold a court.

Sec. 3. The several courts of common pleas shall consist of a president and associate judges. The state shall be divided, by law, into three circuits; there shall be appointed in each circuit a president of the courts, who, during his continuance in office, shall reside therein.— There shall be appointed in each county, not more than three nor less than two associate judges, who during their continuance in office, shall reside therein. The president and associate judges, in their respective counties, any three of whom shall be a quorum, shall compose the court of common pleas, which court shall have common law and chancery jurisdiction in all such cases, as shall be directed by law: *Provided*, That nothing herein contained shall be construed to prevent the legislature from increasing the number of circuits and presidents, after the term of five years.

Sec. 4. The judges of the supreme court and courts of common pleas, shall have complete criminal jurisdiction, in such cases and in such manner as may be pointed out by law.

Sec. 5. The court of common pleas in each county, shall have jurisdiction of all probate and testamentary matters, granting administration, the appointment of guardians, and such other cases as shall be prescribed by law.

Sec. 6. The judges of the court of common pleas, shall within their respective counties, have the same powers with the judges of the supreme court, to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done.

Sec. 7. The judges of the supreme shall, by virtue of their offices, be

conservators of the peace throughout the state. The presidents of the court of common pleas, shall, by virtue of their offices, be conservators of the peace in their respective circuits, and the judges of the court of common pleas, shall, by virtue of their offices, be conservators of the peace, in their respective counties.

Sec. 8. The judges of the supreme court, the presidents and the associate judges of the courts of common pleas, shall be appointed by a joint ballot of both houses of the general assembly, and shall hold their offices for the term of seven years, if so long they behave well. The judges of the supreme court and the presidents of the courts of common pleas, shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the authority of this state or the United States.

Sec. 9. Each court shall appoint its own clerk for the term of seven years, but no person shall be appointed clerk except *pro te-nore*, who shall not produce to the court appointing him a certificate from a majority of the judges of the supreme court, that they judge him to be well qualified to execute the duties of the office of clerk to any court of the same dignity with that for which he offers himself. They shall be removable for breach of good behavior, at any time, by the judges of the respective courts.

Sec. 10. The supreme court shall be held once a year, in each county, and the courts of common pleas shall be holden in each county at such times and places as shall be prescribed by law.

Sec. 11. A competent number of justices of the peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office three years, whose powers and duties shall from time to time, be regulated and defined by law.

Sec. 12. The style of all process shall be "*The state of Ohio*;" all prosecutions shall be carried on in the name and by the authority of the state of Ohio, and all indictments shall conclude against the peace and dignity of the same.

ARTICLE IV.

Sec. 1. In all elections, all white male inhabitants above the age of twenty-one years, having resided in the state one year next preceeding the election, and who have paid or are charged with a state or county tax, 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. 2. All elections shall be 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. The legislature shall have full power to exclude from the

privilege of electing or of being elected, any person convicted of bribery, perjury or any other infamous crime.

Sec. 5. Nothing contained in this article, shall be so construed as to prevent white male persons above the age of twenty-one years, who are compelled to labor on the roads of their respective townships or counties, and who have resided one year in the state, from having the right of an elector.

ARTICLE V.

Sec. 1. Captains and subalterns in the militia shall be elected by those persons in their respective company districts, subject to military duty.

Sec. 2. Majors shall be elected by the captains and subalterns of the battalion.

Sec. 3. Colonels shall be elected by the majors, captains and subalterns of the regiment.

Sec. 4. Brigadiers general shall be elected by the commissioned officers of their respective brigades.

Sec. 5. Majors general and quarter-masters-general shall be appointed by joint ballot of both houses of the legislature.

Sec. 6. The governor shall appoint the adjutant general. The majors general shall appoint their aids and other division staff officers. The brigadiers general shall appoint their brigade majors and other brigade staff officers. The commanding officers of regiments shall appoint their adjutants, quarter masters and other regimental staff officers; and the captains and subalterns shall appoint their non-commissioned officers and musicians.

Sec. 7. The captains and subalterns of the artillery and cavalry shall be elected by the persons enrolled in their respective corps, and the majors and colonels shall be appointed in such manner as shall be directed by law. The colonels shall appoint their regimental staff, and the captains and subalterns their non-commissioned officers and musicians.

ARTICLE VI.

Sec. 1. There shall be elected in each county one sheriff and one coroner, by the citizens thereof, who are qualified to vote for members of the assembly; they shall be elected at the time and place of holding elections for members of assembly; they shall continue in office two years, if they shall so long behave well, and until successors be chosen and duly qualified: *Provided* That no person shall be eligible as sheriff for a longer term than four years in any term of six years.

Sec. 2. The state treasurer and auditor shall be triennially appointed by a joint ballot of both houses of the legislature.

Sec. 3. All town and township officers shall be chosen annually, by the inhabitants thereof, duly qualified to vote for members of assembly at such time and place as may be directed by law.

Sec. 4. The appointment of all civil officers, not otherwise directed by this constitution, shall be made in such manner as may be directed by law.

ARTICLE VII.

Sec. 1. Every person who shall be chosen or appointed to any office of trust or profit, under the authority of this state, shall, before the entering on the execution thereof, take an oath or affirmation to support the constitution of the United States and of this state, and also an oath of office.

Sec. 2. Any elector who shall receive any gift or reward for his vote, in meat, drink, money or otherwise, shall suffer such punishment as the laws shall direct; and any person who shall directly or indirectly give, promise or bestow, any such reward to be elected, shall thereby be rendered incapable, for two years, to serve in the office for which he was elected, and be subject to such other punishment as shall be directed by law.

Sec. 3. No new county shall be established by the general assembly, which shall 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 laid off, of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of representation.

Sec. 4. Chillicothe shall be the seat of government until the year one thousand eight hundred and eight. No money shall be raised until the year one thousand eight hundred and nine, by the legislature of this state, for the purpose of erecting public buildings for the accommodation of the legislature.

Sec. 5. That after the year one thousand eight hundred and six, whenever two thirds of the general assembly shall think it necessary to amend or change this constitution, they shall recommend to the electors, at the next election for members to the general assembly, to vote for or against a convention; and if it shall appear that a majority of 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 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, who shall meet within three months after the said election, for the purpose of revising, amending, or changing the constitution. But no alteration of this constitution shall ever take place, so as to introduce slavery or involuntary servitude in to this state.

Sec. 6. That the limits and boundaries of this state be ascertained, it is declared, that they are as hereafter mentioned, that is to say, bounded on the east by the Pennsylvania line, on the South by the Ohio river to the mouth of the Great Miami river, on the West by the line drawn due north from the mouth of the Great Miami aforesaid, and on the north by

an east and west line drawn through the southerly extreme of Lake Michigan, running east after intersecting the due north line aforesaid, from the mouth of the Great Miami until it shall intersect Lake Erie or the territorial line, and thence with the same through Lake Erie to the Pennsylvania line aforesaid; provided always, and it is hereby fully understood and declared by this convention, that if the southerly bend or extreme of Lake Michigan should extend so far south that a line drawn due east from it should not intersect Lake Erie, or if it should intersect the said Lake Erie, east of the mouth of the Miami river of the lake, then and in that case, with the assent of the congress of the United States, the northern boundary of this state shall be established by, and extended to, a direct line running from the southern extremity of Lake Michigan to the most northerly cape of the Miami bay, after intersecting the due north line from the mouth of the Great Miami river as aforesaid, thence north east to the territorial line, and by the said territorial line, to the Pennsylvania line.

ARTICLE VIII.

That the general, great and essential principles of liberty and free government may be recognized and forever unalterably established, we declare,

Sec. 1. That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; and every free republican government, being founded on their sole authority, and organized for the great purpose of protecting their rights and liberties, and securing their independence; to effect these ends, they have at all times a complete power to alter, reform or abolish their government, whenever they may deem it necessary.

Sec. 2. There shall be neither slavery nor involuntary servitude in 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, or female person arrived at the age of eighteen years, be held to serve any person as a servant under the pretence of indenture or otherwise, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a *bona fide* consideration, received or to be received, for their service except as before excepted. Nor shall any indenture of any negro or mulatto hereafter made and executed out of the state, or if made in the state where the term of service exceeds one year, be of the least validity, except those given in the case of apprenticeships.

Sec. 3. That all men have a natural and indefeasible right to worship Almighty God, according to the dictates of conscience; that no human authority can in any case whatever, controul or interfere with the rights of conscience; that no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent,

and that no preference shall ever be given, by law, to any religious society or mode of worship, and no religious test shall be required as a qualification to any office of trust or profit. But religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.

Sec. 4. Private property ought and shall ever be held inviolate, but always subservient to the public welfare, provided a compensation in money be made to the owner.

Sec. 5. That the people shall be secure in their persons, houses, papers and possessions, from unwarrantable searches and seizures, and that general warrants whereby an officer may be commanded to search suspected places, without probable evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described, and without oath or affirmation, are dangerous to liberty, and shall not be granted.

Sec. 6. That the printing presses shall be open and free to every citizen who wishes to examine the proceedings of any branch of government, or the conduct of any public officer, and no law shall ever restrain the right thereof. Every citizen has an indisputable right to speak, write or print upon any subject as he thinks proper, being liable for the abuse of that liberty. In prosecution for any publication respecting the official conduct of men in a public capacity, or where the matter published is proper for public information, the truth thereof may always be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court as in other cases.

Sec. 7. That all courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law, and right and justice administered without denial or delay.

Sec. 8. That the right of trial by jury shall be inviolate.

Sec. 9. That no power of suspending laws, shall be exercised, unless by the legislature.

Sec. 10. That no person arrested or confined in jail, shall be treated with unnecessary rigor, or be put to answer any criminal charge, but by presentment, indictment or impeachment.

Sec. 11. That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, and to have a copy thereof, to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment a speedy public trial by an impartial jury of the county or district, in which the offence shall have been committed, and shall not be compelled to give evidence against himself, nor shall he be twice put in jeopardy for the same offence.

Sec. 12. That all persons shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident or the presumption great, and the privilege of the writ of *habeas corpus* shall not be

suspended, unless when in case of rebellion or invasion, the public safety may require it.

Sec. 13. Excessive bail shall not be required, excessive fines shall not be imposed, nor cruel and unusual punishments inflicted.

Sec. 14. All penalties shall be proportioned to the nature of the offence. No wise legislature will affix the same punishment to the crime of theft, forgery and the like, which they do to those of murder and treason. When the same undistinguished severity is exerted against all offences, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do the slightest offences. For the same reasons a multitude of sanguinary laws are both impolitic and unjust; the true design of all punishments being to reform, not to exterminate mankind.

Sec. 15. The person of a debtor where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law.

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

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

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 legislature for a redress of grievances.

Sec. 20. That the people have a right to bear arms for the defence of themselves and the state, and as standing armies in time of peace are dangerous to liberty, they shall not be kept up, and that the military shall be kept under strict subordination to the civil power.

Sec. 21. That no person in this state, except such as are employed in the army or navy of the United States, or militia in actual service, shall be subject to corporal punishment under the military law.

Sec. 22. That no soldier in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in the manner prescribed by law.

Sec. 23. That the levying taxes by the poll is grievous and oppressive therefore the legislature shall never levy a poll tax for county or state purposes.

Sec. 24. That no hereditary emoluments, privileges or honors, shall ever be granted or conferred by this state.

Sec. 25. That no law shall be passed to prevent the poor in the several counties and townships within this state, from an equal participation in the schools, academies, colleges and universities within this state, which are endowed, in whole or in part, from the revenue arising from donations made by the United States for the support of schools and colleges, and the doors of the said schools, academies and universities shall be

open for the reception of scholars, students and teachers of every grade, without any distinction or preference whatever, contrary to the intent for which said donations were made.

Sec. 26. That laws shall be passed by the legislature, which shall secure to each and every denomination of religious societies in each surveyed township which now is or may hereafter be, formed in the state, an equal participation, according to their number of adherents, of the profits arising from the land granted by congress for the support of religion, agreeably to the ordinance or act of congress making the appropriation.

Sec. 27. That every association of persons, when regularly formed within this state, and having given themselves a name, may on application to the legislature, be entitled to receive letters of incorporation, to enable them to hold estates, real and personal, for the support of their schools, academies, colleges, universities, and for other purposes.

Sec. 28. To guard against the transgressions of the high powers, which we have delegated, we declare, that all powers, not hereby delegated, remain with the people.

SCHEDULE.

Sec. 1. That no evils or inconveniences may arise from the change of a territorial government to a permanent state government, it is declared by this 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.

Sec. 2. All fines, penalties and forfeitures, due and owing to the territory of the United States north west of the river Ohio, shall inure to the use of the state.—All bonds executed to the governor or any other officer in his official capacity, in the territory, shall pass over to the governor or the other officers of the state, and their successors in office, for the use of the state, or by him or them to be respectively assigned over to the use of those concerned, as the case may be.

Sec. 3. 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. 4. All laws and parts of laws now in force in this territory, not inconsistent with this constitution, shall continue and remain in full effect until repealed by the legislature, except so much of the act, entitled "An act regulating the admission and practice of attorneys and counselors at law;" and of the act made amendatory thereto, as relates to the term of time which the applicant shall have studied law, his residence within the territory and the term of time which he shall have practiced as an attorney at law, before he can be admitted to the degree of a counsellor at law.

Sec. 5. The governor of the state shall make use of his private seal, until a state seal be procured.

Sec. 6. The president of the convention shall issue writs of election to the sheriffs of the several counties, requiring them to proceed to the

election of a governor, members of the general assembly, sheriffs and coroners, at the respective election districts in each county, on the second Tuesday of January next, which elections shall be conducted in the manner prescribed by the existing election laws of this territory, and the members of the general assembly, sheriffs and coroners, then elected shall continue to exercise the duties of their respective offices until the next annual or biennial election thereafter, as prescribed in this constitution, and no longer.

Sec. 7. Until the first enumeration shall be made as directed in the second section of the first article of this constitution: The county of Hamilton shall be entitled to four senators and eight representatives.— The county of Clermont, one senator and two representatives. The county of Adams, one senator and three representatives. The county of Ross, two senators and four representatives. The county of Fairfield, one senator and two representatives. The county of Washington, two senators and three representatives. The county of Belmont, one senator and two representatives. The county of Jefferson, two senators and four representatives, and the county of Trumbull, one senator and two representatives.

Done in Convention at Chillicothe the twenty ninth day of November, in the year of our Lord, one thousand eight hundred and two, and of the independence of the United States of America, the twenty seventh.

In testimony whereof, we have hereunto subscribed our names.

EDWARD TIFFIN, *President.*

ATTEST, THOMAS SCOTT, *Secretary.*

LAWS.

AN ACT, to provide for election of electors of President and Vice President of the United States.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That the Governor of this state, sixty days previous to the time provided by this act, for the election of electors of President and Vice President of the United States, shall, by proclamation to be inserted in one of the newspapers printed in each county in this state, where any such paper is printed, give notice of the time of holding such election, and the number of electors of President and Vice President, there to be chosen.

Governor to issue proclamation to be inserted in newspaper in each county.

Sec. 2. That the qualified electors of this state shall, on the first Friday of November next, and on the fifth Friday preceding the first Wednesday in December, in every fourth succeeding year, assemble in their respective townships, at the usual places designated for holding elections, and proceed to elect a number of electors of President and Vice President of the United States, equal to the number of senators and representatives, this state may be entitled to, in the Congress of the United States, which election shall commence and close at the same hours, and be conducted in the same manner, and of which the sheriffs of the respective counties shall give the same notice as is, or may be directed by law, for electing members of the General Assembly of the state; but no senator or representative in Congress, or persons holding an office of trust or profit under the United States, or any director of the bank of the United States, or any of its branches, shall be eligible as an elector of President and Vice President.

Elections to be held in townships on the fifth Friday preceding the first Monday in December.

Election to be opened and closed, &c. as directed by law for election of members of general assembly.

Who shall not be elected.

Sec. 3. That it shall be the duty of the judges of elections, in each township, forthwith after the close of the elections, to seal up one of the poll books of the election, which shall be carried within three days after the day of election, to the sheriff of the proper county, who shall attend the two days next succeeding the election, at the seat of justice of his county, for the purpose of receiving poll books as aforesaid; and if the judges of election, or any one of them shall fail to carry the poll book as aforesaid, they shall forfeit and pay to the state, the sum of one hundred dollars, to be recovered by an action of debt, before any court having cognizance thereof.

Judges of election to seal one poll book and carry it to sheriff, who shall attend at seat of justice to receive poll books.

Judges liable to penalty for neglect.

Sec. 4. That the sheriffs, upon receiving the poll books as aforesaid, shall administer an oath or affirmation to each judge, who shall deliver said poll book, that he was a judge

Sheriff to administer an oath to each judge, and shall endorse certificate upon poll book. Sheriff to deliver poll book to secretary of state under penalty of \$1000. Poll books to be opened by secretary of state and governor, &c. Secretary to make an abstract.

of said election, and shall endorse a certificate of having administered such oath or affirmation on the poll book or packet delivered to him, and shall moreover give the judge, delivering the poll book, a receipt for the same, which receipt the judges shall file with the clerk of the proper county; and the said sheriff on the receipt of the poll books, shall deliver or cause the same to be delivered to the secretary of state, at his office, within eleven days after the election, under the penalty of one thousand dollars, to be recovered as is provided in the third section of this act.

Governor to make certificates and transmit to each elector elected, and cause election to be published.

Votes equal, election to be decided by lot.

Electors to meet at seat of government and perform their duty.

Persons who conduct election liable for neglect.

Electors to give notice to governor when met.

Sec. 5. That the said poll books, on the twelfth day after the election, shall be opened by the secretary of state, in the presence of the Governor, and the aforesaid sheriffs, or such of them as choose to attend; the secretary shall cause the poll books as they are opened to be read aloud, and shall make out a fair abstract of the names of the persons voted for, and the number of votes given to each, and the governor shall forthwith make out, for the persons having the greatest number of votes, certificates of their having been duly elected electors of President and Vice President of the United States, and transmit by special messenger, the proper certificate to each person so elected, and shall cause the election of electors to be published in the newspapers printed at the seat of government, but if more than the number of persons to be elected, have the greatest and an equal number of votes, then the election of those having such equal number of votes, shall be determined by lot, to be drawn by the secretary of state, in the presence of the governor and sheriffs aforesaid; the governor shall transmit the proper certificate, and cause publication to be made as aforesaid, and the said poll books shall be kept in the secretary's office, subject to the inspection of any person, who may choose to examine the same.

Sec. 6. That the electors who shall be chosen as aforesaid, shall, at twelve o'clock on the day which is or may be directed by the Congress of the United States, meet at the seat of government of this state, and shall then and there perform the duties enjoined upon them, by the constitution and laws of the United States.

Sec. 7. That the several persons who shall be appointed to conduct the election of electors of President and Vice President of the United States, shall, for neglect of duty, or for improper conduct, be liable to the same penalties and forfeitures as are or may be provided by the law for regulating elections in this state.

Sec. 8. That each elector of President and Vice President of the United States, shall, before the hour of twelve o'clock, on the day next preceding the day fixed by the law of Congress, to elect a President and Vice President of the United States, give notice to the governor, that he is at the

seat of government, and ready at the proper time, to perform the duties of an elector, and the governor shall forthwith deliver to the electors present, a certificate of all the names of the electors, and if on examination thereof, it should be found, that one or more of said electors are absent, and shall fail to appear before nine o'clock in the morning of the day of election of President and Vice President as aforesaid, the electors then present shall immediately proceed to elect by ballot, in presence of the governor, a person or persons to fill such vacancy or vacancies, as may have occurred through the non attendance of one or more of the electors.

Governor to deliver to electors a list of all the names.

Electors proceed to fill vacancies.

Sec. 9. That if more than the number of persons required, to fill the vacancy or vacancies as aforesaid, shall have the greatest and an equal number of votes, then the election of those having such equal and highest number of votes, shall be determined by lot, to be drawn by the governor, in the presence of the electors attending, otherwise he or they, to the number required having the greatest number of votes, shall be considered elected to fill such vacancy or vacancies.

Equal and highest number of votes, &c. to be determined by lot.

Sec. 10. That immediately after such choice is made in manner aforesaid, the name or names of the person or persons so chosen, shall forthwith be certified to the governor, by the electors making such choice, and the governor shall cause immediate notice in writing to be given to each and every of the electors chosen to fill such vacancy or vacancies as aforesaid; and the said person or persons so elected and notified, and not the person or persons in whose place he or they shall have been chosen, shall be electors, and shall meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined on him or them, as electors as aforesaid, by the Constitution and laws of the United States and of this state.

Electors names thus chosen to be certified to governor who shall notify each elector chosen to fill vacancy.

Electors so chosen and not those originally elected shall be electors.

Sec. 11. That the sheriffs of the different counties shall each receive for his services performed under this act, the following fees, to wit: for advertising the election of electors, the sum of fifty cents for each township within his county; for attending at the seat of justice, to receive the township returns the sum of two dollars; for delivering the poll books to the secretary of state, at his office, the sum two dollars for ever twenty-five miles travel, to and from the seat of government, the distance to be estimated from their respective seats of justice, on the most usual route to the seat of government, which fees shall be allowed by the auditor, on the certificate of the secretary of state, and paid by the treasurer of state.

Sheriffs fees for duties under this act.

To be paid by treasurer of state.

Sec. 12. That each and every elector who shall attend as an elector at the seat of government as aforesaid, shall be entitled to receive three dollars for each and every day's attendance, and three dollars for every twenty five miles travel, of the estimated distance by the most usual route, from his

Compensation of electors, and how paid.

place of residence to the seat of government, and the like sum for returning; which sum shall be allowed by the auditor, on the certificate of the governor, and paid by the treasurer, out of any of the monies in the treasury not otherwise appropriated: *Provided however*, That when a member of the general assembly shall be appointed an elector, he shall not be entitled to the compensation herein allowed.

Proviso, in case of member of the general assembly.

Compensation of judges and clerks of election.

Sec. 13. That the judges and clerks of the township elections, held under this act, and the clerks of the different counties, shall be paid the like compensation, out of their respective county treasuries, and in like manner, as they are entitled to for similar services under and by virtue of the act entitled, "an act to regulate elections."

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,

Speaker of the Senate,

February 15, 1820.

AN ACT to regulate elections.

Election of what offices regulated.

Sec. 1. *Be it enacted by the general assembly of the State of Ohio*, That all elections hereafter to be holden for governor, sheriff, coroner, county commissioners, county auditors, senators, representatives to the general assembly, and representatives to congress, shall be held and conducted in the manner prescribed in this act.

Each township shall compose a district; trustees to direct the place of holding.

Sec. 2. That each township in the several counties, shall compose an election district; the elections to be held at such place as the trustees of each township shall direct.

Sheriffs to provide ballot-box for each township.

Sec. 3. That the sheriffs of the several counties, shall cause to be provided at the expense of the county a ballot box for each township, which may be destitute of the same, and cause it to be deposited with the township clerk, whose duty it shall be to preserve the same, for the use of the electors, and carry said ballot box, together with a copy of the laws containing this act, to the place of holding elections in his township, when, and as often as it may be necessary to meet and vote for officers under this act.

Clerk of township to carry box and this act to election.

Description of box.

Sec. 4. That each box to be provided as aforesaid shall be of a sufficient size to contain the ballots of the township where it shall be deposited, and shall have a lid secured with brass or iron hinges, and a lock and key; through the lid thereof, there shall be an aperture of a size calculated to admit a single ticket at a time, and beneath it shall be placed an iron spring bolt, so as to close the aperture and exclude the admission of any thing into the box after the close of the poll.

Sec. 5. That it shall be the duty of the sheriff, and he is hereby authorized and required, fifteen days at least before the holding of any general election, or ten days before the holding of any special election, to give public notice by proclamation, throughout his county, of the time of holding such election, and the number of officers at that time to be chosen, one copy of which shall be set up at each of the places where the elections are appointed to be holden

Sheriff to give notice of holding elections, how.

Sec. 6. That at all elections to be holden under this act, the poll shall be opened between the hours of eight and ten in the morning, and close at four in the afternoon of the same day, except in the township of Cincinnati, in the county of Hamilton, at which the polls shall be opened between the hours of eight and ten in the morning, and close at six in the afternoon.

Polls when to be opened and closed.

Sec. 7. That at all elections to be holden under this act, the trustees of the several townships shall serve as judges, and the clerk of each township, and such other person as the judges shall choose, shall serve as clerks of the election, who together with the judges aforesaid shall receive seventy-five cents per day, each, as a compensation for their services, to be paid out of the treasury of their proper county.

Trustees to serve as judges

Compensation.

Sec. 8. That if either of the trustees or clerk of any township, shall fail to attend at the time and place, for holding the elections, or if either of them should be a candidate, then it shall be the duty of the electors present, to choose *viva voce*, a suitable person or persons, (as the case may require.) having the qualifications of an elector, to act as a judge or judges, or clerk or clerks (as the case may be) of the election: And previous to any votes being received, each judge and clerk, not being a trustee or clerk of the township, shall take an oath or affirmation, which may be administered by a justice of the peace, trustee, or clerk of the township, in the form following: "You A. B. do solemnly swear, (or affirm as the case may be) that you will perform the duties of a judge of this election, (or clerk as the case may be) according to law and the best of your abilities; and that you will studiously endeavour to prevent fraud, deceit or abuse in conducting the same."

In absence of trustees &c. electors present may choose judges &c. Judges and clerks thus appointed to take an oath. Form.

Sec. 9. That if any of the trustees or township clerks aforesaid, shall refuse to discharge the duties imposed on them, according to the true intent of this act, or if those who may be chosen to act in their stead, in case of their absence or being candidates shall refuse to act, in the capacity of judges or clerks, as required by the provisions of this act; in either case the person or persons so offending shall forfeit and pay a sum not exceeding ten dollars, for the use of the county in which he or they may reside, to be recovered with costs, before any justice of the peace of the township, in an action of debt.

Persons refusing to act as judges &c. to forfeit ten dollars.

Description of votes and how delivered in. **Elector not to vote out of his township.** **Sec. 10.** That each elector shall openly and in full view, deliver to one of the judges of the election, a single ballot or piece of paper, on which shall be written or printed in an intelligible manner, the name or names of the person or persons voted for, with a pertinent designation of the office which he or they may be intended to fill, but no elector shall vote, except in the township in which he resides.

The judge who receives a ticket to proclaim name of elector. **Clerk to enter name in poll book.** **Sec. 11.** That the judge to whom any ticket shall be delivered, shall upon the receipt thereof, pronounce, with an audible voice the name of the elector, and if no objections be made to him, and the judges be satisfied that the elector is a citizen of the United States, and legally entitled agreeably to the constitution and laws of this state, to vote at that election, he shall immediately put the ticket into the box, without inspecting the name or names written thereon; and the clerks of the election shall enter the name of the elector, and number in the poll books agreeably to the form pointed out in the twentieth section of this act.

Upon objections to an elector, judges may examine him upon oath touching his qualifications; or examine witness. **Sec. 12.** That when objections are made to an elector, and in all other cases where it is a fact unknown to either of the judges, whether the person offering his ballot has the right to vote at that election, the judges shall have power to examine such person on oath or affirmation, touching his qualifications as an elector, or they may enquire into the qualifications of such elector, on the oath or affirmation of some disinterested witness or witnesses; which oath or affirmation, either of the judges is hereby authorized to administer.

Poll books to be signed by judges and attested by clerks. **Sec. 13.** That at the close of the polls, the poll books shall be signed by the judges, and attested by the clerks, and the names therein contained shall be counted, and the number set down at the foot of the poll books, in the manner hereinafter provided in the form of the poll books.

After poll book signed, ballot boxes to be opened & tickets to be taken out one at a time. Judges to examine tickets respectively. **Sec. 14.** That after the poll books are signed in the manner hereinafter provided, in the form of the poll books, the ballot box shall be opened and the tickets or ballots therein contained shall be taken out, one at a time, by one of the judges, who shall read distinctly, while the ticket remains in his hand the name or names contained therein, and then deliver it to the second judge, who shall examine the same, and pass it to the third judge who shall string it on a thread, and carefully preserve the same; the same method shall be observed, in respect to each of the tickets in the ballot box, until the number of tickets taken out of the ballot box, is equal to the number of names contained in the poll books.

Clerk to enter all the votes read by judges. **Sec. 15.** That the clerks shall enter in separate columns, under the names of the persons voted for, as hereinafter provided in the form of the poll books, all the votes so as aforesaid read by the judges.

When two ballots rolled together deemed fraudulent. **Sec. 16.** That where two or more ballots are found folded or rolled together it shall be considered as conclusive evidence of their being fraudulent.

Sec. 17. That if a ballot shall be found to contain a greater number of names for any one office, than the number of persons required to fill such office, it shall be considered fraudulent as to the whole of the names, designated to fill such office, but no further. Ballot containing too many names fraudulent.

Sec. 18. That a ballot shall not be adjudged fraudulent for containing a less number of names, than are authorized to be inserted. Containing less than authorized not fraudulent.

Sec. 19. That after the examination of the ballots shall be completed, the number of votes for each person, shall be enumerated under the inspection of the judges, and set down as hereinafter provided, in the form of the poll books, and be publicly proclaimed to the people present. Number of votes to be set down and proclaimed.

Sec. 20. That the following shall be the form of the poll books to be kept by the judges and clerks of election, held under this act. Form of poll books.

"Poll Book of the Election held in the township of _____ in the county of _____ on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ A. B. C. D. and E. F. Judges, and J. K. and L. M. clerks of this election, were severally sworn as the law directs, previous to their entering on the duties of their respective offices.

NUMBER AND NAMES OF ELECTORS.		}	NUMBER AND NAMES OF ELECTORS.	
NO.		}	NO.	
1	A. B.	}	3	E. F.
2	C. D.	}	4	G. H.

It is hereby certified, that the number of electors at this election amount to _____

A. B. } Judges
 C. D. } of
 E. F. } Election.

Attest,

J. K. }
 L. M. } Clerks.

Names of persons voted for, and for what office, containing the number of votes for each candidate.

GOVERNOR		SENATE		REPRESENTATIVE		REPRESENTATIVES IN CONGRESS		COUNTY COMMISSIONERS		SHERIFF		CORONER		COUNTY AUDITOR	
A B	No. Votes	A B	No. Votes	A B	No. Votes	A B	No. Votes	A B	No. Votes	A B	No. Votes	A B	No. Votes	A B	No. Votes
C D	No. Votes	C D	No. Votes	C D	No. Votes	C D	No. Votes	C D	No. Votes	C D	No. Votes	C D	No. Votes	C D	No. Votes
E F	No. Votes	E F	No. Votes	E F	No. Votes	E F	No. Votes	E F	No. Votes	E F	No. Votes	E F	No. Votes	E F	No. Votes
G H	No. Votes	G H	No. Votes	G H	No. Votes	G H	No. Votes	G H	No. Votes	G H	No. Votes	G H	No. Votes	G H	No. Votes
I J	No. Votes	I J	No. Votes	I J	No. Votes	I J	No. Votes	I J	No. Votes	I J	No. Votes	I J	No. Votes	I J	No. Votes
K L	No. Votes	K L	No. Votes	K L	No. Votes	K L	No. Votes	K L	No. Votes	K L	No. Votes	K L	No. Votes	K L	No. Votes
M N	No. Votes	M N	No. Votes	M N	No. Votes	M N	No. Votes	M N	No. Votes	M N	No. Votes	M N	No. Votes	M N	No. Votes
O P	No. Votes	O P	No. Votes	O P	No. Votes	O P	No. Votes	O P	No. Votes	O P	No. Votes	O P	No. Votes	O P	No. Votes
Q R	No. Votes	Q R	No. Votes	Q R	No. Votes	Q R	No. Votes	Q R	No. Votes	Q R	No. Votes	Q R	No. Votes	Q R	No. Votes
S T	No. Votes	S T	No. Votes	S T	No. Votes	S T	No. Votes	S T	No. Votes	S T	No. Votes	S T	No. Votes	S T	No. Votes
U V	No. Votes	U V	No. Votes	U V	No. Votes	U V	No. Votes	U V	No. Votes	U V	No. Votes	U V	No. Votes	U V	No. Votes
W X	No. Votes	W X	No. Votes	W X	No. Votes	W X	No. Votes	W X	No. Votes	W X	No. Votes	W X	No. Votes	W X	No. Votes
Y Z	No. Votes	Y Z	No. Votes	Y Z	No. Votes	Y Z	No. Votes	Y Z	No. Votes	Y Z	No. Votes	Y Z	No. Votes	Y Z	No. Votes

We do hereby certify that A B had _____ votes for Governor
 C D had _____ votes for Governor, A B had _____ votes for Sen-
 ator in state Legislature, C D had _____ votes, &c.

Attest.
 J K }
 L M } Clerks.

A B } Judges
 C D } of
 E F } Election,

Sec. 21. That after canvassing the votes in manner aforesaid, the judges before they disperse, shall put under cover one of the poll books, seal the same and direct it to the clerk of the court of common pleas of that county where the return is to be made, and the poll book thus sealed and directed, shall be conveyed by one of the judges, to be determined by lot, if they cannot otherwise agree, to the clerk of such county, at his office within four days from the day of the election; and the other poll book where the same is not otherwise disposed of by this act. shall be deposited with the township clerk, within three days from the day of election, there to remain for the use of those persons who may choose to inspect the same. and at all elections for state and county offices in any county laid off and organized, between the periods at which the ratio of representation is fixed by law, and before the next subsequent period for apportionment shall arrive, two sets of poll books shall be provided, at the expense of each township; the votes given for governor, representative in congress, senator or representative in the state legislature, shall in the manner prescribed, be set down in one set of poll books, and one of the poll books of such set, shall be sealed up by one of the judges of election, and be carried to the clerk's office of the old county from which such part of the new county was taken. within the same time, and under the same regulations specified in the former part of this section, in the same manner as though such new county had not been laid off; in the second set of poll books the votes for the county offices shall be set down, and the judges of the election shall have one of the poll books of the last mentioned set, sealed up and by one of their number, carried to the clerk's office of the new county in the same manner, within the same time, and under the same regulations before mentioned; the remaining two books one of each set, shall be deposited in the office of the township clerk, for the inspection of any person who may choose to examine the same.

Sec. 22. That on the sixth day after the day of election (or sooner in case all the returns shall be made,) the clerk of the county, taking to his assistance two justices of the peace of the proper county, shall proceed to open the several returns, which shall have been made to his office, and to make abstracts of the votes in the following manner: "The abstract of votes for governor shall be on one sheet, and being certified and signed by the justices and clerk, shall be deposited in the clerk's office, and a copy thereof certified under the official seal of said clerk, shall be endorsed and directed to the speaker of the senate, and forwarded immediately to the seat of government by mail; and the clerk aforesaid, shall make out another certified copy of the abstract of votes for governor as aforesaid, directed to the speaker of the senate, and deliver the same to a member of the general assembly, to

One poll-book to be put under cover by judges and sealed, & delivered to Clerk of C. C. P. of county within 4 days; the other to be deposited with Clerk of township

2 sets of poll-books to be provided for state, & county officers in counties organized, &c. Governor, &c. to be set down in one set of poll-books; the other shall be sealed up and carried to the old county, &c. In second set, shall be set down votes for county officers, which shall be carried to clerk's office of new county.

The other two books of each set to be deposited with clerk of township.

On the sixth day after election or sooner, the clerk of county, with 2 justices of the peace, shall open returns and make abstracts

Abstracts how made and certified.

Of votes for Governor. Speaker of senate shall open and publish abstracts for governor in 5 days after General

Assembly is organized.

Abstract of votes for representative to Congress, senator and representative to gen. assembly, sheriffs, coroners, co. auditors, and commissioners, how made & certified.

A copy to be sent to secretary of state, Justices and clerks not to decide upon validity of returns.

Deputy clerks may perform duty of clerks; or associate judges may when there is no deputy.

When votes equal office to be determined by lot.

Substance, not form, required in poll books.

When two or more counties compose a district for electing members of general assembly, one of the judges in district shall carry poll book to clerk of county where election is held, &c. Clerk to trans-

the end that the same may be conveyed to the speaker of the senate at the seat of government: And the speaker of the senate shall within five days after the general assembly shall be organized, open and publish the abstracts of votes by him received, in conformity to the provisions of the second section of the second article of the constitution of Ohio: And the abstract of votes for representatives to congress, senator and representative to the general assembly, sheriffs, coroners, county auditors and county commissioners, shall be made on one sheet, and being certified and signed (in the same manner as in the case of abstracts of votes for governor) shall be deposited in the clerk's office, and a copy thereof certified as aforesaid, shall be immediately enclosed, directed and forwarded to the secretary of state: In making the abstracts of votes aforesaid, the justices and clerks, shall not decide on the validity of the returns aforesaid, but shall be governed by the number of votes stated in the poll books: But no paper shall be received as the poll book of any township, unless delivered at the clerk's office by one of the judges of the election held in such township.

Sec. 23. That whenever it shall so happen, that the clerk of any of the courts of common pleas shall die, be absent or from any other casualty be prevented from opening the returns of votes at any election, it shall be lawful for his deputy to discharge the duties required of such clerk by law, or if the office of such clerk is not represented by deputy, and such clerk being absent, or in any wise disqualified to serve as aforesaid, it shall be the special duty of the associate judges of the county in which such election was held, to attend immediately at the seat of justice of such county, and they or a majority of them, shall there receive and proceed to open all the returns of elections for such county or counties, and perform the same duties that are required of the clerk of the court and justices of the peace.

Sec. 24. That if any number of persons, greater than the number of offices required to be filled, shall be equal in votes, the clerk and justices or judges aforesaid, shall determine by lot, which of the persons shall be duly elected:

Sec. 25. That no election shall be set aside for want of form in the poll books, provided they contain the substance.

Sec. 26. That when two or more counties compose a district, and elect in common, members of the general assembly, one of the judges in each election district, shall carry one of the poll books to the office of the clerk of that county, in which the election was held, within four days after the day of election, and the clerk shall forthwith proceed to open the returns from the several election districts, in the same manner and under the same regulations that the clerks of the original counties are bound to do by this act, and make out a fair abstract of the votes given within the county under the seal of the court of common pleas and attested by the clerk,

and transmit the same by a special messenger to the clerk's office of the county named for that purpose, of the counties which elect in common, within ten days after the day of election, who shall receive and open the same, in the same manner as returns of election districts, and incorporate the returns from the new county or counties, with the returns of election districts of the original county, and make out and deliver to the persons elected, certificates of their election.

Sec. 27. That the clerk and justices shall declare the person having the highest number of votes for sheriff, coroner, county auditor or county commissioner, and the person or persons having the highest number of votes, for senators or representatives to the general assembly duly elected, subject to an appeal to the court of common pleas of the proper county, in case of the contested election of sheriff, coroner, county auditor or county commissioner, and to that branch of the legislature to which any person may be returned where an election is contested: *Provided*, Notice of such appeal to said court, be entered with the clerk thereof within twenty days from the day of election.

Sec. 28. That the clerk shall make out for the sheriff, coroner, county auditor, county commissioner and each of the senators and representatives to the general assembly, who have the highest number of votes given, a certificate of such his election, and shall deliver the same to the person entitled thereto upon demand without fee.

Sec. 29. That if any person shall directly or indirectly, give or promise any meat, drink or any other reward, with intention to procure his election or the election of any favorite candidate, he shall forfeit and pay for every such offence, a sum not exceeding five hundred dollars, and if a candidate be rendered incapable for two years, to serve in the office for which he was a candidate; and if any person shall furnish an elector who cannot read, with a ticket, informing him that it contains a name or names different from those which are written or printed therein, with an intent to induce him to vote contrary to his inclination, he shall forfeit and pay a sum not exceeding one hundred dollars.

Sec. 30. That if any candidate or elector of the proper county, chooses to contest the validity of any election or the right of any person proclaimed duly elected to his seat, in the senate or house of representatives, such person shall give notice thereof in writing to the person whose election he intends to contest, or leave a written notice thereof at the house, where such person last resided, within twenty days after the election, expressing the points on which the same will be contested, and the names of the two justices of the peace, who will officiate at the taking of the depositions, and when and where they will attend to take the same, and such notice shall be served at least ten days before the day pointed out therein for taking the depositions: *Provided*, That the time fixed

mit abstracts of the county named for that purpose by special messenger.

Clerks, &c. to declare person having highest no. of votes duly elected. In case of contest of election of sheriff, &c. appeal allowed *Proviso*.

Clerk to deliver certificate to person elected without fee.

Bribery at elections prohibited.

Imposition upon an illiterate elector, who cannot read, forbidden.

Any elector wishing to contest the validity of an election of senator or representative, shall give notice to the person.

Substance of notice. Must be served ten days.

Proviso. Justices may issue subpoenas for witnesses;

shall certify under seal all testimony to Speaker.

upon for taking such depositions, shall not exceed thirty days from the day of election; and the said justices or either of them shall have power, and they are hereby authorized and required, to issue subpoenas to all persons whose testimony may be required by either of the parties, commanding such person to appear and give testimony at the time and place therein mentioned, under the penalty of fifty dollars for his neglect or refusal so to do, to be levied on each and every delinquent, who hath been duly served with process; and the said two justices when met shall hear and certify under seal, all testimony relative to such contested election, to the speaker of that branch of the general assembly, where the person whose seat is contested, may be returned to serve at their next session; no person shall contest the election of any senator or representative; unless he is an elector of that county or district from which the person is returned to serve; no testimony shall be received by the justices on the part of the person contesting the election, which does not relate to the point specified in the notice, a copy of which notice, attested by the person who serves or delivers the same, shall be delivered to the said justices, and by them transmitted to the speaker of that branch of the general assembly, where the contest is to be decided with the other documents.

No person to contest unless an elector of the county or district.

Testimony must be pertinent to the notice.

Copy of notice to be sent to Speaker.

Contest of election of sheriff, &c. conducted as above, except testimony shall be sent to common pleas.

Sec. 31. That the method to be pursued in contesting the election of any person proclaimed sheriff, coroner, county auditor or county commissioner, shall in every respect, be similar to the method directed as aforesaid, to be pursued in contesting the election of senator and representative to the general assembly, save only that the testimony taken as aforesaid, and all matter relative to such contest shall be sent to the court of common pleas of the proper county, on or before the second day of the term next ensuing the thirty days allowed, in which to take depositions by the preceding sections, and the said court of common pleas, at their said first term, after thirty days have expired shall hear and determine the said contest.

Judge, who carries poll-books, to receive ten cents per mile.

Sec. 32. That the judge who carries the poll book to the clerk of the court of common pleas of the proper county, shall be entitled to receive for the same, ten cents per mile from the place of election to the seat of justice, to be paid out of the respective county treasuries.

Judges & other officers who neglect duties required by this act to be fined.

Sec. 33. That if any of the following officers, charged with any duty under this act, viz: sheriff, associate judge, justice of the peace, or clerk of the court of common pleas, (who may open the returns,) shall refuse or neglect to perform the duty required of him, by this act, according to the true intent and meaning thereof, he shall on conviction thereof, before any court having cognizance to that amount, be fined in any sum at the discretion of the court, not exceeding two hundred dollars.

Sec. 34. That all fines and penalties imposed by this act, Fines recover- and not herein otherwise provided for, shall be recovered with ed by debt, or costs of suit, in an action of debt, or by indictment for the use indictment. of the county.

Sec. 35. That an act to regulate elections, passed January Acts repealed. twenty sixth, eighteen hundred twenty, and "an act to amend the act entitled an act, to regulate elections, passed January first, eighteen hundred twenty three," be and the same are hereby repealed.

This act, to take effect and be in force from and after the Effect. first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 7th, 1824.

AN ACT providing for the election of sheriffs and coroners, in certain cases.

Sec. 1. *Be it enacted by the General Assembly of the State* Sheriff or cor- of Ohio, That when any sheriff or coroner shall die, or by oner dying or any other means be incapacitated to serve as sheriff, or coro- otherwise inca- ner, it shall be the duty of the associate judges, or any two pacitated, as- of them, of the county where such vacancy may happen, to sociate judges appoint a day, without delay, on which the qualified electors or two of them of said county shall meet in their respective townships and dis- shall appoint a tricts, and proceed to the election of a sheriff, or coroner, (as day to hold e- the case may be) in the same manner as is directed in case of lection to fill the election of a sheriff or coroner at the general election, a- vacancy, &c. greable to an act, entitled "An act regulating elections," passed day of and the said sheriff or coroner so elected, shall perform the same duties and be and the said sheriff liable to the same penalties as sheriffs or coroners in other same duties and be cases, and shall continue in office until the next general elec- liable to the same tion, and until another sheriff or coroner (as the case may be) penalties as sheriffs shall be elected and qualified agreeable to law. or coroners in other

Sec. 2. That when any new county is laid off, or erected, Associate jud- it shall be the duty of the associate judges, or any two of them, ges or two of within said county to appoint a day on which the qualified them, to fix a electors shall meet at the temporary seat of justice, giving day for elect- at least ten days notice thereof in six of the most public pla- ing sheriffs and ces in said county of such election, and proceed to elect one coroners of new sheriff and one coroner, in the same manner as is directed in counties. the foregoing section of this act, except that the return of Return of votes the votes given for the different candidates shall be made to to be made to the associate judges of said county, or any two of them, who judges, who shall give to the two persons who stand highest in votes for shall give sher- the different offices, a certificate of their respective elections, iff elect, &c. certificate, and

Governor may and in consequence of such certificate, the governor is here-
grant commis- by authorized to grant commissions to the persons elected,
sion. accordingly; and the sheriff or coroner so elected, shall per-

form the same duties, and be liable to the same penalties
Shall continue as in other cases, and shall continue in office until the next
in office until general election, and until another sheriff and coroner shall
next general election, and un- be elected and qualified, agreeably to law.
til &c.

MICHAEL BALDWIN,

Speaker of the House of Representatives.

NATHANIEL MASSIE,

Speaker of the Senate.

April 15, 1803.

*AN ACT, providing for the election and resignation of justices
of the peace.*

Judges of C.
C, P shall de-
termine the
number of Jus-
tices for new
townships the
day for elec-
tion.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That whenever any new township shall be set off, or divided, the judges of the court of common pleas, of the proper county, shall determine on a suitable number of justices of the peace, for such township and the day of election; and the clerk of the court, shall transmit a copy of the proceedings thereof, to the trustees of the same, who shall immediately warn a meeting of the electors, to elect the said justices, so determined on, and if there be no trustees within such township, the said court shall cause their clerk to give notice of such election, by causing a notice to be set up in three public places in said township, not less than ten, nor more than fifteen, days previous to such election, pointing out the place of holding such election.

Vacancy hap-
pening in office
of justices of
peace to notify
electors to fill
same.

Sec. 2. That whenever a vacancy is about to happen, or shall actually happen, in the office of a justice of the peace, in any township within this state, either by death, removal, resignation or otherwise, and the trustees being notified thereof, they shall give notice to the electors of such township, to fill such vacancy, by setting up an advertisement, in three public places in the proper township, specifying the number of justices to be elected, which notice shall be given not less than fifteen, nor more than twenty days, previous to holding said election, which shall be held at such place as the trustees of the township shall direct.

Judges to add
one or more

Sec. 3. That whenever it shall be made to appear to the satisfaction of the court of common pleas, of any county that there is not a sufficient number of justices of the peace, in any township thereof, and also that public notice had been given in such township, that application would be made for an additional number of justices of the peace; the judges are hereby authorized, to add one or more justices to

such township, (as to them may seem just,) and the trustees shall warn a meeting of the electors of such township, to elect such justice or justices, so added, agreeably to the provisions of this act; and whenever it shall be made appear to the satisfaction of the judges of the court aforesaid, that it is expedient to decrease the number of justices of the peace in any township, it shall be lawful for the judges to restrict the number as they may think proper: *Provided*, That no justice shall be deprived of his commission, until the expiration of the term for which he shall have been elected: *And Provided also*, That if any township should be, in part, attached to any other township or townships, the justices of the peace of the township thus attached, shall execute the duties of their respective offices, in the township to which they may be attached, in the same manner as if they had been elected for such township.

Sec. 4. That if any candidate or elector of the township, in which the election was held, shall think proper to contest his or their election, who was proclaimed to be elected, he or they intending to contest, shall make it known to one of the judges of the court of common pleas of such county, within six days after such election, and the points on which he or they mean to contest such election, whose duty it shall be to communicate the same to him or them, whose election is contested, with the points on which, the contestor or contestors mean to rely, citing him or them to appear on such a day at some convenient place in said township, allowing the person or persons whose election is contested, five days notice of such contest, specifying the name or names of the persons, who contest the same, and shall also give notice to the clerk of the court of common pleas of the county, directing him to withhold the return of such contested election, until the same is decided.

Sec. 5. That the judge on the same day that he issues a notice to the person, whose election is contested, shall also issue a summons to three respectable freeholders, who he may appoint to try such contest, making known to them, the cause of such summons and place of meeting, which shall be directed to a constable, whose duty it shall be, to serve the same and make return at the time, and place, of trying such contest.

Sec. 6. That when the judge and freeholders have met, the judge shall duly qualify the said freeholders, to try such contest agreeably to evidence, and no evidence shall be admitted, but such as relates to the point or points named in the notice, and when the contest is closed, the freeholders shall sign and seal their decision, which shall be attested by the judge; and if by reason of the same, there should be a vacancy in the office of justice of the peace, the judge shall transmit a copy of such decision, within three days, to the

justices when there is not a sufficient number.

Trustees to warn a meeting.

Judges may decrease the number of justices.

Proviso.

No justice shall be deprived of his commission.

Erovido.

Intention to contest election to be made known to one of the judges of C. C. P. Duty of judge.

Judge to summon three freeholders to try contest.

Constable to serve summons

Judge to qualify freeholders to try contest.

Freeholders to sign and seal their decision; and in case vacancy by reason thereof.

judge to send
copy to trust-
ees.

trustees of the said township, who shall forthwith warn a meeting of the electors, to fill such vacancy, as in other cases; but if by the decision of the freeholders aforesaid, the election so contested remains good, he shall transmit the decision to the clerk of the court, who shall proceed thereon, as if no contest had taken place.

Freeholders
not attending,
judge may ap-
point others.

Sec. 7. That in case any of the freeholders summoned, should fail to attend at the time and place of trying such contest, it shall be lawful for the judge aforesaid, to appoint other freeholders to supply such deficiency, as may enable them to proceed to try such contest: *Provided also*, if the judge shall fail to attend, it shall be lawful for any justice of the peace of the county, to perform all the duties that are required of the judge aforesaid, by the provisions of this act.

Proviso

Judge failing
to attend jus-
tice may per-
form duties.

Sec. 8. That in all cases of contested elections, under the provisions of this act, if the contestor or contestors shall fail in setting aside such election, the person or persons contesting, shall pay the costs accruing by such trial, and the judge or justice is hereby authorized to issue execution for the same, but if the election shall be set aside, the township in which such election was held, shall pay the costs, and the trustees of such township, are hereby authorized and required to issue their order on the township treasurer, for the payment of the same, to be paid out of any money therein; the judge or justice shall be entitled to receive one dollar, and the freeholders trying such contest shall receive one dollar each per day, and the witnesses and constable, their lawful fees as in other cases..

Contestors
failing shall
pay costs.

Elections set a-
side, townships
shall pay the
costs.

Judge, justice,
and each free-
holder shall
have one dol-
lar per day

Justice to take
an oath.

Enter into
bond.

Sec. 9. That whenever any person is elected to the office of a justice of the peace, and receives a commission from the governor, he shall, forthwith, take the necessary oath or affirmation, appertaining to such office, before the clerk of the court of his proper county, who is hereby authorized to administer the same, or before any other person authorized to administer oaths, who shall within ten days, certify the same to the clerk aforesaid, who shall in either case, make record of it in a book, to be by him provided for that purpose; and every justice of the peace so qualified, before he enters on the duties of his office, shall within ten days after such qualification, enter into bond, to be approved of by the trustees of the township, payable to the treasurer of the township, and his successor in office, with at least two sufficient securities, with a penalty of not less than five hundred dollars nor more than three thousand dollars, at the discretion of the trustees to be deposited with the township treasurer conditioned that said justice shall well and truly pay over, according to law, all monies which may come into his hands, by virtue of his said commission; on which bond suit may be brought, and the penalty thereof, recovered by any person

injured, by the neglect or refusal of any such justice, in the same manner as bonds given by sheriffs, and on refusal or neglect to enter into such bonds, the trustees shall advertise a new election, to fill the office of such justice.

Sec. 10. That every justice of the peace who shall hereafter be commissioned, shall in thirty days thereafter, transmit the date thereof to the clerk of the township, who shall make an entry thereof in a book by him to be provided for that purpose; and at least sixty days previous to the expiration of such commissions, the clerk shall give a written notice to the trustees, when such justices commission will expire; and the trustees on receiving such notice shall warn a meeting of the electors of such township, agreeably to the provisions of this act; and all elections under the provisions of this act, shall be conducted in the same manner as is required in the election of members of the general assembly and the judge taking in the return of such election, shall be entitled to receive one dollar per day, to be paid out of the county treasury.

Sec. 11. That all resignations of justices of the peace, shall be made to the Clerk of the Court of Common Pleas of the proper county, and the justice so resigning, shall at the same time, give notice to the clerk of the township of his resignation; and the township clerk shall, within three days after receiving such notice of resignation, certify the same to the trustees of the township, who shall proceed thereon as in other cases of vacancies.

Sec. 12. That if any officer, or other person, shall refuse or neglect to perform such duties as are required by the provisions of this act, such person or persons so offending, shall be fined in a sum not less than five, nor more than twenty dollars, recoverable before any justice of the peace, of the proper township, in an action of debt, qui tam, one half to the person who shall bring suit for the same, and the other half to the use of the township.

Sec. 13. That when a vacancy is about to happen, in the office of justice of the peace, and the trustees of the township shall be notified thereof, according to the provisions of the second section of this act, it shall be lawful for the trustees to advertise and hold an election, to supply such vacancy, before the vacancy actually happens; any thing in said section to the contrary notwithstanding.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 20, 1820.

Refusing to enter into bonds, Trustees shall order new election.

Justice shall in 30 days send date of commission to tp. clk. who shall give notice to trustees when term of office will expire.

Election how conducted.

Judge making return shall receive one dollar per day.

Resignations shall be made to Clerk Court Common Pleas

Officer or other person refusing to perform duties to be fined

Trustees may advertise election before vacancy actually happens.

AN ACT declaring offices vacant in certain cases, and to provide for filling the same.

Commissions of judges to be sent by secretary of state to Clerk C. C. P. of co'ty where judges reside.

Clerk's duty.

Judge to take an oath and transmit certificate of same to clerk.

In what case office to be considered vacant.

Removal of judge without his jurisdiction shall be taken as a resignation

Every officer of whom bond or security may be by law required, who shall neglect to execute same &c. shall be taken to have refused to accept his office.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That every commission that may be hereafter issued, by the governor, to any judge of the supreme court, president or associate judge of either of the courts of common pleas, shall be transmitted by the secretary of state, to the clerk of the Court of Common Pleas of the county wherein such judge may reside; and it is hereby made the duty of such clerk to receive and forthwith to transmit the same to the person entitled thereto; whereupon, such person having received such commission, shall take the oath or affirmation required by the constitution and laws of this state, and transmit a certificate thereof to the same clerk, signed by the officer administering such oath or affirmation, within twenty days after he shall have received such commission; and the county commissioners of the county to which such commission may be forwarded, shall make an allowance to the said clerk, for postage and other expenses necessarily incurred in complying with the requisitions of this section, to be paid out of the county treasury, in case the person entitled to receive said commission should refuse to accept the same and pay said expense

Sec. 2. That in all cases where such certificate may not be transmitted to the clerk, within the said twenty days, as is herein above provided, the person entitled to receive such commission shall be deemed to have refused to accept the office mentioned in such commission, and said office shall be considered vacant; whereupon, said clerk shall, forthwith thereafter, certify the said matter to the governor, who shall proceed according to law to fill the said vacancy.

Sec. 3. That in case any judge of the Supreme Court should remove his residence out of this state, or any president of the Court of Common Pleas out of his circuit or any associate judge out of his county, he shall be considered as having resigned and vacated his office; whereupon, such vacancy shall be filled according to law.

Sec. 4. That every sheriff, coroner, justice of the peace or other officer, of whom bond or security may be by law required, previous to the performance of the duty required of him, who shall neglect or refuse to execute such bond or find such security agreeable to, and within the time prescribed by law, and in all respects to qualify himself for the performance of his official duties, such sheriff, coroner, justice of the peace or other officer shall be deemed to have refused to accept his office, and the same shall be considered vacant; whereupon, such vacancy shall be filled as other vacancies are by law to be filled.

This act to take effect and be in force from and after the ^{first} day of June next.

JOHN POLLOCK,
Speaker of the House of Representatives.
THOMAS KIRKER,
Speaker of the Senate.

January 25th, 1813.

AN ACT authorizing the Governor to fill vacancies in certain cases.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio, That when any officer, the right of whose appointment is, or may be vested in the general assembly, 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 legislature.*

This act to commence and be in force from and after the passage thereof.

MICHAEL BALDWIN,
Speaker of the house of representatives.
DANIEL SYMMES,
Speaker of the Senate.

February 14, 1805.

AN ACT for the appointment of certain officers therein named.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio, That the sheriff of any county within this state, may at any time after the passage of this act, appoint one or more deputies by warrant under him, authorizing said deputy to perform all and singular the duties appertaining to the office of sheriff, within his respective county; and the sheriff shall be answerable for all misconduct or neglect of his deputy, whose official acts shall be performed in the name of the sheriff by his deputy.*

Sheriffs may appoint deputies and shall be answerable for their ~~mis~~conduct.

Sec. 2. *That every deputy appointed under the provisions of this act, shall take an oath or affirmation, (as the case may be) before some person authorized to administer the same, faithfully to perform the duty of deputy sheriff, a certificate of which said appointment, it shall be the duty of such deputy to file in the office of the clerk of the court of common pleas of said county, previous to his entering on the duties of his office.*

Deputies to take an oath and file a certificate of same in clerk's office.

Sec. 3. *That the clerks of the supreme courts, and courts of common pleas, within this state, may at any time from and after the passing of this act, appoint each of them one deputy clerk, to be approved of by their respective courts, whose duty it shall be to perform all and singular the duties appertaining to the office of clerk, in case of the disability or absence of the clerk of said court for which he is appointed.*

Clerks of C. P. and S. court may appoint one deputy to be approved by court.

Deputy clerks to take an oath
Certificate of appointment to be made with seal of court.

Sec. 4. That each deputy clerk appointed under the provisions of this act, in the supreme court, or court of common pleas, before he enters upon the duties of his office, shall take an oath, or make affirmation (as the case may be) before some person legally authorized to administer the same, faithfully to perform the duty of deputy clerk of said court to which he is appointed; a certificate of which appointment shall be made out for him, signed by the clerk, with the seal of the said court thereto annexed; and all official acts of the deputy clerk, so as aforesaid appointed, shall be as valid in law as if done by the clerk himself.

Recorders may appoint each, one deputy.

Sec. 5. That each recorder in this state, be and the same is hereby authorized to nominate, and, with the approbation of the court of common pleas of the county, appoint one deputy, who shall have power to transact all the duties properly appertaining to the office of recorder.

Recorder may take bond from his deputy, who shall take an oath.

Sec. 6. That the recorder may take such bond from his deputy, for the faithful performance of the duties of deputy recorder, as he may think fit; and thereupon the deputy shall take an oath faithfully to perform the duties of deputy recorder, a record of which appointment and oath of office shall be made in court.

Deputies may be removed by recorder.

Sec. 7. That deputies shall be subject to be removed at the pleasure of the recorder, and shall during their continuance in office, be subject to the seventh section of the act, entitled "An act providing for the recording of deeds, mortgages, and other instruments of writing."

Auditor of state may appoint a chief clerk who shall give bond in penalty of \$1,000 to auditor.

Sec. 8. That the auditor may at any time appoint a chief clerk, who shall continue as such during the pleasure of the auditor; and previous to said clerk's entering on the duties of his appointment, he shall give bond with two or more securities, to be approved of by the auditor, in the penal sum of ten thousand dollars, payable to him in his private capacity, conditioned for the faithful performance of all and singular such duties of his appointment as are or may be required by law.

Auditor to give chief clerk certificate of appointment.

Sec. 9. That the auditor shall at the time of making the aforesaid appointment, give to the said clerk a certificate thereof, under the seal of office, which said certificate shall be evidence of his appointment, and the chief clerk shall in case of absence or inability of the auditor, act, do, and perform all the duties appertaining to the auditor of state.

Compensation of chief clerk.

Sec. 10. That there shall be allowed to the aforesaid clerk, the sum of six hundred dollars per annum to be paid quarterly out of the state treasury upon the order of the auditor.

DUNCAN M'ARTHUR,
Speaker of the house of representatives.
 ABRAHAM SHEPHERD,
Speaker of the Senate.

January 30, 1818.

AN ACT for appointing notaries public.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That it shall be the duty of the governor of this state to appoint and commission notaries public, in such towns or counties severally, as he may deem necessary; and to fill any vacancies which may happen in said appointments.

Sec. 2. That each notary public shall be entitled to hold his office for three years, if so long he behave well; and previous to entering upon the duties thereof, he shall give bond to the governor, for the time being, in the penal sum of fifteen hundred dollars, conditioned for the faithful discharge of the duties of notary public; and shall take an oath or affirmation, that he will discharge the same honestly and diligently, and without favor or partiality, and each notary public thus appointed and qualified, shall use and exercise his office for such place as shall be expressed in his commission; and due faith and credit shall be given to his protestations, attestations and other instruments of publication.

Sec. 3. That each notary public shall provide a notarial seal, with which he shall authenticate all his official acts; on which seal shall be engraved the arms of this state and place of his office, which seal, together with the registers and official documents, shall not be liable to be seized on by any execution; and in case of the death or removal of said notary, the aforesaid register and official documents shall be lodged in the office of the recorder of deeds in the proper county, for the use of of his successor in office.

Sec. 4. That every notary public may demand and receive for attestation, protestation, or other instrument of publication, under the seal of his office, one dollar; and for recording in a book to be kept for that purpose, each attestation, protestation, or other instrument of publication, the sum of one dollar, which several sums shall be paid by the person or persons at whose instance the services shall be performed.

This act to take effect and be in force from and after the first day of May next.

MATTHIAS CORWIN,
Speaker of the house of representatives
PETER HITCHCOCK,
Speaker of the Senate,

February 7, 1816.

AN ACT to provide for commissioning certain officers.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That each judge of the supreme court, president and associate judge of the court of common pleas, sheriff, coroner, auditor, state treasurer, militia officer and justice of the peace,

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and every officer whose office is created by law, and not otherwise provided for, shall be entitled to receive from the governor a commission to fill such office upon producing to the secretary of state a legal certificate of his being duly elected or appointed: *Provided*. That the election of all officers, elected or appointed by the legislature, shall be certified by the speakers of both houses.

MATTHIAS CORWIN,
Speaker of the House of Representatives.
PETER HITCHCOCK,
Speaker of the Senate.

February 26, 1816.

AN ACT to organize the Judicial Courts and regulate their practice.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That the supreme court shall consist of four judges, who shall have precedence according to the dates of their commissions, but in case either of said judges shall be elected for two or more terms in succession, then he shall take precedence according to the date of his commission for the first of said terms, and when the commissions of two or more judges shall be of the same date, they shall have precedence with respect to each other according to their respective ages, and the judge entitled to the precedence over all others shall be styled Chief Judge of said court.

Supreme court to consist of four judges.

Precedence

Provided.

Chief judge who shall be.

Exclusive jurisdiction of supreme court concurrent.

Appellate.

Sec. 2. That the supreme court shall have exclusive cognizance of all cases of divorce and alimony, and concurrent jurisdiction in all civil cases, both at law and in equity, where the cause or matter in dispute exceeds one thousand dollars, and appellate jurisdiction from the court of common pleas in all cases in which the court of common pleas has original jurisdiction.

What writs supreme court may issue.

Any judge may grant writs of error, supersedeas, certiorari, habeas corpus.

Courts of C. pleas to consist of president three associates.

Sec. 3. That the supreme court shall have power, on good cause shewn, to issue writs of habeas corpus cum causa, certiorari, mandamus, prohibition, procedendo, error, supersedeas, habeas corpus, and all other writs not specially provided for by statute, which may be necessary to enforce the due administration of right and justice throughout the state, and for the exercise of its jurisdiction, agreeably to the usages and principles of law; and either of the judges of the supreme court, in vacation, shall, on good cause shewn, have power to grant writs of error, supersedeas and certiorari, and also to grant writs of habeas corpus, for the purpose of an enquiry into the cause of commitment.

Sec. 4. That the courts of common pleas shall consist of a president and three associate judges, and shall have original jurisdiction in all civil cases both in law and equity, where the sum or matter in dispute exceeds the jurisdiction

of justices of the peace, and appellate jurisdiction from the decisions of the justices of the peace in their respective counties in all cases; they shall have power to examine and to take the proof of wills, grant letters testamentary thereon and to grant letters of administration on intestate estates, and to hear and determine all causes of a probate and testamentary nature, to appoint guardians for minors, idiots and lunatics, and to call such guardians to an account; they shall have exclusive cognizance of all crimes, offences and misdemeanors, the punishment whereof is not capital, and shall have the same power to issue remedial and other process (writs of error and mandamus excepted) as the supreme court has; and the presidents of the courts of common pleas within their circuits, or any associate judge of the court of common pleas within his county, shall on good cause shewn, have power to allow writs of certiorari, directed to justices of the peace, to cause their proceedings to be brought before such court in order that right and justice may be done.

Jurisdiction, original.

Appellate.

May take proof of wills—grant letters of administration appoint guardians; try crimes, &c. issue remedial and other process, except &c

Sec. 5. That the judges of the Supreme court and presidents and associate judges of the courts of common pleas, before they proceed to execute the duties of their respective offices, shall each take an oath or affirmation to administer justice without respect to persons, and to do equal right to the poor and to the rich, and faithfully and impartially to discharge and perform all the duties incumbent on him as a judge according to the best of his abilities and understanding, agreeably to the constitution and laws of this state, and have the same endorsed on his commission.

Each judge to take an oath

Form.

Oath to be endorsed on commission.

Sec. 6. That the supreme court and courts of common pleas shall appoint clerks for their respective courts in each county; and each of the said clerks shall, before he enters upon the execution of his office, take an oath or affirmation that he will truly and faithfully enter and record all the orders, decrees, judgments and proceedings of the said court; and faithfully and impartially discharge and perform all the duties of his said office according to the best of his abilities and understanding; and the said clerks shall also severally give bond with sufficient sureties (to be approved of by the supreme and common pleas courts respectively) to the state of Ohio in the sum of two thousand dollars, conditioned that he will truly and faithfully enter and record all the orders, decrees, judgments and proceedings of said court, and faithfully and impartially discharge and perform all the duties of his said office; which bond shall be lodged with the county treasurer, and it shall be lawful for the clerks of the several courts within this state to take depositions and administer oaths, in all matters appertaining to the business of their respective offices.

Courts to appoint clerks in each county

Clerks to take an oath.

Form.

To give bond to state of Ohio.

Conditions.

Clerks may take depositions &c.

Sec. 7. That each and every clerk of the respective courts shall keep his office at the seat of justice in his proper county, and every clerk failing or neglecting so to do, shall be deemed

Clerks to keep offices at seat of justice.

Proviso. ed and taken to have resigned the same: *Provided*, That the clerks of new counties shall not be compelled to do so in less than six months after the courts shall be held at the place fixed upon for the permanent seat of justice; and in case a vacancy shall happen in the office of clerk during the vacation, the associate judges may appoint a clerk pro tempore.

Process from S. court to be returne by chief judge, of C. p. art, by president.

Sec. 8. That all writs and process, issued from the supreme court shall bear teste by the chief judge thereof; and all writs and process issuing from the courts of common pleas, shall bear teste by the president of each circuit of said courts, which said writs and process shall be under the seal of the court from whence they issue, and signed by the clerk thereof; and all writs and process shall run in the style of
 The State of Ohio, County, ss,
 and shall be dated on the day on

To be under seal.

which the same may issue.

Clerks to issue subpoenas which may be served by disinterested persons.

Sec. 9. That the clerks of the several courts shall on application of any person having a cause or any matter pending in court, issue subpoenas for witnesses inserting all the names required by the applicant in one subpoena, which subpoena any disinterested person may serve, and return: *Provided*, That the truth of such service and return shall be verified by the oath of the person making the same.

Proviso.

Præcipe to be filed before writ issues.

Sec. 10. That any person requiring a writ shall file a præcipe with the clerk, who shall make out, and deliver such writ or process as is directed; and in all cases of mesne process, where the plaintiff doth not reside, or is not a freeholder in the county, the writ shall be endorsed by some freeholder resident in the county, as security for costs, before the clerk shall deliver the same to the sheriff, and the clerk shall endorse on the writ, for what it was brought, and also the amount appearing to be due or sworn to; and the person so endorsing his name on the writ, shall thereby be bound and liable to pay all costs, that may be adjudged against the plaintiff, both in the court of common pleas and supreme court, and after final judgment rendered in the case, such endorser, his executors or administrators may be proceeded against, by writ of scire facias, in the name of the defendant, his executors or administrators, and on judgment being rendered on such scire facias, execution may issue as in other cases, for the benefit of the persons entitled to such costs.

Non residents, &c.

Clerk to endorse cause of action.

Liability of endorser.

In what cases plaintiff entitled to special bail.

Sec. 11. That in all actions brought on any bond, sealed bill, promissory note, due bill, bill of exchange, or article of agreement, for the payment of a sum of money certain; or on any other contract, on which the plaintiff or his agent shall file an affidavit, that the sum due or damages sustained, exceeds the sum of one hundred dollars, the plaintiff shall be entitled to special bail, and in all other cases when the court, or any judge thereof, in vacation, may from the particular circumstances of the case, direct bail to be filed.

Sec. 12. That the first process in personal actions, in cases where the plaintiff is not entitled to special bail, shall be a summons, and whether the same be issued in or out of term a copy thereof may be personally served on the defendant, or left at his usual place of abode, at any time before its return, and in all actions, when the plaintiff is entitled to special bail, the first process, shall be a *capias ad respondendum*. Where persons not entitled to special bail, first process shall be a summons. How served & returned.

Sec. 13. That it shall be the duty of the sheriff, or other officer, to whom any summons, *capias ad respondendum*, or other process is directed to return the same at the time and place therein mentioned, which shall be filed by the clerk of the court; and if the said sheriff or officer fail to make such return, unless he can make it appear, to the satisfaction of the court, that he was prevented by inevitable accident from so doing, he shall be amerced by the court in any sum, not exceeding the plaintiffs debt or demand, to and for the use of said plaintiff. Sheriff shall return process as therein commanded. Failing-

Sec. 14. That when the sheriff or other officer shall return such summons "served" or "summoned," the party shall be considered as being in court, and may be proceeded against accordingly. Party in court on return "served," &c.

Sec. 15. That the sheriff or other officer shall execute the said writ of *capias ad respondendum*, by taking the body or bodies of the defendant or defendants, and in such case, shall return thereon, "I have taken the body," as to the defendant, or "I have taken the bodies," as to the defendants, on whom the same hath been served, and shall endorse on the *capias ad respondendum*, the names of the bail by him taken, and shall deliver a copy of the bail bond to the clerk of the court, at or before the return day of the same writ, which copy shall be safely kept by the said clerk in his office. Sheriff shall take body on *capias*. His return. Shall deliver copy of bond to clerk.

Sec. 16. That when the sheriff shall return on any writ of *capias ad respondendum*, in any civil action, "not found," as to defendant or defendants, who is or are not to be found in his county; or any writ of summons to answer as aforesaid, "not served," or "not summoned," the plaintiff may sue out an alias or pluries *capias ad respondendum* or summons, until the defendant or defendants, shall be arrested or summoned, or *testatum capias* or summons, where he or they shall be removed into another county, subsequent to the commencement of the suit; and if the defendant, at the time of suing out such process, have a residence in or be an inhabitant of the county, in which such process was sued out, the court may on motion of the plaintiff, order a proclamation to issue, warning the defendant to appear at a certain day therein named, or that judgment will be rendered against him, which proclamation shall be published three successive court days, if the court shall so long remain in session, at the door of the court house of the county, to which When sheriff returns "not found," or not "served," &c. an alias may issue, or pluries, or when defendant is moved, a *testatum*, or proclamation. Defendant failing to appear under such proclamation, judgment as by default.

the last process was returned, and also three times in some newspaper published in the state; and if the defendant shall fail to appear, pursuant to such proclamation, the same proceedings shall be had, and the same judgment given as in other cases of default.

Two or more persons bound in bond, &c. and persons so bound shall reside in different counties, plaintiff may file praecipe in county where either resides, directing a summons, &c. to issue to such other county.

Sec. 17. That if two or more persons are bound jointly, or jointly and severally, by any bond or writing obligatory, bill of exchange, promissory note, or other contract, and the persons so bound shall reside in different counties, it shall be lawful for the plaintiff, in any action to be brought upon any such bond, writing obligatory, bill of exchange, promissory note or other contract, to file with the clerk of the court of the county, in which either of the persons so bound shall reside, and against whom a writ of summons or *capias ad respondendum* shall have been directed, a praecipe directing that a summons or *capias ad respondendum*, issue to the sheriff or coroner of such county or counties, in which such other person or persons so bound as aforesaid shall reside, or may be found, who shall issue the said writ or writs, as by said praecipe shall be directed, and the sheriff or other officer shall execute and return the same, in the same manner and under the same penalties, as if the *capias ad respondendum* or summons had issued from the clerk of his county, and the court to whom such writ is returned, shall proceed in the same manner thereon as if it had been returned by the sheriff of their own proper county.

Recognizance returned by justice, &c. to be minuted & taken as for record.

Process to issue as if taken in court.

Special bail, when to be filed.

Special bail not put in, plaintiff may proceed on bail bond, &c.

If sheriff return "I have taken body" and does not return bond or bail insuffi-

Sec. 18. That whenever any justice of the peace or other person, who now is, or hereafter may be authorized so to do, shall return to the court of common pleas any recognizance, a memorandum thereof shall be entered in the minute book of the court; whereupon the same shall be considered as of record in such court, and proceeded on, by process issuing out of said court, in the same manner as if such recognizance had been entered into before such court, and the same recognizance shall be made out and recorded in full in the book of records of said court, in the same manner as recognizances taken in such court.

Sec. 19. That special bail shall be filed on the return day of the *capias ad respondendum*, or on the succeeding day.

Sec. 20. That if special bail be not put in and perfected in due time, the plaintiff may proceed on the bail bond, or rule the sheriff to bring in the body of the defendant.

Sec. 21. That if upon a *capias ad respondendum*, the sheriff or other officer return "I have taken the body," or "I have taken the bodies," (as the case may be) and shall not return bail, and a copy of the bail bond, or if the bail taken by such sheriff or officer, shall in the opinion of the court, be insufficient, or the defendant shall fail to appear and give special bail, within the time above prescribed, the court on motion shall rule such sheriff or officer to bring in the body of the defendant, within the term, and if he fail so

to do, the sheriff or other officer shall be amerced by the court, in any sum not exceeding the plaintiffs debt or demand with costs, which amercement shall have the same force and effect as a judgment: *Provided nevertheless*, If such sheriff or other officer shall cause special bail to be put in and justified, if justification be required during the same term, he shall be excused from bringing in the body, and no amercement shall be entered against him on the said rule.

Sec. 22. That if the sheriff when ruled so to do, shall bring in the body of the defendant, such defendant shall be committed, and upon the entry of such committur, the plaintiff may proceed in the action and declare against the defendant as in custody.

Sec. 23. That the sheriff in order to save himself, may put in special bail for the defendant without his consent, and the bail of such sheriff may do the same for their indemnity.

Sec. 24. That if special bail be filed during the first or second days of the term to which process is returnable, exception shall be taken and entered thereto in the clerks docket during the said term, of which exception a written notice shall be served on the defendant or his attorney of record, and in such case the defendant shall procure his bail to justify in eight days exclusive, after such exception and notice as aforesaid, or add other bail, who shall justify within said eight days; and where bail is filed on the first or second day of the term, an exception entered after the expiration of the said term shall be of no validity.

Sec. 25. That two days notice of the time of justification of bail, or of putting in new or additional bail and justification thereof, shall be given by the defendant or his attorney, to the plaintiff or his attorney, exclusive of the day it is given, and if Sunday intervene three days notice shall be given.

Sec. 26. That if the bail do not justify at the time appointed, they shall be considered out of court, and when they do justify and are allowed, an order of such allowance shall be drawn and a copy served thereof, on the plaintiff or his attorney.

Sec. 27. That the recognizance of special bail shall be to the effect following.

A B
 against
 C D

} in debt or case [as the case may be,]

The State of Ohio, County to wit:

Be it remembered that on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ G H and E F of the county of _____ personally appeared before me J K, one of the judges of the supreme court of the State of Ohio, or one of the judges of the court of common pleas, in and for the county of _____ or clerk of the supreme court of the

cient, or defendant shall fail to appear, he may be ruled to bring in the body; and failing, may be amerced, *Proviso.*

If sheriff on rule shall bring in body defendant shall be committed.

Sheriff to save himself may put in special bail, &c.

Exception may be taken to special bail on clerks docket et.

Notice to be given defendant or attorney.

Defendant shall give notice of justification of bail, how long.

Bail not justifying is out of court; justifying order shall be drawn, &c.

Form of recognizance of special bail

state of Ohio, or clerk of the court of common pleas, in and for the county of _____ (as the case may be) and severally acknowledged themselves to owe unto A B the sum of _____ (double the sum endorsed on the writ,) to be levied on their several goods and chattels, lands tenements and estates, upon condition that if the defendant C D shall be condemned in this action, at the suit of A B the plaintiff, he shall pay the costs and condemnation of the court, or be rendered or render himself into the custody of the sheriff of said county for the same; or in case of failure that the said G H and E F will pay the costs and condemnation for him.

Taken and acknowledged, the day and year above written, before me, J K ”

And that on acknowledging the aforesaid recognizance the bail piece shall be to the effect following to wit:

Form of bail piece.

‘ State of Ohio supreme court (or court of common pleas) of the _____ day of _____ in the year of our Lord, one thousand eight hundred and _____ C D of the the county of _____ is delivered to bail on a ceppi corpus, unto G H and E F of the said county, at the suit of A B in a plea of debt or trespass on the case, (as the case may be.

Attest S. W. Clerk.”

Special bail may justify by affidavit in S. court before a judge or clerk thereof.

Sec. 28. That in actions which are or shall be instituted in the supreme court of this state special bail may justify by affidavit in the said court, or before one of the judges or clerks thereof, either in term time or in vacation, and such affidavit shall set forth that the bail is a resident of the county, and that he is worth so much, (mentioning the sum he is bail for) after all his debts are paid.

Special bail in C. C. Pleas may justify before judge or clerk in term or vacation.

Sec. 29. That in actions which are or shall be instituted in any of the courts of common pleas of this state, special bail may justify by affidavit in the said court, or before one of the judges or clerks thereof, in term time or in vacation, which affidavit shall set forth that the bail is a resident of the county, and that he is worth so much (mentioning the sum he is bail for) after all his debts are paid.

Special bail not put in, plaintiff may take assignment of bond.

Sec. 30. That if special bail be not put in and perfected in due time, the plaintiff he be satisfied with the bail taken by the sheriff or other officer, may take an assignment of the bail bond, in the words or to the effect following: I, the within named O P do hereby assign and set over the within bond to the within named A B the plaintiff,

Form.

Witness my hand and seal the _____ day of _____ in the year of our Lord one thousand eight hundred and _____

Signed, sealed and delivered } O. P.
in the presence of E F and G H }

SEAL

And this shall be deemed a good assignment in law, to

ground an action on such bail bond, in the name of the assignee.

Sec. 31. That whenever any person shall be imprisoned on mesne process, and remain in prison, and shall not be charged in execution within ten days after judgment rendered against him, he shall be discharged.

Defendant imprisoned on mesne process, shall be charged in execution or discharged. Action or bail bond may be stayed &c.

Sec. 32. That the proceedings on the bail bond may be set aside, if irregular, or stayed, if regular, upon terms, in order that a trial may be had in the original action.

Action or bail bond may be stayed &c.

Sec. 33. That where the plaintiff in the original action, has not lost a trial, for want of special bail being filed in due time, the court or judge may stay the proceedings on the bail bond, upon putting in and perfecting special bail, paying the costs incurred by the assignment, and prosecution of the bail bond receiving a declaration in the original action, pleading issuably and taking short notice of trial, so that the cause may be tried in the same term, if the plaintiff think fit.

On what condition action on bail bond may be stayed.

Sec. 34. That where the plaintiff has lost a trial, in the original action, for want of special bail being filed in due time, it shall be the duty of the court, before the proceedings be stayed on the bail bond, further, to require that the bail consent that judgment be entered against them, on the bail bond, for the plaintiffs security; and in such case, if the defendant fail in the original action, the bail shall be liable to immediate execution, and shall not discharge him or themselves by a tender of the principal.

Court when plaintiff has lost a term, before proceeding on bail bond shall be stayed, shall require bail to consent to payment against h.h. &c.

Sec. 35. That after the expiration of the term in which the plaintiff might have had judgment in the original action, if bail had been filed in due time, the proceedings shall not be stayed on the bail bond without consent of the plaintiff.

When action on bail bond shall not stay without consent of pliff.

Sec. 36. That whenever the defendant is guilty of a neglect, in not putting in special bail in due time, by which the bail bond becomes forfeited, the notice in case the party means to put in special bail in order to stay proceedings on the bail bond, shall be, that he will put in and perfect special bail in open court on such a day, specifying the day, and in that case the plaintiff may oppose the bail in court, without its being a waiver of the bail bond.

When defendant has neglected to put in special bail, what notice he shall give.

Sec. 37. That every court and judge shall take the fact to be true as sworn to in the affidavit, to hold the party to bail without going into the merits.

Affidavit to hold to bail to be taken as true.

Sec. 38. That on the return of the *capias ad respondendum*, the defendant may appear in court and render himself in discharge of his appearance bail, and upon such render the appearance bail shall be discharged; and in such case, if the defendant do not immediately put in and justify special bail he shall be committed, and upon the entry of such *comittitur*, the plaintiff may proceed in the action and declare against him as in custody.

Defendant may render himself in discharge of his appearance bail and not putting in bail, shall be committed

Defendant may render himself in discharge of special bail before or after judgment

Sec. 39. That subsequent to the return of the *capias ad respondendum*, the defendant may render himself or be rendered in discharge of his special bail, either before or after judgment; *Provided*, That such render be made at or before the appearance day of the first *scire facias*, against the bail, returned *scire feci*, or of the second *scire facias* returned *ni-hill*, or of the *capias ad respondendum*, or summons in an action of debt against the bail on his recognizance returned served, and not after; but in either case the bail shall pay the costs of the said suit, and judgment for the same shall be entered against him accordingly: *Provided always*, That in either of the above writs against the bail on his recognizance, there shall be at least fifteen days between the service and return thereof.

Proviso.

Court or judge to commit to sheriff.

Sec. 40. That the court or judge before whom the render is made, shall make an entry or minute of such render and commitment, and thereupon the defendant shall be committed to the custody of the sheriff or jailor attending the said court or judge.

On fact being certified, clerk to enter an exoneratur. Proviso.

Sec. 41. That on such render and commitment duly certified to the clerk of the court, if done in vacation, it shall be the duty of said clerk to enter an exoneratur on the bail piece, and thereupon the bail shall be discharged: *provided*, The said bail give immediate notice of such render to the plaintiff or his attorney if within the county.

When defendant is committed to prison, plaintiff to file declaration in same manner as if he were out on bail.

Sec. 42. That in all personal actions, in which any defendant shall either before, or after appearance, and before final judgement be committed to prison, the plain iff shall proceed to file his declaration or other pleading, within the same time he would be required to do if the defendant were out on bail, and shall furnish the defendant with copies thereof, and if he fail so to do, he shall be non prosed. and such defendant shall also file his plea or other pleading within the time he would be required to do, if he were out on bail, and if he fails so to do, the plaintiff shall be entitled to judgment by default as in other cases.

and furnish defendant with copy, &c.

Sheriff shall not be required to produce body of deft. after second term,

Sec. 43. That no sheriff shall be liable to be called upon to produce the body of any defendant on a *capias ad respondendum*, returned, "I have taken the body," unless he be required so to do, before the expiration of the second term after the return of such *capias*.

After ca. sa. returned not found, plff. may proceed against special bail.

Sec. 44. That after a *capias ad satisfaciendum* shall have been returned, "not found," by the sheriff the plaintiff may proceed against the special bail upon his or their recognizance, and in all cases in which a judgment or decree hath been or shall be rendered, in any court of common pleas or in the supreme court in any county in this state, and the person or persons against whom such judgment or decree is or shall be rendered, shall remove into or be residing in any other county or shall have property in any other county it shall be lawful for the party in whose favor such judgment or decree, is or shall be rendered, to sue out of the office of the clerk of the court rendering such judgement or decree, in the

same process of execution directed to the proper officer of such other county, as he might or could sue out against parties, living in the same county; and process issued, shall be executed and returned to the office from whence it may issue, and if the officer to whom such process may be directed and delivered, shall neglect or refuse to execute and return the same agreeably to the command thereof, or to pay over any money made thereon, it shall be the duty of the court from which such process issued, on motion for that purpose, to amerce the said officer in the same manner as though he were an officer of their own proper county, on which amercement process of execution may be taken out as in other cases.

Sec. 45. That if at any time before or after judgment be rendered against special bail, a writ of error is taken out and allowed on the judgment against the principal, in the suit, in which their recognizance was taken, the court may on motion, stay proceedings against such bail for a reasonable time, on their paying all costs that may have accrued on the proceedings against them; and if on such writ of error, the judgment against the principal in the suit, in which the said bail are bound, shall be finally reversed, so that the said principal be thereby discharged from said suit, then, and in that case the bail shall be discharged from their recognizance.

Sec. 46. That when a writ of habeas corpus cum causa, shall be allowed for removing a cause from the court of common pleas into the supreme court, the clerk of the supreme court shall take bond and security from the party applying for such writ to the adverse party, in the same manner as if such case was removed by a writ of error, and shall also make out and sign a citation to the adverse party, which shall be served on him in the same manner and within the same time as required on a writ of error: *Provided*, That no cause in which the matter in dispute does not amount to one thousand dollars shall be removed by the writ aforesaid, without a special allowance from one of the judges of the supreme court, which shall not be granted unless on good cause shewn.

Sec. 47. That the clerk of the court of common pleas, shall return with the writ of habeas corpus cum causa, a transcript of the record of such court in said cause; and the supreme court shall proceed thereon in the same manner, as if such suit had been commenced and proceedings had therein.

Sec. 48. That in all actions in any court of record upon any bond, or other contract in writing for the recovery of any forfeiture or penalty, for the non-performance of any contract or other agreement contained in any such bond, or contract in writing, the plaintiff, may assign as many breeches as he shall see fit and proper, and the jury in case they shall find a verdict in favor of the plaintiff in any such action, shall as-

which process issued may amerce sheriff as if he were an officer of their own county.

When error is taken in original suit, court may stay proceedings against bail.

and if payment be reversed, bail shall be discharged.

When habeas corpus cum causa allowed Clerk S. court to take bond as in writ of error and a citation to adverse party.

Proviso.

Habeas corpus cum causa how returned &c.

Action for recovery of penalty &c.

Court to render judgment for penalty and direct execution for amount due thereon. shall assess damages for such of the breaches so assigned as the plaintiff upon the trial of the issue shall prove, and the court shall thereupon give judgment for the full amount of the aforesaid penalty, and shall award execution thereon, for the amount of damages so by the jury assessed with costs; and if judgment, shall be given for the plaintiff on demurrer or by default or confession, the court before whom the action is brought shall render judgment as aforesaid for the penalty, and award execution for so much as shall be then due according to equity, and when the sum for which execution should be awarded is uncertain, the same shall upon the application of either party be assessed by a jury.

In actions brought on bonds &c.

Sec. 49. That in any action brought on bond, article of agreement or other contract in writing which has a condition or defeasance to make void the same, on the payment of a less sum than the penalty that may be therein mentioned, at a day and place certain, if the obligor or contractee, or his heirs, executors or administrators, have paid to the obligee or contractor, or his executors or administrators, the principal and interest due by the condition or defeasance of such bond, article, agreement or other contract, though such payment was not made, strictly according to the condition or defeasance, yet it may be pleaded in bar, and shall be as effectual as if the money had been paid at the day and place according to the condition or defeasance, and had been so pleaded.

When payment shall be given by default, and plaintiff may assign as many breaches as he may think fit.

Sec. 50. That when judgment by default, confession or demurrer, as mentioned in the preceeding section shall be given for the plaintiff in such action, he may assign as many breaches of the covenants, agreements or conditions aforesaid as he shall think fit; and if the defendant after such judgment entered, and before execution executed, shall pay into the court where the action is or shall be brought, to the use of the plaintiff or his executors or administrators such damages as the court or jury shall assess as herein before provided by reason of all or any of the breaches of such covenants, agreements or conditions, together with costs of suit, a stay of execution of the judgment shall be entered on record; and if by reason of any execution executed the plaintiff or his executors or administrators shall be fully paid or satisfied, all such damages so assessed with costs of suit and the legal charges for executing the said executions, the body, lands, goods and chattels of the said defendant, shall be thereupon forthwith discharged from the said execution, which shall likewise be entered on record; but in every case the said judgment shall notwithstanding remain as a security to the plaintiff, his executors and administrators, for any other breaches which may afterwards happen of such covenants, agreements or conditions, upon which the plaintiff or his executors or administrators may have a scire facias against the defendant, his heirs devisees, executors or administrators as

And if plaintiff shall be fully paid, the goods of defendant be discharged.

signing other breaches to summon him or them respectively, to shew cause why execution should not be had or awarded on the said judgment, and thereupon damages shall be assessed as aforesaid, and execution issue accordingly; and upon payment or satisfaction in manner aforesaid, of such future damages, costs and charges as aforesaid, all further proceedings on the said judgment shall be stayed, and soon as often as the same may happen; and the defendant, his body, lands, goods and chattels, shall be discharged from the said execution in manner aforesaid.

Sec. 51. That if at any time, pending an action on any bond, bill, note or specialty for the payment of a sum certain, the defendant shall bring into court where the action shall be pending, the principle and interest due on such bond, bill, note or specialty, and all such costs as have accrued in any suit or suits in law or equity upon the said bond, the said money so brought in, shall be deemed and taken to be in full payment and satisfaction of such bond, and the court shall give judgment to discharge the defendant from the same accordingly; and if in any other suit pending in either of the courts, the defendant shall at any time bring into court and deposit with the clerk for the use of the plaintiff, the amount that he admits to be due, together with all costs that have then accrued, and the plaintiff shall refuse to accept the same in discharge of his suit, and shall not afterwards recover a larger sum than the sum so brought into court, exclusive of costs, he shall pay all costs that may accrue from and after the time such money was so brought in and deposited as aforesaid.

Sec. 52. That it shall be lawful for the plaintiff, in replevin, or for the defendant or tenant in every other action to plead in any court of record, with leave of such court, as many several matters as he shall think necessary for his defence, but if on demurrer any such matter be adjudged insufficient, costs shall thereupon be awarded by the court.

Sec. 53. That it shall be lawful for the defendant in any action, to plead the general issue, and give any special matter in evidence, which if pleaded, would be a bar to such action, giving notice with the same plea, of the matter or matters so intended to be given in evidence.

Sec. 54. That no plea in abatement other than a plea to the jurisdiction of the court, or when the truth of such plea appears of record, shall be admitted or received unless the party offering the same, file an affidavit of the truth thereof; and where a plea in abatement shall upon argument be judged insufficient, the plaintiff shall recover full costs to the time of overruling such plea.

Sec. 55. That when one or more of the parties of a company or association of individuals shall be sued, and the person, or persons, so sued shall plead in abatement, that all the parties are not joined in the writ, such suit for that cause

but judgment shall remain for any other breaches which may happen, and plaintiff may have scire facias.

If an action be pending on bill, note, defendant may bring money into court and costs, and be discharged.

In other cases defendant may tender amount which he believes due and if plaintiff shall recover a less sum, he shall pay costs.

Plaintiff in replevin and defendant in other actions may plead several matters.

Defendant may plead general issue

Plea in abatement not allowed, without defendant files an affidavit of trust thereof.

No cause shall abate by reason of non-joinder of defendants;

But a summons shall not abate, but the plaintiff or plaintiffs may forthwith sue out a summons against the other partners named in the plea in abatement, and on the return of the summons may insert in the declaration, the names of the other partners named in said plea, and proceed in all respects thereafter, as though such other partners had been included in the original suit, and if such partners named in said plea, cannot be found, the plaintiff or plaintiffs upon the return of said summons, may suggest in his declaration the names of those not found, and proceed as in other cases where service is only made on part of the defendants, and no other plea in abatement for non joinder of parties shall be allowed in the cause.

If the others cannot be found, it may be suggested in the declaration

as though such other partners had been included in the original suit, and if such partners named in said plea, cannot be found, the plaintiff or plaintiffs upon the return of said summons, may suggest in his declaration the names of those not found, and proceed as in other cases where service is only made on part of the defendants, and no other plea in abatement for non joinder of parties shall be allowed in the cause.

Costs, how taxed when special demurrer overruled.

Sec. 56. That in all cases where a special demurrer shall be overruled, costs may be taxed and allowed the opposite party, to the time of overruling such demurrer.

When several persons are defendants in trespass; and one shall be acquitted, he shall recover costs.

Sec. 57. That where several persons shall be made defendants in actions of trespass, for an assault and battery, false imprisonment or in, ejectment, and upon the trial thereof any one or more of them shall be acquitted by verdict, every defendant so acquitted, shall have and recover his costs of suit in like manner as if verdict had been given against the plaintiff generally, and in all cases where judgment shall be given for the defendant, he shall recover his costs against the plaintiff and have execution for the same.

In actions of trespass quare clausum fregit defendant may plead disclaimer and that the trespass was by negligence, and tender of amends before action brought.

Sec. 58. That in all actions of trespass quare clausum fregit, hereafter to be brought, wherein the defendant shall disclaim in his plea, to make any title or claim to the land in which the trespass is supposed to be done by the declaration, and the trespass be by negligence, or involuntary, the defendant shall be admitted to plead a disclaimer, and that the trespass was by negligence, or involuntary, and a tender or offer of sufficient amends for such trespass before the action brought; whereupon the plaintiff shall join issue, and if such issue be found for the defendant, judgment shall be rendered against the plaintiff for costs, and he shall be forever barred from all other suits concerning the same trespass.

In ejectment ten days notice to be given tenant.

Sec. 59. That no plaintiff shall proceed, in ejectment, to recover any lands or tenements, against a casual ejector, without ten days previous notice being given to the tenant in possession; (if any there be) and it shall be lawful for the court, on application for that purpose, to make the tenant or landlord or both, or any other person claiming title to the premises, defendant in the place of the casual ejector; and in all actions of ejectment, the plaintiff shall have the same benefit and advantage, from a joint demise, that he could from several demises; and separate demises shall only be laid in the names of tenants in common.

Court may make any one defendant who claims title to premises.

Sec. 60. That the plaintiff, on affidavit of the delivery of

the declaration in ejectment, shall have judgment against the casual ejector, unless the tenant in possession or landlord, or other proper person shall apply to be made defendant, and enter into the common consent rule, within the term, to which the said tenant had notice to appear.

Ejectment continued.

Sec. 61. That in ejectment, where the lessor of the plaintiff is unknown to the defendant, the latter may call for an account of his residence or place of abode, from the opposite attorney, and if he refuse to give it, or gives in a fictitious account of a person who cannot be found, or if the lessor of the plaintiff shall not reside, or is not a freeholder, within the county, where such suit is brought, the court, if moved before issue joined, shall order security for costs to be given.

Court before issue joined may require security for costs, if lessor of plaintiff is non resident.

Sec. 62. That in ejectment, where the lessor of the plaintiff resides out of this state, or is an infant, or dead, the court, if moved before issue joined, may stay proceedings, until a real and substantial person be named, or security be given for the payment of costs.

So if lessor of plaintiff is an infant.

Sec. 63. That if any action for mesne profits shall be brought in the name of the nominal plaintiff in ejectment, the court, if moved before issue joined, may stay proceedings, until security be given for the payment of costs.

So if trespass for mesne profits be brought in name plaintiff.

Sec. 64. That if an infant be entitled to any action, his guardian or next friend, shall be admitted to prosecute for him, and if he be sued, a guardian shall be appointed to defend the suit for him, but in no case shall the parole demurrer or the proceedings be deferred or stayed till the infant arrives at full age, neither at common law nor in chancery.

Infants may bring action or defend, by guardian; but shall not avail themselves of parole demurrer.

Sec. 65. That every attorney who shall confess judgment in any case, shall at the time of making such confession, produce his warrant for making the same, to the court, before whom he makes the confession, if required so to do, and a copy of the said warrant shall then be filed with the clerk of the court in which the judgment shall be entered; and no warrant of attorney for confessing a judgment, executed by any person in custody upon mesne process in a civil action, to the plaintiff at whose suit he is in custody shall be of any force, unless some attorney on behalf of such person in custody and expressly named by him, be present and sign the said warrant of attorney as a witness.

Attorneys confessing judgment shall produce to court his warrant, if required.

copy to be filed

A warrant ally, not good by one in custody.

Sec. 66. That if any informer on a penal statute, to whom the penalty or any part thereof, if recovered is directed to accrue, shall discontinue his suit, or prosecution, or shall be non suited in the same, or if upon trial, judgment shall be rendered in favor of the defendant, such informer shall pay all costs, accruing on such suit or prosecution, unless such informer, be an officer whose duty it is to commence such suit or prosecution.

If an informer, to whom any part of penalty can go, become non suit &c. he shall pay costs, unless, &c.

Sec. 67. That in all actions for libel, slander, malicious prosecution, assault, or assault and battery, action on the

In certain actions plaintiff,

recovering less than five dollars, not to recover costs. case for a nuisance, or against justices of the peace for misconduct in office, if the jury on the trial of the issue, or on enquiry of damages, shall find, or assess the damages under five dollars, the plaintiff shall not recover any costs.

When judges of the common pleas interested, they must enter fact on minutes, and certify cause to S. court.

Sec. 68. That if in any suit or action, in the court of common pleas, it shall so happen, that there is not a sufficient number of disinterested judges of such court, to sit on the trial of any particular cause, then and there pending, it shall be the duty of such court, on the application of either party, to cause the facts to be entered on the minutes of the court, and also to order an authenticated copy thereof, with all the proceedings in such suit or action, to be forthwith certified to the next supreme court of the county, which supreme court shall thereupon take cognizance thereof, in like manner, as if it had been originally commenced in that court, and shall proceed to hear and determine the same accordingly.

When any writ shall be pending and one of the parties shall die, if cause of action survive, suit may proceed in name of administrators.

Sec. 69. That when any suit shall be pending in either of the said courts, and either of the parties, shall die before final judgment, the executor, or administrator of such deceased party, whether plaintiff, or defendant, in case the cause of action doth by law survive, shall have full power to prosecute, or defend any such suit or action until final judgment, and the defendant, or defendants, are hereby obliged to answer thereto accordingly; and the court before whom such cause may be pending, is hereby empowered and directed to hear and determine the same, and to render judgment for or against the executor or administrator, as the case may require; and if such executor, or administrator, having been duly served with a scire facias, from the office of the clerk, of the court where such suit is pending, twenty days previous, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor, or administrator, had voluntarily made himself a party to the said suit; and the executor, or administrator, who shall become a party as aforesaid, shall upon motion to the court, where the suit is pending, be entitled to a continuance of the same, until the next term of the said court; and if there be two or more plaintiffs, or defendants, and one or more of them shall die, if the cause of action shall survive, to the surviving plaintiff, or plaintiffs, or against the surviving defendant, or defendants, the writ of action shall not thereby be abated, but such death being suggested on the record, the action shall proceed at the suit of the surviving plaintiff, or plaintiffs, against the surviving defendant or defendants, and after final judgment, the plaintiff may proceed by scire facias, to make the representatives of the deceased defendant, or defendants, parties to said judgment, and any judgment obtained, under the provisions of this section, against the executors, or administrators

Administrator to have a continuance on motion.

When two or more plaintiffs or defendants and one dies the action shall not abate.

But death being suggested, suit shall proceed in the name of survivor.

of any deceased person, shall be considered standing in the same situation, as any other allowed demand, and shall be paid by the executor, or administrator, at such times and in such proportions, as other just demands against said estate.

Sec. 70. That if in any action of trespass, on the case for an injury done to property, real, or personal, or action of trespass on property, real, or personal, either of the parties shall die, before judgment, such action, or suit shall not thereby abate, but may be proceeded in, to final judgment and execution in the same manner, as is herein before provided for in other cases.

Sec. 71. That if any person having a right to commence an action of trespass, on the case for an injury done to property, real, or personal, shall die before such action be commenced, or if the person liable to either of such actions shall die, the cause of such action shall nevertheless survive, and the action may be brought by the executor, or administrator of the deceased party, having right to such action, or against the executor, or administrator, of the deceased party, being liable to such action, and may be proceeded, in to final judgment and execution as in other cases.

Sec. 72. That when the testimony of any person shall be necessary in any civil cause, pending in either the supreme court, or court of common pleas, who shall live out of the county where such cause is pending, or who is about to go out of such county, before the time of trial, or is ancient or very infirm, the deposition of such person may be taken, before any justice, or judge of any of the courts of the United States, or before any chancellor, master commissioner in chancery, justice, or judge of a supreme, or superior court, mayor or chief magistrate of a city, or judge of any county court, or court of common pleas, or justice of the peace of any of the United States, or of this state, not being of counsel, or attorney to either of the parties, or interested in the event of the cause: *Provided*,

That a written notice by the party wishing to have such deposition taken, be first made out and served on the adverse party, or his agent, or attorney on record; as either may be nearest, or left at his or their usual place of abode; in which notice shall be specified, the time and place of taking such deposition, so that the opposite party may be present, at the taking of the same, and put interrogatories, if he think fit, and which shall be served as aforesaid, so as to allow the party time to attend after the service of such notice, not less than at the rate of one day, (Sundays exclusive,) for every twenty miles travel; and every person deposing as aforesaid, shall be carefully examined and cautioned, and sworn, or affirmed, to testify the whole truth, and shall subscribe the testimony, by him or her given, after the same shall be reduced to writing, which shall be done only by the

And after judgment administrators, &c. of dec'd, party may be made defendant by scire facias.

Actions of trespass &c. for injury to property nor to abate by death of party.

Right of action or case, &c. for injuries to property shall survive to plaintiff, and against defendant's representatives.

Depositions of witnesses residing out of county, or going out; aged or very infirm, may be taken before judge, chancellor, master, mayor &c. justice, of the peace, not counsel or attorney to parties, or instructor.

Provido.

Notice to be given to adverse party.

Depositions to be subscribed.

To be reduced to writing, by whom. magistrate taking the deposition or by the deponent or some other disinterested person in his presence, and the deposition so taken, shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken; or shall together with a copy of the notice (given) to the adverse party, be by him, the said magistrate, sealed up and directed to such court and remain under seal until opened in court; and all depositions properly taken in any cause pending in the court of common pleas may be admitted and read in evidence in the same cause when removed into the supreme court, and shall be by the clerk of the court of common pleas certified up with the record: *Provided*, That before the deposition of any aged, infirm, absent or going witness shall be admitted, the court shall be satisfied that the attendance of such witness could not be procured at the trial; *Provided also*, That nothing herein contained shall be construed to prevent either of the said courts from granting a *dedimus protestatam*, to take depositions according to common usage, when it may be necessary, to prevent a failure or delay of justice, which power they shall severally possess; nor to extend to depositions taken in *perpetuam rei memoriam*, which if they relate to matters that may be cognizable therein, either of the said courts, on application thereto made, as a court of equity, may according to the usage in chancery direct to be taken.

To be delivered by officer or sealed & sent. Sec. 73. That it shall be the duty of the judges of either of said courts, from time to time as occasion may require, to make rules and orders for their respective courts, to direct the mode of taking rules, and entering and making up judgments by default or otherwise, in a manner not repugnant to the laws of this state, to regulate the practice of the said courts respectively, as shall be fit and necessary for the advancement of justice, and especially to prevent delay in proceedings; and cause such rules to be entered on the journals of the court of such county, and in order that the rules of practice and proceedings of the several courts of common pleas may be uniform, and as near as may be conformable to the rules of the supreme court, the judges of the supreme

Taken in common pleas may be read in supreme court. court shall order the clerk of said court, to transmit copies of their rules and regulations to the clerks of the courts of common pleas in every county, that the judges of the said courts may from time to time make rules and regulations agreeably thereto, as near as may be, for the practice of their courts respectively.

Provido. Sec. 74. That the plaintiff or his attorney, if required before plea filed, shall deliver to the defendant or his attorney a copy of the account, or bill of particulars of the demand, or a copy of the bill, bond, deed, bargain, contract, note, instrument or other writing, whereon the declaration is founded.

Provido. Sec. 75. That the defendant or his attorney, if required, shall deliver to the plaintiff or his attorney, a copy of any

Dedimus protestatam may be granted, &c. &c. Sec. 76. That the plaintiff or his attorney, if required before plea filed, shall deliver to the defendant or his attorney a copy of the account, or bill of particulars of the demand, or a copy of the bill, bond, deed, bargain, contract, note, instrument or other writing, whereon the declaration is founded.

The judges of either court to make rules & orders, not repugnant to the laws of this state. Sec. 77. That the plaintiff or his attorney, if required before plea filed, shall deliver to the defendant or his attorney a copy of the account, or bill of particulars of the demand, or a copy of the bill, bond, deed, bargain, contract, note, instrument or other writing, whereon the declaration is founded.

Rules to be entered in journals. Sec. 78. That the plaintiff or his attorney, if required before plea filed, shall deliver to the defendant or his attorney a copy of the account, or bill of particulars of the demand, or a copy of the bill, bond, deed, bargain, contract, note, instrument or other writing, whereon the declaration is founded.

Judges of supreme court to order rules to be sent to clerk common pleas. Sec. 79. That the plaintiff or his attorney, if required before plea filed, shall deliver to the defendant or his attorney a copy of the account, or bill of particulars of the demand, or a copy of the bill, bond, deed, bargain, contract, note, instrument or other writing, whereon the declaration is founded.

Plaintiff or his atty. if required shall deliver copy of note, &c. upon which action is founded. Sec. 80. That the plaintiff or his attorney, if required, shall deliver to the plaintiff or his attorney, a copy of any

No defendant shall for

deed or instrument of writing, of which in his plea he shall make profert, or a copy of any bill, bond, deed, note, receipt, bargain, contract, instrument of writing, or bill of particulars of any account or demand, which he intends to offer in evidence at the trial of the cause; and if the plaintiff or defendant shall refuse to furnish the copy or copies required, agreeably to the provisions of this section or the preceding section, the party so refusing shall not be permitted to give in evidence at the trial the original, of which a copy has been so refused as aforesaid.

plaintiff, &c. with copy, &c.

Either party failing to furnish copy, shall not have benefit.

Sec. 76. That the party, whether plaintiff or defendant, shall take notice of the filing of the declaration or other pleading in the cause, at his peril, without service of a copy and notice of the filing of such declaration or other pleading, except as herein before excepted.

Parties shall take notice of filing pleadings.

Sec. 77. That the defendant at any time before issue joined, may move the court to consolidate unnecessary actions or to strike out superfluous counts in the declaration.

Actions how consolidated, &c.

Sec. 78. That where there are issues in law and in fact, the issue in law, shall be determined before the issue in fact shall be tried.

Issues in law to be tried before facts.

Sec. 79. That where judgment shall be entered by default against the defendant, the court shall assess the damages, unless the plaintiff or defendant shall request a writ of enquiry.

On judgment by default, to assess damages.

Sec. 80. That the party against whom a verdict hath been rendered may move for a new trial, and if it be denied may then move in arrest of judgment, but he shall not be permitted to move for a new trial, after a motion in arrest of judgment.

Party may move for new trial, and, if that fails, in arrest of judgment.

Sec. 81. That every special verdict and demurrer to evidence shall be entered on the minutes of the court, after which, either party may move the court to assign a day for argument.

A day for argument to be assigned or special verdict.

Sec. 82. That if execution be not sued out within five years after the date of any judgment, that now is or hereafter may be rendered in any court within this state, or if five years should intervene after the date of any execution issued on any judgment obtained as aforesaid, without suing out any other writ of execution thereon, and such judgment still remains unsatisfied, it shall be lawful for the plaintiff his heirs, executors, administrators, or assigns, to bring and maintain an action of debt on such dormant judgment against such defendant, his heirs, executors or administrators; or he or they may at his or their election, sue out of the clerks office of the court wherein such judgment was obtained and still remains unsatisfied, a writ of scire facias requiring such defendant, his heirs, executors, or administrators, [as the case may be,] to appear at the next term of such court and shew cause, if any, he or they hath c

Judgments to die in five years unless execution shall issue.

But debt may be maintained upon such judgments;

Of scire facias may issue to revive them,

why the said judgment should not be revived and execution awarded against him or them, to which scire facias, the said defendant or his heirs, executors or administrators, may plead such matter as he or they hath, or have to alledge, in order to shew why process of execution should not be awarded.

On scire facias returned "scire facias" or two "nihilis," court shall award execution.

Sec. 83. That on the first scire facias returned "scire feci," or on two writs of scire facias returned "nihil," if the defendant, his heirs, executors or administrators, do not appear and shew cause as aforesaid, the court shall award execution on such dormant judgment or for such part thereof as still remains unsatisfied.

Twelve days before court the clerk shall enter all causes at issue in law or fact, in regular order, or docket, setting an equal number for each day;

Sec. 84. That at least twelve days before every court of common pleas or supreme court, the clerks of the respective courts shall enter in a particular docket, all such causes (and those only) in which an issue is to be tried, or an enquiry of damages is to be made, or a special verdict, or a case agreed, or demurrer, or other matter of law is to be argued, in the same order as they stand in the course of proceeding, setting, as near as may be, an equal number of causes to each day of the time allowed by law for the sitting of such court, if, in his opinion so many days will be required in trying the causes ready for trial, and issue subpoenas for witnesses to attend on the days on which the causes, stand for trial, and no cause shall be removed from its place on the docket, but all causes in which the intervention of a jury is necessary shall be tried in the order in which they stand, unless the parties otherwise agree, or be continued until next term.

and issue subpoenas for witnesses.

No cause to be removed from its place or docket, unless, &c.

Clerks to make out copy of docket for court.

Sec. 85. That the clerk of each of the courts of this state, shall make out a copy of the trial docket for the use of their respective courts, by the first day of each term thereof.

Declarations, to be filed.

Sec. 86. That the declaration, pleadings and other papers, relative to every cause shall be filed together in the office of the clerk of each court, and be by such clerk carefully preserved.

Proceedings of courts to be read, before every adjournment, and signed by presiding judge.

Sec. 87. That for preventing errors in entering the judgments, orders and decrees of each court, the judges thereof, before every adjournment shall cause the minutes of their proceedings to be publicly read by the clerk, and corrected where necessary, and the same shall be signed by the presiding judge then sitting in court, which minutes so signed, shall be taken in a book and carefully preserved among the records; and no proceedings, orders, judgments or decrees of either of the said courts shall be in force or valid until the same be so read and signed.

Minutes, when signed, to be preserved amongst records.

Clerks to keep a book to enter list of executions.

Sec. 88. That the clerk of each court shall enter in a docket book to be kept by him for that purpose, a list of all executions by him issued, the name of the person to whom delivered, what return is made thereon, in case the same be

returned, and the final satisfaction of the judgment, when the same is made; and the clerk shall keep the said docket in court while sitting.

Sec. 89. That in all cases where a non suit may be directed by the court of common pleas, by reason of irrelevancy of testimony or by reason that the testimony adduced does not support the case set forth in the declaration, and also whenever the testimony shall be arrested from the jury, by reason of which the plaintiff becomes non suit, the plaintiff shall have the same right to appeal as in other cases, and either party shall also have the right to except to the opinion of the court, on a motion to direct a non suit, to arrest the testimony from the jury and also in all cases of motions for a new trial, by reason of any supposed misdirection of the court to the jury, or by reason that such verdict may be supposed to be against law; so that such case may be removed by writ of error; and when a party to a suit in any court of common pleas within this state, alleges an exception to any order or judgment of such court, it shall be the duty of the judges of such court concurring in such order or judgment, if required by such party during the term, to sign and seal a bill containing such exception or exceptions as heretofore, in order that such bill of exceptions may, if such party desire it, be made a part of the record in such suit.

In what case plaintiff may appeal from non suit.

Exceptions may be taken to opinion of court.

Court to sign and seal bill of exceptions.

Sec. 90. That the supreme court and court of common pleas shall have power in the trial of actions at law, on motion, and on ten days notice thereof, to require the parties, to produce books and writings in their possession nor power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery; and if the plaintiff shall fail to comply with such order to produce books or writings, the courts respectively, on motion as aforesaid, may give the like judgment for the defendant as in case of non suit; and if a defendant shall fail to comply with such order to produce books or writings, the courts respectively, on motion as aforesaid, may give judgment against him by default.

Courts may require books to be produced or ten days notice. Parties failing may be non suited, a judgment be entered by default.

Sec. 91. That the supreme court and court of common pleas shall, respectively have power to grant new trials in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law: and shall have power to administer all necessary oaths and affirmations, and to punish by fine, or imprisonment, or both, at the discretion of the said courts, all contempt of authority in any cause or hearing before the same: *Provided*, That not more than two new trials be granted to the same party in the same cause.

Courts may grant new trials as usual; may punish for contempts, administer oaths, &c.

Proviso.

Sec. 92. That when in the supreme court judgment upon a verdict in a civil action shall be entered, it shall be com-

When judgment is entered in S. court, ei-

Other party may give notice of application for new trial.

Any two judges may grant new trial within twenty days if granted, court to certify same to clerk. Judgment thereby vacated; otherwise mandate to issue.

Proviso.

Clerks, in vacation to make complete record which shall be signed by presiding judge—at next term.

Where records have not been brought up, courts to cause same to be made up; shall examine and sign them.

Final decrees and judgments in com. pleas may be re-examined &c. & reversed or affirmed in sup's court upon writ of error.

Citation to issue to adverse party ten days.

petent for either party during the term to give notice that he will make an application to the judges for a new trial, which notice shall be entered of record upon the minutes of the court and the reasons for the same, filed with the clerk; and it shall be competent for the party giving the notice aforesaid, at any time within twenty days to apply to the supreme court or any two judges thereof, for a new trial in the said cause and shall submit the evidence in support thereof, with a copy of the reasons which may have been filed, which application the said court, or any two judges thereof, may grant or refuse in their discretion. That if the application shall be granted, the court or any two judges thereof, shall certify the same to the clerk of the court of the county, where the action aforesaid, shall have been tried, and the judgement shall thereby be vacated, and the cause stand for trial at the succeeding term, otherwise execution or mandate shall issue, as, in the other cases, *Provided*; That in every case the certificate of the court or the judges thereof shall be filed within twenty days from the rising of the court, and not after.

Sec. 93. That the clerk of each court, shall in vacation, make a complete record of the writ, recognizance of bail, pleadings, orders and judgments or decrees, in each cause, finally determined at the preceeding term, in a book to be provided and kept for that purpose, which record shall be signed by the president or presiding judge of said court at the next succeeding term of said court.

Sec. 94. That in all cases where the judicial acts or other proceedings of the supreme court or court of common pleas in any county in this state have not been regularly brought up and recorded by the clerks thereof, it shall be the duty of the supreme court or court of common pleas, as the case may be, to cause the same to be made up and recorded within such time as the court may direct, and when so made up, the court shall examine the said records, and if found correct the presiding judge shall sign the same, as is provided in the preceding section.

Sec. 95. That final decrees and judgments in the court of common pleas may be re-examined and reversed or affirmed in the supreme court, holden in the same county, upon a writ of error, whereto shall be annexed and returned therewith, at a day and place therein mentioned, an authenticated transcript of the record and assignment of error and prayer for a reversal, with a citation to the adverse party or his attorney signed by the clerk of the supreme court, the adverse party having at least ten days notice, and no writ of error shall operate as a supersedeas to any execution issued on any decree or final judgment of the court of common pleas, unless the clerk before signing such citation, shall take a bond from the applicant to the adverse party, with one or more good and sufficient securities in double the amount of the judgment obtained or

Decree rendered, conditioned for the payment of the condemnation money and costs in case the judgment of the common pleas should be affirmed in whole or in part, and writs of error shall not be brought but within five years after rendering or passing the judgment or decree complained of, or in case the person entitled to such writ of error be an infant, feme covert, non compos mentis, or imprisoned then within five years as aforesaid, exclusive of the time of such disability.

Writ of error not to be superseded unless &c.
Condition of bond
Writs not to be brought but within five years, saving infants &c.

Sec. 96. That no summons, writ, declaration, return, process, or other proceedings in civil causes, in either of the said courts shall be abated, arrested, quashed or reversed for any defect or want of form, but the said courts respectively, shall give judgment according to the right of the cause, as the matter in law shall appear unto them, without regarding any imperfection, defect or want of form in such writ, declaration or other pleading, returned process, or course of proceeding whatsoever, except those only in case of demurrer, which the party demurring shall specially set down and express, together with his demurrer, as the cause thereof, and the said courts respectively may, by virtue of this act, from time to time, amend all and every such imperfection and defect for want of form, other than those only which the party demurring shall express as aforesaid, and may at any time before a writ of error be brought, permit either of the parties to amend any defect in process or pleadings upon such conditions as the said courts respectively shall in their discretion and by their rules prescribe.

No summons shall abate, be arrested, quashed or reversed for want of form, except, &c.

Amendments in form allowed before writ of error bro't

Sec. 97. That when a judgment or decree shall be reversed in the supreme court, in whole or in part such court may proceed either to render such judgment or pass such decree as the court of common pleas should have rendered or passed or remand the cause to the court of common pleas by writ of procedendo for such judgment or decree; and the supreme court shall not issue execution in causes that are removed before them by writ of error on which they pronounce judgment or pass a sentence or decree as aforesaid, or on appeals, but shall send a special mandate to the court of common pleas to award execution thereupon, and such court is hereby authorized and required to proceed in such cases in the same manner as if such judgment or decree had been rendered therein; and on motion, and good cause shewn, they may suspend any execution made returnable before them by order of the supreme court, in the same manner as if such execution had been issued from their own court; *Provided*, That such power shall not extend further than to stay proceedings till the matter can be further heard by the supreme court.

When judgment in whole or part rendered on error, S. court may render judgment or pass decree, or remand cause to C. pleas.

C. C. pleas may suspend any execution made returnable before them by S. court

Proviso

Sec. 98. That when a judgment or decree is reversed, the plaintiff in error shall recover his costs; when a judgment or decree is affirmed, the defendant in error shall recover his costs; when a judgment is arrested the party prevailing

Costs how taxed on error

shall recover costs; and when a judgment or decree is reversed in part and affirmed in part, costs shall be equally divided between the parties.

Appeals from C. C. pleas to S. Court allowed of course, in civil cases.

Party wishing to appeal must enter his intentions.

Shall also enter into bond to adverse party within 30 days from rising of court.

Amount of penalty and condition.

Court may enter execution to stay for 30 days.

Proviso.

Administrators may appeal without bond.

In cases of appeal lien upon real estate shall remain.

Party appealing to S. Court and not recovering a greater sum, exclusive of costs, shall pay all costs in S. Court.

When appeal is granted and bond given,

Sec. 99. That in civil cases an appeal shall be allowed of course to the supreme court from any judgment or decree rendered in the court of Com. pleas, in which such court had original jurisdiction; and the party desirous of appealing his cause to the Supreme court, shall at the term of the court of common pleas in which judgment or decree was rendered, enter on the records of the court, notice of such his intention; and within thirty days after the rising of such court shall enter into bond to the adverse party, with one or more good and sufficient securities, to be approved of by the clerk of such court in double the amount of the judgment or decree rendered, conditioned for the payment of the full amount of the condemnation money in the supreme court and costs in case a judgment or decree should be entered therein in favour of the appellee; and in case notice of appeal is entered as aforesaid, the court may, on motion of the party entering such notice, on laying him under such reasonable restrictions and terms as they may judge necessary for the security of the adverse party, direct execution to be stayed for thirty days: *Provided*, That in no case shall administrators or executors be compelled to give bond and security in order to perfect an appeal, as is above provided and in such case the clerk if not otherwise directed, shall at the expiration of thirty days from the rising of the court make out, and transmit, the record of the cause to the clerk of the supreme court as in other cases.

Sec. 100. That in all cases where the party against whom a judgment is rendered in the court of Common Pleas, appeals his cause to the Supreme court, the lien of the opposite party upon the real estate of said appellant, created by said judgment shall not be by said appeal removed or vacated but the real estate of said appellant shall be bound in the same manner as if said appeal had not been taken, until the final determination of the cause in the Supreme court.

Sec. 101. That the plaintiff appealing shall not recover a greater sum in the supreme court, than in the court of common pleas, exclusive of costs and interest which may have accrued since the rendition of the judgment in the court of common pleas, he shall pay all costs that may have accrued in the supreme court in such case; and if the defendant in any personal action shall remove the same, by appeal to the supreme court, and the plaintiff shall recover in such cause a judgment for the same sum or a larger sum than was recovered in the court of common pleas, exclusive of costs, the supreme court shall render judgment for the sum so recovered.

Sec. 102. That when an appeal is granted and bond and security given thereon as aforesaid, the judgment or decree rendered in such case in the court of common pleas

shall thereby be suspended, and the clerk of such court shall forthwith make out an authenticated transcript, of the record of the said court in such cause, and deliver the same to the appellant or his attorney, on demand, and the appellant or his attorney shall deposit such transcript with the clerk of the supreme court of such county, on or before, the first day of its next term after the bond and security is given on appeal as herein provided; and if the appellant or his attorney fail to deliver such transcript on the said first day of the term, the appellee may apply to the clerk of the court of common pleas for an authenticated transcript of the record in such cause, and file the same with the clerk of the supreme court, which transcript being filed by the appellee, the supreme court in such case is hereby authorized and required, on his application, either to enter up a judgment or decree in his favor, similar in every respect to that entered in the court of common pleas, or to have the said appeal tried; in either case the appellee shall recover all the costs that may accrue in the supreme court.

judgment of C. pleas shall be suspended.

Transcript to be delivered to appellant or attorney who shall file the same in S. C. on or before the first day of term.

Sec. 103. That the clerk of the supreme court shall, prior to the filing with him the transcript as herein before provided, on the application of either party to an appeal, issue subpoenas for witnesses returnable to the first day of the next term of said court, on satisfactory proof being made before him that such appeal has been taken.

Clerk S. Court may issue subpoenas before transcript filed

Sec. 104. That when any cause is removed by appeal into the supreme court, the appeal shall be tried on the pleadings made up in the court of common pleas, unless, for good cause shewn, and on payment of costs, the said court should permit either or both parties to alter their pleadings, in which case such court shall lay the parties under such equitable rules and restrictions as they may conceive necessary to prevent delay.

Appealed cause to be tried upon pleadings unless.

Sec. 105. That when judgment shall be rendered by the supreme court in any case brought before them by writ of error, in which errors in law may have been assigned, or in any case brought before them by appeal, or by any writ issued from said supreme court in which there may have been an issue, in law or demurrer to evidence, or in which there may have been a verdict and motion in arrest of judgment, or for a new trial, founded on a supposed misdirection of the court to the jury, or on the improper admission of testimony, or the irrelevancy of testimony, or upon any allegation that such verdict is against law, it shall be the duty of the court to reduce the reasons of their judgment to writing, and cause the same to be filed with the other papers of such cause, and if it should so happen that the judges of said court should differ in opinion, then the dissenting judge shall also

In what cases it shall be the duty of supreme court to reduce opinion to writing

Dissenting judge to reduce his opinion to writing.

reduce the reasons of his opinion to writing, and the same shall be filed as aforesaid.

When there are several counts, good and bad and certain damages verdict shall be good.

Sec. 106. That where there are in a declaration several counts any one, or more of which shall be defective, and the residue good, and entire damages are given, the verdict shall be good and effectual in law: *Provided*, The plaintiff, before the jury retire from the bar, apply to the court to instruct the jury to disregard such defective count or counts.

In detinue, if verdict omit value

Sec. 107. That if in detinue the verdict shall omit price or value, the court may at any time award a writ of enquiry to ascertain the same, if on an issue concerning several things in one count in detinue, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the things omitted.

Where quorum of either court fail to attend the judge attending sheriff may adjourn.

Sec. 108. That in case a quorum of the supreme court or court of common pleas, shall fail to attend at the time and place appointed for holding their respective courts, the judge attending [or if no judge be present then the sheriff or coroner as the case may be] shall have power to adjourn the court from day, until a quorum be convened; or if no quorum shall be present within two days after the first day of the term, then and in such case, all suits, plaints, process and pleadings of whatever nature, commenced or depending in the said court, shall stand continued of course to the next term to be holden in said county by the said court.

Court may direct change of venue.

Sec. 109. That in all cases in which it shall be made to appear to the court, that a fair and impartial trial cannot be had in the county where the suit is pending, the court may direct the venue to be changed to some adjoining county.

Judges of S. court to meet in Columbus once a year.

Sec. 110. That it shall be the duty of all the judges of the supreme court to meet annually in the town of Columbus, immediately after the close of their circuit, in order to consult upon, and decide all questions of law which may be reserved in any county in the state, for decision at said session as hereinafter provided.

When difficult questions shall arise, court may reserve them for decision at Columbus.

Sec. 111. That whenever any important or difficult question, either in law or equity, shall arise before the supreme court in any county, the judges holding said court may reserve the same for decision, at said session of the judges of the supreme court, next thereafter to be holden in Columbus as aforesaid.

On reserved question's court may direct argument at county, or written one to be sent Columbus.

Sec. 112. That whenever a question shall be reserved as herein before provided the court shall direct the same to be argued in the county where the same shall arise, or the arguments of counsel shall be made out in writing, and transmitted to the judges at their said session in Columbus.

Judges at Columbus shall reduce their de-

Sec. 113. That the judges at their said session in Columbus, shall cause their decisions in each case to be reduced to writing, which shall be transmitted to the clerk of the supreme court of the county in which such question arose, who

shall enter the same of record and proceedings thereon shall be had, as if such decision had been made in said county. decisions to writing.

Sec. 114. That the judges shall make such rules for the transmitting of cases from the courts in the respective counties, to the said session in Columbus, as to them shall seem necessary and proper. Judges shall make rules to transmit cases.

Sec. 115. That the said judges shall appoint a reporter, who shall report all decisions made at said session in Columbus, and such other important decisions as he may be directed by said judges to report, and cause the same to be published as soon as may conveniently be done after each session. Judges to appoint a reporter. His duty.

Sec. 116. That the reporter shall receive for his services, annually, a sum not exceeding three hundred dollars, to be allowed and certified by said judges and paid out of the state treasury, on the order of the auditor of state. Reporter's salary.

Sec. 117. That the secretary of state shall subscribe on behalf of the state for one hundred copies of said reports subject to the disposal of the General Assembly: *Provided*, The subscription price to the state shall not exceed one cent for each page, of the size of Johnsons New York term reports. Secretary to subscribe for 100 copies of reports.

Sec. 118. That the act to organize the judicial courts and regulate their practice, passed February twenty third eighteen hundred and sixteen, and the act to amend the act entitled an act to organize the judicial courts and regulate their practice passed January twentieth eighteen hundred and twenty three, be and the same are hereby repealed. Acts repealed

This act shall be in force, and take effect from and after the first day of June next. Effect.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 18, 1824.

AN ACT directing the mode of proceeding in Chancery.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio*, That the courts of common pleas shall have jurisdiction, in all cases properly cognizable by a court of chancery, in which plain, adequate and complete remedy, cannot be had at law. Jurisdiction of courts of common pleas.

Sec. 2. That the supreme court shall have concurrent jurisdiction, in all cases cognizable by a court of chancery, where the title of land is in question, or the sum or matter in dispute exceeds one thousand dollars, and appellate jurisdiction in all cases, regularly brought before them from the chancery decisions of the courts of common pleas. of the supreme court.

Sec. 3. That all applicants to the chancery side of either

Application by er of the said courts, shall be by petition, stating the nature
petition. and grounds of the complainants claim, and shall be filed in
 the office of such court.

Subpoena to Sec. 4. That on such petition, being filed as aforesaid,
issue. the clerk shall on the application of the complainant, issue a
 subpoena for the defendant, to appear at the next term of
 the court, to answer the matters and things contained in the
 complainants petition, which subpoena, shall be to the effect
 following:

The State of Ohio, County, ss.
 To the sheriff of the county of GREETING:
 We command you, that you summon A. B. to appear be-
Form. fore the judges of our supreme court, at the court house (or
 judges of our court of common pleas, as the case may re-
 quire,) on the day of in-
 stant, (or next ensuing,) to answer a petition in chancery, ex-
 hibited against him by C. D. and this he shall in no wise
 omit, under the penalty of one thousand dollars; and have
 then there this writ.
 Witness the honorable E. F. chief judge (or president
 judge) of our said court, at the court house, this
 day of G. H.

Which subpoena shall be signed by the clerk, sealed with
 the seal of the court, and bear date of the same day on
 which it is issued.

Subpoena may
issue to defen-
dant in any
county in state

Sec. 5. That if any person shall file a petition in chancery,
 in either of the said courts, against a defendant or defend-
 ants residing within such county, in which it shall be proper
 or necessary to join other defendant, or defendants, residing
 out of such county, but within some other county of this
 state, it shall be lawful for the clerk of such court, on the
 application of the complainant, to issue a subpoena, or sub-
 poenas, for such other defendant or defendants, directed to
 the sheriff or coroner, (as the case may require,) of the coun-
 ty or counties, within which such other defendant, or de-
 fendants reside; and the sheriff or other officer, to whom
 such writ of subpoena is directed, shall serve and return the
 same according to the exigence thereof.

Subpoena or
other process
how served
and received.

Sec. 6. That every subpoena or process for appearance
 shall be served on the person to whom it is directed, or a
 copy thereof left at his dwelling house, or usual place of
 abode, and the sheriff, or coroner serving such subpoena, or
 other process, shall endorse thereon the time and manner
 of service.

Personal ser-
vice may be
made on de-
fendant resid-
ing out of state
at publication
for 2 weeks.

Sec. 7. That if any person shall file a petition in chancery
 against any defendant residing within this state, in
 which it shall be proper, or necessary to join any other de-
 fendant residing out of the state, whether in the U. States,
 or any other country, the complainant may cause person-
 al service to be made on such absent defendant, by a written

notice, setting forth the pendency of such petition, and the substance of the prayer thereof, or he shall cause publication to be made of such notice for nine weeks successively, in some newspaper, printed in this state, and having general circulation in the county, where such suit shall be pending, and on due proof that such notice has been given, such defendant shall be considered in court, and be thereupon proceeded against, in the same manner, as if he had been regularly served with a subpoena in the cause.

Sec. 8. That the complainant may insert in his petition as many defendants as he pleases, though they claim under different titles; but if any of the defendants disclaim, he shall pay them their costs, except for special reasons appearing, the court shall otherwise decree; and he shall also pay to each defendant, any costs he may incur in consequence of any contested claim, in which he is not interested.

Sec. 9. That any person having, both the legal title to, and possession of land, may institute a suit against any other person setting up a claim thereto; and if the complainant shall establish his title to such land, the defendant shall be decreed to release his claim thereto, and to pay the complainant his costs, unless the defendant shall, by his answer, disclaim all title to such lands, and offer to give such release to the complainant, in which case the complainant shall pay to the defendant his costs, except for special reasons appearing, the court otherwise decree.

Sec. 10. That whenever a suit at law for the recovery of money, the cause of action whereof would, on the death of either plaintiff or defendant survive to their legal representatives, or whenever a suit in chancery for the recovery of a specific sum of money or damages shall be pending, in either of the courts aforesaid, against a non resident defendant, or whenever either of such suits may be pending against a resident defendant, who has, during its pendency, either secretly departed out of the jurisdiction of the court, or secreted himself or property within the same, so that the ordinary process of law cannot be served on either, and any person or persons resident within such jurisdiction, is indebted or to has in possession goods and chattels, rights, credits, monies or effects belonging to such non-resident or secreting defendant; it shall be lawful for such plaintiff at law or complainant in chancery, to file his bill of complaint against the person or persons so being indebted, or having in his possession the goods and chattels, rights, credits, monies, or effects of such non-resident or secreting defendant, annexing to his petition an affidavit of the allegations therein contained and the amount of the debt or damages by him claimed, and it shall be lawful in such case for the court, if it shall appear necessary, to enjoin such last named defendant from paying over, conveying away, or secreting such debts by him owing to, or the effects of such other defendant in his hands, until

on proof of notice defendant to be considered in court.

Plaintiff may insert as many defendants as he pleases.

Person having legal title and possession may file bill.

A bill may be filed against a debtor's creditor, when and how,

Also when a person is in possession of goods &c. belonging to judgment or other debtor.

Complainant to attach an affidavit to bill.

Injunction may issue.

final judgment or decree can be had in such cause, and the court shall, on final hearing, make such decree or order, between all the parties as they shall think equitable and just.

Subpoena re-
turned served
or notice prov-
ed, defendant
to answer, etc
in sixty days
after appear-
ance term, un-
less, etc
Def't failing to
to answer, etc.
court may de-
cree.

Sec. 11. That on subpoena being returned, "served," by the sheriff or corner, or on proof of notice having been given as in the seventh section of this act directed, the defendant shall file his plea, answer or demurrer to the complainant's bill in the clerk's office, in sixty days next after the appearance term, of such cause, unless the court shall grant the defendant further time; and if the defendant shall not file his plea, answer or demurrer within the time limited by this act or granted by the court, such bill shall be taken as confessed, and the court may at their discretion render a decree thereon, or order the complainant to produce documents, and depositions, to substantiate and prove the allegations of his bill, and such court may also, at their discretion, examine the complainant on oath or affirmation, touching the allegations of such bill, which examination shall be reduced to writing and filed in the cause, and such decree shall be made in either case as the court shall think equitable and just.

May examine
complainant
on oath or re-
quire evidence

Sec. 12. That in all cases properly cognizable in a court of equity where, either the title to or boundaries of land may come in question, or where a suit in chancery becomes necessary in order to obtain the rescission of a contract for the conveyance of land, or to compel a specific execution of such contract and the defendant, or defendants, against whom a decree is sought, is or are not resident within the state, it shall be competent for the complainant to file his or her petition in the proper court of the county in which such lands may be situate, and such court is hereby authorized to take cognizance thereof, and direct, either personal notice or notice, by publication of its pendency to be given as in this act provided, and on proof of such notice having been given to proceed as in other cases.

When title of
land &c in
question, com-
plainant may
file bill where
land lies.

Suits in chan-
cery may be
brought against
heirs without
naming them.

Proviso.

Sec. 13. That all suits in chancery, which may be brought against the heirs of any decedent where the names of such heirs are known, may be brought against such heirs where the names are unknown to the complainant: *Provided, however,* That such complainant before the issuing of any process or making any order against such heirs, do annex to his or her bill, an affidavit stating that he or she does not know the names of such heirs.

When part of
heirs names
are known and
part not; how
to proceed.

Sec. 14. That in all cases where the names of some of the heirs are known to the complainant and some are unknown, and in all cases where the complainant shall know the names of some of the heirs and shall not know whether there are others or not, it shall be lawful for him or her to proceed, by advertisement, against those who are unknown, in the same manner, he or she might, if the names of all were unknown, and to proceed against those who are known in the

same manner he or she might if the names of all were known.

Sec. 15. That when any suit in equity be pending, and either party thereto shall depart this life, it shall and may be lawful for the devisee or devisees of any testator to revive the suit: *Provided*, The cause of action accrue by the will of the decedent to said devisee or devisees, and said devisee or devisees could support such action if brought anew; or should such testator have been a defendant to have the suit revived against such devisee or devisees, in the same manner, as any such suit may be revived by or against the heirs at law of any decedent.

When either party dies, devisees may revive.

Proviso.

Sec. 16. That if any defendant against whom a decree may be pronounced, who has only been notified of the pendency of the complainants petition against him or her by the notice thereof being published in a newspaper as by this act provided, shall in any time within five years next after the pronouncing such decree, on paying the costs which may have accrued on such suit and giving to the complainant or complainants his, her or their legal representatives notice in writing of his or her intended application, and filing a full and complete answer to the original bill be permitted to apply, by petition, to the court who pronounced such decree, to open the same setting forth in his or her petition the above facts, and that he or she never did, during the pendency of said suit, receive any actual notice thereof in time to put in his or her answer thereto, and annexing to such petition an affidavit of the truth of the facts therein stated: And such court on receiving satisfactory evidence, that the costs have been paid, notice given, answer put in and petition filed, with affidavit annexed as by this action required is hereby authorized and required to open such former decree, and proceed in the said cause in the same manner they ought to have proceeded had such defendant filed his or her answer in due time: *Provided, however*, That nothing in this section contained shall be so construed as to effect the title to any property, real or personal, which may have been the subject of such former decree, in the hands of a bona fide purchaser thereof, subsequent to such former decree.

Defendants who have had notice by advertisement may, within 5 years, petition court to open decree on payment of costs, filing answer, &c.

Proviso.

Sec. 17. That when plea is filed, and the complainant concedes the same to be good though not true, he may reply and take issue upon it and proceed as in case of answer.

When plea filed, issue may be taken.

Sec. 18. That if the defendant file a demurrer and an answer, the complainant shall not proceed on the answer till the demurrer has been argued or disposed of.

When plea and demurrer, demurrer to be first, &c.

Sec. 19. That if the plea or demurrer be overruled, no other plea or demurrer shall be thereafter received; but the complainants bill shall be taken as confessed, and the court shall proceed to decree thereon; or in their discretion they may receive an answer on affidavit of merits, and that such plea or demurrer was not filed for the purpose of delay.

Plea &c. overruled no other plea, received. court may receive answer, &c.

Costs upon demurrer or plea. Sec 20. That if the plea or demurrer be allowed, the complainant shall pay costs, and if overruled, the defendant shall pay them.

Replication or exceptions when to be filed. Sec. 21. That the complainant shall file exceptions or a replication within thirty days after the time limited for filing an answer, if such answer be filed in time, or on failure thereof such cause shall stand for hearing on bill and answer.

Costs upon exceptions. Sec. 22. That the complainant if his exceptions be overruled, shall pay costs to the defendant; and the defendant, if his answer be adjudged insufficient, shall pay cost to the complainant.

One answer insufficient, defendant to file second in 30 days, unless, Sec. 23. That when an answer shall be adjudged insufficient, the defendant shall file a second, or further answer, within thirty days after such adjudication, or within such further time as the court may direct, and on failure thereof the said petition shall be taken as confessed, and such proceedings be had thereon as if the first or original answer had not been filed within the limited or granted time.

Second, answer insufficient, defendant to pay double costs. No further answer allowed, Defendant may be examined Sec. 24. That if such second or further answer shall be adjudged insufficient, the defendant shall pay double costs; and in such case further time to answer shall not be allowed, but the said petition shall be taken as confessed, and such proceedings be had thereon as if the first or original answer had not been filed in due time; or the defendant may be examined upon interrogatories, and committed until he shall answer and pay the costs.

Defendant may swear to answer. Sec. 25. That every defendant may swear or affirm to his answer, before any judge, justice of the peace, or master commissioner in chancery.

Defendant may bring new party before court, and how. Sec. 26. That 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 to answer, and thereupon a subpoena shall be sent out, and other proceedings be had, as in case of other defendants.

Defendant may exhibit interrogatories to complainant. answer to, shall be evidence. complainants bill dismissed without answer Sec. 27. That the defendant in chancery, after he shall have filed his answer, may exhibit interrogatories to the complainant, which shall be answered by him on oath or affirmation, and such answer shall be evidence in the cause, in the same manner and to the same effect as the defendants answer to the complainants petition is evidence; and if the complainant shall not answer such interrogatories by the time appointed by the court, he shall be in contempt, and his petition dismissed with costs.

Answers to cross bills, how made. Sec. 28. That if a cross petition be exhibited, the defendant to the first petition shall answer thereto, before the defendant to the cross petition shall be compelled to answer such cross petition.

By consent, rules may be entered in term or with clerk. Sec. 29. That all rules, common or special by consent of the parties or their counsel, shall be entered of course with the clerk, whether in term time or in vacation.

Sec. 30. That all amendments shall be made, with or without costs, and on such equitable terms as the court shall direct. Amendments allowed.

Sec. 31. That parties to suits in chancery, shall take notice at their peril of the filing of answers, demurrers, pleas, replications and other pleadings, and of the pronouncing and signing decrees. Parties to take notice of filing pleas, &c.

Sec. 32. That if the complainant proceed to a hearing on the petition and answer only, the answer shall be taken to be true in all points; and no evidence shall be received unless it be matter of record to which the answer refers, and is proveable by the said record. On hearing, on bill and answer, answer to be taken as true.

Sec. 33. That every cause in the chancery side of either of the said courts, shall be deemed to be at issue on filing a replication, and it shall not be necessary to issue a subpoena, or enter a rule to rejoin in any case. Replication puts cause to issue.

Sec. 34. That if there be an issue as to any matter of fact which shall render the introduction of a jury necessary, the court is hereby authorized to direct an issue for the trial of the same, and the verdict shall be entered of record, and made use of at the hearing of the cause. Issue in fact tried by jury and verdict, evi- dence.

Sec. 35. That the petition, answer, pleadings, papers, documents, and proofs, filed in the cause, shall be used at the argument or hearing for which no charge shall be made by the clerk except for filing. Pleadings, &c. used at hearing—clerk to charge for filing.

Sec. 36. That a petition for a rehearing shall be signed by counsel, and preferred within thirty days after making the order on the hearing, and the prayer of such petition shall be allowed or disallowed, at the discretion of any two judges of the court, making the order on the hearing of the whole state of the case. Petition for rehearing to be filed in 30 days. May be allowed by two judges.

Sec. 37. That when any cause in chancery shall be finally determined the clerk of the court shall enter together in order, the petition, answer, pleadings, reports, decretal orders, statements of facts found by the jury, or agreed by the parties, and decree in such cause, in a book to be kept for that purpose, which shall be signed by the court at the next term, as of the day on which such decree was pronounced. Complete record in chancery to be made and signed by court.

Sec. 38. That the decree of either of the said courts setting in chancery, shall from the time of their being pronounced, have the force, operation and effect of a judgment at law. Decrees to have effect of judgments.

Sec. 39. That where a decree shall be made for a conveyance, release, or acquittance, in either of the said courts, setting as a court of chancery, and the party against whom the said decree shall pass, shall not comply therewith by the time appointed, then such decree shall be considered and taken in all courts of law and equity, to have the same operation and effect, and be as available as if the convey-

ance, release or acquittance had been executed conformably to such decree.

How courts may enforce decrees:—
Against property and person.

Sec. 40. That either of the said courts, setting as a court of chancery, shall have power to enforce their decrees and orders by attachment or sequestration, and if necessary, to award and issue such final process against the goods, chattels, lands and tenements, or against the person of any defendant, as may be issued on a judgment rendered in a court of law, and all such process shall be obeyed, executed and returned by the sheriff or other officer to whom the same shall be directed, in like manner and under the same penalties, as is provided in cases of process issuing from a court of law.

Sheriff or other officer failing to make return, shall be in contempt and fined.

Sec. 41. That if any sheriff, or other officer to whom any writ, process or order of either of the said courts setting as a court of chancery, shall be directed or delivered, shall not make return thereof at the day of return, and according to the tenor of such writ, process or order, the same not being countermanded, he shall be in contempt, and process of contempt, shall on motion in term time, be issued against him, and before he shall be discharged from such contempt, he shall pay to the clerk for the use of the county, as a fine for said contempt, a sum not exceeding fifty dollars, to be imposed by the court, and the costs incurred by means thereof.

Person in contempt to be fined and committed until he obey and pay fine with costs.

Sec. 42. That to enforce obedience to the process, rules and orders of the said court in chancery, where any person shall be in contempt, he shall for every such contempt, and before he be released or discharged from the same, pay to the clerk of the court, for the use of the county, a sum not exceeding fifty dollars, as a fine for the said contempt and that the said person being in court, upon process of contempt or otherwise, shall stand committed and remain in close custody until the said process, rule or order shall be obeyed and performed, and until the fine so imposed for such contempt with the costs, be fully paid.

Clerk to pay fines into county treasury.

Sec. 43. That the clerk of each court shall account for, and pay quarter annually to the treasurer of his county, the fines which he shall have received by virtue of this act.

Costs how awarded and collected.

Sec. 44. That except where it is otherwise directed by this or some other act of the legislature, it shall be in the discretion of either of the courts, setting as a court of chancery, to award costs or not, and the payment of costs when awarded may be compelled by a writ of fieri facias, or fieri et levare facias, or capias ad satisfaciendum, issuing out of the said court, or by an attachment.

Parties may appeal from final decrees.

Sec. 45. That after final sentence or decree hath been pronounced in any cause or suit in the court of common pleas in chancery, any person who may think himself aggrieved by

any such final decree, may appeal therefrom to the supreme court, on giving notice and security within the time required by law in cases of appeals of suits at law.

Sec. 46. That the supreme court or any judge thereof and the court of common pleas, or any president judge thereof, shall have power to grant writs of ne exeat to prevent the departure of any defendant out of the state, until security shall be given to perform the decree, and writs of injunction to stay waste, and either of the said courts or any judge thereof, shall have power to grant writs of injunction to stay the proceedings after judgment, of any of the courts of law.

Judges of S. court and president mag. may grant writs of ne exeat and injunction to stay waste;

Sec. 47. That writs of ne exeat shall not be granted, but upon petition filed, and affidavit made to the truth of the allegations, which being produced to the supreme court in term time, or any judge thereof in vacation, or to the court of common pleas in term time, or the president judge thereof in vacation they or either of them may grant or refuse such writ, as to them shall seem just, and if granted they shall direct to be endorsed thereon, in what penalty bond and security shall be required of the defendant.

Writs of ne exeat must be granted on affidavit and petition.

How granted.

Sec. 48. That if the defendant shall by answer, satisfy the court that there is no reason for his restraint, or give sufficient security to perform the decree, the writ may be discharged.

When writ may be discharged.

Sec. 49. That no injunction shall be allowed by either of the said courts, or any judge thereof on the filing of a bill praying for the same, unless such bill shew good cause in equity for such injunction, and be verified by affidavit, nor shall any injunction be granted by the supreme court or any judge thereof, to stay proceedings in any suit at law, unless the matter in dispute be of value sufficient to admit of original jurisdiction in the court of common pleas.

Bill must shew good cause in equity for injunction and be verified by affidavit.

Sec. 50. That when an injunction shall be granted to stay proceedings in any suit at law, the effect thereof shall be suspended, until the party obtaining the same, shall give bond with sufficient security to be approved of by the clerk of the court granting such injunction for the paying all monies and costs due or to become due from him in such suit at law, and all monies and costs which shall be decreed against him in case such injunction shall be dissolved, and on the execution of an injunction bond, as required above, the clerk shall endorse on the subpoena, "injunction allowed and bail given" and sign his name thereto, but in no case shall it be deemed necessary to issue a writ of injunction in order to stay the proceedings on a suit at law.

Injunction allowed, not to take effect until bond be given.

Condition.

Sec. 51. That when a sheriff or other officer under any execution, shall receive the whole or any part of the money for which the said execution is sued, and the person against whom such execution may have issued, his executors or administrators, shall obtain an injunction to such execution or

When sheriff shall receive money he shall obtain an injunction to such execution or

execution shall
obtain injunction,
he shall
repay.

for any part of the money mentioned therein before the money so received by such sheriff or officer is paid to the plaintiff, his agent or attorney, or his executors or administrators; in any such case, the sheriff or other officer, his executors or administrators, shall repay to the person against whom such execution issued, his executors, administrators or agent, the money so received, or such part thereof as may be enjoined, detaining only sufficient to pay the costs due on said execution, and if any sheriff or other officer his or their executors or administrators, shall fail or refuse, when required, to pay such money so received, or such part thereof as may be enjoined, to the person having a right to demand and receive the same, such sheriff or other officer shall be liable to be amerced, on motion in open court, for the use of the plaintiff in the same manner that such sheriff or other officer would be liable to be amerced for failing to pay over monies made on execution: *Provided*, That nothing in this section shall be so construed as to prevent the court from ordering the money so made upon execution as aforesaid to be paid into court or retained in the hands of the officer until the said injunction shall be disallowed or made perpetual.

Failing, shall
be amerced

Proviso.

After injunction to stay waste, if defendant do by, the court on affidavit may order attachment.

Sec. 52. That if the person against whom an injunction shall be allowed to stay waste, shall, after the service or notice thereof do, commit, consent, direct or suffer to be done or committed, any waste or destruction of, or upon the premises, contrary to the injunction. the court on motion, and affidavit may order an attachment of contempt to be issued against the person charged with disobedience to, and a breach of the said injunction; and if the person so offending, shall be brought before the court by virtue of said attachment, and it shall be made to appear to their satisfaction that such waste or destruction, hath been done or committed as aforesaid, then the said court may in their discretion, order such defendant to pay into the hands of the clerk a fine not exceeding fifty dollars, to and for the use of the county, and also to make immediate restitution to the party injured, or in default thereof, to order such defendant to be committed and kept in close custody, until he shall fully comply with such order or be otherwise legally discharged.

and may fine him if guilty and order restitution to complainant.

Answer to bill of discovery may be submitted to jury on issue out of chancery.

Sec. 53. That when either party shall have been called on for a discovery on oath and the fact as to which, the discovery was prayed, is afterwards submitted to a jury the answer put in as to such fact shall be laid before the jury in the same manner as is practised with regard to answers on issue, directed to be tried at law by a court of chancery.

Sec. 51. That in all cases wherein an injunction may be hereafter allowed to stay proceedings at law, in an action for the recovery of money only, upon the injunction being dissol-

ved, and the bill dismissed in the court of common pleas, the court, shall proceed to render up a decree in favor of the respondent [plaintiff at law] for the debt or damages, interest and costs recovered at law, and also for the interest and costs, accruing in chancery, together with five per cent, penalty on the amount of debt or damages, and the interest which may have accrued; upon which said decree the party in whose favor it is rendered or his or their legal representatives may sue out execution as in other cases in chancery.

Sec. 55. That if the complainant shall appeal from the decree rendered in the court of common pleas, to the supreme court, in any case specified in the foregoing section, and the said injunction shall be dissolved and the bill dismissed in said supreme court, they shall render up a decree for the debt or damages interest and costs which were recovered at law also for the interest and costs which may have accrued in the court of common pleas, and in said supreme court, together with ten per cent. penalty on the debt or damages, and interest accrued in favor of the respondent.

Sec. 56 That in all cases where judgment shall have been obtained at law, in the Court of Common Pleas or Supreme Court, and the defendant in execution has no goods or chattels, nor real estate holden by legal title, whereon to levy an execution to satisfy said judgment, but is possessed of an equitable interest in real estate, it shall be lawful for the plaintiff in execution, or his legal representative, to file a bill in chancery, in the county where such lands may be situate, or where such judgment, shall have been rendered, setting forth the judgment; and that the party has no goods or chattels nor legal estate which can be levied on, and sold to satisfy said judgment, and praying that said defendant's equitable interest in said land, might be decreed to be sold to satisfy said judgment; and it shall be the duty of said Court of Common Pleas, or Supreme Court, to decree that the equitable interest in said lands, shall be sold to satisfy said judgment, and the sale thereof shall be conducted in all respects in the same manner as is provided for the sale of real estate in the 'act regulating judgments and executions.' *Provided*, That the inquest or appraisers who may be called on to view and appraise said land, shall take into consideration only the interest the defendant may have therein, and the sheriff to whom process may be directed by virtue of this section, shall return his proceedings to the next Court of Common Pleas, and it shall be the duty of said Court to examine the proceedings of the sheriff respecting the said sale, and if on examination, it shall be found that the sale has been in all things conducted agreeably to the provisions of this act, to make record thereof confirming the same, and render a decree conveying unto the purchasers, all the

Injunction dissolved, where allowed in an action for recovery of money, penalty of 5 per cent to be added besides debt.

If complainant shall appeal, S. Court shall decree debt, &c and ten per cent. penalty.

Where judgment obtained at law and execution returned no goods, &c. and judgment debtor has an equity in lands, creditor may file bill, and courts must decree sale of such equity.

Sale to be had as of real estates at law.

Proviso.

equitable interest of the defendant or defendants in the premises.

Mortgagor's interest may be sold in equity, when and how,

Sec 57. That in all cases where judgments have been, or hereafter may be obtained at law, in any court of record in this state, and the defendant in execution, has not sufficient personal or real estate, whereon to levy, to satisfy such judgment, it shall be lawful for the plaintiff in any such judgment, or his legal representative, to file a bill in chancery in the court of common pleas, or supreme court of the proper county, setting forth that such judgment debtor has no personal or real estate which can be levied on and sold, to satisfy such judgment, and praying that the right, title, claim or interest, which such debtor may have in any lands, tenements or hereditaments which has been or shall be mortgaged for the security of any debt due, or assigned to such debtor, may be decreed to be sold to satisfy such judgment; and it shall be the duty of the Court of Common Pleas or Supreme Court to decree that the right, title, claim or interest, which such debtor may have in any lands, tenements or hereditaments, which shall have been mortgaged for the security of any debt due or assigned to such judgment debtor, shall be sold to satisfy such judgment, and the sale thereof shall be conducted in such manner as the Court by their decree shall direct; and the sheriff or other officer to whom process may be directed by virtue of this act, is hereby empowered and directed to assign and transfer the same to the purchaser, and any debt secured by such mortgage, shall pass by the assignment of the sheriff or other officer, who shall serve such writ of execution, and be completely to all intents and purposes transferred to and vested in such purchaser; and any such purchaser or his legal representative, may in his own name maintain any action, proper to recover such debt or to obtain possession of such lands, tenements or hereditaments, which might have been maintained in the name of such debtor, had no such sale been had; but if previously to such sale any suit either in law or equity shall have been instituted by the mortgagee on such mortgage deed, the same shall be prosecuted to final judgment or decree, in the name of such mortgagee for the benefit of such purchaser; and the copy of such mortgage deed, duly certified by the recorder of deeds for the County where such lands are situated, and where such mortgage deed shall be recorded, shall be considered prima facie evidence of such mortgage deed, and of the note or other obligation on which such mortgage is founded, and that the same were remaining due and unsatisfied at the time of entering the decree, and whenever the debtor in such mortgage, shall have paid to such purchaser the amount due thereon, he shall be forever discharged from such note or obligation; and no gift, sale, transfer, conveyance, assignment or endorsement, of such note or mort-

Sale to be conducted as court may direct. Sheriff to assign mortgagor's right to purchaser,

If suit has been commenced by mortgagee, it shall be prosecuted to final judgment.

gave, made by such judgment debtor, after the service of the subpoena in chancery, shall have any validity, force or effect against such purchaser, at the sale under execution, but the same shall be adjudged null and void, except only between such judgment debtor and the person to whom such debtor shall make such gift, sale, transfer, conveyance, assignment or endorsement, their heirs, executors, administrators and assigns.

Sec. 58. That in all cases where judgment shall have been obtained at law or a decree in chancery, for the payment of money, in the Court of Common Pleas, or Supreme Court, and the defendant in execution has not sufficient personal or real estate whereon to levy an execution to satisfy such judgment or decree, but owns any rights or shares or interest, in any banking, manufacturing, turnpike, bridge or other Company, which heretofore has been, or hereafter may be incorporated by the Legislature of this state, it shall be lawful for the plaintiff in execution, or his legal representatives, to file his bill in chancery in the Court of Common Pleas or Supreme Court of the proper County, against said defendant in execution, and make any such Company party thereto, setting forth that such judgment debtor has not sufficient personal or real estate which can be levied on and sold to satisfy such judgment or decree, and praying that the rights or shares or interest of said judgment debtor in such Company, together with the dividends, rents and profits due, and growing due thereon, may be decreed to be sold to satisfy such judgment or decree, and the same shall be held and bound to respond such judgment or decree, from the time of the service of a subpoena on the defendants to said bill; and the Cashier, Clerk or Secretary of any such Company, who shall have been duly served with a subpoena shall in his answer disclose and set forth the number of rights or shares, and the amount of interest owned by such judgment debtor in such Company, with the number or other marks by which such rights or shares or interest are distinguished, together with the incumbrances thereon, if any; and the amount of dividends, rents and profits due on the same; and upon the hearing of said bill, it shall be the duty of the court to decree that the rights or shares or interest of the judgment debtor in such company, together with the dividends, rents and profits due, and growing due thereon, shall be sold to satisfy such judgment or decree, and a l costs, or so many of said rights or shares or such part of said interest as shall be sufficient to satisfy the same, and the sale thereof shall be conducted in all respects in the same manner as is or hereafter may be provided for by law for the sale of personal property; and the officer making such sale shall give to the purchaser an instrument in writing conveying to him such rights or shares or interest, with all the privileges apper-

After service of subpoena on mortgagor, no assignment, &c of mortgage or note, shall have validity, except, &c.

Judgment creditor may proceed by bill against debtor's interest in a corporation. Substance of bill.

Interest to be bound from service of subpoena. Certain officers of corporation to make discovery.

Interest of judgment debtor to be decreed to be sold.

Sale to be conducted as in personal property at law. Office to convey interest of debtor to purchaser.

claiming thereto; and shall also leave with the cashier, clerk or secretary of such company, a true and attested copy of the said execution, and of his return thereon, within ten days after the sale is completed, who shall record the same, and thereupon such purchaser shall be entitled to such rights or shares or interest together with all the dividends, rents and profits due or growing due thereon, and to the same privileges as a member of such company, to all intents and purposes, as such judgment debtor was entitled to; and it shall be the duty of the proper officer or officers of such company, to make and enter on their books a transfer of such rights, shares or interest, together with all dividends, rents and profits due thereon, to the purchaser under such execution, and on request to issue to him such certificates as by the bye laws and regulations of such company are the evidences of the rights or shares or interest of a proprietor in such company.

Purchaser to have all the rights, &c. the judgment debtor had.

Officers of corporations to make a transfer on their books from debtor to purchaser.

Sec. 59. That in all cases when a judgment shall have been recovered at law or a decree in chancery for the payment of money, in the court of common pleas or supreme court of this state, and the defendant has not sufficient personal or real property which can be taken in execution to satisfy such judgment or decree, but has monies, goods or effects in the hands or possession of any other person, body politic or corporate, or has debts due, or that thereafter may become due from any other person, body politic or corporate, it shall be lawful for such judgment creditor his assignee or legal representative to file his bill in chancery against the judgment debtor, and make any such person, body politic or corporate party thereto, setting forth said judgment or decree, and that such judgment debtor has not sufficient personal or real property which can be taken in execution to satisfy the same, and praying that said monies goods and debts due and that shall thereafter become due. may be charged with the payment of such judgment or decree, and the same shall be held and bound to respond such judgment or decree from the service of a subpoena on the defendants to said bill, and the said defendant who shall have been duly served with a subpoena shall in his answer disclose, and set forth the amount of monies, goods and effects in his hands or possession, belonging to the judgment debtor, and the debts due or that may thereafter become due to such judgment debtor, together, with the incumbrances thereon, if any, and upon the hearing of said bill, it shall be the duty of the court to decree that the complainant in said bill at any time thereafter, that the court may think equitable and just, shall have execution for the amount of such monies goods and effects, found to be in the hands or possession of such defendant or the debts due or that thereafter may become due to such judgment debtor, from said defendant, or for so much thereof as shall be sufficient to satisfy such judgment or decree, and execution shall

Judgment creditor may file bill against debtor, and make any person, &c. defendant, who has property of or owes his debtor.

Substance of bill.

Property, debts, &c. of debtor, bound from service of subpoena.

Discovery to be made.

Court to decree execution.

issue therefor accordingly: *Provided*, That nothing in this section contained shall be construed to prevent the judgment creditor from taking execution upon such judgment or decree, at any time during the pendency of said bill: *Provided also*, That the court shall have power to enjoin such defendants, under such penalties as to them may appear just and equitable, from selling, or otherwise disposing of such goods, chattels and effects until the final hearing of such bill.

Provided:
Provido.

Sec. 60. That in all bills in chancery, which shall hereafter be filed for the purpose of perpetuating evidence, the complainant shall set forth specially the subject matter relative to which such evidence is to be taken, the names of parties, if known to him, but if not known, then such general description as he may be able to give of the person as heir, devisee, alienee, or otherwise, the representative of some person who shall be named in such bill, and the defendants to such bill shall be brought into court in the same manner as in other cases.

What a bill in chancery, to perpetuate testimony, shall contain.

Sec. 61. That the complainant, before he proceeds to take any evidence under any decree or order which may be entered in such cause, shall file in court the names of the witnesses, and the interrogatories to be propounded to each witness, and if actual notice shall not have been served on the defendant, the court, or one of the judges thereof, in vacation, shall appoint some attorney of the court to examine the bill and interrogatories, and to file cross interrogatories thereto, which shall be forwarded with the interrogatories to the officer taking the depositions, and shall be fully answered to by such witness; and the attorney who shall by order of the court, file such cross interrogatories, shall be allowed a reasonable fee therefor, to be taxed in the bill of costs.

Complainant before he takes evidence shall file the names of witnesses & also interrogatories.
and if actual notice has not been given defendant, court shall appoint an attorney to file cross interrogatories.

Sec. 62. That if at any time after filing such bill as aforesaid, the complainant shall prove by his own oath, or otherwise, to the satisfaction of the court, or any judge thereof, in vacation, that any material witness is old, infirm, or about to leave the state, whereby he will be in danger of losing the evidence of such witness by death or removal, the court, or such judge in vacation, may make and cause to be filed among the records in such cause, an order for taking the deposition of such aged, infirm or going witness; and in case of the actual death or removal of such witness, before the defendant can be brought into court as above directed, such deposition shall be holden good and valid as if the same had been taken by order of the court, after notice duly published as aforesaid.

Evidence of aged, infirm, or going witness, how perpetuated.

Sec. 63. That such depositions shall be taken before one of the master commissioners in chancery, in this state, or before some person specially authorized by *dedimus potestatem* to take the same, and no question, except those filed in court as aforesaid, shall be put to such witness, nor any statement

Depositions to be taken by a master or *dedimus potestatem* may issue,

The effect of such depositions or a certified copy.

received from him, which shall not be responsive to some one of the interrogatories filed as aforesaid, and all depositions taken as aforesaid, shall be returned to the court in which such bill shall be pending; and if on examination the same shall appear to have been fairly taken, and in all things conformably to the provisions of this act, the court shall order such depositions to be made a part of the record in the cause; and such original deposition or a certified copy thereof, shall be evidence in any suit which may be thereafter litigated between the parties to such bill, or their privies relative to the property which shall have been the subject matter thereof; *Provided*, the deponent cannot be obtained to testify in such suit; and all such bills shall be filed and proceedings therein had at the proper costs of the complainant.

Proviso.

Court may each appoint a master commissioner who may swear witnesses, take depositions.

Sec. 64. That each of the courts having chancery jurisdiction within this state, may appoint a master commissioner in chancery, who shall have power to qualify witnesses, and take depositions in any cause pending either in law or equity, and for that purpose, to issue subpoenas or such other process as may be necessary to compel the attendance of any witness who may be in their proper county, (which process shall be served as in other cases in chancery) and to do all such other acts and things of a ministerial nature as are usually done and performed by master commissioners in chancery, according to the usages and customs of chancery courts.

Reviews altered by petition.

Sec. 65. That any person who was a party to any decree of a court of chancery, his heirs, executors or administrators, may as heretofore, bring and file a petition for a review of the proceedings in which such former decree was made: *Provided*. That no petition for a review shall be brought but within five years next after rendering such decree, unless the person entitled thereto was an infant, feme covert, non compos mentis, or imprisoned, then within five years exclusive of such disability.

Proviso.

Bill of review upon errors of law may be filed as matter of course.

Sec. 66. That if the petition, for a review, examination and reversal of a former decree be brought upon errors of law appearing in the body of the decree, or proceedings themselves, it may be filed as an original petition in chancery, as a matter of course; but if the petition for a review, examination and reversal of a former decree, be brought upon the discovery of new matter, since the hearing on the former decree, it shall only be exhibited and filed by leave of the court, previously granted, as heretofore; and in either case, if the court think it reasonable, under all the circumstances of the case, to stay proceedings on the former decree, they may direct proceedings on such decree, to be stayed until a decree on the said petition for a review shall be made, or until the further order of said court: *Provided*, such application to stay the proceedings on a former decree, be made at the

But if upon new matter by leave of court.

Court may direct proceedings under former decree, stayed.

Proviso.

same term that the petition for a review is filed, or if such petition be filed in vacation, then at the next succeeding term; and where the proceedings on the former decree shall not be stayed as aforesaid, the party against whom such former decree was entered shall comply therewith.

Sec. 67. That if proceedings on a former decree shall be directed to be stayed as aforesaid, the court shall direct such security to be given as is usual in cases of appeal, or injunction, to stay proceedings at law; and if proceedings on the former decree shall not be stayed as aforesaid, the court shall direct security to be given, if they deem it necessary, for the costs. When proceedings stayed, courts shall direct security.

Sec. 68. That the act directing the mode of proceeding in chancery, passed February nineteenth, one thousand eight hundred and ten; the supplementary act, passed December twenty fourth, one thousand eight hundred and twelve; the act amendatory to the above acts, passed February fourth one thousand eight hundred and twenty two, and all other acts supplementary to the above acts are hereby repealed. All acts repealed.

This act to take effect from and after the first day of June next. Eff. etc.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January, 22, 1824.

AN ACT providing for the service and return of process in certain cases.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That when any writ of capias, summons or other meane proces against two or more defendants, shall be directed to any sheriff or other officer, it shall be the duty of such officer to serve the same on so many of the defendants as shall be found in his county, and to endorse on said writ the name or names of such defendants as have been served with the same; and it shall also be the duty of such officer to return on said writ the name or names of such defendants as are not served, specifying that they are not found in his county. When capias issues against two, how to be served.

Sec. 2. That it shall be lawful for the plaintiff, after a writ shall have been returned, "served" on any one or more of the defendants as is provided in the first section of this act, to file his declaration against such defendant suggesting ther in the return made on such writ as to such defendants as have not been served with the same, and shall proceed therein to final judgment as in other cases; and said plain- Nature of return to be suggested and declaration filed.

Scire facias may issue.

tiff may, by a writ or writs of scire facias, after obtaining judgment as aforesaid, cause any defendant or defendants on whom the original writ in said cause shall not have been served, to be made parties to said judgment, unless he or they shew good cause why judgment should not be entered against them; which scire facias shall be directed to the sheriff of the county where such defendant or defendants reside, and shall be returned "served," before such defendant or defendants shall be made party to such judgment; and the defendants made parties to said judgment as last aforesaid, shall be subject to the same process on said judgment they would have been, had they been served with the original process in said suit.

How served and returned.

Sec. 3. That when any person shall voluntarily appear in any court of record in this state, and confess judgment in favor of any other person on any bond, bill, note or other contract, wherein any other person or persons shall be jointly, or jointly and severally liable with the person confessing said judgment; or where any cause shall be removed from the decision of any justice of the peace by appeal or otherwise to any of said courts, and judgment shall be rendered on the judgment of said justice, on any such bond, bill, note or contract, shall be affirmed, the person in whose favor any such judgment shall have been rendered or affirmed, may by a writ or writs of scire facias, cause any person or persons jointly liable as aforesaid, to be made parties to said judgment in the same manner that is provided in the second section of this act; and the persons made parties as last aforesaid, shall be liable to the same process on said judgment that is provided in said section.

Writs of scire facias to make parties.

Capias upon indictment and subpoenas may issue to any county.

Sec. 4. That when a writ of capias shall issue on an indictment found in any county in this state, it shall be lawful for the person to whom the same is directed, to arrest the body of the person named in said writ in any county in this state, and shall commit or hold such person to bail, as shall be provided by law, in the county where such indictment was found; and in all criminal prosecutions for offenses, the punishment of which is death or imprisonment in the penitentiary, subpoenas may be issued for any person within this state, whose testimony may be deemed important on the trial of such prosecution, and it shall be lawful for the sheriff or other officer to whom such writ of subpoena may be directed, to depute any disinterested person to serve and return the same, and the person deputed shall, after serving the same, make oath or affirmation before some court or person duly qualified to administer the same, to the truth of his return thereon, and shall return the same according to the command of such writ, and shall be entitled to receive for his services such fees as are usual in such cases.

Special deputy may serve subpoenas.

Sec. 5. That when an indictment shall be found by the grand jury, against any defendant residing in any other county than that in which such indictment shall be found, the clerk of the court where said indictment was found, may issue a *capias*, directed to the sheriff or other proper officer of the county where said defendant shall reside or may be found, whose duty it shall be to serve and return the same to the court from which it issued, in the same manner as if it had been issued in the county where said officer resides; for which service he shall receive such compensation as he would be entitled to in other cases.

Capias may issue to sheriff where defendant resides:

Sec 6. That it shall be lawful for any officer serving any writ of *capias*, which may hereafter issue on any indictment found in any county in this state, for any offence the punishment of which is a pecuniary fine, or fine and imprisonment in the county goal only, to take the recognizance of the person so arrested, together with good and sufficient security in a sum of not less than fifty, nor more than two hundred dollars, for the appearance of such person at the next term of the court to which such writ shall be made returnable, on the first day of said term: and it shall be the duty of such officer to return said writ, with the name or names of the security or securities endorsed thereon, and also to return the recognizance taken by him as aforesaid, to said court, and the recognizance so taken and returned shall be entered and become a matter of record, and shall be proceeded upon in the same manner that now is or hereafter may be provided in cases of recognizance taken before justices of the peace.

When sheriff may take recognizance upon indictment.

Condition.

Return.

Sec. 7. That where the grand jury empanelled in any court, shall return to such court any bill of indictment for an offence which is punishable by imprisonment in the penitentiary, and the person or persons named in said bill shall not have been recognized to appear before said court; or in case he or they shall not be arraigned at the term at which said indictment shall be presented, said court may at their discretion, make an entry of the cause in their minute book, and therein express and order the amount of the bail to be taken in said cause, and the clerk issuing a *capias* on said indictment shall endorse thereon the amount of the bail ordered to be taken as aforesaid, and the officer serving said *capias* shall take the recognizance of the defendants, together with good and sufficient surety for the appearance of such defendant at the return of said *capias* in the sum ordered, in the same manner that is provided in the fifth section of this act, and shall return said recognizance into said court, where it shall be proceeded with, in the manner that is provided in said section.

When court to make an order for amount of bail.

To be endorsed on capias.

Sec. 8. That in all cases where a *capias ad satisfaciendum* may issue from the court of common pleas, or supreme

Proceedings on ca. sa.

Fees. court, in any county in this state, directed to the sheriff (or officer discharging the duties of sheriff) in any other county within this state, the sheriff or other officer receiving such writ, shall serve the same on the body of the defendant or defendants named therein, or such of them as may be found in his county, and convey him or them so taken, forthwith to the jail of the county from whence the writ issued; for which he shall be entitled to the same fees as are usually allowed for similar services in other cases.

Persons may be appointed to serve process. Sec. 9. That whenever the office of sheriff and coroner shall become vacant by reason of death, disability to do the duties of the office, resignation, removal or otherwise, of such sheriff or coroner, and there shall be no deputy legally qualified to do the duties, or to serve such process as may be required by law, it shall be the duty of the courts of common pleas in their respective counties, or the associate judges of any county, at a term of said court by them for that purpose especially appointed, to appoint some suitable person to do the duties of sheriff; or where the sheriff and coroner shall not be competent to serve any process, by reason of interest or otherwise, it shall be the duty of the courts of common pleas in their respective counties, to appoint some suitable person, to serve such process; and the person so appointed, shall hold his office for such length of time as he shall be appointed, or until the disability of such sheriff or coroner shall be removed: *Provided*, his appointment shall not extend beyond the next annual election, or until the sheriff or coroner then elected shall be commissioned and qualified according to law, and the person so appointed shall have the same powers, and be liable to the same regulations, shall be entitled to the same fees and may be proceeded against for neglect or misconduct in office, in the same manner as is provided in case of sheriffs; and the court making such appointment, may require such security of the person so appointed, for the due execution of the duties required of him, as they may think proper.

Proviso.

Acts repealed. Sec. 10. That an act entitled "an act providing for the service and return of process in certain cases," passed February twenty-fifth eighteen hundred and twenty, be, and the same is hereby repealed.

Effect. This act shall take effect and be in force, from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate

January, 22, 1824

AN ACT, Relating to Juries.

Sec. 1. *Be it enacted by the General Assembly of the State of* ^{Grand and petit} *Ohio,* That there shall be sixty grand jurors, and forty-eight ^{petit jurors in} *petit jurors, judicious persons having the qualifications of* ^{each county.} *electors, annually selected in each county, to serve as grand and petit jurors the ensuing year.*

Sec. 2. That the clerk of the Court of Common Pleas, ^{When & how} *on the first Monday of February, annually, shall direct the* ^{selected.} *proportion, to be ascertained from the number of free white male inhabitants of twenty-one years of age, in the respective townships; and the trustees shall meet on the first Monday of March, annually, and shall select the grand and petit jurors, of persons having the qualifications aforesaid; which shall have been assigned for their respective townships, by the clerk of the Court of Common Pleas; and the respective clerks shall write the names, of the persons so selected, upon separate pieces of paper, and put them into a box, to be by him provided for that purpose at the expense of the county; those selected as grand jurors into one box, and those selected as petit jurors into another box; and the clerk of the court of common pleas, at least thirty days before the sitting of said court, shall, in the presence of the sheriff of said county, the sheriff having first shook the box, so as to mix the ballots on which the names are written, draw from the respective boxes, by lot, fifteen grand jurors and twelve petit jurors; and the said clerk shall forthwith issue a venire facias to the sheriff, commanding him to summon the persons drawn as aforesaid, to attend as jurors at the seat of justice of said county, on the first day of the court next to be holden therein, at ten o'clock, A. M.; and the said clerk shall in like manner, at least thirty days before the sitting of the Supreme Court, in the presence of the sheriff of the proper county, as herein before directed, draw, by lot, out of the box in which is contained, the names of the persons selected for petit jurors, as aforesaid twelve petit jurors, and shall forthwith deposit in the office of the clerk of the Supreme Court of said county, a list of the names so drawn; and the clerk of the Supreme Court, immediately upon the receipt of the names so deposit- ^{Venire to issue} ed, shall issue a venire facias to the sheriff, commanding him to summon the persons drawn as aforesaid, to attend as jurors at the seat of justice of said county, on the first day of the Supreme Court next to be holden therein.*

Sec. 3. That the sheriff, in either case, receiving such ^{Venire how} *venire facias, shall within twenty days thereafter, summon* ^{served.} *such persons, by reading the same in their presence, or leaving, at their usual place of abode, a note or memorandum in the words following, to wit: "I am commanded to summon you* ^{Form of sum} *to appear before the court of Common Pleas,* ^{mons.} *or Supreme Court, (as the case may be) to be holden in* ^{mons.} *on the* ^{mons.} *day of* ^{mons.} *next, to*

serve as a grand or petit juror," (as the case may be) and shall endorse on such venire facias, the names of the jurors and the time when summoned, and return the same to the clerk of said court on the first day of its session.

Number of jurors in Hamilton county.

Sec. 4. That in the county of Hamilton there shall be eighty-four judicious persons having the qualifications of electors annually selected to serve as petit jurors, and the clerk of the court of common pleas shall at the times and in the manner above directed draw two juries for each term of of said court, one of which juries shall be summoned to attend on the first day of the term, and the other on the first day of the third week of the term to serve respectively as jurors in said court.

Juror dying, name thrown aside.

Sec. 5. That if any person, selected a juror as aforesaid, shall die or remove out of the township before the time of drawing for jurymen for any court, where such persons name shall be drawn out, it shall be thrown aside and another name be taken in lieu thereof; and if by reason of sickness or absence out of the county, before receiving such summons, or other sufficient excuse accepted by the court, any juror, summoned as aforesaid, shall not serve at the court to which he is summoned, his name shall be returned into the box from which it was drawn, and shall remain there until drawn out at some subsequent drawing for jurors, when he shall serve, if no disability prevent; and at every annual selection for jurors, if there be any name undrawn and remaining in either box, said trustees shall select so many grand and petit jurors as will make the number to be selected in each township; and in case there should not, by reason of challenge or otherwise, be a sufficient number of jurors present to make up a panel, the sheriff shall summon a sufficient number of talesmen to make up the deficient number; and at the close of any court the names of all such persons, as shall have served on the jury at that term, shall be taken out of the box and destroyed.

Talesmen may be summoned.

Clerk to state apportionment of persons to townships.

Sec. 6. That the clerks of the several Courts of Common Pleas, shall make out in writing a statement of the number of jurors, that they have apportioned to each township, and shall deliver the same to the sheriff, and the sheriff shall, on or before the first Monday in March thereafter, deliver the same to one of the trustees of the proper township; and the said trustees shall forthwith, after they have selected the number of jurors agreeably to the statement aforesaid, and made out a list of their names, deliver the same to one of the constables of their township, whose duty it shall be to deliver the names of the jurors, so selected, to the clerk of the court of common pleas of such county, within five days thereafter; and the sheriff and constable shall be paid for their services, under this section, such sum as shall be allowed to sheriffs and constables for travelling fees, for the service of process in or-

Duty of sheriff and trustees.

Expense how paid.

ordinary cases, to be allowed and paid out of the county treasury, upon the order of the auditor.

Sec. 7. That when a sufficient number of grand jurors shall not appear who shall have been selected and returned agreeably to this act, before either of the courts at their stated term; or if it should so happen, that all the grand jurors, summoned as aforesaid, shall fail to attend, it shall and may be lawful for the court, in either case, to order the sheriff, or other officer, to summon from among the bye standers, or neighboring citizens so many good and lawful men as are necessary to form or complete the panel of the grand jury.

Bye-standers
may be taken
for jurors.

Sec. 8. That any grand juror may be discharged by the court for misbehaviour or on the challenge of the prosecuting attorney in behalf of the state, on good cause shown; and if any person not having the qualifications herein before specified, shall be empaneled as a grand or petit juror, it shall be a good cause of challenge to such juror, who shall be discharged, on the same being verified according to law, or on his own oath or affirmation in support thereof.

Challenges to
Jurors.

Sec. 9. That an oath or affirmation in the following words, shall be administered to the foreman of the grand jury: "Saving yourself and fellow jurors, you as foreman of this grand inquest, shall diligently enquire, and true presentment make of all such matters and things as shall be given you in charge, or otherwise come to your knowledge, touching the present service; the counsel of state, your own and your fellows, you shall keep secret unless called on in a court of justice to make disclosures; you shall present no person through malice, hatred or ill will; nor shall you leave any person unrepresented through fear, favor or affection, or for any reward or hope 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."

Foreman's
oath.

Sec. 10. That the following oath or affirmation shall be administered to the other grand jurors: "The same oath which A. B. your foreman hath now taken before you on his part, you and each of you shall well and truly observe and keep on your respective parts;" the said fifteen jurors, summoned and sworn or affirmed as aforesaid, shall be a grand jury, who shall enquire of, and present all murders, felonies and other crimes and misdemeanors whatever, committed within the limits of the county, in and for which they are empaneled and sworn or affirmed: *Provided*, That it shall require twelve of the said jurors to agree, before any bill of indictment or presentment shall be found.

Other grand
jurors' oath.

Subject of in
quiry.

Provided.

Sec. 11. That in case of sickness, death, discharge or non attendance of any grand juror or grand jurors, after he or they shall be sworn or affirmed, it shall be lawful for the court, at their discretion, to cause another or others to be sworn or affirmed in his or their stead.

One grand ju
ror discharged,
court may
swear another

Challenges to
petit jurors.

Sec. 12. That if there shall be empaneled for the trial of any cause, any petit juror who shall have been convicted of any crime, which by law, renders him disqualified to serve on a jury; or who has been arbitrator on either side, relating to the same controversy; or who has an interest in the cause; or who has an action depending between him and the party; or who has formerly been a juror in the same cause; or who is the party's master, servant, counsellor, steward or attorney; or who is subpoenaed as a witness in the cause, or who is of kin to either party, he may be challenged for such cause; in either of which cases the same shall be considered as a principal challenge, and the validity thereof be tried by the court; and any petit juror who shall be returned upon the trial of any of the causes herein before specified, against whom no principal cause of challenge can be alledged, may, nevertheless, challenge on suspicion of prejudice against or partiality for either party, or for want of a competent knowledge of the English language; or any other cause that may render him at the time an unsuitable juror; and the validity of such challenge shall be determined by the court; and each party may peremptorily challenge two jurors.

Court to try
validity of.

Peremptory
challenges on
indictment.

Sec. 13. That every prosecuting attorney, by permission of the court; and every defendant, upon the trial of any indictment, may challenge peremptorily, two of the panel; and if any person prosecuting for the state shall in behalf of the state, challenge any petit juror, except as aforesaid, he shall immediately assign the cause, of such challenge, and the truth thereof shall be enquired into, and decided upon in the same manner as the challenges of other persons are by law enquired into and decided.

Challenges to
the array.

Sec. 14. That where a grand or petit jury shall be selected, drawn, or summoned contrary to the provisions of this act; or where the sheriff, or other officer in executing the writ of venire facias to him directed, shall not have proceeded as herein before prescribed, then, and in either of those cases, the whole array of the jury may be challenged and set aside, and a new venire facias be awarded, returnable forthwith, in the same manner as if the whole number of grand jurors or petit jurors had failed to attend the court, or had been challenged for cause and set aside by the court.

Who may
serve venire.

Sec. 15 That when the sheriff is interested in any cause which now is, or hereafter may be pending, in either the Supreme Court or Court of Common Pleas, the party in interest opposed to that of the sheriff, may apply to the court, who on such application, shall direct a special venire facias to the coroner of the county, commanding him to summon a jury, having the qualifications herein before pointed out, to try such cause; and where both the sheriff and coroner are interested as aforesaid; or in case of the death, resignation or absence from the county, of both the sheriff and coroner, then

and in either of those cases, the venire facias or other process may be directed to such discreet, disinterested person as the court may name.

Sec. 16. That when by reason of any pressure of business, the court shall deem it necessary to have two petit juries; or when, by reason of absence, sickness, challenge or otherwise, there be none remaining of the petit jurors, selected and summoned as herein before provided, whereon to incorporate a tales, then, and in either of those cases the Supreme Court and Courts of Common Pleas, respectively, may issue their venire facias to the sheriff or other officer, to return a jury of bye-standers or neighboring citizens having the qualifications aforesaid.

Bye standers to be summoned as jurors.

Sec. 17. That it shall be lawful for the Supreme Court or Court of Common Pleas, in which any action is or shall be depending, or where it shall appear to the court to be proper of necessary, that the jurors who are to try the issue in said action should have a view of the messuages, lands or place in question, in order to their better understanding the evidence that may be given on the trial of such issue, to order a special writ of distringas or habeas corpora juratorum to issue, by which the sheriff or other officer to whom the same shall be directed, shall be commanded to have six or more of the first twelve of the jurors, named in the panel to such writ annexed, at the place in question, who, then and there shall have the matters in question shewn to them by the two persons in the said writ named, to be appointed by the court; and the sheriff or other officer who is to execute said writ, shall by a special return on the same, certify under his hand, that the view hath been had according to the command of the said writ.

Jurors may have view of land.

Distringas, &c. may issue.

Command and return.

Sec. 18. That the expenses of taking the said view shall be equally borne by both parties; and that no evidence shall be given on either side at the time of taking thereof: *Provided always*, That in case no view shall be had, or if a view shall be had by any of the said jurors, whether they shall happen to be any of the twelve jurors who shall be first named in said writ or not, yet the said trial shall proceed, and no objection shall be made on either side for want of a view, or for that it was not had by any particular number of the jurors named in the said writ, or for want of a proper return to the said writ.

Expense how paid.

Provis.

Sec. 19. That it shall and may be lawful for the Supreme Court and Courts of Common Pleas, respectively, on motion on behalf of the state, or of any prosecutor or defendant, in any indictment; or of any plaintiff, demandant, avowant, tenant or defendant, in any action or suit depending or to be depending before them, and triable by a jury of twelve men, to order a jury to be struck for the trial thereof; but this provision shall not extend to any indictment for any offence.

Struck jury.

where the party is entitled to challenge peremptorily, or without cause shewn, more than two.

Manner of striking:

Sec. 20. That whenever a struck jury shall be ordered by the Supreme Court or Court of Common Pleas, the party applying for such struck jury, shall give eight days previous notice to the opposite party and to the clerk of the said court, of the time of striking such jury, at which time the clerk of the said court shall attend at his office, and shall, in the presence of such parties, or such of them as shall attend for that purpose, select from the number of persons qualified to serve as jurors within the county, forty such persons as he shall think most indifferent between the parties, and best qualified to try such cause; and then the party applying, his agent or attorney, shall first strike one of the names, and then the opposite party, his agent or attorney, another, and so alternately until each shall have struck out twelve; but if such opposite party shall not attend to such striking, nor any person in his behalf, then the said clerk shall strike for the party not attending; and when each shall have struck out twelve as aforesaid, the clerk of said court shall make a fair copy of the names of the remaining sixteen persons and certify the same under his hand, to be the list of jurors struck as aforesaid for the trial of such cause or issue; which list shall be delivered to the sheriff or other officer, together with the venire facias, and such sheriff or other officer shall thereupon annex the same list to such venire, and summon them according to the command of said writ; and upon the trial of the said cause, the jurors so struck shall be called as they stand upon the panel; and the first twelve of them who shall appear and are not challenged, or shall be found duly qualified and indifferent, shall be the jury, and sworn to try the said cause: *Provided always*, That if the clerk of such court shall be interested in the cause, or related to either of the parties; or if it shall appear probable to the court that he is not indifferent between them, then and in every such case, the court shall nominate two proper persons, who are indifferent between the parties, to strike the jury, who shall do and perform every thing required to be done by such clerk relating to the striking of such jury, and in all cases the day appointed for striking such jury, shall be at least thirty days previous to the sitting of the court.

How summoned.

Revised.

Expense how paid:

Sec. 21. That the party applying for such struck jury, shall pay the fees for striking the same, and seventy-five cents per day for each juror so attending, and shall not have any allowance therefor upon the taxation of the costs, unless the court shall be of opinion that the cause required such special jury; in which case the extraordinary expense shall be equally borne by both parties.

Jurors may give special verdict.

Sec. 22. That no jury shall in any case be compelled to give in a general verdict, so that they find a special verdict,

and shew the truth of the fact, and require the aid of the court, but if of their own will, they give a general verdict, the same shall be received.

Sec. 23. That the 'act relating to juries,' passed February Acts repealed, the twenty seventh, one thousand eight hundred and sixteen, and the act supplementary thereto, passed February second, one thousand eight hundred and twenty one, be and they are hereby repealed

This act to take effect and be in force from and after the Effect. first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 9th, 1824.

AN ACT allowing mutual debts and demands to be set off and concerning tenders.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That in all actions and suits brought on any specialty, contract, bill, note, promise or account, in any court in this state, it shall be lawful for the defendant to plead the general issue, and at the same time to give notice in writing to the plaintiff or his attorney of any debt, contract, book account, or other liquidated demands against the plaintiff, which he may be desirous to have set off and allowed to What de-
mands may be
set off under
general issue,
&c. him in such action or suit, or of any payment or payments he may have made on such specialty, contract, bill, note, promise or account; and the court shall render judgment for the party whether plaintiff or defendant, in whose favor the balance may be found for the amount of such balance and costs: *Provided always,* That no bond, bill, note or other writing assigned over to the defendant after the suit is commenced against him, shall be allowed to be brought in by way of set off to such suit. Provided.

Sec. 2. That in any action or suit brought on any writing obligatory, promise or contract, for the payment of money, if the defendant on a plea of tender shall prove that he did tender payment of the money due on such writing obligatory, promise or contract, at the time and place when by such Tender may
be made and
pleaded. writing obligatory, promise or contract, he was bolden to pay the same, or at any time before the commencement of such action or suit thereon, and shall bring into court the money so tendered, the plaintiff shall not have judgment for more than the money so due and tendered. without costs; and shall pay the defendant his costs, and in any action or suit brought on any writing obligatory, promise or contract for

Of things other than money. the payment of any article or thing, other than money, or for the performance of any work or labor, if the defendant shall plead that he did tender payment or performance of such writing obligatory, promise or contract, at such time and place, and in such article or articles, work or labor as by such writing obligatory, promise or contract, he was bound to pay or perform, and if the court or jury shall find that the defendant did tender as alleged in his plea, they shall at the same time assess the value of the property or labor so tendered, and thereupon judgment shall be rendered in favor of the plaintiff for the sum so found without interest or cost, unless the defendant shall forthwith perform his contract, or give to the plaintiff such assurance as the court may approve, that he will perform the same within such time as the court shall direct, in which case judgment shall be rendered for the defendant, and in case any article so tendered be of a perishable nature, it shall from the time of such tender be kept at the risk and expense of the plaintiff, provided the defendant take reasonable care of the same.

Def. failing to give notice of set off, barred from cost. Sec. 3. That when any plaintiff or plaintiffs shall be indebted to any defendant or defendants, in any debt, contract, book account, or other liquidated demand, and the defendant shall fail to plead the general issue, and give in evidence the said debt, contract, book account, or other liquidated demand, as aforesaid agreeably to the provisions of this act, said defendant or defendants, shall forever be barred from recovering any costs upon any suit which may thereafter be instituted upon the said debt, contract, book account or other liquidated demand, as aforesaid, unless it shall appear to the court that it was not in the power of the defendant in the former suit to produce the evidence of his said debt, contract, book account or other liquidated demand, as aforesaid, at the time of trial.

Act repealed. Sec. 4. That an act entitled, "an act allowing mutual debts and demands to be set off, and concerning tenders," passed February twenty-fourth one thousand eight hundred and sixteen be, and the same is hereby repealed.

Effect. This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February, 19 1824.

AN ACT concerning the admission of testimony in certain cases.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be competent for a party to any suit hereafter to be tried in any court within this state, to exhibit in support of his action or plea, to the court before whom such action is to be tried, the copy of any entry, survey or voucher on record or file in the office of Richard C. Anderson, surveyor of the lands lying within the Virginia Military district, or his successor in office, signed and sworn to by the said Richard C. Anderson, or his successor in office, as being a correct copy or copies of any entry, survey or other voucher, being on record or file in said office, and also that the copies of entries and surveys, or other vouchers on record or file in the office of the Auditor of state, may in like manner be exhibited in support of any such action or plea; in all which cases it shall be unnecessary for the party producing such copy or copies to give notice of the taking the same, to any party interested in the cause or matter, to which they relate.

Sworn copies of entries, &c. from R. C. Andersons or Auditors office, to be admitted in evidence without notice.

JOSPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

December 18, 1823.

AN ACT dispensing with proof in certain cases.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That upon plea of non-est factum, offered by the person charged as the obligor or grantor of a deed, or plea of non assumpsit, or nihil debit offered by the person charged as the maker or endorser of any promissory note or bill of exchange, it shall not be necessary for the plaintiff to prove the execution of the deed, or the making or endorsing of the note or bill of exchange upon which such suit is brought, unless the party offering such plea shall make affidavit of the truth thereof; and when any person other than the grantor or obligor of such deed, or the maker or endorser of such promissory note or bill of exchange shall be defendant the same rule shall be observed as to proof, unless the defendant at the time when either of the pleas aforesaid shall be offered, shall make affidavit, that he or she believes the deed on which the action is founded, is not the deed of the party charged as the obligor or grantor thereof, or that the promissory note or bill of exchange was not subscribed or en-

On plea of general issue, &c. no proof of execution required, without affidavit filed:

dorred by the party charged as the maker or endorser thereof.

Book accounts may be verified by oath of party.

Sec. 2. That in all actions wherein any claim or defence is founded on book accounts of not more than eighteen months standing, in which is drawn in question the validity or amount of any such book accounts, the court or justice may upon the trial of such action examine the party under oath or affirmation, touching the validity of such account or accounts, which shall be admitted as evidence on the trial, the credibility thereof being left to the jury or justice to determine.

JOSEPH RICHARDSON,
Speaker of the House of Representatives
ALLEN TRIMBLE,
Speaker of the Senate.

December 18, 1923.

AN ACT Providing the mode of perpetuating testimony in certain cases.

Before whom depositions may be taken to perpetuate evidence.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That any two associate judges of the court of common pleas, or in case there be no two associate judges disinterested, then two justices of the peace in their respective counties, may take the deposition in writing, of any person residing therein, to perpetuate the remembrance of any fact, matter, or thing, and the associate judges or justices of the peace before whom such deposition is to be made, shall cause such person or persons, whom they know to be interested, either directly or indirectly, or otherwise affected by such deposition, if within their county, to be duly notified of the time and place of taking such deposition, and if without the county, his or their attorney if any they have, who shall be at liberty to interrogate and cross examine such deponent; and all such questions and answers shall be reduced to writing and included in such deposition; and the deposition being reduced to writing by one of the associate judges, or justices of the peace, or by the deponent in their presence, and subscribed; either of the associate judges or justice of the peace, shall administer an oath or affirmation, and certify the caption; and the deposition, so taken, shall within sixty days, be recorded within the office of the recorder of deeds, in the county where the land lies, if the deposition respects real estate, and if the same respects personal estate, then in the office of the clerk of the court of common pleas of the said county, where the same shall be taken; and the deposition so certified, or a copy of said record, may in case of the death of such deponent, absence out of the state, or inability to attend

How to be taken and effect.

the court as aforesaid, be used as evidence in any cause to which it may relate, provided that nothing in this act contained shall be so construed, as to prevent any and all legal exceptions being made and allowed to the reading of such deposition, on any trial at law or equity, in which the same may be introduced as evidence; unless it shall appear by a certificate thereon, that the party against whom the same is to be used, or his attorney, was present at the taking of the same. Provided;

That the act providing the mode of perpetuating testimony in certain cases, passed February the nineteenth A. D. eighteen hundred and ten, be and the same is hereby repealed. Act repealed.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 6, 1834.

AN ACT to enable the holders of land within this state to perpetuate testimony relative to their lands.

Sec. 1. *Be it enacted by the general assembly of the State of Ohio,* That it shall be lawful for any person or persons their agent or attorney, owning or being interested in any tract or tracts of land within this state, any corner or corners of which shall or may be in a decayed or perishable condition, to call on the surveyor of the county where the land lies to make a survey thereof, and cause to be planted at each of such decayed corners, a stone or post, noting particularly the situation and condition of the original corner trees called for in the original survey, and also of all the places of notoriety over, or by which the lines of said survey may pass; and the surveyor shall make out a plat, and certificate of such survey under his hand, noting the names of the chainmen, marker, and other persons present, at the planting of any corner stone or post as aforesaid, and noting also the variation from the original lines, at the time of making such survey. Owners of land may call surveyor and plant corners, &c.

Sec. 2. That when the corner or corners of any such survey shall have been or may hereafter be destroyed, it shall and may be lawful for the owner or owners, their agent or attorney, of any such survey or other lands, the title of which may be affected by the loss of such corner, to call on the surveyor of the county in which the land may be situated whose duty it shall be, to attend on the ground where it is intended to establish such corner or corners at such time as

Surveyor may
issue warrant
for witnesses.

the applicant shall appoint, and the said surveyor is hereby authorized and required to issue his warrant, directed to any constable or other fit person to execute the same, to cause to come before him such witness or witnesses, as well without, as within his county, as the person demanding such warrant, or other person interested may require, and said surveyor is hereby authorized to examine said witness or witnesses on oath or affirmation touching the existence and situation of such corner or corners, or any other matter in relation to the entry or survey of such land and take the same in writing, which shall be signed by the deponent or deponents and certified and signed by the surveyor, and in making a survey of the land, and planting stones or posts at the corners agreeably to the first section of this act, the surveyor shall have reference to, and be governed by the deposition or depositions so as aforesaid taken, and shall specify the same in his certificate of survey, in which shall also be mentioned the names of the persons present at the planting of any corner stone or post as aforesaid: *Provided*, That no person who resides without the county where said depositions are to be taken, shall be bound to attend, unless his travelling fees, both going and returning, and for one days attendance shall have been tendered him, nor shall any witness attending from without the county, be obliged to attend more than one day, unless additional fees for such attendance shall be tendered.

Stones may be
planted.

Proviso.

Sec. 3. That previous to taking any depositions as aforesaid, notice shall be given at least twenty days to the owner or owners, their agent or attorney, if known, who have adjoining lands; and if the owner or owners, their agent or attorney, are not known, or reside out of the state, the applicant shall in some public newspaper, printed in the county where the land lies, if any such be printed therein, if not in a newspaper printed within the state, and nearest the land to be surveyed, give notice of his intention to take depositions at a certain time and place by advertisement inserted for six weeks successively in said paper, the last insertion of which shall be twenty days previous to the time of taking such depositions, in which notice a description of the adjoining lands shall be given evidence of, which notice shall be produced to the surveyor, previous to his taking any depositions as aforesaid; and the said surveyor shall return with his proceedings, the original notices which shall be in writing, with the evidence of their having been served and a copy of the advertisement, if any, with the evidence that the same has been published, and which shall be recorded with the said survey, and depositions.

Notice to
whom and how
to be given.

Shall be re-
turned with
plat, &c.

Surveyor to
make record of
plat &c.

Sec. 4. That any county surveyor, making surveys under the provisions of this act, shall record the plat and certificate thereof, in a book kept by him for the purpose of re-

ording surveys, and deliver the original with any depositions taken as provided for in this act to the recorder of the county, who shall record all such plats, and certificates and depositions, with the notices and advertisements, if any, with the evidence in relation thereto in a book, to be provided by him for that purpose, and shall on demand, deliver the originals to the person at whose instance such survey was made, or depositions taken. Which shall be recorded.

Sec. 5. That the plat and certificate of any county surveyor, made or depositions taken agreeably to the provisions of this act, or a certified copy thereof, from the recorders of office, shall be good evidence in any court of law or equity within this state, in any cause wherein the title of any land to which they may apply, may be affected: *Provided*, That the depositions of witnesses recorded as aforesaid, shall only be received when the witnesses are dead or without the jurisdiction of the court. Plat or copy evidence.

Sec. 6. That county surveyors shall receive for services performed under this act, at the rate of two dollars per day; and for making out and recording plats and certificates, the same fees that are allowed for similar services in other cases, chainman and markers shall be allowed seventy-five cents each, per day; and each witness seventy-five cents per day; and if said witness reside out of the county, in which such corner or corners may be situate, and which he is summoned to establish by his testimony, such witnesses shall be allowed the sum of one dollar for every twenty five miles he may be required to travel, in going from, and returning to his place of residence, and recorders the same fees as are allowed for similar services in other cases; all of which expenses shall be paid by the person or persons applying for such survey, and depositions, who may recover from the persons owning the adjoining land, that may be benefited by the perpetuation of such testimony, their equal proportion of the expense incurred in obtaining such evidence. Fees and how paid.

Sec. 7. That the act to enable the holders of land within this state, to perpetuate testimony relative to their lands, passed twenty-fifth of January, one thousand eight hundred and nineteen, be, and the same is hereby repealed. Act repealed.

This act shall be in force from and after the first day of June next. Effect.

JOSEPH RICHARDSON,
Speaker of the house of Representatives
ALLEN TRIMBLE,
Speaker of the Senate

January, 2, 1824.

*AN ACT fixing the rate of interest,*Six per centum
interest allow-
ed.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That all creditors shall be entitled to receive interest on all money, after the same shall become due, either on bond, bill, promissory note or other instrument of writing, or contract for money or property, on all balances due on settlement between parties thereto, or money withheld by unreasonable and vexatious delay of payment; and on all judgments obtained, from the date thereof; and on all decrees obtained in any court of chancery, for the payment of money, from the day specified in the said decree for the payment thereof; or if no day be specified, then from the day of the entering thereof, until such debts, money or property is paid, at the rate of six per centum per annum, and no more

Act repealed.

Sec. 2. That the "Act fixing the rate of interest, and for the prevention of usury," passed December twenty-ninth, eighteen hundred four, be, and the same is hereby repealed.

Repeal.

This act shall be in force from and after the first day of June next.

JOSEPH RICHARDSON, ,
Speaker of the House of Representatives,
ALLEN TRIMBLE,
Speaker of the Senate,

January, 12, 1824.

*AN ACT Regulating judgments and executions,*What property
liable to ex-
ecution.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That lands, tenements, goods and chattels, shall be subject to the payment of debts and shall be liable to be taken in execution and sold as hereinafter provided.

Judgments a-
gain upon land,

Sec. 2. That the lands and tenements of the debtor, shall be bound for the satisfaction of any judgment against such debtor, from the first day of the term at which judgment shall be rendered, in all cases where such lands lie within the county where the judgment is entered; and all other lands, as well as the goods and chattels of the debtor, shall be bound from the time they are seized in execution.

Goods and
chattels,Command of
fieri facias.

Sec. 3. That the writ of fieri facias issuing from any court of record within this state, shall command the officer to whom it is directed, that of the goods and chattels of the debtor, he cause to be made the monies specified in the writ; and for want of goods and chattels, he cause the same to be made of the lands and tenements of the debtor, and the exact amount of the debt, damages and costs for which the judgment is entered, shall be endorsed on the execution.

Sec. 4. That where two or more writs of execution against the same debtor, shall be sued out during the term in which judgment was rendered, or within ten days thereafter; and when two or more writs of execution against the same debtor, shall be delivered to the officer on the same day, no preference shall be given to either of such writs, but if a sufficient sum of money is not made to satisfy all executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands; in all other cases the writ of execution first delivered to the officer, shall be first satisfied, and it shall be the duty of the officer, to endorse on every writ of execution, the time when he received the same.

Sec. 5: That the officer to whom a writ of execution is delivered, shall proceed immediately to levy the same upon the goods and chattels of the debtor, but if no goods and chattels can be found, the officer shall endorse on the writ of executions "no goods," and forthwith levy the writ of execution upon the lands and tenements of the debtor, which may be liable under this act, to satisfy the judgment upon which the writ of execution issued.

Sec. 6. That if the officer, by virtue of any writ fieri facias, shall levy upon any goods and chattels claimed by any person, other than the defendant, it shall be the duty of said officer, forthwith, to give notice, in writing, to some justice of the peace of the county, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant, and also, a schedule of the property claimed; and it shall be the duty of such justice of the peace, immediately upon the receipt of such notice and schedule, to issue a venire facias, directed to the sheriff or any constable of the county, commanding him to summon five disinterested persons having the qualifications of electors, who shall be named in said venire facias, to appear before him the said justice at the time and place therein mentioned, which time shall not be more than three days after the date of said venire facias, to try and determine the right in the property claimed as aforesaid, and it shall be the duty of the claimant, to give two days notice, in writing, to the plaintiff, his agent or attorney, if within the county, of the time and place of such trial; and if the said jury shall find the right to such property, or any part thereof, to be in the claimant, the said justice shall render judgment upon such finding, in favor of such claimant, for his costs, and also, that he have restitution of said goods and chattels, or any part thereof, according to such finding; but if the right to said property, or any part thereof, shall be found to be in the defendant, then the said justice shall enter judgment against said claimant for costs, and award execution thereof as in other cases: *Provided*, That such judgment in favor of the

When no preference to be given to executions.

To be first levied upon goods, &c.

When goods, &c. claimed by a third person, how to proceed.

Provided.

claimant, shall justify the officer in returning 'nulla bona' on the execution or executions, by virtue of which the levy had been made.

Officer may take bond from deft. when property will not sell, &c.

Sec. 7. That in all cases when a sheriff, coroner or other officer shall by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the sheriff, coroner or other officer, may, for his own security, take of the defendant a bond with security, in such sum as he may deem sufficient, conditioned, that said property shall be delivered to the sheriff, coroner, or other officer holding an execution for the sale of the same, at the time and place which shall be named by said officer, either by notice given in writing to said defendant in execution, or by advertisement, published in a newspaper printed in the county, naming therein the day and place of sale; but if the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him given, or pay to the officer holding the execution, the full value of said goods and chattels, or the amount of said debt and costs, the condition of the said bond given, shall be considered as broken and may be proceeded on as in other cases.

Condition.

Notice to be given before sale of goods.

Sec. 8. That the officer who levies upon goods and chattels by virtue of any execution issued by any court of record, before he proceeds to sell the same, shall cause public notice to be given of the time and place of sale, for at least ten days before the day of sale, which notice shall be given by advertisement published in some newspaper printed in the county, or in case no newspaper be printed within such county, by setting up advertisements in five public places in the county; two of which advertisements shall be put up in the township where the sale is to be held; and where goods and chattels levied upon, cannot be sold for want of bidders, the officer making return that goods and chattels remain unsold for want of bidders, shall annex to the execution a true and perfect inventory of such goods and chattels; and the plaintiff in such execution may thereupon sue out his writ of venditioni exponas, but such goods and chattels shall not be sold unless the time and place of sale be advertised as herein before provided.

Venditioni exponas may issue.

Lands to be appraised before sale, by whom and how.

Sec. 9. That if execution be levied upon lands and tenements, the officer levying such execution, shall call an inquest of five respectable disinterested freeholders, who shall be resident within the county where the lands, taken in execution, are situate, and administer to them an oath or affirmation, impartially to appraise the estate so levied on, and the said freeholders shall return to the said officer, under their hands and seals, an estimate of the real value in money, of said estate, upon actual view of the premises, forth-

with after such view; and the officer on receiving such return, shall forthwith deposit a copy thereof with the clerk of the court from which such writ issued, and immediately advertise and sell such real estate agreeably to the provisions of this act; and if upon such return as aforesaid, it shall appear by the inquisition, that two thirds of the appraised value of such lands and tenements so levied upon, is sufficient to satisfy the execution with all costs, the judgment on which such execution issued shall not operate as a lien on the residue of the debtor's estate, to the prejudice of any other bona fide judgment creditor: *Provided*, That no tract of land shall be sold for less than two thirds of the appraised and returned value of the inquest: *And provided also*, That nothing in this section contained, shall in any wise extend to affect the sale of lands, by the state, for any debt or taxes due thereto; but all lands in this state, the property of individuals, who may be indebted to the state for any debt or taxes, or in any other manner, except for loans heretofore authorized by the legislature, shall be sold without valuation, for the discharge of such debt or taxes agreeably to the law or laws of this state, in such case made and provided: *Provided, likewise*, That if the property of any clerk, sheriff, coroner, justice of the peace, constable, or any collector of state, county, town or township tax, shall be levied on, for, or on account of any monies that now is or may hereafter be by them collected or received in their official capacity, the property so levied on shall be sold without valuation, to the highest bidder, any thing in this act to the contrary notwithstanding.

When Men shall be discharged.

Proviso.

Must sell for two thirds valuation.

Proviso.

In favor of state.

Proviso.

Sec. 10. That lands and tenements taken in execution, shall not be sold until the officer cause public notice of the time and place of sale to be given, for at least thirty days before the day of sale, by advertisement in some newspaper printed in the county, or in case no newspaper be printed within such county, then in some newspaper in general circulation therein, and by putting up an advertisement upon the court house door, and in five other public places in the county, two of which shall be put up in the township where such lands and tenements lie; and all sales made without such advertisement shall be set aside by the court to which the execution is returnable, on motion: *Provided*, That if the court to which any writ of execution shall be returned by the officer, for the satisfaction of which any lands and tenements may have been sold, shall, after having carefully examined the proceedings of such officer, be satisfied that the sale has in all respects been made in conformity to the provisions of this act, they shall direct their clerk to make an entry on the journal, that the court are satisfied of the legality of such sale, and an order that the said officer make to the purchaser a deed for such lands and tenements. And the officer, on making such sale, may retain the purchase

Notice of sale to be given.

Sale may be set aside, unless, &c.

Proviso.

Court to order deed to be made.

money in his hands until the court shall have examined his proceedings as aforesaid, when he shall pay the same over to the person entitled thereto, agreeably to the order of the court.

Need how to
be executed.

Sec. 11. That the sheriff, or other officer, who by such writ or writs of execution, shall sell the said lands and tenements so levied upon, or any part thereof, shall make to the purchaser or purchasers thereof, as good and sufficient a deed of conveyance for the lands and tenements so sold, as the person or persons against whom such writ or writs of execution were issued, might or could have made for the same, at or any time after the said lands became liable to the said judgment; which deed shall be prima facie evidence of the legality of such sale, and the proceedings therein until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned, as was vested in the party, at or after the time when said lands and tenements became liable to the satisfaction of said judgment; and the said deed of conveyance to be made by the sheriff or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the kind of action, the amount and date of term of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid, and shall be acknowledged or proved and recorded as is or may be provided by law, to perfect the conveyance of real estate in other cases.

Sales to be
made at court
house &c.

Sec. 12. That all sales of lands or tenements, by virtue of this act, shall be had at the court house, in the county in which such lands and tenements are situated: *Provided*, That no sheriff, or other officer, conducting the sale of property, either personal or real, nor any appraiser of such property, shall either directly or indirectly purchase the same; and every purchase so made, shall be considered as fraudulent and void.

Sheriff's pur-
chase void.

Creditors may
have separate
levies.

Sec. 13. That in all cases where two or more executions shall be put into the hands of any sheriff or other officer and it shall be necessary to levy on real property to satisfy the same, agreeably to the provisions of this act, and either of the judgment creditors in whose favor one or more of said executions is issued, shall require of the sheriff or other officer, to make a separate levy to satisfy his execution or executions, it shall be the duty of the sheriff, or other officer, to levy said executions or so many thereof as may be required on separate parcels of the real property of the judgment debtor or debtors, giving to the officer making the levy on behalf of the creditor, whose execution may by this act be entitled to a preference, the choice of such part of the real property of the judgment debtor or debtors as will be sufficient at two thirds of the appraised value, to satisfy the same; and in all cases where two or more executions, which by the provisions

Who may
have choice of
lands, &c.

of this act are entitled to no preference over each other, are put into the hands of the same officer, and such officer may be required to levy the same on real property, it shall be the duty of the sheriff, or other officer, when so required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when in the opinion of the appraisers, the same may be divided without material injury; and if the real property of said debtors will not be sufficient, at two thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of said real property shall be levied on to satisfy each execution, as will bear the same proportion in value to the whole of said real property, as the amount due on the execution bears to the amount of all the executions chargeable thereon, as near as may be, according to the value of each separate parcel of said real property as assessed by the freeholders agreeably to the ninth section of this act.

How to proceed when property will not satisfy all the executions.

Sec. 14. That if the term of service of the sheriff, or other officer, who hath made, or shall hereafter make sale of any lands and tenements, by virtue of an execution against the same, shall expire; or if the said sheriff, or other officer, shall abscond, or be rendered unable by death or otherwise, to make a deed of conveyance for the same, it shall be lawful for any succeeding sheriff, or other officer, on receiving a certificate from the court from which such execution issued, for the sale of the said lands and tenements, signed by the clerk by order of said court, setting forth that sufficient proof hath been made to the said court, that such sale was fairly and legally made; and on tender of the purchase money, or if the purchase money, or any part thereof be paid, then, on proof of such payment and tender of the balance, if any there be, to sign, seal and deliver to the said purchaser or purchasers, or his or their legal representatives, a deed of conveyance of the said lands and tenements so sold, which deed shall be as good and valid in law and have the same effect as if the sheriff or other officer, who made the sale, had executed the same.

Sheriff's successor may make a deed for lands sold by his predecessor.

Sec. 15. That if on any sale made as aforesaid, there shall remain an overplus of money in the hands of the sheriff, or other officer, after satisfying the writ or writs of execution, with interest and costs, then the said sheriff, or other officer, shall pay over to the defendant in execution, or his legal representative such overplus on demand.

Shall pay over plus to defendant.

Sec. 16. That if any judgment or judgments, in satisfaction of which any lands or tenements belonging to the party hath or shall be sold, shall at any time thereafter be reversed, such reversal shall not affect or defeat the title of the purchaser or purchasers; but in such case restitution shall be made of the monies by the judgment creditor, for which such lands or tenements were sold, with lawful interest from the day of sale.

Reversal of judgment not to affect the title of purchaser.

Judgments not levied in one year shall not be a lien upon lands.

Sec. 17. That no judgment heretofore rendered, or which hereafter may be rendered, on which, execution shall not have been taken out and levied before the expiration of one year next after the rendition of such judgment, shall operate as a lien on the estate of any debtor, to the prejudice of any other bona fide judgment creditor; but in all cases where judgment has been, or may be rendered in the supreme court, and a special mandate awarded to the court of common pleas to carry the same into execution, the lien of the judgment creditor shall continue for one year after the first day of the term of the court of common pleas to which such mandate

Lien of judgments rendered in S. Court

may be directed; and nothing in this section contained, shall be so construed, as to defeat the lien of any judgment creditor who shall fail to take out execution, and cause a levy to be made as herein provided, when such failure shall be occasioned by appeal, writ of error, injunction, or by a vacancy in the office of sheriff and coroner, or the inability of such officer, until one year after such disability shall be removed; and in all cases where real estate has been, or may hereafter be taken on execution, and appraised, and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the court from which such execution issued, on motion of the plaintiff, to set aside such appraisal and order a new appraisal to be made, or to set aside such levy and appraisal, and award a new execution to issue, as the case may require.

Failure of levy by appeals, writs of error, &c.

Appraisments and levies may be set as de.

Sec. 18. That the sheriff, or other officer, to whom any writ of execution shall be directed, shall return such writ to the court to which the same is returnable, on or before the second day of the term to which such writ is made returnable: *Provided*. That all executions issued by the court of common pleas, for the county of Hamilton, within twenty days prior to the commencement of any term, may be returned on or before the third Monday of said term.

Writs to be returned the first or second day of term.

Proviso.

When judgments are rendered on notes &c. the clerk shall certify, &c.

Sec. 19. That in all cases where judgment is rendered in any court of record within this state, upon any bond, sealed bill, promissory note, or other instrument of writing, in which two or more persons are jointly and severally held and bound, and it shall be made appear to the court by parole or other testimony, that one or more of said persons, so bound, signed the same as surety, or bail, for his or their co-defendant, it shall be the duty of the clerk of said court, in recording the judgment thereon, to certify which of the defendants is principal debtor, and which are sureties, or bail; and the clerk of the court as aforesaid, in issuing execution on any such judgment, shall issue execution commanding the sheriff or other officer, to cause the money specified in the writ, to be made of the goods and chattels, lands and tenements of the principal debtor; but for want of such sufficient property, of the principal debtor, whereof to make the same,

Command of an execution when there is principal and security or bail

then that he cause the same to be made of the goods and chattels, lands and tenements of the surety or bail, and in all such cases, the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted, before any of the personal or real property of the surety or bail shall be taken in execution.

Sec. 20. That in all cases where judgment shall be rendered in the supreme court, against the appellant, or an injunction dissolved in the court of Common Pleas or Supreme Court, the successful party shall before he brings suit upon the appeal or injunction bond, issue execution against the principal debtor; and if by the return upon the execution, it shall appear that the principal debtor has not goods and chattels, lands and tenements sufficient to satisfy the same, the successful party may then commence suit upon the appeal or injunction bond, and take judgment for the penalty thereof, which judgment shall be discharged by the payment of the original judgment or decree with interest and costs, together with costs of suit on the appeal or injunction bond.

Sec. 21. That each freeholder, summoned to appraise real property under the provisions of this act, shall be allowed and receive for his services the sum of fifty cents for each day he may be engaged in the discharge of the duties enjoined by this act, to be collected on the execution by virtue of which the property appraised was levied on, if claimed at the time of making the return of such appraisement; and when any freeholder, summoned as aforesaid, shall fail to appear at the time and place appointed by the officer, and discharge his duty as appraiser, he shall, on complaint being made to any justice of the peace, of the township in which such delinquent freeholder resides, forfeit and pay the sum of fifty cents for every such neglect, unless he can render a reasonable excuse; which sum shall be collected by said justice and paid into the township treasury, for the use of the township.

Sec. 22. That each person who has a family shall hold the following property exempt from execution or sale for any debt, damages, fine or amercement, to wit: one cow, twelve sheep, and the wool shorn from them, all the flax in possession of such family, and the yarn or thread manufactured therefrom, two spinning wheels, two beds and bedding, the usual and common wearing apparel of such family any quantity of cloth manufactured by such family, not exceeding seventy-five yards, two pots or kettles, and any other articles of household furniture, which the debtor shall select not exceeding fifteen dollars in value, to be appraised by two disinterested house-holders; and the tools of a machine to be selected as above, not exceeding twenty-five dollars in value, to be appraised as aforesaid, and the tools of a mechanic necessarily employed in his occupation shall not be

Appeal and injunction bonds shall not be issued until execution returned and 'no goods,' &c.

Appraisers' fees.

Penalty for neglect of duty

What property exempt from execution by persons who have a family.

liable to execution until his other personal property, liable to execution, shall have been levied on and sold.

Persons may be discharged from ca. sa. by delivery of pro party.

Sec. 23. That any person taken by a writ of *capias ad satisfaciendum* shall be discharged by delivering or setting off to the officer serving the same real or personal property sufficient to satisfy the judgment and costs for which such writ issued.

A new execution may issue when a party dies in execution.

Sec. 24. That the party at whose suit any person may stand charged in execution for any debt or damages recovered, his, her or their executors or administrators may after the death of the person charged and dying in execution lawfully sue out and have a new execution against the goods and chattels, lands and tenements or any of them, of the person so deceased in such manner and form to all intents and purposes, as he, she or they might have had by the laws of the state, had the person never been taken and charged in execution: *Provided always*, That nothing in this section contained shall be construed so as to authorize the party his, her or their executors or administrators, at whose suit any person shall be in execution and die, to have execution against the lands and tenements of the person so dying, which shall at any time after his or her being taken and charged in execution be by him or her sold *bona fide* for the payment of just debts.

Proviso.

For what the sheriff may be amerced.

Sec. 25. That if any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed and which hath come to his hands or shall neglect or refuse to sell any goods and chattels, lands and tenements, or shall neglect to call an inquest according to the foregoing provisions in this act, and return a copy thereof to the clerk's office, or shall neglect to return any writ or writs of execution to him directed to the court, to which the same is or are returnable on or before the second day, or on or before the third Monday of the term (as the case may be) to which the same is or are made returnable, or shall neglect to return a just and perfect inventory of all and singular the goods and chattels by him taken in execution unless the said sheriff or other officer shall return that he hath levied and made the amount of the debt, damages and cost, or shall refuse or neglect, on demand to pay over to the plaintiff, his agent or attorney of record, all monies by him collected or received for the use of the said party, at any time after collecting or receiving the same, or shall neglect or refuse, on demand made for that purpose by the defendant, or his legal agent or attorney of record, to pay over all monies by him received for any sale made as aforesaid, more than sufficient to satisfy the writ or writs of execution with interest and legal costs, he shall on motion in open court, be amerced in the amount of said debt, damages and costs with ten per centum thereupon, to and for the use of the said plaintiff or defendant (as

the case may be:) *Provided*, That where the cause of amercement is for refusing to pay over money collected as aforesaid, the said sheriff or other officer, shall not be amerced in a greater sum than the amount so withheld with ten per centum thereon: *Provided Also*, That two days notice in writing shall be given to the said sheriff or other officer, by the plaintiff or his attorney, and when execution shall be issued in any county in this state, and directed to the sheriff or coroner of an other county it shall be lawful for such sheriff or coroner having such execution in possession, after having discharged all the duties required of him by law, to enclose such execution by mail to the clerk of the court who issued such execution, and on proof being made by such sheriff or coroner that such execution was mailed, a sufficient or reasonable time to have reached the office where it issued within the time prescribed by law, such sheriff or coroner shall not be liable to any amercement or penalty for any failure of the safe arrival of such execution, any thing in this act to the contrary notwithstanding: *Provided however*, That no sheriff shall forward any money made on any such execution by mail, unless he shall be specially instructed so to do by the plaintiff or his agent, and in all cases of a motion to amerce a sheriff or other officer, of any county other than the county from which the execution issued, notice shall be given to such officer as herein before required, by leaving with such officer or at his office a written copy of such notice at least fifteen days before the first day of the term at which such motion shall be made, or by enclosing and transmitting by mail a written copy of such notice, directed to such officer, at least sixty days previous to the first day of the term at which such motion shall be made, and all amercements so procured shall be entered on the record of the court and shall have the same force, and effect as a judgment; and each and every security of any such sheriff or other officer may be made party to the judgment so as aforesaid rendered against such sheriff or other officer, by scire facias against such security, and any such surety or sureties, may at the return of such scire facias, set up any matter which may have arisen subsequent to entering judgment against such sheriff or officer, in his, her or their defence, but no matter which may have arisen previous to entering such judgment against such sheriff or other officer, shall be permitted to be set up as a defence, and in case the surety or sureties do not shew sufficient matter of defence at the return of the said writ of scire facias, wherefore judgment should not pass against him or them, the court before whom the same is made returnable shall render judgment against such security or securities as in other cases whereupon execution in the name and for the use of the party or his legal representative may on motion,

Proviso.

As to amount of amercement

Proviso.

Notice to be given.

Execution may be sent by mail.

Proviso.

Sheriff not forward money by mail, unless, &c.

Notice to amercer officer of an other county.

Amercement to have force of judgment.

be awarded against the body of the sheriff or other officer, and the goods and chattels, lands and tenements of such sheriff or other officer, and any sureties who may have been made a party to any such judgment, but the goods, chattels, lands and tenements of any such security shall not be liable to be taken on any such execution when sufficient goods and chattels lands and tenements of the sheriff or other officer against whom execution may be issued can be found to satisfy the same: *Provided*, That nothing herein contained shall prevent either party from proceeding against such sheriff or other officer, by attachment according to law at his election.

Securities liable.

Sheriff's property first liable.

Proviso.

Sheriff amerced to have benefit of original judgment.

Sec. 26. That in cases where a sheriff, coroner or other officer may be amerced and shall not have collected the amount of the original judgment from the judgment debtor he shall be permitted to sue out an execution and collect the amount of said judgment in the name of the original plaintiff for the use of the said sheriff, coroner or other officer.

Judgment creditor may have scire facias against heirs, &c.

Sec. 27. That when there are judgments unsatisfied against testators, or intestates, or against their executors or administrators, or when judgments may hereafter be obtained as aforesaid in any court of record within this state, it shall be lawful for the plaintiff or plaintiffs in such judgment after the time allowed by the court to such administrators, or executors for the settlement of such estate shall have expired, to issue a scire facias thereon against the heirs or devisees of such testator or intestate, if any there be, in which writ of scire facias it shall be set forth that said heirs or devisees, or both as the case may be, hold lands and tenements by devise or descent of such testator or intestate and said heirs or devisees, or both, as the case may be, shall by said writ or writs of scire facias be called upon to show cause, if any they have, why the judgment or judgments should not be levied of the lands and tenements so by them held as aforesaid; and if on hearing of said cause, it shall appear that said defendant or defendants in said writ named, hold lands and tenements as aforesaid, then judgment shall be rendered thereon, and execution issue and be levied according to the provisions of this act: *Provided*, That where any, or all of said heirs or devisees reside out of the county where such judgment or judgments are or may be rendered, it shall be lawful to issue said writ to any county in this state, which writ shall be served by the sheriff of such county, and by him returned to the officer whence it issued.

What writ shall set forth.

Proviso.

Acts repealed.

Sec. 28. That the act entitled "An act regulating judgments and executions," passed the first of February in the year of our Lord one thousand eight hundred and twentytwo, and all other acts and parts of acts, coming within the perview of this act, be and the same are hereby repealed:

Provided, That nothing in this act shall be so construed as to affect bonds given for the delivery of personal property, under the provisions of the act of the first of February aforesaid; but such bonds shall be liable to be prosecuted to final judgment and execution, in the same manner as though the said act had not been repealed: *Provided also*, That where execution may have issued upon any judgment and personal property taken upon such execution, and a bond given for the delivery of such property, under the provisions of the act aforesaid, no execution shall be issued upon any such judgment under the provisions of this act, until the expiration of nine months from the date of such bond.

Proviso.

Proviso.

This act shall take effect and be in force from and after the first day of June next.

Effect.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBRE,
Speaker of the Senate.

February 4, 1824.

AN ACT Relating to wills.

Sec. 1. *Be it enacted by the General Assembly of the state, of Ohio*, That any person having an estate in any lands, tenements or hereditaments, or any annuity or rent, charged upon or issuing out of the same, or any goods or chattels, rights, credits and choses, in action or in possession, and property of every description whatever, may give or devise the same, to any person by last will and testament by him, or her lawfully executed.

Persons may
devise property
by will, &c.

S. c. 2. That every such last will and testament shall be in writing, and signed by the party making the same, or by some other person in his or her presence, and by his or her express direction, and shall be attested and subscribed in the presence of such party, by two or more credible witnesses, who saw the testator subscribe, or heard him acknowledge the same.

How to be executed.

Sec. 3. That no last will and testament, made by any infant, idiot or person of insane memory, shall be valid in law.

Wills of infants, &c void

Sec. 4. That the right of creditors shall not be impaired by any last will and testament; nor shall the right of dower of the widow of any testator be prejudiced thereby, unless any legacy or devise to such widow, in the will contained, shall be expressly specified to be in lieu of dower; and in case of a devise, in lieu of the dower, if the widow shall, within six months after probate of the will, make known to the court of common pleas, for the proper county, her election to relinquish her dower, and claim under the will; then, her elec-

Rights of creditors not impaired.

Widow may take dower or by will

tion so made as aforesaid, shall be entered on the minutes of the court, and her right to dower in the estate of the testator, shall be thereby barred, and if the widow fail to make her election as aforesaid; she shall retain her dower, and take nothing by the will.

What shall be
a revocation.

Sec. 5. That any last will and testament, or any clause thereof, shall be revoked, by the testator destroying, cancelling or obliterating the same, or causing it to be done in his presence, or by subsequent will, codicil, or instrument made as aforesaid; or when the testator had no child at the time of executing such will, but shall afterwards have a child, and in either case, such last will or codicil shall be void.

Child reported
dead, or born
after will, how
to take.

Sec. 6. That when a testator at the time of executing his last will as aforesaid, shall have a child absent, and reported to be dead, or shall have a child or children born, and shall afterwards have a child who is not provided for in such will; the child who was absent and reported to be dead, at the time of executing such will, or the child born after executing such will, shall succeed to the same share of the testator's estate as he would have been entitled to if such testator had died intestate; towards raising which portion the devisees and legatees shall contribute proportionably out of the part devised or bequeathed to them by such last will:

proviso.

Provided, That any such child, who shall have received any share or portion of the testator's estate by way of advancement, shall bring the same into hotch pot before he shall be able entitled to any portion of such estate, as in this section is above provided.

How proved.

Sec. 7. That where any personal property, or real estate, shall be bequeathed or devised, by last will and testament as aforesaid, the executors to such will, or any person interested therein, may cause the said will to be brought before the court of common pleas, of the county in which such property or estate may be, and the said court shall cause the witnesses to such will to be examined in open court; and if it shall appear to the court when such will is offered for probate, that any witness to such will is dead, then such proof

Will and proof
to be recorded.

shall be taken in open court, of the hand writing of the testator or of such witness so dead, or of such other circumstances as would be proper to prove such will on a trial at law, and such court may issue a commission with the will annexed, directed to any suitable person to take the deposition of any absent witness, and all such depositions duly certified and returned, shall be as valid as if taken in open court; and the said court shall cause all such examinations and proofs, to be reduced to writing; and if it shall thereupon appear that such will was duly executed, and that the testator at the time of executing the same, was of full age, and of sound mind and memory, and not under any restraint, the court shall or-

Let the clerk to record such will, together with the proof so taken, in a book to be kept by the clerk for that purpose, and every will which shall be proved in manner aforesaid, and shall have a certificate thereof endorsed upon it, with the seal of the said court thereunto annexed, and also a transcript of the record of such will certified by the clerk and sealed with the seal of the court, shall be as effectual, in all cases, as the original will would be, if produced and proven; and said court shall cause all such witnesses, as any person interested therein may desire, to come before such court and testify touching the premises; and any person having custody or power of any such will, may be compelled to produce the same before the said court for the purpose aforesaid.

Copy as effectual as original.

Persons may be compelled to produce will

Sec. 8. That if any person shall subscribe his name as a witness to a will wherein any bequest or devise is given to him, if the will cannot otherwise be proved, such bequest or devise shall be void, and such witness shall be competent to give testimony of the execution of such will, in like manner as if no such bequest or devise had been made; but if such witness would have been entitled to any share of the testator's estate, in case such will were not established, so much of such share shall be saved to him as shall not exceed the bequest or devise bequeathed to him.

Bequest to witness void if &c.

Sec. 9. That no verbal will shall be valid in law, unless it be made in the last sickness of the deceased and be proved by two credible disinterested witnesses, that the testator was of sound mind and memory, and that he did at the same time, call on some person present to bear testimony that such was his will.

Verbal will when valid &c. when not.

Sec. 10. That after six months have elapsed, from the time of speaking the pretended testamentary words, no testimony shall be received to prove a verbal will, nor shall such will be valid unless it be committed to writing and subscribed by the witnesses within ten days after making the same.

Verbal will continued.

Sec. 11. That if the real estate, so devised as aforesaid, be in several counties, then such will shall be proved in manner aforesaid, in one of such counties, and a certificate of such probate shall be endorsed upon it, with the seal of the court thereunto affixed; which will with such certificate, shall be admitted to record in every county in which such lands are situated, and shall have the same validity therein as if probate had been had thereof in each of such counties.

Wills may be recorded in one county &c. copies in another where lands lie.

Sec. 12. That authenticated copies of wills, provided according to the laws of any state or territory of the United States, relative to any property within this state, may be admitted to record, by the court aforesaid, in the county where such property shall be, and such authenticated copies shall be good and valid in law in like manner, and shall be subject

Copies of wills from other states may be recorded here.

to the like mode of contest as wills made in this state are declared to be.

Expense of probate by whom paid.

Sec. 13. That the expense of proving and recording the said wills, shall be paid by the person applying to have the same done; and the witnesses and officers shall have the like fees for their attendance and services, on proving a will as aforesaid, as for the like attendance and services in other cases.

In what cases a will annexed may be granted.

Sec. 14. That if the executor named in any will shall die, refuse to act, or if no executor shall be named therein, the court may receive the probate of such will, or admit to record, a copy thereof, authenticated as in the thirteenth section of this act directed, and grant letters of administration, with the will annexed, to the person to whom administration would have been granted, if such testator had died intestate.

Sale of lands by surviving executors.

Sec. 15. That where any lands, tenements, or hereditaments have been or shall be given or devised by any last will and testament, executed as aforesaid, to the executors therein named, or any of them, to be sold or conveyed; or where such lands, tenements, or hereditaments shall be thereby ordered to be sold or conveyed by such executors, or any of them, and part of the executors so named, die, refuse or neglect to take upon them the execution of the said will, then all sales and conveyances, of the said lands, tenements or hereditaments, by the executor or executors who take upon himself or themselves the execution of the will, shall be equally valid as if the residue of the executors had joined in the sale and conveyance; but if none of the executors named in such will, take upon themselves the execution thereof, or if all such executors so taking upon themselves the execution thereof, shall die before the sale or conveyance of such lands, tenements or hereditaments, such sale or conveyance shall be made by the person or persons to whom administration, with the will annexed, may be granted by the court.

By administrators, with will annexed.

To take an oath.

Form.

Sec. 16. That before granting a certificate of probate of any will, the said court shall administer to the executor or the administrator, with the will annexed, the following oath or affirmation, to wit: "You do swear, (or affirm,) that this writing contains as far as you know or believe, the true last will and testament of the within named, and that you will well and truly perform the same, by paying first the debts, and then the legacies contained in said will, as far as his goods, chattels, and credits will extend and the law charge you, and that you will make a true inventory of all the said goods, chattels and credits, as also a just account when thereunto required."

Original will.

Sec. 17. That all original wills shall be recorded and filed

In the clerk's office of the court in which they are respectively proven. to be recorded.

Sec. 18. That if any person interested shall within two years after probate had, appear, and by bill in chancery, contest the validity of the will an issue shall be made up whether the writing produced be the last will of the testator or not, which shall be tried by a jury, whose verdict shall be final between the parties, saving to the court the power of granting a new trial as in other cases, but if no person appear in that time the probate shall be forever binding, saving also to infants, married women, and persons absent from the state, or of insane mind, or in captivity, the like period after the removing of their respective disabilities. Wills how cop-
tested.
Issue to be
made up.
Rights of in-
fants, &c. sa-
ved

Sec. 19. That in all such trials by jury, the certificate of the oath of the witnesses at the time of the first probate, shall be admitted as evidence in case of the absence, death, or disability of any such witness, at the time of such trial. Certificate of
probate evi-
dence.

Sec. 20. That appeals may be had from the decisions of the court of common pleas to the supreme court, when any will or other matter relating thereto, shall have been contested, when the sum or matter in controversy, exceeds two hundred dollars in value. Appeals allow-
ed.

Sec. 21. That in case of a deficiency of personal assets, the court shall order the executor or administrator, with the will annexed, of any last will and testament, to sell the whole or a part of the real estate of the testator, in the same manner, and under the same regulations as is or shall be by law provided for the sale of real estate of intestates. May sell real
estate, when
and how.

Sec. 22. That when any person hath any child under the age of twenty one years, and not married at the time of his death, it shall be lawful to and for the father of such child, whether born at the time of the death of the father or not, by last will and testament duly executed as aforesaid, to dispose of the custody and tuition of such child for, and during such time as he or she shall respectively remain under the age of twenty one years, or any less time, to any person or persons in possession or remainder; and that such description of the custody of such child, shall be good and effectual against every person claiming the custody or tuition of such child; and that such person or persons, to whom the custody of such child be so disposed or devised, as aforesaid, may maintain an action of ravishment of ward, or trespass, against any person who shall wrongfully take away or detain such child, for the recovery of the same, and shall and may recover damages in said action for the use and benefit of such child. Testamentary
guardians may
be appointed.

Sec. 23. That any person to whom the custody of any child is so disposed or devised, may take into his custody to the use of said child, the profits of the real estate of such child, and also the tuition of the child, and the custody and management of his or her personal estate, until such child ar- Their power.

gives to the age of twenty one years, or any less time, according to such disposition aforesaid, and may bring such action in relation thereto as a guardian appointed by the court, or chosen by such child, might lawfully do.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE.

Speaker of the Senate.

February 26, 1824.

AN ACT defining the duties of executors and administrators.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That when any person shall die intestate leaving real or personal property within this state, the court of common pleas of the county wherein the intestate had his or her last place of residence shall, on application, grant letters of administration, (to the widow if any) or to the person nearest of kin to the intestate, who will accept; and if the widow or no one of kin will accept, then to any creditor of the intestate, who may apply for the same, but if no application be made to the court, and they be well informed that the estate of the deceased exceeds the value of one hundred dollars, the court shall cause the next of kin, if in the county and known to the court, and if not, then the person in whose custody the goods and chattels, of such intestate may be, to come before them and shew cause why letters of administration should not be granted, and if such person do not appear at the next term of the court and shew cause, as aforesaid, the court shall appoint one or more proper persons, and grant to them letters of administration.

Sec. 2. That the letters of administration shall empower and direct the administrator, to have all the goods and chattels of the deceased, so far as shall come within his or her knowledge, appraised by three good judicious house-holders, of the county, under oath or affirmation, who shall be appointed by the court, and named in said letters, which house-holders having well and truly appraised all goods and chattels of the deceased, which shall be presented to them, a true and accurate inventory of such appraisement, signed by said appraisers, and also a true and accurate statement of all debts which are due and owing to the state so far as known to the administrator, shall be by him returned to the clerk's office of the said court within three months: *Provided,* That the appraisers as aforesaid shall allow the widow such provisions or other property as they shall think reasonable for the support of herself and children, twelve months from the time of the death of such intestate which shall not be

C. C. pleas
to grant letters
of administra-
tion.

To whom.

Powers conferred by.

Appraisement,
&c.

Provid.

returned in such inventory, but in a separate schedule, which shall also be signed by them.

Sec. 3. That the administrators, on receiving such letters, shall by advertisement inserted, and continued four weeks successively, in one of the public newspapers printed in this state, notify the creditors of such estate to exhibit their accounts legally proven within one year, and such administrators shall adjust and settle up the accounts within eighteen months from the date of such letters, unless the court shall extend the time which they are hereby empowered to do on good cause shewn to any time, not exceeding five years from the date of such letters.

Notice to creditors.

When to settle.

Sec. 4. That executors or administrators with the will annexed, shall be governed by the provisions of the second and third sections of this act, so far as relates to goods and chattels, of the deceased, not otherwise disposed of in the will.

With the will annexed.

Sec. 5. That the court, when they grant letters of administration shall cause the administrator to take an oath or affirmation, to discharge with fidelity, the duties of an administrator according to law, and shall likewise require him to give bond with two or more sufficient sureties, conditioned for the faithful performance of the duties required of him, and if it shall afterwards appear to the court, that any last will and testament was made by the deceased, and the executor therein named shall prove the same agreeably to law, the court shall require the administrator to deliver such letters of administration, together with his proceedings thereon to the court, and on delivery thereof to the court, he shall be released from his bond; but if such administrator, after being notified as aforesaid, to come forward and deliver up his letters of administration, shall refuse or neglect so to do, then the court by decree entered of record shall stay all further proceedings on such letters of administration, and shall likewise oblige such administrator to give over all such assets, monies, papers and accounts as may be in his possession, belonging to such estate, into the hands of the executor appointed under the will, and the court may allow, in these cases, to such administrator on the delivery of his papers, such compensation for his services while acting under the letters of administration, as may appear to them just and reasonable.

To take an oath and give bond.

How to proceed when will discovered.

Sec. 6. That during any contest about a will, or during the infancy or absence out of the state of any executor, or until a will which once existed, but is destroyed or secreted, shall be produced or established, or for any other good cause, the court may appoint a proper person as administrator, who shall act until the disability, or other obstacle as aforesaid, shall be removed; and the administrator so appointed shall in all respects proceed and govern himself as is required of other administrators, appointed under this act, with or

Temporary administration may be granted.

without a will annexed, (as the case may be) except that the oath and bond required of them to be taken and given shall be varied as the circumstances may require: And the bond of administration, or the bond given by the executor, shall be drawn payable to the state of Ohio, and filed in the clerk's office, and shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time for the benefit of any party injured by breach thereof until the whole penalty be recovered.

May sell
whole or any
part of personal
property.

Proviso

Sec. 7. That the executor or administrator shall in all cases where such sale may be necessary, sell the whole or any part of the personal property not devised or bequeathed, at public vendue, after at least fifteen days notice having been given in some news paper in general circulation throughout the county, or by advertisement set up in at least five public places in the county where such sale is to take place: *Provided*, That the widow may keep such part of the house hold furniture, and other personal property as she may think proper at the valuation made by the appraisers, she securing the payment thereof to the executor or administrator, if thereunto required to his satisfaction, receipting therefor, as a part or in full satisfaction of her legacy or portion (as the case may be) and shall be moreover entitled to her wearing apparel, one bed and bedding and all the wearing apparel of her deceased husband, and such other articles of property as are or may be by law exempt from execution, without being obliged to account for it as a part of her husband's estate: And every executor or administrator making sale of goods and chattels of deceased persons shall return a true inventory of the goods so sold, and the price for which they were sold, and also of the goods taken by the widow (if any) at the appraisement to the office of the clerk of the court of common pleas for said county, within three months after such sale is made

To present an
account.

His compen-
sation.

Sec. 8. That every administrator shall, within the time allowed for settling the accounts of the estate in his hands, present to the court of common pleas, a fair written statement or account current, in which he shall charge himself with the whole amount of the estate, according to the inventories of sale and appraisement, including all the debts due the estate, and monies on hand at the death of the deceased: And credit himself with all monies lawfully expended in settling said estate either by the payment of debts or otherwise, exhibiting with said account the receipts and vouchers for all monies paid out; which account and vouchers shall be inspected by the court; and the court shall upon such examination, allow such administrator a credit for all debts with which he had charged himself and which could not be collected; and shall also allow such administrator a credit for any sum not exceeding six per cent. on the amount by

him settled, and such other sums for extra expenses and trouble, as they may deem reasonable. And after allowing the said administrator all just credits on his account, the court shall strike the balance of, and upon such account, and determine what sum remains in the hands of said administrators, due to the widow (if any) and heirs of the deceased; and said account when approved and settled, shall be recorded at length by the clerk of said court; and said receipts and vouchers or duplicate thereof, shall be filed and preserved in the office of said clerk; and said administrator shall immediately after such settlement pay to the widow (if any) and heirs of such decedent, if of full age, and to their guardians respectively if minors the account of money due them severally.

Sec. 9. That every account presented to the court by any executor or administrator for settlement, shall be continued one term subject to the examination of all persons interested, and any person interested, may file written exceptions to said account or any item thereof.

Account to be continued one term.

Sec. 10. The court of common pleas shall have power by citation and attachment to compel any administrator or executor to present his accounts for final settlement at any time after the expiration of eighteen months from the date of the letters testamentary or administration, or after the further time allowed by said court for such settlement.

May be compelled to account.

Sec. 11. That if any administrator, shall refuse or neglect to settle up the estate within the time allowed by the statute or the court, such refusal or neglect shall be deemed and holden by all courts, to be a breach of the condition of the bond of administration.

What shall be a breach of bond.

Sec. 12. That if any executor or administrator shall neglect or refuse to comply with the duties enjoined on him by this act, or shall waste the estate of the testator, or intestate, it shall be lawful for the court granting letters of administration, testamentary, or certificate of probate, upon complaint made by any person interested, to remove such executor or administrator upon good cause shown, and proceed to appoint others in the manner pointed out by this act, as near as the nature of the case will admit.

May be removed.

Sec. 13. That when the surety, in any bond given by an administrator or executor, shall discover or believe, that such executor or administrator is wasting or mismanaging the estate, whereby the said surety may become liable to loss or damage, the court upon application of such surety in writing, and good cause shown shall order every such executor or administrator, to render an account of his administration of the estate, or executing the will to said court, and to give a separate security to his or her surety, indemnifying such surety from all loss or damages by reason of the bond of ad-

Security may make complaint.

administration, or bond given by such executor: And on neglect or refusal of such executor or administrator to give such bond of indemnity, the said court may revoke the letters testamentary, or letters of administration, and grant others as if no such letters had been issued.

New administrators may sue old ones.

Sec. 14. That when any executor shall be removed, and an administrator, with the will annexed, appointed; and when any administrator shall be removed and another appointed in his stead, under the provisions of this act, such new appointed administrator shall be authorized immediately, to commence an action on the case, against such removed executor or administrator, and hold him to bail; and in such action to recover the amount of monies, assets, rents, issues and profits received by such removed executor or administrator, and not applied according to law, as well as all damages done or committed by such administrator, in respect to the estate in his or her hands.

When emblements shall be assets & when not.

Sec. 15. That if a testator or intestate, shall die after the first day of March, all the emblements of his lands, which shall be severed before the thirty first day of December following, shall be assets in the hands of the executor or administrator; but all such emblements growing on the lands on said first day of March, or at the time of the death of the testator or intestate, if that event happen after the thirty first day of December, and before the first day of March, shall pass with the land, to the heir, devisee, reversioner or remainderman, subject nevertheless, to the debts of the testator, or intestate, in case the estate should be insolvent.

Failing to plead only liable for amount of assets.

Judgment to be de bonis, &c

Sec. 16. That hereafter no executor or executors, administrator or administrators shall be made liable for more than the amount of assets which have come, or which may come into his her or their hands to be administered, on account of having failed to plead or make defence, or on account of any plea or pleas which he, she or they, may hereafter plead to any suit or action whatever, which may hereafter be brought or prosecuted against him, her or them, or either of them; but the judgment of the court in all such cases, which shall be 'de bonis testatoris,' shall only render such executor or executors, administrator or administrators, liable for the amount of the assets in his, her or their hands, unadministered.

When no heir, widow to have personal property.

Sec. 17. That when the deceased shall not have left any legitimate child, heir of his body, the widow shall be entitled to the whole residue of the personal property, after the debts, funeral charges and other incidental expenses shall have been paid; that when he shall have left such legitimate child, heir as aforesaid, the widow shall be entitled to the one half of such residue, if such residue do not exceed four hundred dollars, and if it exceed that sum, she shall be entitled to the half of the first four hundred dollars, and one third part of all the remainder which shall be set off and assigned to her, by the

Administrator, in a reasonable time after the amount of such residue is ascertained.

Sec. 18. That if on return made to the court, it shall appear to their satisfaction, that after deducting the widows wearing apparel, one bed and bedding, the expenses of the last sickness, funeral charges, and the costs of administration, there is not personal property sufficient to pay all the demands against said estate, they shall direct the administrator, or executors, to sell so much of the real estate of the deceased, lying in any county or counties, within this state, as shall be sufficient to discharge all such demands, after the money arising on the sales of the personal property, has been applied thereto, that if it shall appear to the court that said estate will be insolvent, they shall direct the administrator or executors to sell the whole of the real estate, of such testator or intestate, (after assigning to the widow, if any, her dower therein,) including the remainder after such estate of dower shall have been determined, and shall direct the administrator or executor, to pay over the proceeds in manner following; that is to say, the funeral expenses, and those of the last sickness of the testator or intestate, with the costs of administration, shall be first paid; secondly, all judgments rendered against said testator or intestate in his life time, and which remain unsatisfied, according to their respective priorities, so far as the same operated as a lien upon the estate of the testator or intestate, in his life time, and no further, the amount of which shall be determined by the court, with reference to the proceeds, in the hands of said executor or administrator, arising from the lands bound by the said judgment, after which it shall be the duty of the executor or administrator, to distribute the residue of the assets, if any, among the remaining creditors of said deceased, including such part of the aforesaid judgments, as may remain unsatisfied, in proportion to the sum due to each, which shall upon the application of the executor, or administrator, be determined by the court; and no executor, or administrator, shall be made liable for any claims against said estate, which shall be presented after such proportion shall have been determined, provided the same shall not be, until after eighteen months shall have expired, from the granting of his letters of administration, and they shall report this proceeding to the court, at such times as they may direct; and no costs shall be recovered at any suit commenced against any executor, or administrator, within the time allowed by the court for the settlement of the estate of the testator, or intestate, nor shall any execution be issued, on a judgment rendered, in consequence of the commencement of such suit, within the time aforesaid, and in case such estate should prove insolvent, such judgment creditor shall not receive any other or greater proportion of his demand against the estate,

Marshall real estate, &c.

Dower to be assigned.

Priority of judgments &c.

than the other creditors, who may not have procured judgment in their favor, prior to the death of such testator, or intestate, and no execution shall be issued on any judgment, rendered prior to the death of the testator, or intestate, within the time allowed by the court, for the settlement of such estate, and all sales made by any executor, or administrator, of real property, under and in virtue of an order of the court, shall vest in the purchaser, a good and complete title therefor, unincumbered by any judgment, that may have been rendered in the life time of any testator or intestate.

Application for sale to be by petition. Sec. 19. That when the executor, or administrator, shall apply to the court under this act, for authority to sell the real estate of their testator, or intestate, the application shall be by petition, to which the lawful heir, or the person having the next estate of inheritance of the testator, or intestate, shall be made defendant.

Appraisers. Sec. 20. That when it shall be made appear to the satisfaction of the court, that it is necessary to sell the real property, for the discharge of debts, as herein specified, they shall appoint three disinterested men, to view the lands, tenements, or hereditaments so to be sold, who being first duly sworn, shall return to the court, a statement of the value of such lands, and the court shall allow them for their services, such compensation as shall be reasonable, to be paid out of the estate of the deceased, and the court shall direct the executor, or administrator, to sell either the whole or a part (as they may think proper,) of such real estate, after giving notice of the time and place of sale, by advertising the same, in at least five public places in the county, and in some newspaper of the most general circulation therein, at least six weeks successively, and such lands, tenements, or hereditaments shall be sold to the best advantage, either for cash or a limited credit, the purchaser securing the payment of the instalments as they may become due, but no credit shall in this case extend beyond the period of three years: *Provided,*

May be sold on credit.

Proviso.

That any such tract of land with improvements thereon, shall not be sold for less than two thirds, and every tract of land without improvements, for less than one half of its appraised value, unless it shall be made to appear to the satisfaction of the court that the same cannot be sold for one half, or two thirds (as the case may be,) of the appraised value thereof, in which case the court may at their discretion order

Court may direct price.

Proviso.

the administrator to sell said land at such price and in such manner as they may think proper to direct: *Provided also,* That in all cases where lands have been heretofore appraised and offered for sale, and could not be sold for two thirds, or one half of the appraised value, as stated in the foregoing section, it shall be lawful for the courts to order the same to be sold as is above provided for.

Sec. 21. That the court may require, if they deem it necessary of any executor or administrator, to whom they grant the privilege of selling real property, what security they may think proper, to secure to the creditors, or heirs, the money arising from such sales, respect being had to the value thereof, and the executor, or administrator, shall by deed duly executed, convey to the person purchasing the property so sold, which deed shall vest the title in the purchaser, as completely, as though it had been conveyed by the deceased, in his life time.

Court may require additional security.

Deed to purchaser.

Sec. 22. That when any person has heretofore purchased, or may hereafter purchase any lands, and die intestate, previous to the payment being completed therefor, and it shall be made appear to the satisfaction of the court, that there are not assets in the hands of the administrator, after paying all just debts, funeral and other incidental expenses, sufficient to complete such payment the court shall order such administrator to sell the same, in all respects agreeably to the provisions of this act, who is hereby legally authorized and required (upon the order of the court aforesaid,) to transfer and convey the title of such lands to the purchaser, or his legal representatives, as fully and completely, as such deceased might, or could have done in his life time.

Equitable interests may be sold, when, &c

Sec. 23. That it shall be the further duty of the administrator, to render a correct and accurate statement of all proceedings with respect to the sales made as aforesaid, to the court from which such order issued, within four months after such sale may be made.

Account of sales to be rendered to court.

Sec. 24. That the several courts of common pleas, within this state, are hereby authorized and required to grant letters of administration, as well in cases of persons dying, or who have died out of this state, leaving rights and credits, or any estate real or personal, within this state, as in cases where such persons may die, or may have died within this state, and under the same provisions, rules and regulations.

Court may grant when persons die out of state.

Sec. 25. That every executor, or administrator, who has been, or shall hereafter be appointed, within any of the United States, or Territories thereof, according to the laws of the state, or territory, within which such appointment, may have been, or hereafter may be made, shall be authorized by virtue thereof, to commence and prosecute any action or suit, either in law, or equity, in any court of this state, having jurisdiction of the subject matter, of such action or suit, in his or her capacity of administrator, or executor, in the same manner, and under the same regulations, as any non resident may be permitted to sue or be sued.

Executors &c. of another state may bring suit here.

Sec. 26. That every executor, or administrator, who may have given bond in this state agreeably to this act, shall be, and hereby is authorized, in all cases of an appeal from one court to another, by him made, to prosecute the same with-

May appeal without bond.

out filing any bond to prosecute the said appeal to effect, and abide the judgment thereon to be had.

Special courts
for administration.

Sec. 27. That it shall be at all times hereafter lawful for the judges of the court of common pleas, or any three of them, when required, to convene for the purpose, of granting letters of administration, taking probate of wills, and the said judges shall be allowed for their services, one dollar and fifty cents each, per day, on such special meeting to be paid by the person, at whose instance the court was convened, out of the estate of the deceased.

Compensation
Many acts re-
pealed.

Sec. 23. That the act, entitled an "act, for the proving and recording wills, and codicils, defining the duties of executors and administrators, the appointment of guardians, and the distribution of insolvent estates," passed the twenty-fifth of January, one thousand eight hundred sixteen, and the act, entitled "an act, to amend the act, for the proving and recording wills, and codicils, defining the duties of executors and administrators, the appointment of guardians, and the distribution of insolvent estates," passed the second of February, one thousand eight hundred twenty one, and an act, entitled "an act, further to amend the act, for proving and recording wills, and codicils, defining the duties of executors and administrators, the appointment of guardians, and the distribution of insolvent estates," passed the twentieth day of December, one thousand eight hundred twenty-one, and all other acts, and parts of acts, coming within the purview of this, be and the same are hereby repealed.

Effect:

This act to take effect and be in force from and after the first day of June next: *Provided*, That all suits and proceedings now pending, under the provisions of the acts hereby repealed, shall be conducted agreeably to this act, and all judgments rendered on such suits, as well as judgments heretofore rendered shall be carried into execution under the provisions of this act.

Proviso.

JOSEPH RICHARDSON,

Speaker of the House of Representatives.

ALLEN TRIMBRE,

Speaker of the Senate.

February 11, 1824.

AN ACT regulating the course of descents and distribution of personal estates.

Descent of
real estates of
inheritance

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio*, That when any person shall die intestate, having title to any real estate of inheritance, lying and being in this state which title shall have come to such intestate by descent, devise or deed of gift from an ancestor, such estate shall de-

scend and pass in parcenary to his or her kindred in the following course: First, to the children of such intestate or their legal representatives: Second, if there be no children or their legal representatives, the estate shall pass to the brothers and sisters of the intestate, who may be of the blood of the ancestor from whom the estate came or their legal representatives, whether such brothers and sisters be the whole or of the half blood of the intestate: Third if there be no brothers and sisters of the intestate, of the blood of the ancestor from whom the estate came or their legal representatives, and if the estate came by deed of gift from an ancestor who may be living, the estate shall ascend to such ancestor: Fourth, if the ancestor from whom the estate came be deceased, the estate shall pass to the brothers and sisters of such ancestor, or their legal representatives, and for want of such brothers or sisters or their legal representatives, to the brothers and sisters of the intestate of the half blood or their legal representatives, though such brothers and sisters be not of the blood of the ancestor from whom the estate came: Fifth, if there be no brothers and sisters of the intestate or their legal representatives, the estate shall pass to the next of kin to the intestate of the blood of the ancestor from whom the estate came.

which have come by descent, devise, or deed of gift from an ancestor.

Sec 2. That if the estate come not by descent devise or deed of gift, it shall descend to the children of the intestate and their legal representatives.

Children of intestate to inherit estates derived otherwise.

Sec. 3. That if there be no children or their legal representatives, the estate shall pass to the brothers and sisters of the intestate of whole blood, and their legal representatives.

No children estate shall pass to brothers and sisters, &c.

Sec. 4. That if there be no brothers or sisters of the intestate of the whole blood or their legal representatives, the estate shall pass to the brothers and sisters of the half blood and their legal representatives.

No brothers and sisters of whole blood to pass to half blood.

Sec. 5. That if there be no brothers or sisters of the intestate of the half blood or their legal representatives, the estate shall ascend to the father, if the father be dead then to the mother.

No one of half blood, shall ascend to father, &c.

Sec. 6. That if the father and mother be dead, the estate shall pass to the next of kin to, and of the blood of the intestate.

Parents dead shall pass to next of kin.

Sec. 7. That when any person shall die intestate, or who has heretofore died intestate, leaving no one of kin of the blood of such intestate, or if the kin or heirs of the blood of such intestate be an alien or aliens, the estate of such intestate shall pass to and be vested in the husband or wife, relict of such intestate, unless such alien or aliens shall appear and prosecute his her or their claim, within ten years after the death of such intestate: *Provided*, That the alien heir of any intestate who has heretofore died, shall be allowed fifteen years from the passage of this act, to assert his or her claim to the estate of such intestate.

No one of kin, or intestate or his heirs aliens, estate shall vest in husband or wife.

Proviso.

Estate may escheat.

Sec. 8. That when any person shall die intestate, having title to any real estate lying, and being in this state, and there shall be no person entitled to inherit the same by the provisions of this act, the said real estate shall escheat to, and vest in the state to be disposed of for literary purposes under the direction of the legislature.

When children shall take per capita, and when per stirpes.

Sec. 9. That where any of the before mentioned children, brothers, sisters or their legal representatives in the same degree of consanguinity, or kindred, come into the partition of any real estate they shall take per capita, that is to say, by persons; but where one or more of them are dead, and one or more living, the issue of those dead shall have a right to partition, and such issue in such case shall take per stirpes, that is to say the share of their deceased parents.

When advancement shall be brought into hotch pot.

Sec. 10. That where any of the children of the intestate or their issue shall have received from the intestate in his life time, any real estate by way of advancement, and shall choose to come into partition with the other parceners such advancement shall be brought into hotch pot with the estate descended.

Descent through an alien ancestor good.

Sec. 11. That in making title by descent it shall be no bar to a party that any ancestor through whom he derives his descent from the intestate is or hath been an alien; bastards shall also be capable of inheriting or of transmitting inheritance on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

Bastards may inherit, &c.

Children born bastards may inherit, if parents intermarry, &c.

Sec. 12. That where a man having by a woman one or more children shall afterwards intermarry with such woman, such child or children, if recognized and acknowledged by him as his children, shall be thereby legitimated; the issue also in marriages deemed null in law, shall nevertheless be legitimate.

Parceners may maintain waste against each other.

Sec. 13. That one parcener may maintain an action of waste against another, but no parcener shall have or possess any privileges over another in any election, division, or matter to be made, or done, concerning lands which have descended.

Goods and chattels of intestates, how distributed.

Sec. 14. That if any person shall die intestate, leaving any goods chattels or other personal estate, such goods, chattels or other personal estate shall be distributed agreeably to the foregoing course of descents, saving however such rights which any widow may have to any portion of such personal estate: *Provided*, That if there shall be no person entitled to inherit agreeably to the provisions of this act, such personal estate shall pass to, and vest in the overseers of the poor, and their successors in office, for the use of the poor of the township, or townships in which he same may be.

Personal estate when no heir to vest in overseers of poor.

Sec. 15. That nothing in this act shall be construed to affect the right any person may have as tenant by the courtesy in any estate of inheritance nor shall the right of dower claimed by any widow in any estate of inheritance be impaired in any wise whatever. Estates in
curtesy saved

Sec. 16. That all laws and parts of laws now in force in this state, on the subject of descents are hereby repealed. All former
laws repealed,

This act to take effect and be in force from and after the first day of June next. Effecting

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,

Speaker of the Senate.

February 11th, 1824.

AN ACT Relating to Dower.

Sec. 1. *Be it enacted by the General Assembly of the state, of Ohio,* That the widow of any person dying, shall be endowed of one full and equal third part of all the lands, tenements, and real estate of which her husband was seized, as an estate of inheritance, at any time during the coverture, and she shall in like manner, be endowed of one third part of all the right, title, or interest that her husband, at the time of his decease, had in any lands and tenements, held by bond, article, lease, or other evidence of claim, and she shall remain in the mansion house of her husband, free of charge, for one year after his death, if her dower be not sooner assigned her. Widow to be
endowed of real
and equitable
estate.

May remain in
mansion house
&c.

Sec. 2. That if any estate shall be conveyed to a woman as jointure, in lieu of her dower, to take effect immediately after the death of her husband, and to continue during her life, such conveyance shall bar her right of dower to the lands and tenements, which were her husband's; but if the jointure, or conveyance was made when the feme was in infancy, or if made after marriage, in either case, the widow at her election may waive her jointure and demand her dower. Jointure bars
dower, when,

Widow may
elect,

Sec. 3. That no contract of the husband, or recovery against him, of any lands, tenements, or hereditaments being the inheritance, or freehold of his wife during the coverture between them, shall in any wise deprive the wife, after the death of her husband, of any right which she had or might have to such lands, tenements, or hereditaments, or her heirs, or any person who shall have right, title or interest to the same by the death of such wife or widow. Wife's inheri-
tance not injur-
ed by act of
husband.

Sec. 4. That when any conveyance intended to be in lieu of dower, shall through any defect fail to be a legal bar thereto, and the widow availing herself of such defect shall Availing her-
self of defect

The conveyance, to cease &c. demand her dower, the estate and interest conveyed to such widow with intention to bar her dower, shall thereupon cease and determine.

Evicted from jointure to be endowed of other lands. Sec. 5. That if any widow be lawfully evicted from her jointure, or any part thereof, without fraud in her, she shall be endowed of as much of the residue of her husband's lands, tenements, or hereditaments whereof she was before dowable, as the same lands, tenements, or hereditaments from which she was evicted, shall amount to.

An adulteress barred of dower. Sec. 6. That if a wife willingly leave her husband and dwell with her adulterer, she shall lose and be barred of her right of dower, but if she shall return, and her husband shall be reconciled to her and dwell with her, she shall be restored to her right of dower.

Husband giving up lands by covin, wife may recover dower. Sec. 7. That if the husband in his life time shall be impleaded for lands, or tenements, and giveth up the same by covin, or fraud, after the death of the husband, the wife may recover her dower of the same. and in case the husband loseth the land in demand by default, and his wife after his death, demand her dower therein, she shall be heard, and if the widow can establish the right of the husband to the lands and tenements, she shall be entitled to, and recover her dower therein.

Heir may assign dower, Sec. 8. That when the lands of the deceased are not encumbered by mortgage or by judgments obtained against such decedent in his life time, the heir or other person having the next immediate estate of inheritance, may assign to the widow, her dower therein, by writing under his hand and seal, particular describing the same, which if accepted by such widow, shall be holden a good assignment in law.

Petition in chancery for dower. Sec. 9. That the widow applying for dower, in the lands of her deceased husband, may file her petition in chancery, against the heir, or other person having the next immediate estate of inheritance, setting forth her right thereto, and describing the tracts of lands of which she claims to be endowed and the court on the hearing of such cause, shall render such decree in the premises, as to them shall appear just and consistent with the rights of all the parties interested therein.

Incumbrances may be shewn by cross bill, Sec. 10. That when the rights of any mortgagee, or the lien of any judgment creditor, shall be shown to the court by cross petition filed before the rendition of a decree, in such petition for dower, such rights and liens shall be regarded by the court, in the rendition of such decree, and no inequality shall be allowed, or any injustice done to any such mortgagee or judgment creditor to the benefit of another.

Petition to be filed where message is situated, Sec. 11. That when the lands lie in several counties, the petition for dower shall be preferred in the county, in which the principal message of the deceased is situate, and the court of common pleas of such county, shall have complete jurisdiction, and may order the whole dower of such widow to be assigned in any one or more of such counties, and out

of any one or more tracts of land, if the same may be done without prejudice to the rights of any person claiming title to, or holding a lien on such land.

Sec. 12. That when dower shall be decreed on any petition filed as aforesaid, the court shall issue their order to the sheriff of one of the counties, in which such lands may be situate, commanding him, that by the oaths of three judicious disinterested men of the vicinity, who are not of kin to either of the parties interested, he cause such dower to be set off and assigned to such petitioner, in manner as set forth in the decree; and the sheriff to whom such order is directed, shall in all things obey the same and return his proceedings therein, to the said court, at their next term, and such assignment, if approved by the court, shall be entered on the records thereof, and shall be thereupon valid and effective in law: a writ of seisin shall thereupon issue from the said court to such sheriff, who on the receipt thereof, shall deliver to the widow full possession of her dower, assigned to her as aforesaid.

On decree of dower, sheriff to assign, how.

A writ of seisin may issue.

Sec. 13. That if during the minority of the heir, dower shall be assigned to a widow who is entitled thereto, or if she shall recover the same on application to the court by the default, fraud or collusion of the guardian, such person coming of age may have his action against such widow for the same.

Heir may have action, if dower is collusively assigned.

Sec. 14. That where estates, of which a woman is dowable, are entire, and where no division can be made by metes, or bounds, dower thereof shall be assigned in a special manner, as of a third part of the rents, issues and profits, to be computed and ascertained in manner aforesaid.

May be endowed of rents.

Sec. 15. That no woman who shall be endowed of any lands, tenements, or hereditaments as aforesaid, shall wantonly commit, or suffer any waste thereon, under the penalty of forfeiting that part of the estate, in which such waste shall be made, to him, or them that have immediate estate of inheritance in remainder, or reversion to be recovered in action of waste.

Waste forfeits dower.

Sec. 16. That all laws and parts of laws, heretofore passed on the subject of dower, be and the same are hereby repealed.

All prior laws repealed.

This act shall take effect and be in force, from and after the first day of June next.

Effect.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 28, 1823.

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AN ACT for the appointment of Guardians;

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That the court of Common Pleas shall have power whenever they consider it necessary to appoint a guardian or guardians to all minors within their county; and on good cause shewn, to authorize such guardian or guardians to sell all or any part of the property, whether real or personal of his or their ward or wards; and the court shall at the same time direct the manner of securing to said ward or wards, the money arising on such sale, which said guardian or guardians shall, before entering on the discharge of duties of his or their appointment, in every case give bond to the state of Ohio, in such sum, and with such security as shall be approved of by the court, conditioned to discharge with fidelity, the trust reposed in him or them, and for rendering an accurate statement of his or their transactions with a just account of the profits arising and accruing from the real or personal estate of his or their ward or wards, and for delivering up the same to the court when hereunto required, which bond shall be filed with the clerk of the court, and the court may allow to such guardian or guardians, such compensation as they may think proper, for the services by him or them performed in virtue of the appointment aforesaid. *Provided,* That no person who shall be, or who may have been an administrator of any estate or executor of any last will and testament shall be appointed by the court a guardian for any minor who shall be interested in said intestate estate, or who shall claim or be entitled as heir, devisee or otherwise to any interest under or by virtue of said last will and testament, unless such guardian be appointed by last will and testament.

Sec. 2. That the court of common pleas shall have power by citation and attachment to compel any guardian or guardians to render from time to time an account of his or their management of the estate of said ward or wards, and upon good cause shewn, to remove such guardian or guardians, and appoint an other or others in his or their stead.

Sec. 3. That no sale of real property shall be made under the provisions of this act, unless the court shall be satisfied that such sale will be for the advantage of such ward or wards or necessary for his or their maintenance and the guardian or guardians shall be governed therein by the same regulations as are required of administrators in the sale of real property in the case of insolvent estates.

Sec. 4. That minors living out of this state and owning lands within the same, shall be entitled to the benefit of this act on their guardian or guardians giving such security as shall be approved of by the court in the county wherein such land is situate.

C. C. pleas
to appoint
guardians to
minors.

Guardians'
bond.

Compensation.

Proviso.

Guardians
must account
or be removed.

How sale of
property to be
conducted.

Minors of
other states.

Sec. 5. That it shall be the duty of every guardian, whether appointed under the authority of this act or by the last will and testament of any testator within three years after his appointment, or the death of the testator, (as the case may be) and at the expiration of every two years thereafter, to settle his account with such ward or wards before the court of common pleas, by which he may have been appointed, or before the court which may have granted probate of said last will and testament, whereby said guardian or guardians may have been appointed, which settlement shall be final between the parties thereto, saving however to any such ward or wards, the right of opening and reviewing the same in chancery or elsewhere upon good cause shewn at any time within two years after the said ward or wards shall arrive at full age, and it shall be the duty of such guardian or guardians at the term of the court preceding that at which he or they intend to apply for such settlement to file with the clerk of said court, a statement of his or their account, with the vouchers in support thereof, whereupon the said clerk shall within thirty days thereafter cause to be published in some newspaper, printed within the county, for three weeks successively, a notice wherein shall be set forth such intended application, together with the name or names of the guardian or guardians so applying as aforesaid; but if no newspaper shall be published within the county, then such notice shall be put up on the court house door.

Testamentary or not, to settle with court.

Wards may review settlement.

Sec. 6. That when there are minors as aforesaid, males above fourteen, and females above twelve years of age, or when any minors for whom the court have appointed a guardian or guardians, shall arrive at the respective ages aforesaid, such minors may severally choose a guardian or guardians, such as the court shall approve; and if such minors do not come before the court and choose a guardian or guardians after being notified by the court so to do, the court shall appoint a guardian or guardians for them as aforesaid.

Minors may choose guardians.

Sec. 7. That any guardian or guardians appointed as aforesaid, for any female under the age of twelve, or any male under the age of fourteen years may, if it be necessary, bind such minor or minors to any suitable person until such minor or minors, (if a male) shall arrive at the age of twenty-one years, and if a female at the age of eighteen years: *Provided*, That before the indenture whereby any minor or minors may be bound to service according to this section, shall be holden valid in law, the person or persons to whom such minor or minors shall be bound as aforesaid, and also the terms and covenants in such indenture contained, shall be approved of by the court, and a certificate of the clerk with

Guardians may bind wards.

Proviso.

the seal of such court shall be attached to such indenture, in testimony of such approbation.

Laws re-
pealed.

Sec. 8. That all laws and parts of laws coming within the purview of this act, be, and the same are hereby repealed.

Effect,

This act to take effect and be in force from and after the first of June next.

JOSEPH RICHARDSON,

Speaker of the house of representatives.

ALLEN TRIMBLE,

Speaker of the Senate.

February 6, 1824.



AN ACT to provide for the safe keeping of Idiots, Lunatics, Insane persons, the protection of their property, and other purposes.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio*

On complaint
in writing, ju-
stice may issue
warrant to
bring said, &c
before him.

That the justices of the peace, in the respective townships, within this state, are hereby empowered and required upon application, made to them, or either of them, in writing, by any of the relations of an idiot, lunatic, or insane person, or by any overseer of the poor, or any other person, in the township where such person resides, to issue a warrant to any constable of said township, requiring him to bring such idiot, lunatic or insane person, before such justice granting the warrant; and also to summon seven discreet and disinterested freeholders, to appear at the same time and place, who being first duly sworn for that purpose, shall enquire into the case, and return their verdict in writing to the justice, whether the person, complained of, be an idiot, lunatic, or insane, and shall moreover certify under their hands, whether, in their opinion, there is danger of such person destroying his, or her own life, or property, or the life, or property of others, or whether such person ought to be put in confinement or not.

and a sum-
mons for 7 free
holders,

who may en-
quire into case

Justice to is-
sue warrant to
overseers of the
poor to pro-
vide for idiots,
&c.

Sec. 2. That in case the inquest, as provided by the first section of this act, shall set forth in their verdict, that such person is an idiot, lunatic, or insane, and do not certify, as their opinions, that such person ought to be put in close confinement, the justice shall issue his warrant to the overseers of the poor, of the township where he, or she may have last resided, or been found, directing them to take care of, and provide for the maintainance, or otherwise dispose of such person, agreeably to the provisions of the act entitled "an act for the relief of the poor," and in case the inquest shall set forth in their verdict, that in their opinion, there is danger of such person destroying life or property as aforesaid, and that he, or she ought to be put in close confinement, then

or commit
such, to jail if
dangerous, un-
less friends
give bond.

said justice shall commit such person to close confinement, in the jail of the county, (unless the friends, or relatives shall give a bond, with sureties, for the safe keeping of such person, in a sum to be approved of by the justice, payable to the county treasurer, for the use of the county,) and shall set forth in the mittimus, the particular cause of commitment; and it shall be the duty of the jailor to receive and safely keep such person until he, or she shall be discharged as hereinafter provided.

Sec. 3. That the jailor shall, within five days after receiving such person, notify the commissioners of the county, to meet at the jail, on a particular day, not further distant than ten days, whose duty it shall be to meet accordingly; and they, or any two of them, so met, shall carefully examine the state of such person, and if in their opinion, medical aid shall be requisite, they shall employ some skillful physician, to attend such person, and use such means as may be most conducive to restore the exercise of reason.

Sec. 4 That whenever such physician shall be of opinion, that such person may be safely released, or ought to be otherwise disposed of, he shall make report thereof to the commissioners, who shall thereupon meet, and it shall be competent for them, at such meeting, or at any other time, upon due examination, to release or provide in whatever way they shall deem most advisable, for keeping of such person, and also to make such allowance to any physician, or other person, employed to keep, or take care of such person, as they shall deem lawful and right.

Sec. 5. That in every case when any person is adjudged to be an idiot, lunatic, or insane, on the verdict of a jury, agreeably to the provisions of the first section of this act, the justice of the peace receiving such verdict, shall issue his warrant to the overseers of the poor of the township, directing them to take charge of the estate, real and personal, of such person, and make an inventory thereof, and return the same to the clerk's office, of the court of common pleas of their county, within ten days thereafter, which return the said clerk shall file in his office.

Sec. 6. That the overseers of the poor, returning such inventory, shall apply to the court of common pleas, at their next session, to appoint a guardian, or guardians to take charge of such idiot, lunatic, or insane person; whereupon the court shall make such appointment, and the guardian, or guardians so appointed, shall give bond to said court, in a reasonable sum, to its satisfaction, with sufficient sureties, for the use of such person, conditioned for the faithful discharge of their trust, and for rendering a true and just account of their guardianship, whenever thereunto required by the court; and the said court shall make such allowances, to the overseers of the poor, and guardians for their

Ja^r or shall no
tify commi-
sioners, who
may employ
physician.

On physician's
report prisoner
released.

When verdict
of jury finds
a person an
idiot, &c. over-
seers of poor to
take charge of
their estate.

Overseers of
poor to apply to
court and have
guardians ap-
pointed.

services, under this act, as they shall deem reasonable, to be paid out of the estate of such person, and in case the estate aforesaid, shall be wholly expended in the charges and maintenance of such person, the county shall be chargeable with all further expenses that shall accrue.

Overseers of poor shall surrender estate to guardian.

Sec. 7. That the overseers of the poor, who have in their hands any estate, real, or personal, of any idiot, lunatic or insane person, for whom a guardian, or guardians shall be appointed as aforesaid shall deliver over such estate into the hands of the said guardian, or guardians, and take a receipt therefor, which shall be filed in the office of the clerk of the court of common pleas of the county; and such guardian, or guardians, shall improve frugally and without waste, such estate, or shall apply the same, or the annual profits thereof for the maintenance of such person, or his, or her family, and such guardian, or guardians, shall have power to settle accounts, to receive, sue for and recover all debts, and demands due to such person, to improve and manage the real estate, agreeably to law, in as full and ample a manner, as such idiot, lunatic, or insane person could do, if he, or she were restored to the true use of reason; and shall also be subject to the payment of all just debts, of such person, prior to his, or her insanity, or disability, out of the personal estate, or in case that be insufficient, then out of the real estate, and such guardian is hereby authorized to sell any real estate of such person, in case it may be necessary for the support, or payment of the debts of such person, in such manner, as executors, or administrators are by law enabled to do; and in all cases where guardians are appointed, under the provisions of this act, and their guardianship shall be required for a longer space of time than one year; it shall be, and it is hereby made their duty to make report annually, to the court of common pleas of the proper county, of the situation and condition of all property placed in their hands as guardians, and the receipts and disbursements of all monies belonging to the estate placed under their care, which report shall be made under oath.

Guardian's duties and powers.

Must report annually to court,

Court of C. P. to appoint guardians to children of idiots, &c. and may remove them for cause.

Sec. 8. That the courts of common pleas in each county, are hereby empowered to appoint guardians for the children of idiot, lunatic, or insane persons, in the same manner as though their parents were deceased, and for good cause to remove such guardians, and appoint others in their stead, and fill any vacancy that may be occasioned by death or otherwise: *Provided*, That such guardianship shall cease at the time when, according to the provisions of this act, such idiot, lunatic, or insane person shall be adjudged to be restored to the use of his, or her reason.

Proviso.

Sec. 9. That upon the application of any of the friends, relatives, or guardians of any idiot, lunatic, or insane person, to any justice of the peace, he shall cause to be summoned,

and duly sworn, a like jury or inquest, as is directed in and by the first section of this act, and in case they shall by their verdict, to be returned in writing, declare that such person is restored to the use of his, or her reason, the residue of the estate, real and personal, shall be delivered to such person.

Jury of 7 may enquire whether idiot, &c. restored to reason.

Sec. 10. That in cases where any person, owning property either real, or personal, within this state, hath, or shall, in consequence of mental derangement, abandon such property, and remove or escape, so that proceedings to ascertain whether such person be lunatic, or insane, can not be had under the provisions of this act, it shall be lawful for the relatives, or friends of such person, to apply by petition to the court of common pleas, of the county where any part of the real estate of such person may be situated, setting forth the facts, that such person owned property, and in consequence of mental derangement, had abandoned the same, and removed, or escaped out of the country, and praying the court to proceed and enquire into the truth of the allegations in the petition contained.

When insane person escapes &c. friends may apply by petition to court.

Sec. 11. That upon hearing the petition, the court shall order a jury to be empannelled before them, to enquire into the facts in the petition stated, and such jury, after hearing the evidence, shall return a verdict according to the truth of the case, and if it shall be found by the verdict of the jury, that the facts stated in the petition are true, the court shall appoint a guardian, or guardians, to take charge of the property of such person; which guardian, or guardians, shall give bond, and shall proceed in the same manner, have the same power, and be subject to the same rules and regulations, provided in cases of guardians, appointed under the provisions of this act.

Jury to be empannelled to try truth of petition; and if true, guardians may be appointed.

Sec. 12. That if any lunatic, or insane person, shall return to the county from which he, or she, may have departed, and the court of common pleas shall, upon actual observation adjudge that such person is restored to the use of his, or her reason, they shall direct the residue of the property, in the hands of the guardian, to be restored to such person.

If lunatic &c. returns, court to order property restored.

Sec. 13. That in case of any person owning real estate, within this state, and residing in another state, or country, being adjudged a lunatic, idiot, or insane person, according to the laws of the state, or country, where such person may reside, the committee, or guardian of such person, appointed according to the laws of such state, or county, may obtain possession and dispose of the real, and personal estate of such person, within this state, in the manner following:—Such committee, or guardian shall present to the court of common pleas, of the county where any part of the property of such person may be, an authenticated transcript of the judgment, or commission of idiocy, lunacy, or insanity, and of the ap-

Guardians &c. of non resident lunatics &c. may sell real estate in this state, and how

pointment of such committee, or guardian, to take charge of the estate of such person; and upon the court being satisfied that idiocy, lunacy, or insanity still continues, and that the applicants are the same persons named in the proceedings, they shall make an order for such persons to take charge of such idiot's, lunatic's, or insane person's estate, real, or personal, to be found in this state, and may authorize such committee, or guardian, to sell and convey the estate of such lunatic, idiot, or insane person, upon such terms and conditions as the court may deem proper and the guardian, or committee of such person, in their proper names, may sustain any proper action for the recovery, or protection of the person, or property of such idiot, lunatic, or insane person.

Guardians,
&c. may complete contracts and make deeds by order of court.

Sec. 14. That when any person declared and adjudged an idiot, lunatic or insane before his v situation, shall have sold real estate, within this state, and shall not have conveyed the same, or when the committee or guardian of a lunatic, idiot or insane person, in any other state or country appointed according to the laws of such state or country, have already sold the real estate of such lunatic, idiot or insane person, lying within this state, in either case, the court of common pleas of the county in which the lands may be situate, may authorize such committee or guardian to complete the sale, by making a conveyance on such terms as the court shall deem just

Security and liability for costs. Guardians to have notice in proceedings under 9 sec.

Sec. 15 That when the relatives of any person, alleged to be an idiot, lunatic or insane, or where any other person (except the overseers of the poor) shall make application to any justice of the peace, according to the provisions of the first or ninth sections of this act, and such application shall not succeed, the person so applying, shall be liable for costs, and said justice shall compel such applicant to give security for costs as in other cases; and when any other than the guardian of any idiot, lunatic or insane person shall make application to any justice of the peace, according to the provisions of the ninth section of this act, such applicant shall give a written notice of such application to said guardian by serving the same, personally, or leaving a copy thereof at his residence, at least ten days before the time appointed for the hearing of such application.

Appeals allowed.

Proviso.

Sec. 16. That an appeal shall be allowed to the court of common pleas, from inquests had, under the provisions of this act, upon which appeal, the court shall proceed to final judgment as if the case had been commenced in the said court: *Provided however,* That when any person shall, by the inquisition before the justice of the peace, be declared idiot, lunatic or insane, and an appeal be taken, the court shall appoint a guardian, at the term to which such appeal is taken, in the same manner as is provided in and by this act.

Sec. 17. That the courts of common pleas, in the several counties in this state, shall have power to appoint guardians to all such deaf and dumb persons, whether they be minors or of full age, as may be incapable to take care of, or manage their estates, and shall require of any guardian or guardians, thus appointed, such bond and security, as is by law required in case of minors, and their power shall extend to property, protection, education and maintainance, the same as in other cases of guardian and ward: *Provided always*, That said court of Common Pleas shall not appoint a guardian under the provisions of this section, unless the incapability to take care of, or manage the estate of the person applied for by such person, shall first have been ascertained by an inquiry as provided for in the first section of this act.

Guardians
may be appointed to deaf and dumb persons.

Provide.

County commissioners
may make allowance to indigent lunatics, &c.

Sec. 18. That the commissioners of any county in this state, in which there may be any idiot, or lunatic, in indigent circumstances, shall in their discretion, make such allowance, as to them shall seem right, and the necessity of the case may require, and shall issue their order, in favour of such idiot, or lunatic, or their legal representatives, for the sum so allowed, to be paid out of the treasury of such county.

Acts repealed

Sec. 19. That the act to provide for the safe keeping of idiots, lunatics, and insane persons, the protection of their property, and other purposes, passed January eighth, one thousand eight hundred and twenty, and the amendatory act, passed February second, one thousand eight hundred and twenty two, be and the same are hereby repealed.

Acts repealed

This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of representatives,
ALLEN TRIMBLE,
Speaker of the Senate

January 29, 1824.

AN ACT allowing, and regulating writs of attachment.

Sec. 1. *Be it enacted by the general assembly of the State of Ohio*, That if any creditor, whether resident of the state of Ohio, or elsewhere, his agent, or attorney, shall make oath, or affirmation in writing, before any proper authority, that his debtor hath absconded to the injury of his creditors, or that such debtor is not a resident of the state, (as he verily believes,) and shall file the same with the clerk of the court of common pleas, such clerk shall issue a writ of attachment, directed to the sheriff, or coroner, (as the case may require,) commanding him to attach the lands, tenements, goods, chattels, rights, credits, monies, and effects of said

Writ to issue upon oath of creditor, or his attorney.

Command of

Proviso. debtor, wheresoever they may be found, and if any clerk shall issue such writ without oath, or affirmation filed as aforesaid, such writ shall be quashed at his costs: *Provided*, That no writ of attachment issued under the provisions of this act, at the suit of any person who is not a freeholder, or a resident of the county, shall be served by the said officer, unless the same shall be endorsed by some freeholder of the county as security for costs.

Service of writ. Sec. 2. That the officer having such writ, shall go to the place where the defendants property may be found, and there in the presence of two freeholders of the county, declare that by virtue of said writ, he attaches said property at the suit of such plaintiff: And the said officer, with the said freeholders, who shall be under oath, or affirmation, to be by him administered, (and who shall for their services be allowed such sum as the court may direct,) shall make a true inventory and appraisalment of all the property attached, which shall be signed by said officer and freeholders, and returned with the writ, with the time when the same was served, and which from the time of service shall bind the property and the estate of the defendant so attached: *Provided*, That where property shall be attached in the hand of a consignee, his lien thereon shall not be affected thereby.

Inventory and appraisalment.

Proviso.

Sec. 3. That upon the return of said writ, the clerk who issued the same shall make out an advertisement, stating the names of the parties, the time when, from what court, and for what sum, the writ issued, and deliver the same to the plaintiff, or his attorney on demand, who shall cause the same within thirty days, to be inserted in one of the newspapers printed in this state, and nearest the place where the attachment issued; for six weeks successively, and if any plaintiff shall neglect to have such notice published the attachment shall be dismissed with costs.

Notice how made and published.

Garnishee to give bond or property to remain with sheriff. Conclusion.

Proviso.

Sec. 4. That the property attached shall remain in the hands of the officer, unless the garnishee in whose possession it may be found, shall give bond to the officer, with two sufficient sureties, freeholders of the county, in double the appraised value thereof, with condition that the same property, or its appraised value in money shall be forthcoming, to answer the judgment of the court. *Provided*, That if it shall appear to the court, that any part of said property shall have been lost, or destroyed, by unavoidable accident, they shall remit the value thereof, to the person so bound.

Proceedings against garnishee; who failing to appear may be attached, or a capias may be awarded and he held to special bail.

Sec. 5. That if the plaintiff, or other credible person, shall make oath that he has good reason to, and does verily believe, that any person (naming him,) has property (describing the same,) in his possession, belonging to the defendant, and if the officer cannot come at such property, he shall leave with such garnishee, or at his usual place of residence, a copy of the writ of attachment, and affidavit, with a written

Notice that he appear in court, at the return of such writ, and the said garnishee shall attend accordingly and answer, under oath, or affirmation, all questions put to him touching the property and credits of the defendant in his possession, or within his knowledge, and from the day of such service, such garnishee shall stand liable to the plaintiff in attachment, to the amount of the property, monies, and credits, in his hands, or due from him to the said defendant: And if such garnishee, do not appear in court as required, the court may proceed against him by attachment, or if the plaintiff, or other credible person, shall make oath, or affirmation, and file the same, that he has good reason to, and does verily believe, that the said garnishee will abscond, before judgment and execution can be had against him, or that any other person (naming him,) hath any property, monies, or credits of the defendant, then in his possession, or is indebted to said defendant, and that he is in fear such other person will abscond, as aforesaid, it shall be lawful for such plaintiff, to institute a suit by *capias ad respondendum* against such garnishee, or other person, who shall be held to special bail, in which suit, the plaintiff may declare for the property, monies, and credits aforesaid, as of his own proper monies, property, and credits, in trover and conversion, or if the garnishee be indebted to the defendant, for money had and received, or if the garnishee shall have property, monies, or credits of the defendant, in his possession, and shall also be indebted to said defendant, the plaintiff may declare in trover, adding thereto, a count for money had and received, and give the special matter in evidence, and if verdict and judgment be had for the said plaintiff, execution shall be thereupon had, as in other cases.

Form of action, trover, and money count added.

Sec. 6. That the suit so instituted, shall be continued until the action against the defendant in attachment shall be determined, and if in such action, judgment shall be rendered for the defendant, the garnishee shall recover costs: And if the plaintiff shall recover against the said defendant in attachment, and if the said garnishee shall deliver to the officer executing such writ, all the property in his possession belonging to the defendant, and pay all the monies from him due, at the time of service of process on such garnishee, then the costs which have accrued in such suit, against said garnishee, shall be paid out of the effects in the hands of such officer.

Suit against garnishee continued, cost how taxed and recovered.

Sec. 7. That if the officer by virtue of any such writ of attachment, shall attach any goods, or chattels, claimed by any person, other than the defendant, it shall be the duty of said officer forthwith to give notice in writing, to some justice of the peace of the county, in which shall be set forth the names of the plaintiff, and defendant in attachment, the name

When property attached is claimed by another here trial shall be had.

of the person or persons claiming, and also a schedule of the property claimed; and it shall be the duty of such justice of the peace immediately upon the receipt of such notice, to issue a venire facias, directed to the sheriff, or any constable of the county, commanding him to summon five disinterested persons, having the qualifications of electors, who shall be named in said venire facias, to appear before him, at a time therein mentioned, which shall not be more than three days after the date of said venire facias, to try and determine the right in the property so attached; and shall also give notice by summons to the plaintiff, his agent, or attorney if within the county of the time and place of such trial, and if the said jury shall find the right to such property, or any part thereof, to be in the claimant, the said justice shall render judgment in favor of such claimant for his costs, and also that he have restitution of such goods, and chattels; but if the right to said property shall be found, to be in the defendant in attachment, then the said justice shall enter judgment against the claimant for costs, and award execution thereon, as in other cases: *Provided*, That an appeal shall be allowed in all such cases, in the same manner that appeals are allowed from the judgments of justices of the peace, except, that bail for such appeal shall be entered within five days, from and after the rendition of judgment: *And provided also*, That no order for restitution shall be issued, until after the expiration of said five days.

Judgment here rendered and costs taxed.

Proviso.

Appeal.

When appeal perfected, property to remain with officer, unless claimant gives bond.

Conditions

Claimant,

Plaintiff.

Action trover

Sec. 8. That when an appeal shall be taken and perfected, as is provided in the preceding section of this act, the property so attached and claimed, shall remain in the keeping of the officer attaching the same, unless the claimant shall enter into a bond payable to such officer, in double the appraised value thereof, with one or more sureties, to be approved of by said officer, conditioned, that the same property, or the appraised value thereof in money, shall be forthcoming, to answer any judgment that may be recovered by the plaintiff, or other creditor against the defendant in attachment, in case the right to such property, or any part thereof shall be determined against said claimant; and the claimant before the justice, shall be plaintiff in the court of common pleas, and shall declare in trover, and the special matter may be given in evidence.

Default to be entered three terms.

Creditors to file declaration

Defendant may file pleas.

Sec. 9. That at the first and two next succeeding terms after the issuing of the writ of attachment the defendant shall be called and his default entered, at or before which third term, the said plaintiff, and every other creditor of the defendant, may file their declarations, setting forth in a proper manner their cause of action, and it shall be competent for such defendant at or before the said third term, to file special bail, or surrender himself in custody, or elect to have the property attached, remain in custody, and may plead to any, or all

of the declarations, which may be filed against him, but that if the said defendant shall not plead as aforesaid, the court at the said third term, shall proceed at the suit of all the said plaintiffs, as in other cases of default, and the said defendant, or any other on his behalf, may appear and introduce evidence before the court, or jury, as in other cases of default, and shall have the same right to appeal, move in arrest of judgment, or set aside the proceedings for irregularity, and if the defendant shall enter special bail, or surrender himself in custody as aforesaid, the operation of such attachment, upon the property and monies of said defendant, shall cease in respect of the plaintiffs, whose declarations may have been pleaded to, in custody, or by reason of having filed special bail: *Provided*, That no judgment shall be rendered under the provisions of this act, except for causes arising out of, founded upon, or sounding in contract, or upon the judgment, or decree of some court of law, or chancery: And provided further, that in case judgment shall be rendered against the original plaintiff in attachment, or if he shall otherwise fail to prosecute his suit to effect, the proceedings in favor of such other creditors, as may have filed declarations, shall in no wise be affected thereby, but may be prosecuted to final judgment, and the property attached, shall remain in the hands of the officer, to satisfy the same.

How to proceed if defendant does not appear

Provided.

Cause must arise from contracts.

Sec. 10. That when judgment shall be entered against a defendant in attachment a scire facias shall issue against the garnishee (except as herein before provided for) to appear at the next term, and shew cause why the plaintiff should not have execution of the money due by him to the defendant, or of the goods and chattels of the defendant in the possession of the garnishee; and if the said garnishee shall appear upon the return of the said scire facias, and on oath or otherwise to the satisfaction of the plaintiff confess the amount of such debt or the value of such goods and chattels, and deliver the same to the officer serving said attachment, or shall pay the value thereof with all monies from him owing to the said defendant into court, he shall be discharged from all further liability on account of the goods so delivered and the monies so paid; and the costs thereof shall be paid out of the effects so attached: That if on said scire facias returned served, or on two writs returned "nihil," the said garnishee shall not appear and confess as is herein before provided, judgment shall be entered against him by default, and the court shall proceed to assess the amount thereof and award execution therefor as in other cases: That if the said garnishee, shall appear at the return of said writ or writs, and plead thereto, the issue shall be tried and the damages assessed by a jury as in other cases, and

Scire facias may issue, except

Proceedings against garnishee

Judgment shall be entered for the plaintiff in attachment against the garnishee for the amount found due from him to the defendant in attachment, and for the value of the goods belonging to said defendant, in his possession at the time of serving said writ, with costs, and shall award execution therefor—but if the said jury, find in favour of said garnishee, he shall recover costs and have execution for the same.

Property, land &c to be sold as if levied upon by execution

Money to be divided amongst creditors.

Proviso.

Perishable property &c.

Sec. 11. That after judgment for the plaintiffs in attachment all the property remaining in the hands of the officer, with the lands and tenements if any, whether held by legal or equitable title, shall be sold by order of the court, under the same restrictions and regulations as if the same had been levied upon by execution, and the money arising therefrom, with the amount which may be recovered from the said garnishee after discharging the costs, shall be divided among the several creditors, in proportion to the amount of their respective judgments, and if there be not sufficient to satisfy the whole, the said judgments so recovered shall stand, and execution may issue thereon for the residue, in all respects as in other cases: *Provided*, That animals and property of a perishable nature may be sold by order of the court, at any time after the return of the writ.

Writ may go to other counties

Sec. 12. That in all cases of attachment by virtue of this act, if the plaintiff, his agent or attorney, shall make and file with the clerk an affidavit setting forth, that he verily believes that the defendant in attachment, hath lands, tenements, and real estate, goods or chattles, situate in any other county (naming such county) in the state, the clerk shall, on application of the plaintiff or his attorney, make out and seal another writ of attachment directed to the sheriff or coroner of the county in which such other property shall be, who shall serve and return the same in the same manner, and for neglect shall be liable to the same penalty, as if such writ had issued and was returnable in his own county, and on such writ executed, there shall be the same proceedings as are herein before directed.

Where two or more are jointly bound, how to proceed.

Sec. 13. That when two or more are jointly bound or indebted, either as joint obligors, partners or otherwise, the writ of attachment provided for by this act, may be issued against the separate or joint estates, or both of such joint debtors, or any of them, in the same manner and under the same restrictions as is provided for by this act in other cases.

Action not to abate by death of defendant.

Sec. 14. That if any defendant shall die after a writ of attachment shall have issued against him it shall not thereby abate but the same shall be carried on to judgment sale and distribution as if such death had not happened.

Writ in the C. Pleas super-

Sec. 15. That any writ of attachment which may be issued out of the court of common pleas shall be a superse-

deas to all attachments issued by a justice of the peace (except so far as herein provided,) which may be undertaken at the time of serving said writ; and it shall be lawful for the officer serving the same, to take into his possession all goods and chattels taken by the constable as if no writ of attachment had been issued by the justice: *Provided*, That it shall be competent for every plaintiff in attachment and such as may file their claims before the justice of the peace to proceed thereon to final judgment, a transcript of which judgment shall be filed in the court of common pleas, and the parties thereto plaintiffs shall be entitled to the same distribution, as if such judgment had been obtained in said court, and all costs accruing before said justice shall be taxed with the costs in court and paid as herein before directed.

exceeds the execution before a justice

Provision

Costs how taxed and paid

Sec. 16. That the act allowing and regulating writs of attachment, passed fourteenth February, in the year one thousand eight hundred and ten, and the act amendatory thereof, passed January twenty eighth, in the year one thousand eight hundred and thirteen, be, and the same are hereby repealed.

Laws repealed

This act shall be in force from and after the first day of June next.

Effect

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 17th, 1824.

AN ACT allowing and regulating writs of attachment before justices of the peace

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That if any creditor, his agent or attorney shall file an affidavit with any justice of the peace within this state, setting forth that his debtor absconds to the injury of his creditor, or that such debtor is not a resident of the county as he verily believes; the said justice shall thereupon issue a writ of attachment under his hand and seal, directed to any constable of his proper county, commanding him to execute the same on the goods, chattels, rights, credits, monies and effects of the defendant within the county, and make return thereof, within twenty days.

Justice to issue writ upon oath of creditor &c.

Command of writ.

Sec. 2. That the constable in executing such writ of attachment, shall go to the place where the defendants property may be found, and in the presence of at least two credible persons, declare that by virtue of the writ to him directed, he attaches the goods, chattels, rights, credits, monies

How constable shall execute writ

and effects of said defendant, at the suit of such plaintiff in attachment; and the said constable shall take to his assistance two respectable freeholders, who under oath or affirmation, (which oath or affirmation the constable is hereby authorised to administer,) shall make a true inventory and appraisal of the property so attached, which shall be signed by the said constable and freeholders, and returned with the writ; and the constable shall endorse on said writ the time and manner of serving the same, and subscribe his name thereto; and such writ when served, shall bind the property so attached from the time of executing the same.

Constable, &c. to make an inventory, &c.

To endorse writ, which shall bind property.

Sec. 3. That any person taking out a writ of attachment from a justice of the peace, shall forthwith advertise, in three of the most public places in the proper county, and in some newspaper printed in the county, if a newspaper be printed therein; and if no paper be printed in such county, such notice shall be advertised in some paper in general circulation in said county, that an attachment has been taken out from such justice against such absent or absconding debtor, and shall transmit to the justice a copy thereof, and shall produce to him satisfactory evidence of having advertised agreeably to the requisitions of this section, thirty days previous to rendering judgment.

Party to advertise and give notice.

Sec. 4. That the property attached shall be taken into the care of the said constable unless the garnishee, or person in whose custody or possession the said property may be found, shall enter into bond to the constable with two good and sufficient sureties, within the county, in double the appraised value of such property, conditioned that such property, or the appraised value thereof, shall be forth coming to answer the judgment on said attachment: *Provided*, That if the said property or any part thereof, shall be lost by unavoidable accident, said justice, upon sufficient proof being made shall remit the value thereof to the person so bound.

Constable to take property, unless bond be given.

Condition of bond.

Proviso.

Sec. 5. That if any constable by virtue of a writ of attachment, shall attach any goods, chattels or effects, which shall be claimed by any other person as his property, the claimant may at any time within ten days after the levy, prefer his claim in writing to the justice of the peace who issued such attachment, setting forth therein the particular items of property which he claims; whereupon the justice shall make out in writing, under his hand and seal, and deliver to the constable, a notice setting forth the name of the claimant, the property claimed, and the day and place, at which the right thereto, will be tried; a copy of which notice shall be delivered to the plaintiff in attachment, his agent or attorney, or left at his usual place of abode, at least three days before the day of trial, and the original notice shall be

Property claimed by another, how to proceed.

returned by the constable to the justice of the peace, with the time and manner of service endorsed thereon; and the justice shall issue such subpoenas for witnesses as may be demanded by either party.

Sec. 6. That if on trial the justice shall determine the right of property to be in the claimant, he shall enter up judgment on his docket that the said claimant recover of the plaintiff in attachment, the goods and chattels so claimed or such part thereof as may be found in him together with his reasonable costs, and if the right of property be found against the claimant, the justice shall render judgment against him for costs, and where part of the property claimed is recovered by the claimant and part thereof is adjudged to be in the defendant in attachment, the costs shall be divided in such manner as shall be reasonable and just; and in all cases when any property so claimed is adjudged to be in the claimant, if no appeal be taken or writ of certiorari issued out and served, within ten days after the rendition of such judgment, the justice shall issue an order to the constable in whose custody the property may be, describing with reasonable accuracy the property so recovered, and commanding the constable to deliver over the same to the successful claimant; which order the constable shall forthwith obey, and he shall not be liable thereafter to an action for having attached such property.

Justice to enter judgment on docket, and how.

Costs of trial how taxed.

Order for delivery of property.

Sec. 7. That in all cases when the right of property shall be disputed by any claimant, and a trial shall be had, the judgment of the justice therein may be appealed from, or taken up by certiorari to the next court of common pleas as in other cases, on the appellant giving sufficient security for the costs of such appeal.

An appeal or certiorari allowed.

Sec. 8. That if on trial, the justice adjudge the property claimed to be in the claimant, and the plaintiff appeal, or sue out a certiorari, if such appeal be perfected, or such certiorari served within ten days after the rendition of such judgment, the property shall remain in the custody of the constable and be disposed of in the same manner as if it had not been claimed; unless the claimant shall, within ten days after the rendition of such judgment, file with the justice a bond, payable to the defendant in attachment, with good and sufficient security in double the appraised value of such property, conditioned that if final judgment shall be had in the court of common pleas against such claimant, that he will pay the appraised value of such property to the said justice, or such other justice as shall have charge of the suit, for the use of such persons as may be legally entitled thereto, in which case the property shall be delivered to the claimant in the same manner as if no appeal had been taken, and the justice shall file such bond in his office for the use of such persons as may be interested therein; and if

When plaintiff appeals, officer to keep property, or claimant give bond.

Condition. rial judgment shall be given against the claimant, on an appeal or certiorari, such claimant, (or if bond shall have been given as aforesaid, the obligors therein) shall be held indebted to the defendant in attachment in the full amount of the appraised value of such property; which debt shall be bound in his or their hands by the attachment, and judgment therefor shall be had against him or them on a scire facias sued out from such justice, at any time after the rendition of judgment on such attachment, by order of the plaintiff in attachment or other person interested therein, which shall be served and returned as in other cases.

When appeal is taken, claimant may have property on giving bond.

When property sold, avails how applied.

How disposed of after final judgment.

Sec. 9. That if on such trial the justice shall adjudge the right of property not to be in the claimant; and an appeal shall be taken thereon, or a certiorari served within ten days after such judgment, the property shall be delivered to the claimant on his giving bond and security as provided in the eighth section of this act; but if no such bond and security be given within ten day after the rendition of such judgment, the property shall remain in the hands of the constable to be disposed of in the same manner as if it had not been claimed; and in all cases when the property so claimed shall be sold by the constable, pending the appeal or certiorari, the avails of such sale shall be paid over to the justice and remain in his hands until final judgment be given; and if on final judgment, the property shall be adjudged to be in the claimant, the property or the money made by the sale thereof shall be delivered, or paid over to him, other wise it shall be apportioned in the same manner as other monies paid in on such attachment.

Costs how taxed and paid

Sec. 10. That all costs which shall be adjudged against the plaintiff in attachment, on the trial of the right of property, whether the same accrue before the justice, or in the court of common pleas shall be taxed in the general cost bill, and paid in the same manner as the other costs on such attachment; and any creditor who shall have filed his claim therein may appeal from the decision of such justice, adjudging the right of property so attached to be in the claimant, and in every case unless an appeal be taken within ten days after the rendition of judgment, or a certiorari be sued out, and served before the end of the next session of the court of common pleas for the proper county, the judgment of the justice shall forever conclude the right of property between such creditors and the claimant.

Upon appeals, claimant shall be plaintiff.

Sec. 11. That on every appeal taken as aforesaid, the claimant shall be plaintiff in the court above, and may declare against the plaintiff in attachment in detinue, and the cause shall be tried at the first term of the court to which it is appealed, unless good cause for a continuance be shown.

Sec. 12. That if the plaintiff or other credible person shall make oath or affirmation that he has good reason to

believe, and does verily believe, that any person is indebted to, or hath property (describing the same as nearly as may be) in his possession, belonging to the defendant in attachment; and if the said constable, making service of such writ of attachment, cannot come at the property of the defendant in attachment, in the hands and possession of such person, the said constable shall summon such garnishee, by leaving with him, or at his usual place of residence, a copy of such writ of attachment and a copy of the affidavit, together with a written notice to such garnishee, to appear before the said justice within five days, who shall give attendance accordingly, and make answer, under oath or affirmation, to all questions that shall be put to him touching the property and credits of the defendant, in his hands and possession or within his knowledge; and from the day of such service, such garnishee shall stand accountable to the plaintiff in attachment, to the amount of the monies, property and credits in his hands, or due from him to the said defendant in attachment.

Garnishee
may be summoned.

Service.

Must answer
on oath.

Sec. 13. That the suit instituted against such garnishee, shall be continued without trial or decision, until the action against such defendant in attachment shall be determined; and if in such action nothing shall be found due from the defendant to the plaintiff, then the garnishee shall recover costs against the plaintiff or if in such suit so instituted against the garnishee, the plaintiff shall be non suited, his suit discontinued or judgment be had against him, the said garnishee shall recover costs; and if the plaintiff shall recover judgment against the defendant in such attachment, and the garnishee shall deliver up to the constable, before judgment is had against him, all the goods, chattels, and other property of such defendant in his possession, and shall also pay over to the said justice all monies due from him to said defendant, then the costs which shall have accrued on such suit, against the garnishee, shall be paid out of the proceeds of the property attached and belonging to the defendant; but if the garnishee, shall not appear, or if appearing, shall refuse truly to confess the matters alleged, and the plaintiff on trial shall recover judgment, the said garnishee shall pay costs.

Suit against
garnishee shall
be continued.

In what cases
he shall recover
costs and
how they shall
be paid.

Sec. 14. That if the plaintiff will make oath or affirmation before the justice issuing said attachment, that he is in fear said garnishee will abscond before judgment can be had, and that he verily believes said garnishee hath monies, goods, chattels or effects in his possession, or is indebted to the said defendant, it shall be lawful for said justice to issue a warrant against such garnishee, or other person holding property of the said defendant, who shall enter into recognizance with one good and sufficient surety to pay any sum and costs that may be awarded against him in said suit a gar-

When and
how a warrant
shall issue a
gainst garni-
shee.

nishce; and on failure to enter into such recognizance, he shall be committed.

When the justice shall give judgment for plaintiff and award execution.

Sec. 15. That upon return of said writ of attachment, if the creditor or creditors shall make sufficient proof of the debt due him or them, and also of the goods, chattels, rights, credits, monies and effects in the hands of the garnishee, the said justice shall, at any time after the expiration of thirty days, give judgment therein for the said plaintiff or plaintiffs, as the case may be, and award execution thereon, either against the effects of the defendant or against the garnishee, as the case may require: *Provided*, The amount proved by any one of the creditors doth not exceed the sum cognizable before a justice of the peace in other cases: *Provided also*, That if the plaintiff shall fail in proving a demand against the defendant, or in proving the goods, chattels, rights, credits, monies and effects in the hands of the garnishee, he shall pay the costs, and if need be, the said justice shall give judgment against such plaintiff, and issue execution for the same.

Provision.

Proceedings may be certified to court C. pleas.

Sec. 16. That if upon proof made as aforesaid, it shall appear that a sum greater than the amount cognizable by a justice of the peace, is due and owing to any one person, then, and in that case, the said justice shall forthwith certify his proceedings, together with the writ and constables return, to the court of common pleas, next to be holden in said county, and the court shall proceed therein, as if the writ of attachment had originally issued from said court.

Perishable articles may be sold on ten days notice.

Sec. 17. That the effects of the defendant, taken by attachment, shall be kept without sale, in such manner as the justice shall direct, for at least three months, except the same shall be live stock or property of a perishable nature, in which case it shall be sold in a reasonable time after the rendition of the judgment, on ten days previous notice being given as in other cases, and if any such stock or property shall be lost in the hands of the constable, by unavoidable accident, the justice shall make him adequate allowance therefor.

Justice to adjust demands, and pay an equal proportion to each creditor.

Sec. 18. That the justice shall have power to audit and adjust all accounts and demands of the plaintiff and creditors of the defendant in attachment, upon due proof of the same being made within three months from and after issuing said attachment; and if the money collected by virtue of the sale of said property, be not sufficient to satisfy in full, the demands or accounts proven against said defendant, then the justice shall pay an equal proportion to each creditor, according to his demand thus adjusted, after deducting the legal costs, which may have accrued by virtue of such attachment; and the said justice shall allow to the said constable and appraisers, such compensation as shall appear to

Constable &c. allowed compensation.

him just and reasonable; for services not otherwise provided for by law.

Sec. 19. That if the plaintiff in attachment shall discontinue or dismiss his suit after any other creditor or creditors shall have filed their claims, such creditors may proceed to final judgment, and the officer shall retain the property so attached in his custody, and proceed therewith in the same manner as if such original suit had not been discontinued or dismissed.

If plf. discontinue, creditor may proceed.

Sec. 20. That if sufficient monies and effects cannot be found to satisfy the legal costs of such attachment and service, such costs including all costs which shall have accrued in any trial with any person summoned as garnishee, shall be discharged by the creditors, in proportion to their several demands adjusted as aforesaid; and all judgments rendered by the justice, by virtue of this act, may be taken up by appeal or otherwise as in other cases.

Costs how paid.

Sec. 21. That where an attachment is levied on goods in the possession of a consignee, the lien of the consignee shall not thereby be taken away.

Appeals &c. allowed.

Sec. 22. That if on the return of an attachment issued against the goods, chattels, rights, credits, monies and effects of an absconding debtor, it shall appear to the justice that there were no goods, chattels, rights, credits, monies and effects, or not a sufficiency whereon to levy, the justice on the application of the plaintiff, shall certify his proceedings therein to the next court of common pleas for the proper county, whereupon an attachment shall issue from said court, and be executed by the sheriff of said county on the lands and tenements of the defendant, which shall be within such county, and the same proceedings shall be had thereon as in other cases of attachment sued out originally from the court of common pleas.

Consignee his lien. Justice may certify proceedings to court when no goods, and writ may issue against lands.

Sec. 23. That in all cases where a writ of attachment is issued by virtue of the provisions of this law, the following form shall be pursued, as nearly as the same may be proper and applicable; and the justice shall, in all cases endorse on the back of said writ the amount of the sum claimed, that the defendant or any one for him, may pay the same and costs, if such defendant or his agent so elect; and upon the return of such writ, if said sum and costs be paid, the justice shall enter a judgment of non suit.

Sum claimed to be endorsed on writ.

FORM OF A WRIT,

The State of Ohio,

To any of the constables of _____ township,
county—GREETING:

Essex.

Whereas, A B hath this day made oath (or affirmation, as the case may be,) that C D is justly indebted to him, and

that the said C D absconds to the injury of his creditors, (or that the said C D is not a resident, &c. as the case may be) as he verily believes, you are therefore, hereby commanded to attach the goods, chattels, rights, credits, monies and effects of the said C D which may be in your county, agreeably to law; and whereas A B hath made oath or (affirmation,) that he does verily believe that E F is indebted to (or hath property of, as the case may be,) the said C D; you are therefore commanded to summon the said E F agreeably to law, that he appear before G H a justice of the peace within said township, on the _____ day of _____ 18__ then and there to make answer, under oath or affirmation, touching the property and credits of the said C D within his knowledge or possession; hercof fail not, and of this writ make legal service and due return according to law: Given under my hand and seal this _____ day of _____ 18__



G H.

Justice of the peace in and for said township and county.

Repeal,

Sec. 24. That the act allowing and regulating writs of attachment before justices of the peace, passed January first, one thousand eight hundred and sixteen, is hereby repealed.

Effect,

This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 7, 1824.

AN ACT for the punishment of crimes.

Murder in the first degree.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That if any person shall purposely, of deliberate and Premeditated malice, or in the perpetration or attempt to perpetrate any rape, arson, robbery or burglary, kill another; every such person shall be deemed guilty of murder in the first degree, and upon conviction thereof shall suffer death.

Murder in the second degree.

Sec. 2d. That if any person shall purposely and maliciously, but without deliberate and premeditated malice, kill another; every such person shall be deemed guilty of murder in the second degree, and, on conviction thereof shall

be imprisoned in the Penitentiary, and kept at hard labour, during life.

Sec. 3. That if any person shall unlawfully kill another, without malice, either upon a sudden quarrel or unintentionally; while the slayer is in the commission of some unlawful act; every such person shall be deemed guilty of manslaughter, and upon conviction thereof, shall be imprisoned in the Penitentiary and kept at hard labor, not more than ten, nor less than three years. Manslaughter

Sec. 4. That if any person shall have carnal knowledge of his daughter or sister, forcibly, and against her will; every person so offending shall be deemed guilty of a rape, and upon conviction thereof, shall be imprisoned in the Penitentiary and kept at hard labor, during life. Rape upon daughter or sister,

Sec. 5. That if any person shall have carnal knowledge of any other woman than his daughter or sister as aforesaid, forcibly, and against her will, or if any male person of the age of seventeen years and upwards, shall carnally know and abuse any woman child under the age of ten years with or without her consent; every such person so offending shall be deemed guilty of a rape, and upon conviction thereof, shall be imprisoned in the Penitentiary, and kept at hard labour, not more than twenty, nor less than seven years. Carnal knowledge of child under ten years, rape

Sec. 6. That if any male person eighteen years old and upwards, shall have carnal knowledge of any woman other than his wife, such woman being insane; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than ten nor less than three years. Carnal knowledge of insane women

Sec. 7. That if any married person, having a husband or wife living, shall marry any other person; every person so offending shall be deemed guilty of a high misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not exceeding seven nor less than three years: But nothing in this section shall be construed to extend to any person, whose husband or wife shall be continually and wilfully absent for the space of three years, together next before the time of such marriage; the person marrying not knowing the other to be living at the time of such marriage. Bigamy, &c. Provided

Sec. 8. That if any step father shall have sexual intercourse with his step daughter, knowing her to be such; or if any step mother and her step son shall have sexual intercourse together having knowledge of their relationship; or if any father shall have sexual intercourse with his daughter, knowing her to be such; or if any brother and sister being of the age of sixteen years or upwards, shall have sexual intercourse together, having knowledge of their consanguinity; every step father, step mother, step son, father, brother or sister Incest

ter so offending, shall be deemed guilty of a high misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor, not more than ten nor less than three years.

Perjury.

Sec. 9. That if any person on his oath or affirmation in any action, plea, suit, bill, answer, complaint, indictment, controversy, matter or cause depending or which may depend in any of the courts of this state, or before any justice of the peace, referees or arbitrators, or in any deposition or affidavit or other oath or affirmation, taken or made pursuant to the laws of this state, shall wilfully and corruptly depose affirm or declare any matter to be fact knowing the same to be false; or shall in like manner deny any matter to be fact, knowing the same to be true, every person so offending shall be deemed guilty of perjury, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor, not more than seven nor less than three years.

Subornation of perjury.

Sec. 10. That if any person shall persuade, procure or suborn any other person to commit wilful and corrupt perjury; every person so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor, not more than seven nor less than three years: And shall moreover be disqualified from giving evidence or being a juror, or of holding any office of honor, profit or trust within this state.

Substance sufficient in indictment for perjury, &c.

Sec. 11. That in every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant and before what court or authority the oath or affirmation was taken, averring such court or other 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 any record or proceedings, either in law or in 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.

Arson, &c.

Sec. 12. That if any person shall wilfully and maliciously burn or cause to be burned any dwelling house, kitchen, shop, barn, stable, store-house, ware-house, malt-house, still-house, mill, pottery or other building the property of any other person, or any church, meeting-house, court-house, work-house, jail, or other public building or any ship, boat or other water craft or any bridge of the value of fifty dollars erected across any of the waters within this state; every person so offending shall be deemed guilty of arson, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor, not more than twenty nor less than seven years.

Sec. 13. That if any person shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor, not more than seven nor less than three years. Setting fire to houses, &c

Sec. 14. That if any person shall in the night season wilfully, maliciously and forcibly break and enter into any dwelling-house, kitchen, shop, store house, ware-house, malt house, still-house, mill, pottery, factory, water craft, church or meeting house with intent to kill, rob, commit a rape or with intent to steal property of any value or commit any other deed by this act declared criminal; every person so offending shall be deemed guilty of burglary, and upon conviction thereof shall be imprisoned in the penitentiary and kept at hard labor, for not more than ten nor less than five years. Burglary, &c

Sec. 15. That if any person shall forcibly and by violence or by putting in fear, take from the person of another any money or personal property of any value whatever; every person so offending shall be deemed guilty of robbery, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor, not more than twenty nor less than three years. Robbery

Sec. 16. That if any person shall wilfully and maliciously, either in the day time or in the night season, without breaking or violence, enter any dwelling house, kitchen, shop, store house, ware house, malt house, still house, mill, factory, pottery, watercraft, church or meeting house, and shall attempt to kill, disfigure or maim any person, or rob, steal, or commit a rape, or arson, every person so offending his or her aiders, abetors counsellors and procurers, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned in the penitentiary, and be kept at hard labor not more than seven, nor less than three years. Breaking houses, &c by day or night without violence

Sec. 17. That if any person shall assault another with intent to commit a murder, rape, or robbery, upon the person so assaulted every person so offending shall be deemed guilty of a misdemeanor and upon conviction, thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than seven nor less than three years. Assault with felonious intent

Sec. 18. That if any person shall steal any money, or other personal goods or chattels, the property of another of the value of fifty dollars or upwards; the person so offending shall be deemed guilty of larceny, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than seven nor less than three years. Larceny

Sec. 19. That if any person shall steal or maliciously destroy any bank bill, or bills, or promissory note or notes, Larceny or destruction of

bank notes &c. bill of exchange, order, warrant, draft, check or bond given for the payment of money, of fifty dollars, or upwards knowing them to be such; every such person shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor, for the term of three years.

False personation. Sec. 20. That if any person shall falsely personate another, before any court of record or judge thereof, or before any justice of the peace, clerk of either the supreme court, or court of common pleas, or any other officer of this state, which is, or hereafter may be authorized, to take the acknowledgments of deeds, powers, or warrants of attorney, or to grant marriage licenses, with intent to defraud any person, body politic, or corporate, any person so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, for any space of time, not exceeding six, nor less than three years.

Forgery. Sec. 21. That if any person shall falsely make, alter, forge, or counterfeit, any record, or other authentic matter, of a public nature, or any charter, letters patent, deed, lease, writing obligatory, will, testament, annuity, bond, covenant, bank bill, or note, check, draft, bill of exchange, contract, or promissory note for the payment of money, or other property, or any acceptance of a bill of exchange, or the number, or principal sum of any accountable receipt, for any note, or any order, or warrant, or request for the payment of money, or the delivery of goods and chattels of any kind, or any acquittance, or receipt, either for money or goods, or any acquittance, release, or discharge of any debt, account, action, suit, demand, or other thing, real, or personal, or any plat, draft, or survey of lands, 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 bills drawn by the auditor of public accounts, for the payment of money at the treasury, with intent to damage, or defraud any person, or persons, body politic or corporate, or shall utter, or publish as true and genuine, or cause to be uttered, or published 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; every person so offending, shall be deemed guilty of forgery, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor for any space of time, not more than twenty, nor less than three years.

Uttering or publishing forged instruments

Sec. 22. That if any person shall voluntarily, unlawfully, and on purpose, cut, or bite the nose, lip, or lips, ear, or ears, or cut out or disable the tongue, put out an eye, slit the nose, ear or lip, cut or disable any limb or member of any person; with intent to murder, kill, maim, or disfigure such person; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor, not more than twenty, nor less than three years.

Sec. 23. That if any person shall shoot, stab, or shoot at any other person, with intent to kill, wound or maim; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than five, nor less than three years.

Sec. 24. That if any person shall engage in, or fight a duel with another, or shall be second to such person, who shall fight a duel, or if any person shall by word, message, letter, or in any other way challenge another to fight a duel, or shall accept a challenge to fight a duel, although no duel be fought or shall knowingly be the bearer of such challenge, or shall advise, prompt, encourage, or persuade any person to fight a duel, or challenge another to fight a duel, or to accept a challenge to fight a duel, whether such duel be, or be not fought; every person so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than ten, nor less than three years: *Provided* however, That if death ensue from such duel, the person or persons concerned, shall be deemed guilty of murder, and shall be punished for murder in the first or second degree, (as the case may be,) as is provided in this act, any thing in this section to the contrary notwithstanding.

Sec. 25. That if any person shall receive or buy goods, or chattels of the value of fifty dollars or upwards, that shall have been stolen, or taken by robbery, knowing the same to be stolen, or taken by robbery, with intent to defraud the owner, or shall harbor, or conceal any thief, or robber, knowing him or her to be such; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than seven, nor less than three years.

Sec. 26. That if any person shall steal any horse, mare, gelding, foal, or filly, ass, or mule of any value, or if any person shall receive, or buy any horse, mare, gelding, foal, or filly, ass, or mule, that shall have been stolen, knowing the same to have been stolen, with intent, by such receiving, or buying to defraud the owner, or if any person shall conceal any horse thief, knowing him to be such; every person so offending, shall be deemed guilty of a misdemeanor, and up-

Mayhem, slitting nose, &c.

Stabbing, shooting, &c. with intent to kill, wound, or maim.

Duelling, challenging, &c.

Provided

Receivers of goods taken by larceny or robbery.

Harboring &c. thief or robber. Stealing horses, &c. or receiving them knowing to be stolen.

on conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than fifteen, nor less than three years.

Counterfeiting current coin. Uttering or passing.
Making instrument for counterfeiting.
 Sec. 27. That if any person shall counterfeit any of the coins of gold, silver or copper currently passing in this state, or shall utter or put off any such counterfeited coin or coins, knowing them to be such, or shall make any instrument for counterfeiting any of the coins aforesaid; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor, not more than ten nor less than three years.

Selling, &c. counterfeiting bank notes. passing bills of fictitious banks, &c.
 Sec. 28. That if any person shall sell, barter or in any manner dispose of any false, forged or counterfeited bank note or notes, or shall sell, barter or in any manner dispose of any counterfeit bank note or notes, the same not being filed up, or the signatures thereto forged or affixed, whether by the single bill, or by sheets, or if any person shall be detected with any such counterfeit bank notes in his possession, for the purpose of selling, bartering or disposing of the same, or if any person shall make, utter, publish, pass or put in circulation any note or notes, bill or bills, purporting to be the note or notes, bill or bills of a bank, company or association, which never did, in fact exist, such person, knowing at the time of publishing, passing or putting in circulation any such note or notes, bill or bills, that the bank, company or association, purporting to have issued the same, never did exist, every person so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, for not more than seven years, nor less than three years.

Engraving plates, &c. for counterfeiting, &c.
 Sec. 29. That if any person shall engrave any plate for striking or printing any false or counterfeit bank notes, knowing it to be designed for that purpose, or shall knowingly have in his possession and secretly keep any plate for the purpose aforesaid; and if any person shall engrave, cut, indent or carve any piece or pieces of brass, copper or any other metal for striking, printing or altering any of the writing, printing or figures of any bank note or notes, bill or bills, knowing them to be designed for that purpose or shall knowingly have in his possession and secretly keep the same for the purposes aforesaid; every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than ten nor less than three years.

Attempting to pass counterfeit coin, bank notes, &c.
 Sec. 30. That if any person shall attempt to pass any base or counterfeited coin or coins, knowing them to be such or shall attempt to pass any false, forged and counterfeited bank note or notes, knowing them to be such; every person

so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor not more than six nor less than three years.

Sec. 31. That if any person shall knowingly sell and convey any tract or parcel of land, without having a title to the same, either in law or equity, evidenced by a written contract, devise, descent, or deed of conveyance, with intent to defraud the purchaser; every person so offending shall be deemed guilty of a fraud, and upon conviction thereof, shall be imprisoned in the penitentiary and kept at hard labor, for the space of three years.

Conveying
lands without
title.

Sec. 32. That in all trials for murder, the jury before whom such trial is had, if they find the prisoner guilty thereof, shall ascertain in their verdict whether it be murder in the first or second degree; and if such prisoner be convicted by confession in open court, the court shall proceed by examination of witnesses, to determine the degree of the crime, and shall pronounce sentence accordingly.

Jury to deter-
mine degree of
murder &c.

Sec. 33. That if any person shall aid, abet, or procure any other person to commit any one of the offences, by this act made criminal; every person so offending, shall, upon conviction thereof, be imprisoned in the penitentiary and kept at hard labor, for any time between the respective periods, for which the principal offender could be imprisoned for the principal offence, or if such principal offender would on conviction be punishable with death, or be imprisoned for life; then such aider, abettor or procuror shall be imprisoned for life, or be punished with death as the case may require.

Aiders, abettors
and procurors,
&c.

Sec. 34. That if any person shall give any mortal blow, or administer any poison to another in any county within this state, with intent to kill, and the party so stricken or poisoned, shall thereof afterwards die, in any other county or state, the person giving such mortal blow, or administering such poison, may be tried and convicted of murder or manslaughter, as the case may be, in the county where such mortal blow was given or poison administered.

Persons may
be tried where
mortal blow
shall be given,
&c.

Sec. 35. That in all cases where any person shall be convicted of any offence, by this act declared criminal, the court shall declare in their sentence, for what period of time, within the respective periods prescribed by law, such convict shall be imprisoned, at hard labor in the penitentiary and shall moreover determine and declare in their sentence whether any, and for what period of time such convict shall be kept in solitary confinement in the cells of the penitentiary, and shall also render judgment against such convict for costs of prosecution and award execution thereon against the goods and chattels, lands and tenement of said convict.

Judgment and
sentence of the
court.

Death to be by hanging. Sheriff to be executioner. Sec. 36. That the mode of inflicting the punishment of death, in all cases under this act, shall be by hanging by the neck until the person be dead: and the sheriff, or in case of his death, inability, or absence the coroner of the proper county, in which sentence of death shall be pronounced by this act, shall be executioner.

Convicts never to be jurors, &c. Sec. 37. That any person who shall be convicted of any offence by this act made criminal, shall be forever thereafter incapable of giving testimony, being a juror or holding any office of honor, profit or trust within this state.

Acts repealed. Sec. 38. That the "act for the punishment of crimes," passed January twenty-seventh, eighteen hundred and fifteen, an act supplementary to the last named act, passed February twenty sixth, eighteen hundred and sixteen, an act to amend the last named act, passed January thirtieth, eighteen hundred and eighteen, an act further to amend said act, passed February eighth, eighteen hundred and nineteen, and the act for the punishment of crimes, passed February second, eighteen hundred and twenty-one, be and the same are hereby repealed: *Provided*, That all offences committed prior to the taking effect of this act, shall be prosecuted and punished in the same manner as if this act had never been passed.

Effect. This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMPLE,
Speaker of the Senate.

February 26th, 1824.

AN ACT pointing out the mode of trying criminals.

Sheriff or jailor to give judges notice three days before court. **Powers of court.** **Prisoner may be recognized or remanded.** Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That when any person shall have been committed to jail for any crime or offence, and wishes to be liberated, the sheriff or jailor at the request of said person shall forthwith give the associate judges, the clerk and prosecuting attorney (if such attorney reside within the county,) at least three days notice of the time of holding an examining court, unless the judges prosecuting attorney and clerk shall agree to attend such court with shorter notice; and the judges having met and heard the witnesses, shall determine whether the prisoner ought to be discharged, admitted to bail or remanded to prison and said examining court shall have power to adjourn from day to day for the examination of such prisoner.

Sec. 2. That if said court shall adjudge that such prisoner ought to be held or let to bail, they shall recognize him or

her with such security and in such sum as they shall deem sufficient to appear at the next court of common pleas, and in case the prisoner fails to give security he shall be remanded to prison; and in all cases where the prisoner is remanded or let to bail the court shall recognize the witnesses on the part of the state, to appear at said next court of common pleas to testify against the said prisoner.

Witness's to be recognized.

Sec. 3. That the examining court, provided the prisoner fails to give security shall instruct their clerk to enter in the proceedings, in what sum, and with what number of securities he or she shall be recognized; and it shall be competent for any judge of the supreme court or court of common pleas, at any time thereafter to liberate such prisoner upon his or her giving such security as was required by the examining court.

Court may enter amount of bail, and any judge may liberate.

Sec. 4. That in all cases where the judge shall recognize a prisoner under the provisions of this act he shall forthwith transmit to the clerk of the court of common pleas, the recognizance so taken, and also a warrant directed to the jailor, requiring him to liberate the prisoner so recognized.

Judge to send recognizance to clerk. Prisoner how discharged.

Sec. 5. That when a person charged with the commission of an offence, the punishment of which is death, hath heard the indictment read, he or she shall be at liberty to declare, whether he or she elect to be tried in the court of common pleas; and if the prisoner elects to be tried in the court of common pleas, it shall be the duty of the clerk thereof, at the instance of the prosecuting attorney to make out a venire facias directed to the sheriff, commanding him to summon thirty six good and lawful men of the county, having the qualifications of electors being house holders to appear forthwith before said court, which court is hereby required to hear and adjudicate on such indictment according to law.

Prisoner may elect to be tried in C. pleas.

36 jurors to be summoned.

Sec. 6. That when a person indicted for an offence, the punishment of which is death, does not elect to be tried in the court of common pleas, the clerk thereof shall truly record the indictment, and forthwith make out a certified transcript of the same with the proceedings of the court on such indictment under the seal of his office, and deposit such transcript with the original indictment in the office of the clerk of the supreme court, which clerk shall docket the same; and the supreme court shall proceed to trial and judgment in the same manner as if such indictment had been found therein; and the clerk of the supreme court at the instance of the prosecuting attorney, shall make out a venire facias directed to the sheriff, commanding him to summon at least three days before the sitting of the supreme court (if so many days intervene) thirty-six good and lawful men of the county having the qualifications of electors, being house holders, to appear before the said court on the first day of the term, and said sheriff shall return a panel of their names,

Prisoner may elect to be tried in S. Court.

Indictment to be sent to S. court.

Sheriff to summon 36 jurors.

Sec. 7. That in all cases where a defendant shall elect to be tried in the supreme court under the provisions of this act, the court before whom such election shall be made, shall at the instance of the prosecuting attorney or defendant recognize all witnesses present, as well on behalf of the state as the defendant, to appear before the supreme court for said county, on the first day of the next term of said supreme court, and not depart without leave.

C. C. pleads to examine witnesses.

Condition.

Peremptory challenge allowed.

Sec. 8. That every person indicted for an offence, the punishment of which is death, and who has pleaded not guilty, shall be admitted peremptorily to challenge twenty-three of the jury and no more.

Prisoner to have copy of indictment and panel.

Sec. 9. That a copy of the indictment, and a copy of the panel of the jury returned by the sheriff shall be delivered to every person who may be indicted for an offence, the punishment of which is death, at least twelve hours before the commencement of the trial.

Parties may challenge for cause.

Sec. 10. That each prosecuting attorney, and also each defendant indicted shall have the liberty of challenging for cause, the validity of which the court shall try.

By-standers may be jurors.

Sec. 11. That the jurors summoned as is herein before provided, or such of them as appear and be not challenged together with so many other good and lawful men of the by-standers having the qualifications as aforesaid, as will make up the number of twelve, or if the whole array be challenged, twelve of such by-standers having the qualifications aforesaid as may not be challenged shall be a lawful jury for the trial of a prisoner.

Prisoner not indicted first term, may be let to bail, unless &c.

Sec. 12. That when any prisoner committed for any offence the punishment whereof is capital, shall apply to the court the first day of the term by petition or motion, and shall desire to be brought to his or her trial, before the end of the term, and shall not be indicted in that term unless it appear by affidavit that the witnesses against him or her cannot be produced in time, the court shall set him or her at liberty, except where the proof of guilt is evident, or the presumption great, upon his or her giving bail in such sum as they shall think reasonable, to appear before them at a day to be appointed of the succeeding term.

Counsel may be assigned to poor prisoners.

Sec. 13. That the court before whom any person shall be indicted is hereby authorized and required to assign to such person if not of ability to procure counsel, such counsel not exceeding two as he or she shall desire, to whom such counsel shall have free access at all reasonable hours.

A person standing mute, how tried.

Sec. 14. That if any person be indicted for any offence whatever, against this state and shall on being arraigned or called to answer to the matter charged in such indictment stand mute, a jury shall forthwith be empanelled to try and say whether the person so standing mute, stands mute obstinately and on purpose, or by the providence and act of God,

and if they return their verdict that such person stands mute by the providence and act of God, the court shall cause him or her to be remanded to prison, and shall not proceed against him or her until he or she shall have recovered therefrom, but if the jury return their verdict that the person so standing mute stands mute obstinately and on purpose then the court shall cause to be entered upon the indictment against such person the plea of 'not guilty,' and also, shall cause the like plea of 'not guilty,' to be entered when any person indicted as aforesaid, shall refuse to plead, or answer to such indictment and in all such cases, shall proceed upon his or her trial, in like manner and in all respects as if he or she had voluntarily pleaded the same plea thereto.

Sec. 15. That all criminal cases shall be tried in the county where the offence was committed, unless it shall appear to the court that a fair and impartial trial cannot be had, in which case the court before whom the cause is pending, may direct the person accused to be tried in some adjoining county.

Crimes to be tried where committed, unless, &c

Sec. 16. That when the venue is changed to an adjoining county, in a criminal case, the clerk of the proper court thereof, after having received the original indictment and a certified transcript of the proceedings thereon, shall issue a venire factas in the same manner as is contemplated by the 8.xth section of this act and the trial shall be conducted in all respects as if the offender had been indicted in the county to which the venue is changed; *Provided always*, That the costs accruing from a change of the venue, shall be paid by the county in which the offence was committed.

When venue changed, clerk to issue venire factas.

Provide

Sec. 17. That when a court has ordered a change of venue, they shall issue a warrant directed to the sheriff, commanding him to convey the prisoner to the jail of the county where he or she is to be tried, which jailor is hereby required to receive and commit to jail the prisoner so transferred.

Court to issue warrant for prisoner.

Sec. 18. That when a change of venue is allowed the court shall recognize the witnesses on the part of the state to appear before the next court to be holden in the county in which the prisoner is to be tried.

Court to recognize witnesses for state.

Sec. 19. That when any person shall be confined in jail, charged with a bailable offence, whether he or she be committed by warrant under the hand and seal of any judge or justice of the peace, or whether he or she be committed by the sheriff or coroner by virtue of a capias upon indictment found, it shall be lawful for any judge of the supreme court, president of the court of common pleas within his proper circuit or associate judge within his proper county, to admit such person to bail upon sufficient security, in such sum as the judge may consider sufficient to ensure the appearance

Person confined in jail, on bailable offence, any judge may admit to bail, and for that purpose may issue warrant, &c.

of the accused at the proper court to answer the offence where with he or she may be charged, and for the purpose of taking such surety, any judge by special warrant, under his hand and seal, may require the sheriff or jailor to bring such accused person before him at the court house of the proper county at such time as in said warrant, the judge may direct.

When prisoner is confined for a capital offence, and S. court sits before the C. P. clerk S. C. to issue a venire facias, for grand jury.

Proceedings on change of venue.

Sec. 20. That in all cases where a person is or shall be committed to the prison of any county within this state, charged with an offence, the punishment of which is death, and the supreme court should commence its session in said county, prior to the court of common pleas, after such commitment, it shall be the duty of the clerk of the supreme court for such county, to issue a writ of venire facias to the sheriff, commanding him to summon sixteen persons having the qualifications of grand jurors, to attend the supreme court as a grand jury and the supreme court shall cause such jurors to be empanelled and sworn as a grand jury, and the same proceedings shall be had against such prisoner as are usually had before courts for the indictment and trial of persons accused of crimes, and in all cases when the venue shall be changed for the trial of a criminal prosecution, the original indictment and transcript of the proceedings shall be sent to the clerk of the court in which trial is to be had, and if the same be sent to the clerk of a court of common pleas such clerk shall proceed thereon as if the indictment had been originally found in that court.

S. court may, in criminal cases, pronounce sentence according to verdict.

Sec. 21. That in all cases where any person or persons indicted either in the supreme court or court of common pleas for an offence, the punishment of which is death, shall be tried in the supreme court and found guilty of a less offence the punishment of which is not death, the supreme court shall nevertheless proceed to pronounce against such prisoner, the sentence affixed by law to the offence whereof he or she may be found guilty.

Witnesses' fees.

How charged and paid.

Sec. 22. That witnesses summoned by order of the prosecuting attorney or defendant, and attending on courts in criminal cases, shall be allowed the following fees to wit: those residing out of the county, where the trial is to be had the sum of one dollar per day, for each day he or she shall actually attend the court under such summons, and one dollar for each twenty five miles travelling, to and from said court, and those residing within such county the sum of fifty cents per day, for each days actual attendance under a summons as aforesaid, to be paid out of the county treasury, where the trial is had, upon the order of the Auditor of the county, and where a defendant is convicted of an offence not punishable with death or confinement in the penitentiary, such costs shall be charged against the defendant in the bill of costs, and collected and paid into the county treasury.

and in all cases when any person is convicted of an offence punishable with death or confinement in the penitentiary the costs of all the witnesses shall be charged in the bill of costs, and paid in the same manner, and from the same fund, that other costs are paid in like cases.

Sec. 23. That in cases where an issue upon an indictment is tried by a jury, the sheriff shall pay the jury whether the defendant be convicted or acquitted and the Auditor of the county shall refund the amount so paid by the sheriff, upon the certificate of the clerk. Sheriff to pay jury.
Auditor to refund.

Sec. 24. That the act pointing out the mode of trying criminals, passed February twenty sixth, one thousand eight hundred and sixteen, and the act, supplementary thereto, be and the same are hereby repealed.

Acts repealed
Effect.

This act shall be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 6th, 1824.



AN ACT, making provision for carrying into effect the act for the punishment of crimes.

Sec. 1. *Be it enacted by the General Assembly of the state, of Ohio,* That any person sentenced to imprisonment agreeably to the provisions of the act for the punishment of crimes, shall within thirty days after his or her conviction, be transported to the penitentiary of this state, by the sheriff of the county, in which such conviction may be had, and shall there be delivered into the custody of the keeper of said penitentiary, together with a copy of the sentence of the court, ordering such imprisonment, there to be safely kept until the term of his or her confinement shall have expired or until he or she shall be pardoned by the proper authority.

Sheriff to transport prisoners to penitentiary.

Sec. 2. That the costs of prosecution so far as relates to the fees of constables, justices, sheriffs, witnesses and clerks, shall be made out by the different officers claiming the same, specifying the different items composing the costs, according to the act regulating the fees of civil offices in civil and criminal cases, and shall be by such persons lodged with the clerk of the court before which any criminal may be convicted, during the term in which such conviction may be had: And the clerk shall make out, under his hand, and the seal of said court, a fair copy of all such charges, which shall be examined, and if correct the same shall be allowed.

Justices, sheriff, &c. to make out a list of fees
Clerk to make a copy and send with conviction, &c

by the presiding judge of said court and forwarded, with such convict, and delivered by the sheriff to the keeper of the penitentiary: And the sheriff shall receive eight cents per mile, going to, and six cents per mile returning from said penitentiary, to be computed from the seat of justice of the county in which the conviction took place, and the sum of one dollar for every twenty five miles for transporting and sustaining each prisoner, and one guard for each prisoner shall also receive the same compensation per mile, as the sheriff is entitled to receive: and if at any term of the court, there should be more than one person convicted, it shall be the duty of the court, to make an order, directing the number of guards, (not exceeding one to each convict,) which in their opinion may be necessary for the safe transportation of such convicts; a certificate whereof shall be made out by the clerk, under the seal of the court, and delivered to the sheriff: And the sheriff shall deliver the certificate to the keeper of the penitentiary, who shall be governed thereby in making out his order for the transportation of such convicts. And all charges made out agreeably to the provisions of this section, shall be delivered to said keeper, who shall, if found correct, give his order to the auditor of state for the amount thereof: and the same shall be paid by the state treasurer, out of the money appropriated for the use of the penitentiary, on the order of the auditor: *Provided*, That nothing in this section contained, shall be so construed as to allow any sheriff pay for a guard who has not actually assisted in conveying the convict as aforesaid.

Sheriff's mileage and transportation,

Number of guards.

Keeper to give his order for expenses.

Proviso,

Sheriff's may call assistance, &c as if in their own counties.

What shall be done with prisoner, and his clothes

Sec. 3. That the sheriffs of the several counties of this state, during the time they, or any of them shall be employed in conveying to the penitentiary, any person or persons, sentenced to imprisonment, shall have the same power and authority to secure him, her or them in any jail within this state, and to demand the assistance of any sheriff, jailor or other person within this state, in securing all such offenders, as if such sheriff were in his own proper county: And all such sheriffs, jailors or other persons so called upon, shall be liable on refusing, to the same penalties, as if called upon by the sheriff of their own proper county.

Sec. 4. That every person sentenced to hard labour and imprisonment as aforesaid, shall be washed, cleansed and shall remain in separate lodgings until it shall be certified by a physician, that he or she may be safely admitted among the other prisoners: And the clothes which the said person may wear on his or her arrival at the penitentiary, shall either be burned, or carefully fumigated and put away, at the discretion of the keeper: And in case the said clothes are preserved, they shall be restored to the owner at the expiration of the term of his or her confinement: but in case such clothes shall have been burned, then the keeper

shall furnish such convict with a reasonable suit of course clothes at the time such convict is discharged from confinement.

Sec. 5. That all offenders imprisoned as aforesaid, shall during the term of his or her confinement, be clothed at the expense of the state, in garments of coarse materials, uniform in colour and in make, and suitable to their sex: And the males shall have the right side of their heads shaved close, at least once in every month, if it be deemed proper by the keeper: And all convicts shall be fed on coarse, but wholesome food, and shall as far as may be consistent with their age, sex, health and ability, be kept at hard labor, in such manner, as the keeper shall deem most proper and most beneficial and advantageous to the state: And it shall be lawful for the keeper, when in his opinion it may be necessary, to employ suitable persons to instruct the prisoners in any work at which they may be employed: And the said prisoners shall, at all times be kept separate, with as little intercourse with each other, as the nature of their employment and the apartments of the penitentiary will permit: And during such part of the term of his or her confinement as the court before whom such conviction may be had, shall direct to be in the solitary cells, such prisoner shall be confined in the solitary cells, at such intervals, and in such manner, as the keeper may deem proper: And all prisoners, which cannot be kept in employment at hard labor, shall be kept in solitary apartments, but if the construction of the penitentiary will not admit of solitary confinement in all cases, those prisoners shall be kept together, whose offences approach nearest to the same grade of criminality, and who manifest the least disposition towards repentance or reform: And the doors of all the lodging rooms and cells shall be locked, at the hour of eight o'clock in the evening, and one or more guards shall patrol said penitentiary at least twice in every hour during the night, and until the return of the hour of labor in the succeeding morning.

Prisoners how fed and clothed.

To be kept at hard labor.

To remain apart.

Those who cannot be employed to be kept in solitary cells.

Guard to patrol.

Sec. 6. That each convict shall be kept at work every day in the year, Sundays excepted; and the hours of work shall be as many as the season of the year will permit; and when the labour of each day is finished, such tools and materials as may be easily removed, shall be taken to places of safety, until the hour of labour shall return.

To be kept at work every day except Sunday.

Sec. 7. That there shall be elected by joint ballot of the General Assembly, a keeper for the penitentiary, who shall be commissioned by the Governor, and continue in office for one year after his election, and until his successor shall be chosen and qualified; before entering upon the duties of his office, he shall take an oath or affirmation, faithfully to discharge the duties of his office according to law, and shall give bond in the sum of twenty thousand dollars, with

Keeper to be elected.

To take an oath and give bond.

Conditioned ; sufficient security, to be approved of by the auditor of state, payable to the state of Ohio, conditioned, that he, his deputies and assistants shall faithfully discharge the duties required of them by law, which bond shall be recorded in the office of the secretary of state, and a copy thereof certified by said secretary, shall be good evidence in any court in which suit may be commenced against such keeper or his securities; and said bond shall not be void on the first recovery, but may be put in suit, from time to time, for a breach of any condition thereof; and the said keeper shall be notified of his appointment by the secretary of state, and if he shall refuse or neglect to give such bond within ten days after such notification, the office shall be deemed vacant; and if the legislature shall not be in session, and in all other cases when the office of keeper shall become vacant by death, resignation or otherwise, when the legislature shall not be in session, the governor shall fill the same; and all keepers appointed by the governor as aforesaid, shall give bond as herein before provided, and shall hold their office until the next general assembly shall elect a successor, and until he shall be qualified as herein before provided.

Governor may fill vacancy.

Keepers' salary.

Sec. 8. That the keeper shall receive a salary of one thousand dollars per annum, to be paid quarterly, upon the order of the auditor, which salary shall be in full for all his services.

Purchases of raw materials to be made by keeper on order of auditor.

Sec. 9. That whenever the keeper shall deem it necessary to purchase any raw materials, clothing or other articles for the use of the penitentiary, he shall make a statement in writing of the articles wanted and the probable amount such articles may cost, and submit the same to the auditor of state; and if, in the opinion of the auditor, the interest of the state require such purchase, he shall give an order to the keeper, authorizing him to purchase the said articles, or such of them as he may think proper and necessary, which order shall give full power and authority to the said keeper, to contract for, and purchase, upon the best terms for the state, all or any of the articles mentioned in said order; and upon the receipt of the keeper to the person from whom

Auditor to give order on treasury for amount to be purchased out of the state

any such article may have been purchased, being presented to the auditor, he shall file the same, and give an order for the amount thereof on the treasurer, who shall pay the same out of any money in the treasury which may have been appropriated for the support of the penitentiary: and if it shall at any time be necessary to purchase any articles without the state, the auditor shall give an order for the necessary amount on the treasury, to the keeper, which shall be drawn for and paid as aforesaid: *Provided*, That nothing in this section contained, shall extend to purchases made by said keeper, which shall not exceed the amount of twenty dollars: and all purchases so made, without the consent

Provisio. 25

and approbation of the auditor, shall be entered in the books of the institution as hereinafter provided, and shall be subject to the inspection of the auditor, in the same manner as other accounts entered in said books are: and in case the auditor shall, on examination of the books, as hereinafter provided, be of opinion, that such purchases were necessary, he shall credit the keeper for the same, on the books in his office, in the same manner, as he is hereinafter directed to credit said keeper for receipts produced for articles purchased, and money paid by and with the consent and approbation of said auditor.

Sec. 10. That the keeper shall keep a fair, plain and regular account with the state, crediting the same with all monies he may draw out of the treasury for the use of the penitentiary, and at the end of each week, with all monies he may have received during such week, from the sale of manufactured articles, and charging the same, with all monies paid out on account of the institution; he shall, also keep a regular account of all purchases made by him for the use of the institution, and of the amount of the sales of manufactured articles, and shall make and report an abstract of all his accounts to the auditor of state, on the first Monday of March, June, September, and on the fifteenth day of November in each year, and shall also make an annual abstract of his accounts as aforesaid, and report the same to the general assembly; and the said keeper shall be permitted to employ a clerk for the purposes aforesaid: *Provided*, That the salary allowed such clerk, shall not exceed three hundred dollars per annum.

Keeper to keep regular accounts, &c.

May employ a clerk. *Proviso*.

Sec. 11. That it shall be the duty of the keeper of the penitentiary, to direct what articles shall be manufactured, the quantity and quality thereof, and to vend the same to the best advantage, or exchange them for such raw materials as may be wanted; and also, to make contracts with merchants and others, for the sale of such articles, on a credit or otherwise: and when said articles are to be sold on a credit, it shall be his duty to limit the time of payment, which shall not exceed six months, and to judge and accept of the security; and in directing what articles shall be manufactured as aforesaid, the keeper shall select such articles, on which the price when manufactured, shall exceed the cost of the raw material, as far as practicable; the keeper shall also have power to punish all such convicts as may be guilty of disorderly or improper conduct, by confinement in the cells of the penitentiary, and feeding them on bread and water, for any term not exceeding thirty days; and of regulating the admission of strangers into the penitentiary, in any manner he may think proper:

Keeper's powers as to manufacturing, &c.

May punish disorderly convicts, &c.

Proviso. *Provided*, such regulations shall be approved by the auditor state.

Keeper may employ physician. Sec. 12. That the keeper shall employ a skilful physician by the year, or for any less time, to attend upon the convicts, when in his opinion it may be necessary: *Provided*, The compensation paid such physician for attendance and medicine, shall not exceed one hundred and fifty dollars per annum.

Proviso. Sec. 13. That the auditor shall keep a regular account with the keeper of the penitentiary, charging him with all monies paid on account of the institution, and with all the raw materials, and manufactured articles on hand, all tools and implements used in the penitentiary, together with the debts due the institution; and crediting him by all monies paid into the treasury, on the production of the treasurers receipts for said payments; and it shall be the duty of the auditor to make out an abstract of all such accounts up to the fifteenth of November, annually, and report the same to the general assembly on the first Monday of December annually.

Auditor to keep a regular account with keeper, and make report to gen. assembly. Sec. 14. That the books of the keeper shall be open at all times for the inspection of the auditors and abstracts of the books certified under the hand and seal of the auditor, shall be good evidence in any suit against the keeper or his sureties.

Books to be open for inspection of auditor. Sec. 15. That the keeper shall each month render an account to the auditor of the amount of monies received by sales or collection of debts during the preceding month; and the auditor shall charge said keeper with such monies so received, and credit him with all monies expended for the institution, on the keeper's producing the proper receipts, specifying the amount paid out, and for what article or articles.

Keeper to render monthly acct. to auditor. Sec. 16. That the keeper shall, on the fifteenth day of November in each year, make out a report of the situation of the penitentiary to the auditor; in which he shall specially state the amount of monies then on hand, or deposited in the state treasury, the quantity of manufactured articles, the amount of debts due the institution, specifying those due on bond, note or book account, by whom owing, when contracted and when due; and if in a train of collection, the situation of those debts, and an account of all fees which he may have paid: the report shall also contain the amount of manufactured articles on hand at his former annual report, the amount manufactured during the preceding quarters; which said account shall be examined by the auditor and compared with his account against the keeper, and if found correct the balances shall be struck on the books of the auditor and keeper.

Keeper to report situation of penitentiary to auditor in November. Sec. 17. That no vinous, spiritous or fermented liquors, (except such as may be prescribed by the attending physi-

tion for any convict in ill health) tobacco, snuff or cigars shall be introduced, given, bartered or sold to any of the convicts within the penitentiary; and any person so offending against the provisions of this section, shall forfeit and pay the sum of fifty dollars to be recovered in an action of debt before any court of competent jurisdiction, to be applied to the use of the institution

Convicts not have liquors, snuff, tobacco &c.

Sec. 18. That when the keeper shall commence suit on any bond, note, or book account under one hundred dollars, the justice of the peace, in whose hands the same may be placed for collection, shall issue his summons directed to any constable of his county, commanding him to summon the defendant or defendants to appear before him within twelve days from the date of such summons; which shall be served by the constable at least five days before the return day thereof, and the justice shall proceed to try the said cause on the day the summons is made returnable, and if judgment shall be rendered for the keeper in favor of the penitentiary, execution shall (at the request of the keeper) immediately issue for the debt and costs, as aforesaid recovered, unless the defendant shall at the time of the rendition of the judgment appeal the same, and give immediate security to prosecute his appeal to judgment in the next court of common pleas in said county: *Provided*. The justice may on good cause shewn continue the cause according to the provisions of the act, entitled "an act, defining the duties of justices of the peace in civil and criminal cases:" and if the keeper shall permit any individual who may have received or collected any monies or debts due the institution, to retain the same longer than three months from the time such monies or debts were received, without commencing suit for the recovery of the same, the said keeper shall be charged with said monies or debts so received or collected: *Provided, also*. That there shall be no stay of execution or appraisement of real or personal property for any debts or penalties accruing under this act.

Suits in favor of penitentiary before a justice of peace, how conducted.

Provided.

Keeper not to suffer, money to remain in hands of officers, &c.

Provido.

Sec. 19. That in all suits or prosecutions in behalf of the institution, the style shall be "The Ohio Penitentiary, vs. A. B."

Deputy and guards.

Provido.

Further provided.

Sec. 20. That the keeper of the penitentiary shall employ a deputy and as many guards as he may deem necessary: *Provided*. The whole number shall not amount to more than one guard for every fifteen convicts: *Provided also*. That the keeper may temporarily add to the number of guards, when danger is apprehended from an insurrection of the convicts: And the said deputy and guards shall receive such compensation as the keeper may deem just and reasonable, to be by him paid out of any monies in his hands, and if there be not sufficient monies in his hands, then out of the state treasury on the order of the auditor of state.

Sec. 21. That if any convict or convicts confined in the pen-

Keeper liable
for negligent
escapes.

What shall be
an escape.

Proviso.

Further pro-
viso.

penitentiary shall escape therefrom by the negligence of the keeper, his deputy or guards, the said keeper shall forfeit and pay for every such escape, the sum of fifty dollars, to be applied as is provided in the seventeenth section: And if any convict or convicts shall be seen without the walls of the penitentiary, it shall be sufficient evidence to charge the keeper with a negligent escape: And in all cases when a convict may make his escape, the auditor shall charge the keeper with the fifty dollars aforesaid and cause the same to be deducted out of his salary: *Provided however*, That if the keeper shall satisfy the Governor that such escape was not occasioned through his negligence, the governor shall remit the penalty aforesaid, and on the keepers producing the governors certificate of remission to the auditor, he shall credit the keeper with the same: *Provided also*, That nothing in this section contained shall be construed to deprive the keeper from employing convicts to assist in unloading any waggons bringing articles purchased for the use of the institution to the penitentiary, nor from employing convicts to cultivate the lot of ground belonging to the state, on which the penitentiary is erected, in case they are properly guarded; but in cases of escape under this provision, the keeper shall nevertheless be charged with such escape as in other cases; and in case the keeper should not be able to satisfy the governor that the necessary precautions were used to prevent such escape, the penalty aforesaid shall not be remitted.

Fees of sheriff,
&c. for retak-
ing prisoner.

Sec. 22. That any sheriff, constable or other person, who shall retake and convey to the penitentiary any convict who may have escaped therefrom, shall be allowed eight cents per mile going to and returning from the penitentiary, and such additional compensation as the keeper may deem reasonable, for the necessary expense incurred, to be paid by him out of any monies in his hands, and if he have no monies, then by the treasurer of state, on the order of the auditor of state.

One apart-
ment for an in-
firmary.

Sec. 23. That one or more apartments in the penitentiary shall be prepared for an infirmary, and whenever any convict shall be considered by the attending physician, so unwell as to require removal from work or solitary confinement, he or she shall be placed in the infirmary there to remain until the physician shall report to the keeper that such convict is in a proper condition to be removed from said infirmary; the said keeper shall then order him or her back to their former labor or cell.

Bible shall be
furnished,

Sec. 24. That the keeper shall furnish each convict with a bible, and shall permit as often as he may think proper, regular ministers of the gospel to preach to such convicts.

Sec. 25. That no convict shall receive or transmit any

letter or paper except under the inspection of the keeper; nor shall such convicts hold any correspondence in or out of the penitentiary, nor converse with any person, except the governor, heads of departments, members of the general assembly, judges of the supreme, and common pleas courts, keeper or assistants in the penitentiary.

Convicts not to hold conversation or correspondence, except, &c.

Sec. 26. That the governor, heads of departments, and members of the general assembly, and such other persons as the keeper may think proper, shall be admitted as visitors within the walls of the penitentiary.

Visitors.

Sec. 27. That in every case in which a new keeper for the penitentiary shall be elected or appointed, the keeper whose term of office shall have expired, shall deliver over to his successor, quiet and peaceable possession of the penitentiary buildings, with all the property of the state in his possession, together with the convicts; and it shall be the duty of such other keeper to give to his predecessor a receipt for the property and convicts aforesaid; and such part of said property as may consist of raw materials and manufactured articles shall be appraised and valued by the auditor of state or some suitable person to be by him appointed, and be received by the new keeper at such appraisement and valuation; and in case the keeper should die during his term of office, the auditor of state or some suitable person whom he shall appoint, shall value and appraise the property as aforesaid, and deliver the same, together with the convicts to the new keeper appointed by the governor or elected by the legislature; and said keeper shall receipt to the auditor of state for said property and convicts: and it is hereby made the duty of the auditor of state to settle the accounts of such keeper whose time may have expired as aforesaid, or who may have died during his term of office, allowing him for the cost of the raw materials, together with the appraised value of the manufactured articles on hand at the time of such expiration of office or decease of the keeper aforesaid; and if upon such settlement, the auditor shall find that the said keepers have well and truly performed the duties required of them by law, and that they are not indebted to the state, he shall give the said keeper whose term of office has expired, or to the representatives of such deceased keeper a certificate thereof; and upon the exhibition of such certificate to the secretary of state, he shall cancel the bond given by said keeper, which certificate shall be filed in the office of the secretary of state: *Provided*, That if the auditor shall appoint any person to appraise the property as is herein before provided; the person so appointed, shall, before entering on the discharge of said duties, take an oath or affirmation before some competent authority, well and truly to appraise and value the property aforesaid, and the individual thus ap-

Keeper to deliver over building's property, &c. to his successor.

When keeper or shall die, auditor shall settle accounts, &c.

Provido.

pointed shall receive the sum of two dollars per day for the time necessarily employed in the discharge of said duty, which account shall be audited and paid out of the treasury on the warrant of the auditor: And in all cases where the keeper may die, resign or be removed before the expiration of his term of office the deputy keeper shall take charge of the prisoners, and the management of the institution under the direction of the auditors until another keeper shall be appointed and qualified.

Keepers to receive convicts sentenced by courts of U. S.

To be kept at the expense of U. States.

Deputy and guards to take an oath.

Auditor shall visit penitentiary.

Keeper may be removed.

Sec. 28. That the keeper of the penitentiary is hereby required to receive all criminals sentenced to the penitentiary by the authority of the United States, and to keep them at hard labor or in solitary confinement, agreeably to the order of the court pronouncing such sentence, until legally discharged therefrom: and every prisoner committed for any offence, by the authority of the United States, shall be supported at the expense of the same, during his or her confinement in the penitentiary, and the keeper shall certify the expense of each and every convict committed to his care, under this section, as is required of sheriffs by the act, entitled "an act for the confinement of prisoners under the authority of the United States in the goals of this state."

Sec. 29. That the deputy keeper and guards provided for by this act, shall before entering upon the duties of their stations, each, take an oath or affirmation, well and faithfully to discharge their duties, and that they will give immediate notice to the keeper, of any conspiracy amongst the convicts, or improper conduct of their fellow keepers or guards.

Sec. 30. That the auditor of the state shall visit the penitentiary at least once in every month, and make himself acquainted with its general state and situation, examine the books and conduct of the keeper and assistants, and if he shall find that the provisions of this act are not carried into full force and effect, he shall make the same known to the keeper; and if the said keeper shall disregard the notice thus given for the space of one week; the auditor shall make complaint against him to the governor, who shall, if the nature of the case require it, remove the keeper, and appoint another in his place; and the accounts of such dismissed keeper, shall be settled by the auditor in the manner herein before provided.

Sec. 31. That the act making provision, for carrying into effect, the act for the punishment of crimes, passed February second, one thousand eight hundred and twenty two, and the act supplementary to the act, making provisions for carrying into effect the act for the punishment of crimes,

passed January twenty third, one thousand eight hundred and twenty three, be, and the same are hereby repealed. Acts repealed.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
 ALLEN TRIMBLE,
Speaker of the Senate.

February 26th, 1824.

AN ACT for the punishment of certain offences therein named.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That if any person shall, in the night season, unlawfully break open and enter any mansion house, shop, store, ship, boat, or other water craft, in which any person shall dwell or reside, and shall commit or attempt to commit any personal violence or abuse, or shall be so armed with any dangerous weapon as to indicate a violent intention, the person so offending, shall upon conviction thereof, be fined in any sum not exceeding three hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county, and be fed on bread and water only, not exceeding thirty days, at the discretion of the court. House-breaking &c. in night.

Sec. 2. That if any person shall, in the day time, unlawfully break open and enter any mansion house, shop, store, ship, boat or other watercraft, in which any person shall or may dwell or reside, and shall commit or attempt to commit any personal abuse, force or violence, he or she so offending shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county and be fed on bread and water only, not exceeding twenty days, at the discretion of the court. House-breaking &c. in the day time.

Sec. 3. That if any person shall steal any money or other goods and chattels, of any kind whatever, of less value than fifty dollars, the property of another, or shall steal or maliciously destroy any bank bill, promissory note, bill of exchange, order, warrant, draft, check or bond, given for the payment of any sum under fifty dollars, the property of another, every person so offending, on conviction thereof, shall make restitution to the party injured in two fold the value of the property stolen and be fined in any sum not exceeding two hundred dollars or shall be imprisoned in the county jail, in a dungeon or cell thereof, if such jail contain either, and shall be fed on bread and water only, during his or her confinement, for any time not exceeding thirty days; any or all the foregoing punishments may be inflicted according to the aggravated nature of the offence: the Larceny or distinction of notes, &c. Sheriff's fees for subsisting.

prisoners

sheriff shall receive twelve and an half cents only per day, for thus subsisting the prisoners on bread and water.

Rioters

Sec. 4. That if three or more persons shall assemble together, with intent to do any unlawful act, with force and violence, against the person or property of another, or to do any unlawful act against the peace, or being lawfully assembled, shall agree with each other to do any unlawful act as aforesaid, and shall make any movement or preparation therefor, the persons so offending shall each, on conviction thereof, be fined in any sum not exceeding two hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county and fed on bread and water only, not exceeding ten days; and whenever three or more persons shall be assembled as aforesaid, and proceed to commit any of the offences aforesaid, it shall be the duty of all judges, justices of the peace and sheriffs, and all ministerial officers, immediately upon actual view, or as soon as may be, on information, to make proclamation in the hearing of such offenders, commanding them in the name of the state of Ohio to disperse and depart to their several homes or lawful employments; and if upon such proclamation such persons shall not disperse and depart as aforesaid, it shall be the duty of such judges, justices of the peace, and sheriffs, and all other ministerial officers respectively, to call upon all persons near, and, if necessary, throughout the county, to aid and assist in dispersing and taking into custody all persons assembled as aforesaid; and all military officers and others called on as aforesaid, and refusing to render immediate assistance, shall each upon conviction thereof, be fined in any sum not exceeding twenty five dollars.

Judges &c. to warn rioters to disperse and call to their assistance the power of the county, &c.

Persons refusing assistance to be fined.

Persons obstructing authorities or continuing together to be fined and imprisoned.

Sec. 5. That if any person shall forcibly obstruct any of the authorities aforesaid, or if any three or more persons shall continue together, after proclamation made as aforesaid, or attempted to be made and prevented by such rioters, or in case of no proclamation, any three or more persons being assembled as aforesaid, shall commit any unlawful act as aforesaid, every such offender, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars and imprisoned in the cell or dungeon of the jail of the county, and be fed on bread and water only, not exceeding thirty days, and shall moreover find security for good behaviour, and to keep the peace, for a time not exceeding one year.

Persons killed, &c. in resisting judges, &c. such slayers held guiltless.

Sec. 6. That if any of the persons so unlawfully assembled, shall be killed, maimed or otherwise injured, in consequence of resisting the judges or others in dispersing and apprehending, or in attempting to disperse and apprehend them, said judges, justices of the peace, sheriffs, and other ministerial officers, and others acting by their authority, or the authority of either of them, shall be holden guiltless: *Provided*, such killing, maiming or injury shall take place in

Proviso.

consequences of the use of necessary and proper means to disperse or apprehend any such persons so unlawfully assembled.

Sec. 7. That if any person shall abuse any judge or justice of the peace, resist or abuse any sheriff, constable or other officer in the execution of his office, the person so offending shall, upon conviction thereof, be fined in any sum not exceeding two hundred dollars or imprisoned in the cell or dungeon of the jail of the county, and be fed on bread and water only, not exceeding twenty days, or both, at the discretion of the court.

Resisting or abusing officers.

Sec. 8. That if any person, shall unlawfully assault or threaten another in a menacing manner, or shall unlawfully strike or wound another, the person so offending, shall upon conviction thereof, be fined in any sum not exceeding one hundred and fifty dollars, or imprisoned in the cell or dungeon, of the jail of the county, and be fed on bread and water only, not exceeding ten days, or both, at the discretion of the court, and shall moreover be liable to the suit of the party injured.

Assault and battery.

Sec. 9. That if any judge, justice, coroner, constable, jailor, or other officer of this state, either judicial or ministerial, shall knowingly, ask, demand or receive any fee or reward to execute and do his duty, other than is or shall be allowed by the laws of this state, every person so offending shall, upon conviction thereof, be fined in any sum not exceeding two hundred dollars, or imprisoned in the cell or dungeon, of the jail of the county, and be fed on bread and water only, not exceeding ten days, or both, at the discretion of the court, and for seven years thereafter, be incapable of holding, any office of honor, profit or trust, in this state.

Officers who ask, demand or receive unlawful fees.

Sec. 10. That if any person, by any false pretence or pretences, shall obtain from any other person, any money, goods, merchandize or effects whatever, with intent to cheat and defraud such person of the same, or shall fraudulently make and transfer any bond, bill, deed of sale, gifts, grants or other conveyances to defeat his creditors of their just demands, such person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or be imprisoned in the cell or dungeon, of the jail of the county, and be fed on bread and water only, not exceeding ten days, or both, at the discretion of the court.

Obtaining money, &c. by false pretences &c. punished.

Sec. 11. That if any person shall take upon himself to exercise or officiate in any office or place of authority, in this state, without being lawfully authorised; or if any person, by color of his office, shall wilfully and corruptly oppress any person under pretence of acting in his official capacity, the person so offending shall, upon conviction thereof, be fined in a sum not exceeding two hundred and fifty dollars, or imprisoned in the cell or dungeon, of the jail of the county.

Usurpation of, or oppression in office.

by, and be fed on bread and water only not exceeding ten days or both, at the discretion of the court.

Officers encouraging, &c suits, quarrels, &c.

Sec. 12. That if any judge, justice of the peace, clerk of any court, sheriff, constable, attorney or counsellor at law, shall encourage, excite and stir up any suit, quarrel or controversy between two or more persons, with intent to injure such person or persons, such judge, justice of the peace, clerk, sheriff, constable, attorney and counsellor at law, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and shall be answerable to the party injured in treble damages.

Sheriff's etc. oppressing, etc. by color of office.

Sec. 13. That if any sheriff, coroner, recorder, jailor, clerk or constable by color of, or in execution of his office shall designedly, wilfully or corruptly injure, defraud or oppress any person, or shall attempt to defraud, injure or oppress any person, such sheriff, coroner, recorder, jailor, clerk or constable, shall, on conviction thereof, be fined in any sum not exceeding two hundred dollars, and be answerable to the party so injured, defrauded or oppressed, in treble damages.

Destroy bridges removing land marks, &c.

Sec. 14. That if any person shall, knowingly, wilfully and maliciously, demolish, cut down or destroy any private, public or toll bridge, cut, fell, deface, alter or remove any land mark, corner or bearing tree, properly established, the person so offending, shall on conviction thereof, be fined in any sum not exceeding five hundred dollars or imprisoned in the cell or dungeon, of the jail of the county, and be fed on bread and water only, not exceeding thirty days, or both, at the discretion of the court.

Fisticuffs,

Sec. 15. That if any two persons, shall agree and wilfully fight or box, at fisticuffs, the persons so offending shall be deemed guilty of an affray, and upon conviction thereof, shall be fined each in a sum not exceeding fifty dollars, or be imprisoned and kept in close confinement, in the county jail, not exceeding ten days, or both, at the discretion of the court.

Defacing, etc. monument or tomb-stones.

Sec. 16. That if any person shall wilfully and maliciously alter, deface, break down or destroy any monument or tomb stone, erected or set up to perpetuate the memory of any deceased person, every person so offending shall, upon conviction thereof, be fined in any sum not exceeding two hundred dollars, and be kept in solitary confinement, in the cell or dungeon, of the county, and be fed on bread and water only, not exceeding thirty days, at the discretion of the court.

Digging up dead-body, or attempting so to do, etc.

Sec. 17. That if any person, shall wantonly dig or take up any corpse, or dead human body, buried or entombed in any cemetery or burying ground, either public or private, or shall attempt so to do, or shall carry away from such cemetery or burying ground, any such corpse or dead body, or

shall aid, assist or be in any way concerned, either in the attempt or in the digging or taking up, or in carrying away such corpse or dead body, as aforesaid, every person offending in either of the aforesaid instances, shall upon conviction thereof, be fined in any sum not exceeding one thousand dollars or be imprisoned in the cell or dungeon, of the county jail and fed on bread and water only, not exceeding thirty days, or both, at the discretion of the court.

Sec. 18. That if any person shall wilfully and maliciously alter or deface any artificial ear-mark or brand, upon any horse, mare, foal, filly, mule or ass, sheep, goat or swine, cow, ox, steer, bull or heifer, the property of another, every person so offending shall on conviction thereof, be fined in any sum not exceeding fifty dollars, and be liable in treble damages, to the party injured.

Defacing ear marks or brands of another.

Sec. 19. That if any person shall sell or barter any spirituous or other liquors, of an intoxicating quality, to any Indian or Indians, within this state, every person so offending, shall upon conviction thereof, be fined in any sum not exceeding one hundred dollars, or be imprisoned in the cell or dungeon, of the jail of the county, and be fed on bread and water only, not exceeding ten days, or both, at the discretion of the court: *Provided* That nothing in this section, shall extend to any tavern keeper, who shall sell to any travelling Indian: *Provided*, the same shall not exceed one gill, to each Indian.

Selling intoxicating liquors to Indians.

Provide.

Sec. 20. That if any person, having been called upon by the sheriff or other ministerial officer, in any county in this state, to assist such sheriff or other officer in apprehending any person charged with or convicted of any offence, against any of the laws of this state, or in securing such offender when apprehended, or in conveying such offender to the jail of the county, shall neglect or refuse to render such assistance, every person so offending, shall upon conviction thereof, be fined in any sum not exceeding fifty dollars.

Persons refusing to assist sheriff or other officers, &c.

Sec. 21. That if any person, shall knowingly send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, containing wilful and malicious threats of injury, of any kind whatever, or with intent, or for the purpose of extorting money or other valuable things, fraudulently from any person, every person so offending, shall upon conviction thereof, be fined in any sum not less than fifty, nor more than five hundred dollars, or be imprisoned in the cell or dungeon, of the jail of the county, and be fed on bread and water only, not exceeding ten days or both, at the discretion of the court.

Sending or delivering threatening letters to extort money, &c.

Sec. 22. That every married woman, who shall have sexual intercourse with any other man than her husband, every unmarried man who shall have sexual intercourse with a married woman, and every married man who shall

Adultery.

Proviso.

have sexual intercourse with any other woman than his wife, shall upon conviction thereof, be imprisoned in the cell or dungeon, of the jail of the county, and be fed on bread and water only, any time not exceeding thirty days: *Provided*, That the testimony of one of the parties to the crime, shall in no case be received as evidence against the other party.

A married person deserting wife or husband and living in adultery, &c.

Sec. 23. That if any married woman shall hereafter desert her husband, and live and cohabit with any other man, in a state of adultery, she shall upon conviction thereof, be imprisoned in the cell or dungeon, of the jail of the county, and be fed on bread and water only, not exceeding thirty days, and if any married man, shall hereafter desert his wife, and live and cohabit with any other woman, in a state of adultery, or if any married man living with his wife, shall keep any other woman, and notoriously cohabit with her, in a state of adultery, or if any unmarried man shall live and cohabit with a married woman in a state of adultery, every person so offending shall on conviction thereof, be fined in any sum not exceeding two hundred dollars, and be imprisoned in the cell or dungeon, of the jail of the county, and be fed on bread and water only, not exceeding thirty days, at the discretion of the court.

Fornication.

Sec. 24. That if any unmarried persons shall live and cohabit together in a state of fornication, such persons so offending, shall each, on conviction thereof, be fined in any sum not exceeding one hundred dollars, and be imprisoned in the cell or dungeon, of the jail of the county, not exceeding ten days.

Libels.

Sec. 25. That if any person shall write, print or publish any false and malicious libel, of or concerning an other person, or shall cause or procure any such libel to be written, printed or published, every person so offending, shall upon conviction thereof, be fined in a sum not exceeding five hundred dollars, and be liable to the party injured.

Treasurer and ministerial lands protected.

Sec. 26. That if any person, shall cut, fell, box, bore or destroy any living tree, standing or growing on any of the public school or ministerial lands, in this state, not having first obtained license from the proper authority so to do, every person so offending, shall upon conviction thereof, be fined in any sum not exceeding thirty dollars.

Sheriffs &c suffering criminals to escape.

Sec. 27. That if any sheriff, jailor or other person, whatsoever, having any offender in his custody, charged with or convicted of any offence, made punishable by the laws of this state, shall voluntarily suffer such offender to escape and go at large, every sheriff, jailor or other person so offending, shall upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or be imprisoned and kept in close confinement, not exceeding ten days, or both, at the discretion of the court.

Sec. 28. That if any person shall rescue, by force, any offender, charged with, or convicted of an offence, by the laws of this state, made punishable with imprisonment from any jail, or other place of confinement, or from the custody of any officer, or other person charged with the safe keeping of such offender, every person so offending shall upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and be imprisoned in the cell or dungeon, of the jail of the county, and be fed on bread and water only, not exceeding thirty days.

Rescuing of-
fenders.

Sec. 29. That if any person shall be aiding or assisting any prisoner, confined in any jail or other place of confinement, charged with any offence against the laws of this state, to make or attempting to make his or her escape from such jail or place of confinement, although no escape be actually made, every person so offending, shall upon conviction thereof be fined not more than five hundred dollars, nor less than fifty dollars.

Assisting pris-
oners to escape

Sec. 30. That if any person, shall attempt to corrupt or influence any juror, or witness, legally summoned to attend any court, either by promises, threats, letters, money or other undue means, either directly or indirectly, every person so offending shall upon conviction thereof, be fined in a sum not exceeding five hundred dollars, and imprisoned in the cell or dungeon, of the jail of the county not exceeding thirty days.

Attempting to
corrupt &c.
juror or wit-
ness.

Sec. 31. That if any juror or witness shall corruptly take and receive any money, goods, chattels, or other reward, either directly or indirectly, in any action or suit instituted before any court, having jurisdiction thereof, such juror or witness so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars and imprisoned in the cell or dungeon of the jail of the county, and be fed on bread and water only, not exceeding thirty days.

Juror or wit-
ness who shall
take bribe, &c.

Sec. 32. That if any person legally called upon to give testimony before any court or other authority in this state authorized to administer oaths and affirmations, shall refuse to take an oath or affirmation, such court or authority may commit the person so refusing, to prison until he or she shall consent to take such oath or affirmation; and after the person committed to prison as aforesaid, shall have taken the oath or affirmation required, the court or authority aforesaid, may moreover, punish such person for such refusal by a fine not exceeding twenty dollars.

Witnesses re-
fusing to testi-
fy,

Sec. 33. That if any person shall, directly or indirectly in any way or manner, give promise or contract to give any money or other valuable thing, with intent to obtain, procure or influence the opinion, judgment or decree of any judge or justice of the peace of this state, or arbitrator in any action, plea, suit, complaint, indictment, controversy, matter or cause depending, or which shall depend before

Bribery of
judge, justice
or arbitrator.

him or them, or before any court in this state, every person so offending, shall, upon conviction thereof, be fined not more than one thousand dollars, nor less than fifty dollars.

Attempt to bribe ministerial officer, to suffer an escape.
 Sec. 34. That if any person shall, by bribery, persuasion, seduction or any other arts or means whatever, attempt to prevail on any ministerial officer or other person charged with the safe keeping of any person accused or convicted of any offence against the laws of this state, to permit such person to escape from the custody of such officer or other person, every person so offending, shall, upon conviction thereof, be fined in any sum not more than two hundred, nor less than twenty five dollars.

Setting fire to, or burning hay corn &c.
 Sec. 35. That if any person shall wilfully and maliciously set fire to, or burn or cause to be burned, any barrack or stack of hay, crib of corn, stack of wheat, rye, oats, barley, flax, hemp or fodder, or grain of any kind or any fence, boards, plank or scantling or any square timber or piles of other timber, the property of another, every person so offending shall, upon conviction thereof, be fined in any sum not more than five hundred, nor less than ten dollars, and be imprisoned in the cell or dungeon of the jail of the county, not exceeding thirty days, or both at the discretion of the court, and shall be answerable to the party injured in double damages.

Setting on fire woods, &c.
 Sec. 36. That if any person shall wilfully and maliciously set on fire, or cause to be set on fire, any woods, prairie or other grounds within this state, other than his own, or shall intentionally permit the fire to pass from his own prairie or grounds, to the injury of any other person or persons, every person so offending shall, on conviction thereof, for every such offence, be fined in a sum not exceeding fifty dollars at the discretion of the court, and stand committed, until the sentence of the court is complied with, and shall be liable to the action of the party injured, for the damages which he, she or they may have sustained in consequence of such fire.

Killing, &c. horse, cow, sheep, &c.
Proviso.
 Sec. 37. That if any person shall wilfully and maliciously kill or destroy any horse, mare, foal, filly, mule, or ass, sheep, goat, cow, ox, steer, bull, heifer, or swine, the property of another, such person shall, upon conviction thereof, be fined in any sum not more than one hundred nor less than five dollars, and imprisoned in the cell or dungeon of the jail of the county and be fed on bread and water only, not exceeding twenty days, at the discretion of the court, and shall moreover be liable to the owner of the property killed or destroyed, in double the value thereof: *Provided*, That nothing in this section shall be construed to extend to any person who shall kill any of the before mentioned animals, trespassing in his or her own enclosure.

Sec. 33. That if any person shall wilfully and maliciously, cut down, saw, bark, or otherwise kill or destroy any fruit or other tree or trees, growing in any nursery, garden, yard or orchard, the property of another, every person so offending shall, upon conviction thereof, be fined in any sum not more than five hundred, nor less than five dollars; and the owner of the fruit or other tree or trees, thus killed or destroyed, shall recover not less than double the value of the same, from the person killing or destroying said fruit or other tree or trees.

Destroying
fruit trees, &c.

Sec. 39. That if any person shall wilfully and maliciously demolish, throw down, alter or deface any mile-stone, mile-board, or guide-board on, or at the fork of any public road, every person so offending shall, upon conviction thereof, be fined in any sum not exceeding fifty dollars, or be imprisoned not exceeding ten days, or both at the discretion of the court.

Demolishing
milestones, &c.

Sec. 40. That if any sheriff or jailor, or any other person having the care and custody of any jail, suffer the same to become foul or unclean, so that the health of any prisoner may be endangered, such sheriff, jailor or other person shall be liable to indictment, and on conviction, shall be fined in any sum not exceeding one hundred dollars.

Suffering jail
to be unclean,
&c.

Sec. 41. That if any person shall vend, sell, barter, or dispose of, or shall offer to vend, sell or barter any tickets or tickets of any lottery or device of chance whatever, without being authorized so to do by the laws of this state, every person so offending shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars, nor less than ten dollars.

Vending lottery
tickets.

Sec. 42. That if any butcher or other person shall knowingly sell any unwholesome flesh, of a deceased animal, or other unwholesome provision, he or she shall upon conviction thereof be fined in any sum not exceeding fifty dollars.

Selling un-
wholesome
provisions.

Sec. 43. That if any person shall build, erect, continue or keep up any dam or other obstruction in any river or stream of water in this state, and thereby raise an artificial pond, or produce stagnant waters which shall be manifestly injurious to the public health and safety, every person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, at the discretion of the court; and the court shall moreover order every such nuisance to be abated or removed.

Producing arti-
ficial ponds
or stagnant wa-
ters.

Sec. 44. That when any warrant legally issued by any magistrate in this state, in any criminal case shall be delivered into the hand of any constable to be executed, whose duty it shall be to execute such warrant, it is hereby made the duty of such constable to serve the same immediately; and if such constable shall neglect or delay to serve any

Constables
who neglect,
&c. to serve
warrants in
criminal cases.

such warrant delivered to him as aforesaid, when in his power to serve the same either alone or by calling upon assistance according to law, such constable shall if the offence charged for which the warrant issued, be punishable with death or imprisonment in the penitentiary of this state, upon conviction thereof be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail ten days or both at the discretion of the court.

In other cases than those punishable by death &c.

Sec. 45. That if any constable shall be guilty as specified in the preceding section, of neglect or delay in serving any warrant, when the offence charged for which such warrant may issue, be an offence not punishable by death or imprisonment in the penitentiary, such constable shall upon conviction thereof, be fined in any sum not exceeding one hundred dollars, or imprisoned not exceeding ten days or both at the discretion of the court.

Constable may forfeit his office.

Sec. 46. That a conviction of either of the offences specified in the two preceding sections of this act, shall be a forfeiture of his office of constable, and the same shall thereby immediately become vacant.

Where no cell, &c. in jail, prisoner to be in criminals room.

Sec. 47. That where any jail in any county in this state, shall not have a cell or dungeon therein by name, then, and in that case when the court shall sentence any person or persons to imprisonment in the cell or dungeon of any jail, under the provisions of this act, the person or persons so sentenced shall be confined in that part of the jail usually allotted to the confinement of criminals.

Sheriff, &c. to feed and confine as directed by this act.

Sec. 48. That if any sheriff or jailor, or any other person having the care and custody of any jail shall suffer any person sentenced to solitary confinement, and to be fed on bread and water only, to be dealt with in a manner less severe than that intended by the sentence, or to be fed with food different from that intended by the sentence, shall, upon conviction thereof be fined in any sum not exceeding one hundred dollars: *Provided*, That nothing in this section shall be construed to prevent medical aid from being afforded to any sick or disabled prisoner.

Proviso.

Prosecutions to be by indictment, imprisonment in C. jail.

Sec. 49. That all prosecutions under the provisions of this act, shall be by indictment before the court of common pleas in the county where the offence shall have been committed, except in cases otherwise provided for by this act, and all persons imprisoned under the same, shall be imprisoned in the jail of the proper county.

Indictment to be found in one year, except larceny.

Sec. 50. That no person shall be indicted or prosecuted for any offence against the provisions of this act, except for the offence of larceny, for which the offender may be indicted and punished any time within three years from the commission of the offence, unless such indictment shall be found, or such prosecution commenced within one year from the time such offence was committed.

Sec. 51. That all fines and forfeitures incurred under this act, and the act for the punishment of crimes shall be paid into the county treasury where the crime was committed.

Fines how paid.

Sec. 52. That no bill of indictment for any offence specified in this act, shall be found a true bill by any grand jury, unless the name of the prosecutor be endorsed at the foot thereof, except such bill be found upon testimony sworn and sent to the grand jury by order of the court at the request of the prosecuting attorney, in which case the fact that the bill was found upon testimony sworn and sent to the grand jury by order of the court, shall be endorsed at the foot of the bill, instead of endorsing the name of the prosecutor.

Every indictment to be indorsed, &c.

Sec. 53. That in all cases where the prosecutors name is endorsed, and the bill found a true bill by the grand jury; and upon trial the defendant is acquitted the prosecutor shall be liable for costs, unless the court shall be of opinion that there was reasonable ground for instituting the prosecution: In all such trials the prosecutor may be admitted as a witness, and his credibility left to the jury.

Prosecutor liable for costs, unless,

Sec. 54. That when any person is apprehended upon a warrant for committing an assault, or an assault and battery or an affray by fighting or boxing at fist-cuffs, issued upon the complaint of the party injured, he shall be taken before the justice, judge or other judicial officer that issued the warrant; and thereupon the person accused may plead guilty to such accusation and upon such plea being made the justice, judge or other judicial officer shall have power, and is hereby authorized to adjudge the amount of fine or recognize the offender to appear at the next court of common pleas for such county which fine shall in no case be more than one hundred dollars, or less than five dollars, to be paid by the party accused, for which judgment shall be entered, and the amount collected by execution in the name of the state of Ohio, in the same manner and upon the same terms as is provided for the general collection of fines; but if the person accused declines to plead guilty to the accusation, he shall, upon hearing be discharged, committed or recognized as just ce may seem to require.

Party apprehended for assault, may plead guilty, and be fined, or bound over to court.

Amt. fines.

Sec. 55. That the act entitled an act for the punishment of certain offences therein specified, passed the eleventh day of February, one thousand eight hundred and fifteen; the act entitled an act supplementary to the act for the punishment of certain offences therein named, passed the second day of February, one thousand eight hundred and twenty-one; and the act entitled, an act to amend the act for the punishment of certain offences therein specified; and the act supplementary thereto, passed the second day of February, one thousand eight hundred and twenty-two, with the act

to prevent firing woods and prairies, passed February eleventh, eighteen hundred and five, be, and the same are hereby repealed: *Provided*, That all offences committed prior to the taking effect of this act shall be prosecuted and punished in the same manner as if this act had never been passed.

Acts repealed.
Provisos.
Effect.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives:
ALLEN TRIMBLE,
Speaker of the Senate.

February 10, 1824.

AN ACT for the prevention of gaming.

Gaming contracts void.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio*, That all promises, agreements, notes, bills, bonds or other contracts, mortgages or other securities, whatsoever, after the taking effect of this act, when the whole or any part of the consideration of such promise, agreement, conveyance or security shall be for money or other valuable thing whatsoever won, laid or betted at cards, dice tables, tennis balls, or any other game or games whatsoever, or at any horse race, cock fighting, or any other sport or pastime, or on any wager whatsoever, or for the reimbursing or repaying any money lent or advanced at the time of such play, bet or wager, so to be betted or wagered, shall be utterly void, frustrate and of none effect, to all intent and purposes whatsoever, any law usage or custom to the contrary notwithstanding.

Money, lost and paid may be recovered back within six months.

Sec. 2. That if any person or persons whatsoever, at any time, by playing at any game or games whatsoever, or by betting on the hands or sides of such as do play at any game or games, shall lose to any one or more persons so playing or betting, any sum of money or other valuable thing, and shall pay or deliver the same or any part thereof; the person or persons so loosing and paying, or delivering the same, shall be at liberty within six months next following, to sue for and recover the money or other valuable thing so lost and paid or delivered, or any part thereof, from the respective winner or winners thereof, with cost of suit, by action of debt founded on this act; to be prosecuted in any court or before any justice of the peace in this state having jurisdiction thereof; in which action it shall be sufficient for the plaintiff to allege that the defendant is indebted to the plaintiff or received to the plaintiff's use the money so lost and paid, or converted the goods won of the plaintiff to the defendant's use,

The declaration.

whereby the plaintiff's action accrued to him according to the form of this act, without setting forth the special matter; and in case the party so loosing such money or other thing as aforesaid, shall not within the time aforesaid, bona fide, without covin or collusion, sue and with effect prosecute for the money or other thing so lost and paid or delivered, it shall and may be lawful to and for any other person or persons by any such action or suit as aforesaid, to sue for and recover the same with costs of suit against any such winner or winners as aforesaid, to the use of the person or persons suing for the same.

The party loosing, failing to prosecute, any other person may.

Sec. 3. That every person who by virtue of this act shall or may be liable to be sued for monies or other things so won as aforesaid, shall be compelled to answer upon oath, such bill or bills in chancery preferred against him or them for discovering the money or things so won at play as aforesaid: *Provided however*, Upon discovery and repayment of the money or other things so to be discovered and repaid as aforesaid, the person or persons discovering and repaying the same with cost shall be acquitted, indemnified and discharged from any further or other forfeiture, punishment or penalty, which he or they may have incurred by playing for or winning such money or other thing so discovered and repaid.

Winners compelled to answer bills in chancery.

Proviso.

Sec. 4. That if from and after the taking effect of this act, any person or persons whatsoever shall import or bring into this state any pack or packs of playing cards, every person so offending shall forfeit and pay for every pack of playing cards so imported or brought into this state, not more than twenty nor less than five dollars; and every person in whose possession any pack or packs of playing cards shall or may be found, after the taking effect of this act, shall be taken and considered as an importer within the meaning of this act, unless such person can prove that such pack or packs of playing cards were in his possession previous to the taking effect of this act.

Importers of playing cards fined.

Persons in possession of playing cards to be taken as importers unless &c.

Sec. 5. And to prevent gaming at ordinaries and other public places, which must often be attended with quarrels, disputes and controversies, the impoverishment of many people and their families, and the ruin of the health and corruption of the manners of youth, who upon such occasions often fall in company with lewd, idle and dissolute persons, who use this way of maintaining themselves. *Be it further enacted*, That if any person or persons shall at any time play in any ordinary, tavern or race field, or in any booth, arbor, out-house, connected with such tavern, ordinary or race-field or at other public place, at any game or games whatsoever, except games of athletic exercise, or

Playing at ordinaries, taverns, racefields boothsarbors or out houses at any games except athletic exercises punished.

To be bound
to good beha-
viour.

shall bet on the hands or sides of such as do play as afore-
said, every person or persons, upon conviction thereof, shall
forfeit and pay a sum not exceeding seventy nor less than
ten dollars, and shall be bound to their good behaviour, with
sufficiert security, in the sum of seventy dollars, for the term
of twelve months; and if any person or persons shall give
such security, and afterwards, within that time, shall play or
bet for any money or other valuable thing whatsoever, such
playing or betting shall be deemed a breach of good beha-
viour, and a forfeiture of their cognizance given for the same.

Losers and
winners to be
fined.

Sec. 6. That if any person by playing or betting at any
game or wager whatsoever, at any time, shall loose or win to
or from another, any sum of money or other article of value,
the looser and winner shall, each on conviction, be fined in
a sum not less than ten dollars nor more than seventy dol-
lars, and shall moreover be bound to his or her good be-
haviour for one year.

Persons win-
ning by ill
Practices.

Sec. 7. That if any person or persons whatsoever do, or shall
at any time or times, by fraud, shift, cozenage circumvention,
deceit, unlawful device, or evil practice whatsoever, in play-
ing at or with cards, dice or any other game or games, or in
or by bearing a share or part in the stakes, or wagers or ad-
ventures, or in or by betting on the sides or hands of such as
do or shall play, win obtain or acquire to themselves any
sum or sums of money, or other valuable thing or things
whatsoever, every person so winning by such ill practice,
and being thereof convicted, upon indictment, shall be fin-
ed not less than fifty dollars, nor more than five hundred
dollars, and shall moreover be bound to his good behaviour in
such sum and with such security as the court may approve,
for the term of one year.

Keepers of
gaming tables.

Sec. 8. That all and every keeper or keepers, exhibitor
or exhibitors of either of the gaming tables commonly call-
ed A B C, or E O tables billiard tables or farro bank or any
other gaming table or bank of the same or like kind, under
any denomination whatsoever, shall, on conviction thereof,
be fined in a sum not less than fifty dollars nor more than
two hundred dollars for every such offence, and shall moreo-
ver find security for his or their good behavior, for the term
of one year, in the sum of five hundred dollars; and if he or
they shall afterwards, within that time, keep or exhibit ei-
ther of the said gaming tables or banks, or other gaming ta-
bles or banks, under any denomination whatsoever, or shall
play at any game or games prohibited by this act, such keep-
ing, exhibiting or playing shall be deemed a breach of good
behaviour, and a forfeiture of the recognizance given for the
same.

Suffering gam-
ing tables &c.

Sec. 9. That if any person or persons shall suffer the
game of billiards or any of the games commonly called A B

C, E O or farro bank or any other gaming table or bank of the like kind, under any denomination whatsoever, to be played in his or her house, or in any out house, booth or arbor of which he or she at the time has the care or possession, every person or persons so offending shall, on conviction, forfeit and pay a sum not less than fifty dollars, nor more than two hundred dollars.

to be played at house, booth or arbor.

Sec. 10. That if any keeper or keepers of a tavern, or ordinary or other house of public resort, shall suffer any game or games prohibited by this act to be played at or with in such tavern, ordinary or other house of public resort, or in any out house appendant thereto, every such keeper or keepers shall on conviction, forfeit and pay a sum not less than fifty dollars nor more than two hundred dollars; and if any licensed tavern keeper shall be convicted of suffering such gaming in his or her house, he or she, in addition to the penalty hereby imposed shall, moreover, forfeit his or her license for keeping such tavern, and shall not be re-licensed as a tavern keeper, for one year from the date of such conviction.

Keepers of taverns &c. suffering games to be played, the license of tavern keepers to be forfeited.

Sec. 11. That all fines and forfeitures imposed by this act, shall be recoverable by indictment in any court of common pleas within this state, or before a justice of the peace where the fine cannot exceed the sum of seventy dollars; but any person considering himself or herself aggrieved by the judgment of any such justice convicting such person of any of the offences mentioned in this act, may appeal to the next court of common pleas to be holden for the county wherein such conviction may happen: *Provided*, The person or persons so appealing shall within ten days after such conviction, enter into recognizance before such justice in the sum of one hundred dollars, with one or more sufficient securities in a like sum, conditioned that the defendant will make his personal appearance before the court of common pleas, to which such appeal is taken, on the first day of the next succeeding term thereof, and not to depart from said court without the leave thereof; and as soon as such recognizance shall have been entered into, such justice shall cause to come before him all the material witnesses on the part of the state, who shall severally be recognized in the sum of fifty dollars each, conditioned that they appear before the court to which such appeal is taken, on the first day of the succeeding term thereof, and not depart from such court without the leave thereof; and on such appeal, such other and further proceedings shall be had by indictment and trial of such offender as in other cases.

Fines, &c to be recovered by indictment when sum exceeds 70 dollars. Appeals allowed in sums under 70 dollars.

Provide.

Sec. 12. That no indictment for any of the offences mentioned in this act shall be quashed, or judgment thereon arrested for any supposed defect or want of form: *Provided*, Sufficient be set out therein to enable the court to render

Supposed defects &c. not to injure indictment &c. *Provide.*

judgment thereon, according to the very right and justice of the case.

Construction
of this act.

Sec. 13. That this act shall be so construed, in all courts of justice, as to advance the remedies hereby provided, and to suppress the mischiefs hereby prohibited.

Act to be given
constantly
in charge.

Sec. 14. That the presiding judge, in all the courts of common pleas within this state, shall constantly give this act in charge to the grand juries of their courts, at the time such grand juries shall be sworn.

Fines, &c. to
be paid to co.
treasurer.

Sec. 15. That all fines and forfeitures imposed by the authority of this act, shall be collected and paid over, as other fines are, to the treasurer of the proper county, within twenty days after the collection thereof, to be applied to county purposes.

JOHN POLLOCK,
Speaker of the House of Representatives.
OTHNIEL LOOKER,
Speaker of the Senate.

January 4th, 1814.



AN ACT for the prevention of certain immoral practices.

Sabbath break
ing how pun-
ished.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That if any person of the age of fourteen years or upwards, shall be found on the first day of the week, commonly called Sunday, sporting, rioting, quarreling, hunting, fishing, shooting or at common labor, (works of necessity and charity only excepted) he or she shall be fined in a sum not exceeding five dollars, nor less than one dollar: *Provided,* nothing herein contained shall be construed to extend to those who conscientiously do observe the seventh day of the week as the Sabbath, or to prevent families emigrating, from travelling; watermen from landing their passengers; superintendents or keepers of toll bridges from attending and superintending the same, or ferry-men from conveying over the waters travellers or persons removing with their families on such days.

Proviso.

Tavern keep-
ers for selling
spirits on Sun-
day.

Sec. 2. That if any tavern keeper or other person shall sell or barter any spirituous liquors on the first day of the week, commonly called Sunday, (except to travellers on a journey) such tavern keeper or other person so offending, shall be fined in a sum not exceeding five dollars.

Interrupting
public worship

Sec. 3. That if any person or persons shall at any time interrupt or molest any religious society, or any member thereof, or any persons when meeting or met together for the purpose of worship or performing any duties enjoined on or appertaining to them as members of such society, the person or persons so offending may be arrested on war-

rant legally issued or by the order of some civil officer within the county on view or hearing; and shall be fined in a sum not exceeding twenty dollars; and any judge of the court of common pleas or justice of the peace within the proper county, be, and they are hereby empowered, authorized and required to proceed against and punish every person offending against the provisions of this act; and upon view, or hearing, may, or on information given on oath or affirmation, shall, if need be, issue his warrant to bring the body of the accused before him, and shall, in a summary way, inquire into the truth of the accusation; and if guilty, shall enforce the penalty of this act annexed to the offence: and said offender (if the said judge or justice should think necessary,) may be detained in custody and committed until sentence be performed: *Provided*, That this section shall not be so construed as to deprive any religious society of the right of laying hands upon the person or persons who may be disturbing the congregation, and turning him or them out of their church or place of worship. Proviso.

Sec. 4. That if any person of the age of fourteen years or upwards, shall profanely curse or damn, or profanely swear by the name of God, Jesus Christ or the Holy Ghost, each and every person so offending shall be fined in a sum not exceeding one dollar, nor less than twenty five cents for every such offence. Profane swearing.

Sec. 5. That if any person or persons shall be found making or exciting any contention or disturbance at any tavern, court, election or other meeting of the citizens for the purpose of transacting or doing any business appertaining to or enjoined on them, the person or persons so offending, shall be fined in a sum not exceeding five dollars, nor less than fifty cents each, and if necessary, imprisoned until such meeting shall be ready to disperse: *Provided*, The time for which such person or persons may be confined, shall not exceed six hours. Exciting disturbance at court, &c.

Sec. 6. That if any person or persons shall play bullets along or across any street in any town or village within this state, or if any person or persons shall run any horse or horses within the limits of any such town or village, every person or persons so offending, shall be fined in a sum not exceeding five dollars nor less than fifty cents. Bullets and horse racing in streets.

Sec. 7. That if any keeper of a public house or retailer of spiritous liquors in this state, shall establish, keep, or permit to be kept upon his or their lots or premises, any nine pin alley, or shall in whole or in part be interested in any nine pin alley, upon the lot or premises of another, he or they shall, upon conviction thereof forfeit and pay to, and for the use of the proper township, not less than twenty-five, nor more than one hundred dollars: And this section Nine pin alley

shall be construed to extend to any alley denominated a nine pin alley whether such alley is used for playing therein, a greater or less number than nine pins.

Puppet shows and wire dancing for money. Sec. 8. That if any person or persons shall exhibit any puppet show, wire dancing or tumbling, juggling or slight of hand within this state, and shall ask or receive any money or other property for exhibiting the same, every such person so offending, shall forfeit and pay for every such offence the sum of ten dollars.

Destroying advertisements set up, &c. Sec. 9. That if any person shall intentionally deface, obliterate, tear down or destroy in whole or in part any copy or transcript of or extract from any law or act of the United States or of this state, or any proclamation, publication, advertisement of notification, whatsoever, set up in any public place within this state, for the public information of any citizen, by the authority of any law or act of this state, such person shall, on conviction thereof, before any court having jurisdiction of the same, be fined in any sum not exceeding ten dollars, and may be committed to jail for a time not exceeding twenty-four hours, at the discretion of the court.

Selling spirits, &c. at or near religious assemblies. Sec. 10. That if any person shall expose or offer for sale at any place where any religious society of people are collecting or collected together, for the purpose of religious worship, or within one mile thereof any spirituous liquor, cider or beer, such person may be arrested and detained in custody not exceeding six hours at any one time and shall be fined in a sum not exceeding twenty dollars: *Provided*, That nothing in this act shall affect merchants, licensed tavern keepers, innkeepers, distillers or manufacturers of cider or beer, selling ardent spirits, cider or beer at their usual place of vending the same or at their residence.

Proviso. Sec. 11. That all fines accruing under the provisions of this act shall be collected in the name of the state of Ohio, as in other cases of a breach of the peace, and be paid into the township treasury for the use of the townships in which the offence shall have been committed within twenty days after collected; and if any officer fail to pay over such fine by him collected agreeably to the provisions of this act, such officer shall for any such neglect forfeit and pay into the township treasury double the amount of any fine or fines by him collected, to be recovered in a summary way before any justice of the peace having cognizance of the same at the suit of the township treasurer: *Provided*, That all prosecutions under the provisions of this act shall be commenced within ten days after the offence shall have been committed, except prosecutions against justices for not paying over any fine or fines as aforesaid.

Fines how collected and paid. Sec. 12. That the act entitled "an act for the prevention of certain immoral practices," passed the third day of January, one thousand eight hundred and sixteen; and the act a-

Penalty for neglect.

Proviso.

mentary thereto passed January twenty ninth, one thousand eight hundred and twentyone, and be and the same is hereby repealed.

This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 19, 1824:

AN ACT defining the duties of Sheriff's and Coroner's in certain cases.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That every sheriff and coroner, shall within ten days after they shall have received their commissions, give bonds to the state of Ohio, with two or more securities, to be approved of by the court of common pleas, of the proper county, in any sum not exceeding twenty thousand nor less than three thousand dollars at the discretion of the court, or of a majority of the associate judges if the court of common pleas shall not be in session, conditioned for the faithful discharge of their respective duties, and the said court may at any time during the continuance of such sheriff or coroner in office, require of them such further and additional security as they may deem necessary, which bonds shall be lodged with the clerk of the court of common pleas, of the proper county, and shall be by him recorded in the book of records of the judgments of said court, and whenever it shall be necessary for any sheriff or coroner to give bond during the vacation of the court of common pleas, it shall be competent for a majority of the associate judges, of said county to determine upon the sufficiency of the bond and surety aforesaid, who shall meet at the usual place of holding judicial courts, within said county, for the purpose aforesaid, and no judge, clerk, an attorney of any court shall be received as surety for any sheriff or coroner, and if any sheriff or coroner shall fail to give the necessary security within the time allowed by this act, he shall be taken and deemed to have resigned his said office: *Provided,* That in all cases where the court may think proper, for good cause shown, to require additional security, of the sheriff or coroner, upon their refusing to comply with such requisitions, the court is hereby authorised to declare the office of such sheriff or coroner vacant, and proceed accordingly.

Sheriffs
and coroners,
to give bond.

Court may re-
quire addition-
al bonds.

Bonds to be re-
corded.

Who shall not
be security.

Failing to give
bonds, office
vacant.

Provided

Sheriffs shall

Sec. 2. That it shall be the duty of every sheriff to preserve the public peace, to cause all persons guilty of any

preserve the peace.

breach thereof, within his knowledge, or view to enter into recognizance with sureties, for keeping the peace, and appearing at the succeeding term of the common pleas, of the proper county, and to commit to jail in case of refusal, and shall return a transcript of his proceedings with the recognizance by him taken to the court aforesaid, and shall execute all warrants, writs, and other process to him directed, by the proper and lawful authority, and shall attend upon all courts of common pleas, and the supreme court of the county, during their session, and shall have power to call to his aid, in the execution of the duties herein and by law required, such person or persons, or power of the county, as may be necessary.

To execute warrants, writs, and other process.

Persons charged with crime removing or absconding may be apprehended by sheriff, etc.

Sec. 3. That if any person or persons, who may be charged with the commission of a crime or offence, made punishable by the laws of this state, shall abscond, or remove from the county in which such crime or offence be charged, to have been committed, it shall be lawful for any sheriff constable or other person, to apprehend the person or persons so charged, and forthwith remove him, her or them, to the county in which the alleged crime, may be said to have been committed, and deliver such person or persons, to any judge or justice of the peace, in said county, who shall cause the person or persons so delivered to be dealt with as the law may direct, and it shall be the duty of the auditor of the county, to which such removal is made, to allow the officer or other person causing such removal, all necessary disbursements and expenses together with a reasonable compensation for his time and trouble, and the amount so allowed shall be paid on the order of the auditor aforesaid out of the county treasury.

Expenses and fees how paid.

To take charge of prisoners.

Sec. 4. That it shall be the further duty of the sheriff of every county to take charge of all persons committed to prison and see that they are safely kept and supplied with necessary sustenance agreeable to law, and shall by himself or deputy at all times, attend to the jail of the county, for the purpose aforesaid, and if any sheriff shall refuse or neglect to perform the duties which by law he may be required to perform, he shall upon conviction thereof, be fined in any sum not exceeding four thousand dollars, at the discretion of the court, to be recovered by indictment, to and for the use of the county in which the offence shall have been committed, *Provided*, That the provisions herein contained, shall not extend to affect any remedy, which might otherwise be had against any sheriff, for an escape or neglect upon civil process.

Attend to the jail.

Liable to indictment, etc. for neglect.

Proviso.

Prisoner may be conveyed to jail, of adjoining county, where, &c.

Sec. 5. That whenever any person charged with the commission of any offence, or who shall be arrested upon any civil process, or who may have been sentenced to suffer imprisonment upon conviction, shall be in custody in any county having no sufficient jail, the sheriff or coroner shall

forthwith convey the persons in custody as aforesaid, to the jail of such adjoining county, as in the opinion of the officer, shall be the most convenient and secure, and the said officer shall have authority to call such aid as may be necessary in guarding and transporting such person so in custody, and if any person shall refuse or neglect to render such necessary aid, when thereto required, he shall upon conviction thereof, before any justice of the peace within the county in which said offence shall have been committed, forfeit and pay for every such offence, the sum of ten dollars, to and for the use of the county aforesaid, and the said sheriff or coroner, with the persons whom he may call to his assistance, for conveying any persons, from one county to another as aforesaid, as is in this section provided, and for returning such persons as is herein after provided, shall each receive a reasonable compensation for their services, at the discretion of the auditor of the county, from which such person shall have been removed, to be paid out of the treasury thereof, upon the order of the auditor aforesaid.

Sec. 6. That it shall be the duty of the sheriff of the county to which such prisoner shall be removed, as aforesaid, on being furnished with a copy of the process or the commitment of such prisoner, to receive such prisoner into his custody, and he shall be liable for escapes, or other neglect of duty, in relation to such prisoner, as in other cases, and shall be paid out of the treasury of the county, from which such prisoner shall have been removed, such fees as are allowed by law in other cases, to be paid upon the order of the auditor of the county aforesaid.

Jailer to be paid by county from whence prisoner comes

Sec. 7. That whenever any person charged with the commission of any offence, shall have been removed for safe keeping as aforesaid, it shall be the duty of the prosecuting attorney of the county, in which such person shall have been charged, at least ten days before the term of the court of common pleas or supreme court, to which such person shall have been committed for trial, to file with the clerk thereof, a precept directing that a habeas corpus issue, and the said clerk shall thereupon issue such writ directed to the sheriff, in whose custody said person so charged shall be, who shall upon the service thereof by the sheriff of the county, from which said person shall have been removed, deliver over such person to the said last named sheriff, who shall have the person so charged before the said court to be dealt with according to law.

Habeas corpus to issue for prisoner.

Sec. 8. That whenever the term of office, for which any sheriff shall have been elected, has expired, or he shall have resigned or removed without the county, it shall be the duty of such late sheriff to deliver over all writs of execution and all other process of whatever description, whether executed or not, together with all goods and chattels, which may have been by him taken in execution, or attached and

Sheriff to deliver writs, goods, etc. to his successor or to coroner,

which may remain in his hands, together with all bonds to such person, as may have been elected and qualified to discharge the duties of sheriff or if no such person shall have been elected and qualified as aforesaid, then to the coroner of said county, making the necessary and proper return upon each writ of execution or other process, so far as the same shall have been executed, and also to deliver over as aforesaid, all prisoners in the jail of the county or otherwise in his custody, together with all bail bonds by him taken and remaining in his possession, and the said new sheriff or coroner shall receive all such writs or other process and proceed to execute the same or such of them as remain unexecuted in whole or in part, in the same manner as if such writs or other process had been originally directed to him and no 'venditioni exponas' or other process shall hereafter be directed to, or executed by any sheriff whose term of office may have expired as aforesaid, and in case the prisoners, writs, process, bail bonds, and property shall have been delivered over, as aforesaid, to the coroner, by the former sheriff, his sureties, executors or administrators, it shall be the duty of the said coroner, his executors or administrators, to deliver over all such prisoners, writs, process, bail-bonds, and property to the new sheriff, in like manner as is herein before provided, and when any sheriff shall die during the period for which he shall have been qualified to act as such, it shall be competent for the executor, administrator or security of such sheriff to deliver over to the coroner or such person as may be qualified to act as sheriff within said county, in like manner, as is herein before provided. And during the time when the office of sheriff shall be vacant in any county, the coroner thereof shall be bound to perform all the duties and be vested with all the powers of sheriff of said county, and shall also execute process of every kind, to which the sheriff is a party or interested in the suit.

When office of sheriff is vacant, coroner shall do the duties.

Death by violence, coroner to summon jury.

Sec. 9. That whenever information shall be given to any coroner that the dead body of any person supposed to have come to his or her death by violence, has been found within his county, it shall be the duty of such coroner to issue his warrant directed to any constable of the county in which such body shall be found or if in his opinion the emergency shall require to any discreet person of the county, forthwith to summon a jury of twelve men of the county, having the qualifications of electors, to appear at the place where the dead body shall be, at the time specified in said warrant to enquire concerning the same; and the constable shall forthwith execute and return the same according to the command thereof; and the said coroner shall administer an oath or affirmation to the jurors aforesaid of the form and effect, following to wit: you do solemnly swear or affirm (as may be proper) that you will diligently enquire and true presentment make according to the best of your understanding in what manner, and by whom the deceased, whose be-

Jurors' oath.

by is here present came to his or her death (as may be proper) and that you will deliver to me a true inquest thereof in writing, and by you severally subscribed without unnecessary delay according to the evidence which shall be submitted; and the coroner shall have power to issue subpoenas for such witnesses as to him shall appear proper, and shall have power to administer to the said witnesses such oath or affirmation as is usual in other cases; and the jury aforesaid having been empaneled and sworn aforesaid with the said coroner shall proceed to enquire in what manner the deceased came to his death; and if by violence from any other person or persons, by whom, whether as principals or accessories before or after the fact, together with all the circumstances in relation thereto; And the testimony of the witnesses shall be reduced to writing, and by them respectively subscribed, and shall with the inquisition and recognizances hereinafter directed, if any be by him returned to the court of common pleas of the proper county; And it shall be the duty of the coroner if in his discretion he shall adjudge it necessary to cause the witnesses attending as aforesaid to enter into recognizance in such reasonable sum as may be proper, conditioned for their appearance at the succeeding term of the court of common pleas for said county to give testimony of and concerning the subject matter aforesaid; and the said coroner may if he shall deem it necessary, require of the witnesses or any of them, to give security for their attendance as aforesaid; And if the said witnesses or any of them shall neglect to enter into recognizance and give the necessary security if required, it shall be the duty of the said coroner to commit any person so neglecting to the prison of the county, there to remain until discharged by due course of law.

Subpoenas
may issue.

Proceedings to
be returned to
court.

Witnesses
may be recog-
nized.

Sec. 10. That it shall be the duty of the said jurors to draw up their verdict of the facts by them found, in writing and severally subscribe the same and make return thereof to the said coroner without delay; And if it shall be returned by the jurors aforesaid, That the deceased came to his or her death by force or violence, and by any other person or persons; and if the persons so charged or any of them shall be there present, it shall be the duty of the said coroner to arrest such person or persons and convey him or them immediately before a proper officer for examination; and if the said persons or any of them shall not be present, it shall be the duty of the said coroner forthwith to inform one or more justices of the peace, and the prosecuting attorney if within the county of the facts so found, in order that the persons may be immediately dealt with according to law.

Verdict to be
in writing and
signed.

Person may be
arrested.

Sec. 11. That every constable or other person who may have been appointed as aforesaid who shall fail to execute any warrant to him directed as aforesaid, he shall forfeit and pay a fine of fifty dollars; and every person who may have

Fines, upon of-
ficers who ne-
glect duty.

been summoned to attend as a juror aforesaid and who shall fail to attend, shall pay a fine of five dollars, in either case to be recovered upon the complaint of the said coroner before any court having jurisdiction thereof; and every coroner who shall refuse or neglect to perform any of the duties herein required of him, he shall forfeit any sum not exceeding two thousand dollars, at the discretion of the court to be recovered by indictment in the court of common pleas of the county in which the offence shall have been committed, all of which said fines shall be to and for the use of the county.

Acts repealed. Sec. 12. That the act entitled "an act defining the duties of sheriffs and coroners in certain cases." passed the fifth day of January, in the year one thousand eight hundred and five; and an act to amend the last named act passed the seventh day of January, in the year one thousand eight hundred and nineteen, be, and the same are hereby repealed.

Effect. This act shall be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 25, 1824.

AN ACT, to regulate the fees of civil officers in civil and criminal cases.

Sheriff's fees. Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the fees and compensation of the several officers and persons herein named, shall be as follows, to wit:—

SHERIFF'S FEES.

Sheriffs shall be allowed the following fees:

For the service of every writ or summons and return thereof (subpoenas only excepted) when only one defendant is named therein, thirty five cents.

For each additional defendant, fifteen cents.

For every bail bond, fifty cents.

For commitment to prison, or discharging therefrom, or attending a person before a judge, thirty cents.

For serving a writ of possession with the aid of county two dollars.

For serving without such aid, seventy five cents.

For executing a writ of enquiry and returning the same with the inquisition, one dollar twenty five cents.

For the copy of any writ or process necessary to complete a service for each hundred words, ten cents.

For serving and returning a subpoena for each person named therein, ten cents.

For summoning a jury to be allowed on each issue, including travelling fees, fifty cents.

For summoning a grand jury to be paid by the county, three dollars.

Summoning a special jury, including travelling fees, two dollars.

Travelling fees upon all writs, precepts and subpoenas to be computed from the place of return to the place of service, per mile, five cents.

Poundage on all monies made on execution, two per cent.

Service of a declaration in ejectment and return, the same fees as allowed for the service of a summons.

Making a deed of land sold on execution, to be paid by the purchaser, two dollars.

Serving a scire facias and making return thereof, seventy five cents.

Serving any person with an order of court and making return thereof, thirty cents.

Mileage as in other cases.

For keeping and providing for a person in jail per day, twenty five cents.

For calling a jury, ten cents.

For opening court and calling each action to be charged once each term, sixteen cents.

For calling each witness, four cents.

For executing a criminal to be paid out of the county treasury, eight dollars.

For bringing up a person on habeas corpus, seventy five cents.

For summoning a jury on forcible entry and detainer, or forcible detainer, two dollars.

For serving a writ of restitution, seventy five cents.

Mileage thereon as in other cases.

For serving a summons in forcible entry and detainer or forcible detainer, thirty five cents.

Mileage as in other cases.

For all written advertisements for the sale of property, either real or personal, twenty five cents.

For all advertisements in a public newspaper, twelve and a half cents in addition to the price of printing.

Sec. 2. That the clerks of the supreme court and court of common pleas, shall be allowed the following fees in civil cases:

Clerks of Supreme court of C. pleas.

For filing precipe and issuing capias, attachment, execution, certiorari, supersedeas, summons or writ of replevin under seal, and entering the same, twenty five cents.

Issuing writs of scire facias and venditional expons under seal, for every hundred words, ten cents.

Issuing writs of partition and entering the same, twenty cents.

For entering the appearance of either party, personally or by attorney, to be charged but once, eight cents.

For entering sheriffs return on any writ, six cents.

Docketing each cause, (to be charged but once,) six cents.

Docketing appeal from justices, eight cents.

Filing declaration, plea, demurrer, or bill, or answer in chancery, each, six cents.

Filing every paper, exhibit, or necessary document in the cause, four cents.

Issuing subpoena in chancery, twenty-five cents.

Dedimus potestatum under seal, fifty cents.

Subpoena for witnesses, where there is but one person named therein, twelve and a half cents, and for every additional person four cents

The writ venire, for a jury to be charged in each cause tried, twelve cents.

Receiving panel and swearing jury, twelve and a half cents.

Swearing each witness, four cents

Swearing constable, four cents.

Entering claim of each witness, for his or her attendance, six cents.

Giving order therefor to each witness, eight cents.

Entering judgment, ten cents.

Recording general verdict, ten cents.

Special verdict for every hundred words, ten cents.

For taking special bail, twelve cents.

Taking and entering recognizance, twenty five cents.

Issuing a bail piece under seal, fifty cents.

For entering every special rule, six cents.

Entering every continuance, discontinuance or retraxit, ten cents.

Entering a rule of reference, twelve cents.

Copy thereof under seal, twenty five cents.

Attending to the striking of a special jury and furnishing a panel thereof to each party, fifty cents.

Issuing a venire facias for a special jury, twenty five cents.

Entering allowance of and issuing a writ of habeas corpus under seal, fifty cents.

Each certificate to which the seal of the court is required, and not herein provided for, fifty cents.

For each writ or process under seal not herein provided for, twenty five cents.

Entering confession of judgment or lease, entry and ouster, ten cents.

Entering satisfaction of judgment on record, twelve and a half cents.

Making up a complete record of the process, proceedings and judgment in each cause, for each hundred words such record may contain, ten cents.

For making out copies of process, pleadings, records, or any proceedings in a cause, when required by either of the parties or by law, for each sheet of one hundred words, ten cents.

Entering notice of appeal to supreme court, ten cents.

Taking bond on appeal or writ of error, twenty five cents.

Entering allowance of writ of error, certiorari, or habeas corpus, ten cents.

Entering every decree in chancery, for each hundred words, ten cents.

For drawing cost bill, after final judgment or decree, thirty five cents.

An order to advertise, twenty five cents.

Sec. 3. That the clerk of the court of common pleas shall be allowed the following fees in administration and probate cases:

Fees of clerk
of C. C. pleas
in administra-
tion and pro-
bate matters.

For the probate of a will or testament with a certificate thereof, thirty three cents.

Issuing letters testamentary and copy, one dollar.

Administering an oath to an executor or administrator and taking bond, forty cents.

Recording a will or inventory, final settlement of executors, administrators or guardians, for every hundred words, ten cents.

Making out copies of wills or inventories, for every hundred words, ten cents.

Entering appointment of administrators or appraisers of property, twelve and a half cents.

Copy of order to appraisers, twelve and a half cents.

Taking bond of any guardian appointed for minors, or insane persons, thirty three cents.

Letters of administration and copy, one dollar.

Certificate of guardianship under seal of the court, seventy five cents.

Issuing citation to administrators or executors to settle up their accounts or shew cause why they should not be removed, thirty five cents: *Provided*, In all cases where there are several minors who may have chosen the same person as guardian, or for whom the same person may have been appointed as guardian at the same time, the clerk shall not be entitled to or receive any more or greater fees for taking bond or giving certificate of guardianship under seal of the court than if there shall be one ward only.

Clerks of Ss
and C. C.
pleas in crim-
inal cases.

Sec. 4. That the clerks of the court of common pleas and supreme court shall be allowed the following fees in criminal cases:

For issuing *capias*, or other process on indictment under seal, twenty five cents.

Writ of subpoena for one or more witnesses, twenty cents.

Entering defendants appearance or plea, six cents.

Venire for jury twenty five cents.

Receiving panel and swearing jury, twelve and a half cents.

Swearing each witness, four cents.

Swearing constable, four cents.

Entering general verdict, twelve and a half cents.

Special verdict, for every one hundred words, twelve cents.

Entering judgment, sixteen cents.

Entering up recognizance in full, twenty five cents.

And for all other services the same fees as are allowed in civil cases for similar services: *Provided*, That no clerk shall charge or receive any fee for a cost bill under the provisions of this act, except for taxing costs in a suit at law or in chancery.

Recorders fees

Sec. 5. That recorders shall receive the following fees.

For recording a mortgage, deed of conveyance, letter of attorney or other instrument of writing, for every hundred words twelve and a half cents, to be paid to the recorder on the reception of a deed, &c.

For all copies, for every hundred words, ten cents.

For every search where no copy is required, twelve and a half cents.

Coroners' fees

Sec. 6. That coroners shall be allowed the following fees:

For view of a dead body, three dollars:

For drawing all necessary writings and return thereof, for every hundred words, ten cents.

For travelling each mile to the place of view, ten cents.

For issuing a venire for a jury, twenty five cents.

To each juror the same fees as jurors in court, to be paid out of the county treasury.

Justices' fees.

Sec. 7. That justices of the peace shall be allowed to receive the following fees.

For a *capias* or summons, twelve and a half cents.

For a warrant in criminal cases, twenty-five cents.

For taking a recognizance of bail, twenty-five cents.

For commitment to jail, twenty-five cents.

For every subpoena, for one person, twelve and a half cents.

For each person in addition, four cents.

For entering judgment on trial, twenty-five cents.

For entering judgment on confession, twelve and a half cents.

For issuing execution, twenty five cents.

For a certified copy of proceedings on appeal, certiorari, or otherwise, thirty-one and a fourth cents.

For every continuance or adjournment at the request of the party, ten cents.

For entering a rule of reference, or a copy thereof, each, ten cents.

For swearing witnesses, jurors, or arbitrators, each four cents.

For issuing writs of attachments, twenty-five cents.

For scire facias, twenty cents.

For taking depositions, for each hundred words, ten cents.

For making a certificate thereon, ten cents.

For entering a discontinuance or satisfaction, ten cents.

For the proof or acknowledgment of a deed, or other instrument of writing, with a certificate thereon twenty-five cents.

For a venire for a jury, twenty five cents.

For a writ of restitution, twenty-five cents.

For taking affidavits, each, twenty five cents.

For every search warrant, twenty-five cents.

For marrying and making return thereof, one dollar and fifty cents.

Constables

Sec. 8. That constables shall receive the following fees:

fees.

For serving summons or other writs for each person named therein, ten cents.

For a copy of a summons left at the place of abode, twelve and a half cents.

For serving execution on body or goods, twenty cents.

For commitment to prison, twenty-five cents.

For summoning a jury on a dead body including mileage, seventy-five cents.

For all monies made on execution, four per cent.

For every days attendance upon the court by order of the court, seventy five cents; to be paid out of the county treasury, upon the certificate of the clerk.

For every days attendance on the grand jury, seventy five cents.

And where any sheriff, coroner or constable has any process to serve, or duty to perform, and has to travel, he shall be allowed five cents per mile from the place of service to the place of return (except where otherwise provided for) and when two or more persons are named in any such process, mileage shall be computed at the most distant place of service to the place of return, unless such persons reside in opposite or different directions from such place of return.

Witnesses
fees.

Sec. 9. That witnesses shall be allowed the following fees:

For going to, attending at, and returning from court under a subpoena per day, to be paid by the party at whose in-

tance he is summoned, on demand, and taxed in the bill of costs, fifty cents.

Fees allowed for service under the act for the partition of real estates.

To each commissioner employed in making partition and in going to, and returning, for each day, one dollar and fifty cents.

To the surveyor each day employed in making such survey, two dollars.

To each mauler and chain carrier for each day employed, seventy five cents.

To officers of court the same fees as are allowed for similar services in cases of a like nature.

Officers allowed thirty-five cents for settling up advertisement.

Proviso.

Sec. 10. That in all cases in law, where an officer in the due execution of his office, shall be required to write or set up an advertisement, such officer shall be allowed, for every such advertisement twenty-five cents, and if such advertisement be required to be published in a newspaper the officer proving such publication, shall be allowed the price thereof to be taxed in the bill of costs: *Provided*, Nothing herein shall be so construed as to allow constables more than twenty five cents for advertising the sale of property taken in execution.

Associate Judges to receive two dollars & fifty cents per day, &c.

Sec. 11. That each and every associate judge of the court, of common pleas in this state shall receive for his services two dollars and fifty cents for each day he shall attend courts including the time employed in travelling to, and returning from courts, which attendance shall be certified by the clerk and be paid out of the treasury of the proper county, upon the order of the auditor of said county.

County commissioners, two dollars per day

Sec. 12. That each county commissioner shall be allowed two dollars per day for his services to be paid out of the county treasury, upon the order of the county auditor.

Grand jurors.

Sec. 13. That each grand juror shall be allowed the sum of one dollar per day for each day he may serve, which services shall be certified by the clerk, and paid out of the county treasury on the order of the county auditor.

Petit Jurors.

Sec. 14. That petit jurors shall be allowed each fifty cents, upon each cause he is empannelled and sworn to try, to be advanced by the party in whose favor the verdict shall be given and taxed in the bill of costs.

Sec. 15. That each county auditor shall receive for his services the following fees and compensation:

County auditors.

For making out the duplicates of state and county tax, for every sheet of one hundred words, *Provided*, That three figures shall be counted as one word, ten cents.

Making out copies of duplicates required by law for each one hundred words, to be completed as before, eight cents.

Recording proceedings of commissioners, or other record necessary to be made, for every one hundred words, ten cents.

- For every order on the treasury of the county, six and one fourth cents.

For every entry or transfer of land for taxation, twelve and a half cents, to be paid by the person making such transfer.

And for all other services required of said auditor by law any sum not exceeding fifty dollars per annum, which together with all other fees allowed said auditor shall be paid out of the county treasury, on the order of the county commissioners: *Provided*, Said commissioners shall in no case give an order to said auditor for fees, but upon an account made out and sworn to by said auditor, which shall be filed in the office of the treasurer of the county.

Sec. 16. That the courts of common pleas in each county, shall make an allowance of not more than sixty dollars per annum to their clerk and sheriff, each for services where the state fails or the defendant proves insolvent, and other services not particularly provided for; and the sheriff or jailor shall also receive for each prisoner in a criminal case the legal allowance for diet, out of the county treasury when the same cannot be recovered of such prisoner, also to be paid out of the county treasury on the order of the auditor; and moreover the clerk shall receive a reasonable allowance for blank books and stationary, to be paid as aforesaid.

Sec. 17. That all and every of the respective officers whose fees are herein ascertained, limited and appointed, shall and they are hereby required to make fair tables of their fees respectively, according to this act, and to publish and set up the same in their respective offices within three months after any such officer shall have been elected or appointed in some conspicuous part, for the inspection of all persons who have business in said offices, on pain of forfeiting for each day the same shall be missing through said officers neglect, the sum of five dollars, which penalty may be recovered by indictment for the use of the county, where the offence shall have been committed; and it shall, and may be lawful, for any person to refuse payment of fees to any officer who will not make out a bill of particulars, signed by him, if required, and also a receipt or discharge signed by him, for fees paid, and the bill of fees of the officers herein named, shall be subject to examination and correction by the several courts, and if any officer shall charge or receive any greater fees than herein allowed, the court on proof, shall fine said officer, four times the amount over charged for the use of the party injured: *Provided*, That if any clerk of any of the courts of this state shall fail to complete a full record in every case, within six months after final judgment of the proper court therein, every such clerk so failing shall be removed from office by the court of which he is clerk; and it

Compensation to clerks and sheriffs when state fails.

Sheriff or jailor shall receive pay for diet &c for prisoners. Clerks to be allowed for blank books,

Officers to make tables of fees and set them up in their offices.

Forfeiture for neglect.

Officer taking illegal fees to be fined four times the amount.

Proviso.

Clerks shall be removed who do not make complete records.

shall be the duty of the court strictly to enforce the provisions of this act in all things.

No ministerial officer to receive fees unless items are returned.

Sec. 18. That no sheriff, coroner or constables, shall be entitled to receive either on mesne or final process, any fees provided for in this act, unless he shall return upon the process upon which any charge shall be made the particular items of such charge.

Docket fees.

Sec. 19. That in all suits or actions commenced in the supreme court or court of common pleas the person recovering judgment, shall be entitled to the following docket fee, to wit: in each and every case where the suit is settled and ended previous to the issue being joined and after the declaration is filed, two dollars and fifty cents, after trial, five dollars, which docket fee shall be taxed in the bill of costs; and no docket fee shall be allowed and taxed in any suit determined previous to the filing a declaration, nor when a suit is removed by certiorari, or on an appeal, when no trial is had by a jury or by the court before whom the same is removed; and in all cases where the laws of this state have left to the court to determine who shall pay the costs the docket fee, shall be taxed as the said court shall order.

Laws repealed

Sec. 20. That the act regulating the fees of civil officers passed February twenty-first, eighteen hundred five; and the act regulating the compensation of associate judges and certain officers therein named, passed January eighth, eighteen hundred twenty-two, and the act entitled an act allowing docket fees in certain cases, passed February nineteenth, one thousand eight hundred and ten, be, and the same are hereby repealed.

Effect

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of representatives.

ALLEN TRIMBLE,

Speaker of the Senate.

February 19, 1824.

AN ACT for the confinement of prisoners under the authority of the United States, in the jails of this state.

WHEREAS, it hath heretofore been recommended by Congress, to the legislatures of the several states, to pass laws making it expressly the duty of the keepers of the jails to receive and safe keep therein all prisoners committed under the authority of the United States until they shall be discharged by due course of the laws thereof, under the like penalties as in the case of prisoners committed under authority of such states respectively, the United States

to pay for the use and keeping of such jails, at the rate of fifty cents per month for each prisoner who shall under their authority, be committed thereto, during the time such prisoner shall be therein confined; and also, to support such of said prisoners as shall be committed for offences—Therefore,

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That the sheriff or keeper of every jail in any county of this state, shall be, and he is hereby authorized and required to receive all prisoners committed to his custody by the authority of the United States, and to keep them safely until discharged by due course of the laws of the same; and if any sheriff or jailor shall neglect or refuse to perform the services and duties required of him by this act, or shall offend in the premises, he shall be liable to the like penalties, forfeitures and actions, as if such prisoner or prisoners had been committed under the authority of this state: *Provided,* That every prisoner who shall be committed for any offence by the authority of the United States, shall be supported at the expense of the same, during his or her confinement in said jail.

Sheriff's, &c. to receive prisoners committed by authority of U. States. Penalty, for refusal, &c.

Provided

Sec. 2. That the sheriff or keeper of every jail shall, on the first Monday of January, annually, make out under oath or affirmation, the name or names of all prisoners who, within the year then last past, shall have been committed to his custody, under the authority of the United States, and the time that he, she or they shall have been respectively confined, with an account of the expense thereof, at fifty cents per month, for the use and keeping of such jail, for every person so committed, together with an account of their subsistence, at the rate established by law for state prisoners, unless provided for by the United States, and transmit the same to the auditor of this state, who is hereby authorized and required to draw on the treasurer of this state, who shall pay the said account, out of any public money in his hands not otherwise appropriated; and the said auditor is hereby required to exhibit the several accounts by him received as aforesaid, against the United States, on or before the last day of March annually, for allowance.

Account &c. to be made out.

Auditor to draw on treasurer for amt.

ABRAHAM SHEPHERD,
Speaker of the House of Representatives.
THOMAS KIRKER,
Speaker of the Senate.

December 20, 1806.

AN ACT securing the benefits of the writ of Habeas Corpus.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That if any person, except persons convicted of some

Persons, except conv'cted of some

crime or offence, or for treason or felony, shall have the benefit of the writ of Habeas corpus.

Any judge may allow writ.

Person shall convey prisoner before judge, and make true return.

Persons unlawfully detained to be discharged.

Judge may commit, discharge, or let to bail.

crime or offence, for which they stand committed, or persons committed for treason or felony, the punishment whereof, is capital, plainly and specially expressed in the warrant of commitment, now is or shall be confined in any goal of this state, or shall be unlawfully deprived of his or her liberty, and shall make application, either by him or herself, or any person on his or her behalf, to any one of the judges of the supreme court, or president or associate judges of the court of common pleas, and does at the same time produce to such judge a copy of the commitment, or cause of detention of such person, or if the person so imprisoned or detained, is imprisoned or detained without any legal authority, upon making the same appear to such judge, by oath or affirmation, it shall be his duty forthwith to allow a writ of habeas corpus, which writ shall be issued forthwith by the clerk of the supreme court, or court of common pleas, as the case may require, under the seal of the court, whereof, the person allowing such writ is a judge, directed to the proper officer, person or persons, who detain such prisoner.

Sec. 2. That it shall be the duty of the officer or person to whom such writ shall be directed, to convey the person or persons, so, imprisoned or detained, and named in such writ, before the judge allowing the same, or in case of his absence or disability before some other judge of the same court, on the day specified in said writ, and shall make due return of said writ, together with the day and cause of the caption and detention of such person, according to the command thereof.

Sec. 3. That when the said judge shall have examined into the cause of caption and detention of the person so brought before him, and shall be satisfied that the person is unlawfully imprisoned or detained, he shall forthwith discharge such prisoner from said confinement; and in case the person or persons applying for said writ, shall be confined or detained in a legal manner, on a charge of having committed any crime or offence, the said judge shall at his discretion, commit, discharge or let to bail, such person or persons; and if the said judge shall deem the offence bailable, on the principles of law, he shall cause the person charged as aforesaid, to enter into recognizance, with one or more sufficient securities, in such sum as the judge shall think reasonable, the circumstances of the prisoner and the nature of the offence charged, considered, conditioned for his appearance at the next court, where the offence is properly cognizable; and said judge shall certify his proceedings, together with the recognizance, forthwith to the proper court, and if the person or persons charged as aforesaid, shall fail to enter into such recognizance, he or they shall be committed to prison by such judge.

Sec. 4. That if any person to whom such writ of habeas corpus shall be directed as aforesaid, shall neglect or refuse to obey, or make return of the same, according to the command thereof, or shall make a false return of said writ or upon demand made by the prisoner, or any person on his or her behalf, shall refuse to deliver to the person demanding, within six hours after the demand thereof, a true copy of the warrant or commitment and detainer of such prisoner, every person so offending shall, for the first offence, forfeit to the party aggrieved, the sum of two hundred dollars; and for the second offence, four hundred dollars; and shall, if an officer be incapable to hold his said office.

Persons neglecting or refusing to obey writ or making a false return, shall forfeit, &c.

Sec. 5. That if any clerk of the supreme court, or court of common pleas, shall refuse to issue such writ, after allowance and demand made as aforesaid, he shall forfeit to the party aggrieved, the sum of five hundred dollars.

Clerks refusing shall forfeit, &c.

Sec. 6. That any person who shall be set at large upon any habeas corpus, shall not be again imprisoned for the same offence, unless by the legal order or process of the court, wherein he or she shall be bound by recognizance to appear, or other court having jurisdiction of the cause or offence; and if any person shall knowingly, contrary to this act, recommit or imprison, or cause to be recommitted or imprisoned for the same offence, or pretended offence, any person so set at large, or shall knowingly, aid or assist therein, he shall forfeit to the party aggrieved, five hundred dollars, any colourable pretence or variation in the warrant or commitment notwithstanding.

Persons enlarged, not to be again imprisoned for same offence.

Sec. 7. That if any person of this state shall be committed to prison, or in custody of any officer, for any criminal matter, such prisoner shall not be removed therefrom into the custody of any other officer, unless by legal process, or where the prisoner shall be delivered to some inferior officer to carry to gaol, or shall, by order of the proper court be removed from one place to another, within the state, for trial, or in case of fire, infection or other necessity; and if any person after such commitment, shall make out, or sign or countersign any warrant for such removal, contrary to this act, he or she shall, for every such offence, forfeit to the party aggrieved, five hundred dollars.

Prisoners not to be removed from custody of an officer to another, unless, &c.

Sec. 8. That where any person shall appear to be committed by any judge or justice, and charged as accessory before the fact, to any felony, the punishment whereof is capital, which felony shall be plainly and specially charged in the warrant of commitment, such person shall not be removed or bailed by virtue of this act or in any other manner than if this act had not passed.

Accessories before the fact to felonies shall not be bailed &c.

Sec. 9. That no citizen of this state, being an inhabitant or resident within the same, shall be sent prisoner to any

Citizens not to be sent out of

The state for
crimes com-
mitted in it.

place whatsoever, out of this state, for any crime or offence committed within this state, and every such imprisonment is hereby declared to be illegal; and if any such citizen shall be so imprisoned, he may for every such imprisonment maintain an action of false imprisonment, in any court having cognizance thereof, against the person or persons by whom he shall be so imprisoned or transported, contrary to the intention of this act, and against any person who shall contrive, write, seal, sign or countersign any writing for such imprisonment or transportation, or shall be aiding or assisting in the same or any of them; and shall recover treble costs, besides damages, which damages so to be given, shall not be less than five hundred dollars; and every person knowingly concerned in any manner as aforesaid, in such illegal imprisonment or transportation, contrary to this act, and being thereof lawfully convicted, shall be disabled from thenceforth to bear any office of trust or profit within this state: *Provided*, That if any citizen of this state, or person or persons, at any time resident in the same, shall have committed or be charged with having committed any treason, felony or misdemeanor in any other part of the United States or territories, where he or she ought to be tried for such offence, he, she or they may be sent to the state or territory having jurisdiction of the offence.

Proviso.

Penalties to be
recovered by
action of debt.

Proviso.
Limitation.

Sec. 10. That the penalties in this act made recoverable shall be recovered by the party aggrieved, his or her executors or administrators, against the offender, his or her executors and administrators, by action of debt, in any court having cognizance of the same: *Provided*, That no person shall be sued or molested for any offence against this act, unless within two years after the time when such offence shall have been committed; but if the party aggrieved shall then be in prison, then within two years after the decrease of the person imprisoned, or his or her delivery out of prison; and in every such action it shall be lawful for the defendant to plead the general issue and give the special matter in evidence.

This act shall take effect and be in force from and after the first day of June next.

Effect.

EDWARD TIFFIN,
Speaker of the House of Representatives.
THOMAS KIRKER,
Speaker of the Senate.

February 22, 1811.

AN ACT regulating prison bounds.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio*, That every person imprisoned for debt, either on

mesne process or execution, shall be permitted and allowed the privilege of prison bounds, which are or may be laid off and assigned by metes and bounds, around or adjoining each county jail, by the judges of the court of common pleas: *Provided*, The same does not extend in any direction from said jail, more than four hundred yards, but such prisoner shall, in no instance, pass over, or without said limits.

Persons imprisoned for debt shall be allowed limits

Proviso.

Sec. 2. That no prisoner shall be entitled to the privilege of prison bounds, until he shall have given bond to the creditors, with two or more sureties resident in the county, such as two of the judges of the court of common pleas, or justices of the peace shall approve of, in double the sum for which such prisoner stands committed, for the prisoner's safe continuing in the custody of the jailor, within the limits of said prison bounds, until legally discharged, which bond shall be lodged with the sheriff, until the creditor or creditors shall demand the same, and when the condition of said bond is broken, the creditor may put said bond in suit, and have judgment entered against the sureties for the debt, interest and costs, for which the prisoner stands committed.

Prisoner must give bond to creditor with two or more sureties.

Sureties to be approved of by two judges or justices of peace.

Creditor may have judgment for debt and cost

Sec. 3. That an act allowing and regulating prison bounds, passed December nineteenth, seventeen hundred and ninety nine, and an act amendatory thereto, passed December sixth, eighteen hundred, are hereby repealed.

Act repealed.

This act shall take effect and be in force from and after the first day of June next.

Effect

MICHAEL BALDWIN,
Speaker of the house of representatives.
JOSEPH KERR.
Speaker pro. tem. of the Senate.

January 12, 1805.



AN ACT to amend the act entitled an 'act regulating prison bounds.'

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio*, That the prison bounds in the several counties in this state shall be extended to the corporation limits of the town in which the prison may be situated, and in all cases where the town as aforesaid has not been incorporated, the bounds shall extend to the limits of the recorded town plat, any thing in the act to which this is an amendment to the contrary notwithstanding.

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This act to take effect and be in force from and after the passage thereof.

JOSFPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE.

February 1, 1821.

Speaker of the Senate.

AN ACT for the prevention of frauds and perjuries.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That all deeds of gifts and conveyances of goods and chattels, made in trust to the use of the person or persons making the same, shall be, and hereby are declared to be of no effect.

Deeds, &c. made in trust for grantor void.

Sec. 2. That every gift, grant or conveyance of lands, tenements, hereditaments, rents, goods or chattels, and every bond, judgment, or execution, made or obtained with intent to defraud creditors of their just and lawful debts or damages, or to defraud or to deceive the person or persons who shall purchase such lands, tenements, hereditaments, rents, goods or chattels, shall be deemed utterly void and of no effect.

Gifts, grants, &c. to defraud creditors, void.

Sec. 3. That 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, such goods and chattels shall be deemed the property of the person having had such possession, unless a reservation of the right of such goods and chattels shall have been made to the lender, in writing, and such writing shall have been recorded within six months from the time of making such loan in the recorder's office for the county where one or both of the parties shall then have resided.

Possession for five years of goods, &c. gives right, unless, &c.

Sec. 4. That no leases, estates or interests, either of freehold or terms for years, or any uncertain interests of, in, or out of lands, tenements or hereditaments, shall at any time hereafter, be assigned or granted, unless it be by deed or note, in writing signed by the party so assigning or granting the same, or their agents thereunto lawfully authorized, by writing or by act and operation of law.

Freeholds or terms for years not to be assigned or granted without deed or note.

Sec. 5. That no action shall be brought whereby to charge the defendant upon any special promise, to answer for the debt, default or miscarriage of another person, or to charge any executor or administrator upon any special promise, to answer damages out of his own estate, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of

Persons not answerable for a promise to pay debt of another, or on marriage agreement, or contract for sale of lands,

lands, tenements or hereditaments, or any interest in, or ^{without writ-} concerning of them, or upon any agreement that is not to be ^{ing.} performed within the space of one year from the making thereof, unless the 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 or her lawfully authorized.

EDWARD TIFFIN,
Speaker of the House of Representatives.
DUNCAN MARTIN,
Speaker of the Senate.

February 19, 1810.

AN ACT defining seals to be affixed to instruments of writing.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That to all deeds, bonds, wills, powers of attorney for the conveyance of real estate, which shall hereafter be executed within this state, there shall be affixed a seal, either of wax, wafer, or ink, otherwise called a scrawl; and all other instruments of writing which may hereafter be executed, to which by law a seal is, or may be made necessary, each of the before mentioned methods of sealing shall have equal effects in law: *Provided,* That nothing in this section shall be so construed in any wise to effect any law requiring any specific seal to be affixed to any instrument of writing therein mentioned.

Sec. 2. That the act, entitled "an act, defining seals affixed to certain instruments of writing," be, and the same is hereby repealed.

This act shall commence and be in force from and after the first day of June next.

JOHN SLOANE,
Speaker pro tem. of the House of Representatives.
DANIEL SYMMES,
Speaker of the Senate.

February 11, 1805.

AN ACT, to provide for the proof and acknowledgment of deeds, and other instruments of writing.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That when any man or un-married woman, above the age of twenty-one years shall, within this state execute a deed, mortgage or other instrument of writing, by which Deeds to be signed, sealed and acknowledged in presence of two

witnesses.

any land, tenements or hereditaments lying and being within the same, shall be conveyed in whole or in part, or otherwise affected or incumbered in law, such deed, mortgage or other instrument of writing, shall be signed and sealed by the grantor or grantors, maker or makers, and such signing and sealing shall be acknowledged by him or them, in the presence of two subscribing witnesses, who shall attest the acknowledgment of such signing and sealing; and also be acknowledged before a judge of the court of common pleas, or a justice of the peace, who shall certify such acknowledgment on the same sheet, on which such deed, mortgage or other instrument may be printed or written, by subscribing his name and affixing his seal to said certificate of acknowledgment.

Must be acknowledged before a judge or justice.

Husband and wife to sign, seal and acknowledge, &c.

Sec. 2. That when a husband and wife (she being eighteen years old or upwards,) shall, within this state, execute any deed, mortgage or other instrument of writing, for the conveyance or incumbrance of the estate of the wife, or her right of dower to any lands, tenements or hereditaments whatsoever, such deed, mortgage or other instrument of writing, shall be signed and sealed by the husband and wife, and the signing and sealing thereof shall be acknowledged by them in the presence of two subscribing witnesses, who shall attest the acknowledgment of such signing and sealing, and also be acknowledged before a judge of the court of common pleas, or a justice of the peace, and the judge or justice taking such acknowledgment, shall examine the wife separate and apart from her said husband, and shall read, or otherwise make known to her the contents of such deed, mortgage or other instrument of writing, and if upon such examination, she shall declare that she voluntarily and of her own free will and accord, and without fear or coercion of her husband did, and now doth acknowledge the signing and sealing thereof; the said judge or justice shall certify the same, together with the acknowledgment of the husband on the same sheet on which such deed or mortgage or other instrument, shall be printed or written, subscribing his name and affixing his seal to said certificate, and all instruments of writing, executed as is provided by this and the first section of this act, shall be good and valid in law.

Acknowledgment of wife.

Deeds executed agreeably to law, valid.

Sec. 3. That all deeds, mortgages and other instruments of writing for the conveyance of lands, tenements, and hereditaments, situate, lying and being within this state, which hereafter may be made and executed and acknowledged or approved in any other state, territory or country, agreeably to the laws of such state, territory or country, or agreeably to the laws of this state, such deed, mortgage or other instrument of writing shall be valid in law.

Deeds to be recorded in six

Sec. 4. That all deeds, mortgages and other instruments of writing, executed agreeably to the first and second sec-

tions of this act, shall be recorded within six months from the date of the same, within the county wherein such lands, tenements and hereditaments are situate; and all deeds, mortgages and other instruments of writing, executed agreeably to the third section of this act, shall be recorded within six months from the date of the same, within the county where such lands, tenements, and hereditaments shall lie, and all such deeds, mortgages or other instruments of writing, executed, acknowledged and proved and recorded as aforesaid, shall be good and valid in law; and if any deed, mortgage or other instrument of writing as aforesaid, shall not be recorded within the time herein before specified, such deed, mortgage or other instrument of writing, shall be considered fraudulent against any subsequent bona fide purchaser or purchasers, without knowledge of the existence of such former conveyance: *Provided*, That such conveyance may be recorded after the expiration of the time herein required, and shall from the date of the record be notice to any subsequent purchaser or purchasers.

months in county where land lies, &c.

Provido.

Sec. 5. That all deeds, mortgages or other instruments of writing as aforesaid, for the conveyance of any lands, tenements or hereditaments situate, lying and being within this state, which shall have been executed and acknowledged or proven previous to the taking effect of this act, whether executed within this state agreeably to the laws thereof, or any other state, territory or country, agreeably to the laws of such state, territory or country, shall be admitted to record, and from the date of such record shall be as good and valid in law, against any subsequent purchaser or purchasers, as if the act, entitled "an act, to provide for the proof and acknowledgment of deeds and other instruments of writing," passed January thirtieth, eighteen hundred and eighteen, had not been repealed.

Deed's executed agreeable to law previous to the taking effect of this act, admitted to record.

Sec. 6 That all powers of attorney authorizing the sale and conveyance of lands, tenements or hereditaments within this state, shall be acknowledged and certified in the same manner as is required in the case of deeds, mortgages and other instruments of writing; and when the estate of the wife is to be conveyed, or relinquishment of her dower shall be required in lands, tenements or hereditaments intended to be sold or conveyed, it shall be competent for the wife to join the husband in the execution of a power of attorney, and relinquish her estate or right of dower, in the lands, tenements and hereditaments, intended to be conveyed by virtue thereof, in the same manner as is required in the case of deeds, mortgages and other instruments of writing, and the title made by virtue of such power of attorney, shall include the name of the wife and be good and valid in law, and divest the wife of her estate or right of dower to the lands, tenements and hereditaments conveyed thereby, as effectually as

Powers of atty for conveyance of land, how executed, &c.

Wife may join in power.

Provided,

if she had signed and acknowledged such deed, mortgage or other instrument of writing, or had conveyed her estate or relinquished her right of dower, to the premises therein mentioned: *Provided*, That the wife may at any time revoke such power of attorney, so far as it relates to her estate or right of dower, previous to the sale of the lands, tenements and hereditaments intended to be sold and conveyed by such power of attorney, by having such revocation recorded in the county or counties wherein such lands, tenements and hereditaments may be.

Powers of att'y
must be recor-
ded.

Sec. 7. That all powers of attorney, authorising the sale of any lands, tenements or hereditaments or for the making of any deed, mortgage or other instrument of writing, for the conveyance or incumbrance of any lands, tenements or hereditaments, in this state, shall before such sale, conveyance or incumbrance takes place, be recorded in the recorder's office of the county wherein such lands, tenements or hereditaments may lie; and that all powers of attorney proven, acknowledged and recorded, according to the provisions of this act, shall be received in evidence in all courts of record within this state, in the same manner and under the same rules of evidence as deeds, mortgages and other instruments in writing are received and admitted in evidence by virtue of this act.

Recorders to
keep a seal of
office.

Copies, evi-
dence,

Sec. 8. That each recorder shall be authorized and required to procure and keep a seal of office, and all copies of records shall be certified by such recorder under his hand, to which certificate he shall affix his seal of office if thereunto required; and all copies of records certified under the hand and seal of the recorder, in the manner herein specified, shall be received in all courts, as evidence of the existence of such records.

Act repealed.

Sec. 9. That the act, to provide for the proof and acknowledgment of deeds and other instruments of writing, passed January thirtieth, one thousand eight hundred and eighteen, be, and the same is hereby repealed.

Effect

This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.

ALLEN TRIMBLE,
Speaker of the Senate.

February 24, 1820.

—:00:—

AN ACT providing for the recording of deeds, mortgages and other instruments of writing.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio, That there shall be one recorder in each county, who*

shall be appointed by the associate judges of the proper county, in the manner following, to wit: the associate, eldest in the commission, shall give notice in writing to the other two associates, notifying them of the time of meeting at the seat of justice, (at least six days previous to the time of such meeting) for the purpose of selecting a fit person for recorder of the county, and the said associate judges, or any two of them, when so met, shall proceed to appoint a person (having the qualifications of an elector) recorder of the county, for the term of seven years, if he so long behaves well, who shall keep his office at the seat of justice of his proper county, and who shall give bond, with two good securities, to be approved of by the said judges, in the sum of one thousand dollars to the governor of this state, and his successors in office, conditioned for the faithful discharge of the duties of his office, who shall then take and subscribe the following oath: "I, A B, do solemnly swear or affirm, (as the case may be) that I will faithfully and impartially discharge the duties of recorder for the county of _____ according to the best of my abilities and understanding," and in all cases where the office of recorder shall become vacant, or in case of new counties, the associate judges shall proceed to the appointment of a recorder as above directed: *Provided*, That it shall not be lawful for any associate judge to be appointed, or to hold the office of recorder.

Associate judges to appoint a recorder.

To give bond, and take an oath.

Form.

Vacancy how filled.

Proviso.

Sec. 2. That the said recorders in the several counties shall record in a fair and legible hand, in a book or books to be by him provided for that purpose, all deeds and mortgages, and conveyances of lands and tenements lying within his county; and also all other instruments and writings, which by law are required to be recorded.

Duty of recorder.

Sec. 3. That the said recorder shall, upon the receipt of any deed or other writing, which shall be delivered to him to be recorded as aforesaid, endorse thereon the time when the same was entered for record, and shall also (if thereunto requested) give to the person delivering the same, a receipt therefor, expressing the date thereof, the names of the parties and a description of the premises, without any fee or reward; and said recorder shall record all deeds and other writings, in regular succession, according to their priority, or time of being brought into his office, and when the same shall be recorded, he shall endorse thereon the time when, the number and page of the book in which the same is recorded.

To endorse the time of receiving and, &c.

And refer to the page of the book of records &c.

Sec. 4. That the said recorder shall make out, for any person demanding the same, a fair and accurate copy of any record in his office, to which copy he shall affix his certificate and signature.

To make copies.

Sec. 5. That for the recording of any deed or other writ-

Fees. ing the said recorder shall be entitled to demand and receive of the person or persons for whom the same shall be recorded, the sum of twelve and a half cents for every hundred words therein contained; and for all copies of records, the said recorder shall be entitled to demand and receive of the person or persons requiring the same, the sum of nine cents for each hundred words contained therein.

To be paid on receipt of deed &c. Sec. 6. That whenever a deed or other instrument of writing which the law makes necessary to be recorded, shall be delivered to the recorder of any county, for the purpose of having the same recorded, the recorder may ask and demand such fee or fees as in this act is prescribed and no more.

Punished for frauds and negligence. Sec. 7. That if any recorder shall neglect or refuse to receive and record any deed or other writing, which shall be presented to him for that purpose, or shall refuse to give a receipt therefor, if required, or shall refuse to make out and certify a copy of any record that shall be demanded of him, or shall demand and receive of any person or persons, for any of the aforesaid services, greater fees than is herein allowed, or shall fraudulently endorse on any deed or writing, a different date than the day on which said deed or writing was entered for record, or a different date from that date on which the same was recorded, with intent to defraud any person or persons, he shall, for every such offence, forfeit and pay a sum not exceeding two hundred dollars to the treasurer of the county, where the offence shall be committed, for the use of the county, to be recovered by indictment, and shall also pay the party aggrieved all damages which he, she or they shall have sustained thereby, with costs of suit: *Provided*, That if any recorder, offending as aforesaid, should at the same time be the county treasurer, then the fine imposed on such recorder, shall be recoverable by the county commissioners, in manner aforesaid.

Proviso. Sec. 8. That the recorders of the several counties within this state, on their going out of office, are hereby directed and required to deliver up all the books, records and other instruments in their respective offices to their successors in office, who shall give receipts therefor, which shall be a full discharge as to the specifications therein mentioned.

To deliver books, &c. to successor. Sec. 9. That the act 'providing for the recording of deeds, mortgages and other conveyances of land,' passed the sixteenth of April, eighteen hundred and three; and the act to amend the same, passed the twenty first of December, eighteen hundred and six, and an act repealing of a part of the third section of the act, entitled, 'an act regulating the fees of civil officers, in civil and criminal cases, and providing for the appointment of recorders in certain cases,' be, and the same are hereby repealed.

Acts repealed.

This act shall take effect and be in force from and after ~~the~~ the first day of June next.

EDWARD TIFFIN,
Speaker of the house of representatives,
DUNCAN M'ARTHUR,
Speaker of the Senate.

February 8th, 1810.

AN ACT declaring the law in certain cases of actions upon covenants real, and for other purposes.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That the grantee, or his or her heirs, executors, or administrators in all deeds of bargain and sale for the conveyance of lands, containing the covenants of general warranty, shall and may maintain an action of covenant against the grantor in such deed, his heirs, executors or administrators, upon such common covenant of general warranty, in the same manner that such grantee or his or her heirs, executors or administrators might have done, had such deed contained also a covenant of seizin on the part of the grantor; and such action may in like manner be commenced before the grantee, or his or her heirs, executors or administrators shall have been evicted, and shall be supported by the same evidence; and the plaintiff shall be entitled to recover the same quantum of damages, as in the case of an action brought upon a covenant of seizin.

Grantee in deed with warranty may maintain same action without, as with covenant of seizin and without eviction.

Sec. 2. That if any person shall sell, or shall convey, by any deed of conveyance or assurance containing covenants either of general, or special warranty, any tract of land having at the time of such sale or conveyance, no title either in law or equity to the land so sold or conveyed, such vender knowing at the time of sale, that he had no title either in law or equity to the land so as aforesaid sold or conveyed; or if any person shall sell or convey any tract of land as agent or attorney in fact for any other person, not being legally authorized so to do, it shall be lawful for the purchaser to have and maintain an action upon the case for deceit against the grantor, in such deed or party to such contract or such pretended agent or attorney in fact, in which action the plaintiff shall recover against the defendant the full value of the lands so sold or pretended to be conveyed, together with the value of the improvements thereon, both to be estimated at the time of action brought.

Action for deceit and damages.

Sec. 3. That in all actions brought under the provisions of this act, the plaintiff may sue out his summons in the county in which such lands lie or may be situate, directed to the sheriff or coroner (as the case may be) of any other

Summons may issue to any county.

county in which the defendant in such suit may be, or reside; and the sheriff or coroner to whom the same may be directed, shall serve and return such summons to the court that issued the same, and such court, shall in all respects, proceed thereon as if the defendant resided in their proper county: *Provided however*, That no judgment by default shall be taken in any such cause until the next succeeding term after such summons shall be returned, executed.

Proviso.

Act repealed.

Sec. 4. That the act entitled, 'an act declaring the law in certain cases of actions upon covenants real, and for other purposes,' passed the second day of January, one thousand eight hundred and fifteen, be and the same is hereby repealed.

Effect.

This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 3, 1824.

AN ACT providing for the execution of real contracts, in certain cases.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio*, That if two or more persons, who heretofore have held or may hereafter hold lands, as coparceners, joint-tenants or tenants in common, have heretofore or shall hereafter, become obligated for the sale and conveyance of the same, or of any part thereof, or if any one or more of the said coparceners, joint tenants or tenants in common, after the said contract, and before the conveyance of the land so contracted for, hath or have died or shall die, it shall be lawful for the survivor or survivors, to present a petition to the court of common pleas, of the county in which the land, so contracted for, may or shall be situated, setting forth the facts relative to the said contract, and praying for an order for the execution thereof; and if it shall appear to the said court, by good and sufficient testimony, that such contract hath been made, and hath been fully complied with, on the part of the purchaser or purchasers, or that the said purchaser or purchasers is, or are then ready to comply with the said contract according to the terms thereof, so that he or they, hath or have a full right to demand and receive a conveyance of the said land, or any part thereof, it shall be lawful for the said court of common pleas, to make an order, authorising and empowering the said survivor or survivors;

Surviving joint tenant, tenant in common, &c may petition court to make a deed.

to complete the said contract, by conveying the land so contracted for; and the deed so made and executed, by virtue of the order aforesaid, shall convey as complete and perfect a title, and shall, in all respects, have the same effect as if the said deed had been executed by all the said coparceners, joint-tenants or tenants in common.

Sec. 2. That the said petition shall recite the names of all the contracting parties, the situation, quantity and description of the land so contracted for, and the time of making such contract; and the deed to be made, by virtue of the order aforesaid, shall recite the said order, and it shall be the duty of the clerk of the said court, to record the said petition at length, and the order thereon granted.

What petition and deed shall recite.

Sec. 3. That if any person or persons, who have, or shall enter into any contract for the sale and conveyance of land or other real property, and before the completion of such contract on his, her or their part, have or shall die, leaving heirs under the age of twenty-one years, or otherwise, and the executor or executors, administrator or administrators, or other legal representatives of such person or persons, so deceased, or who may hereafter die, may or shall be desirous of completing such contract or contracts, for and on behalf of such heirs, such executor, administrator or other legal representatives, may petition the court of common pleas of that county in which the lands or real property shall be situated, particularly stating the contract in like manner as is provided in the case of a survivor or survivors; and the same orders and regulations shall be made and pursued as is herein above provided, and pointed out in case of a survivor or survivors; and upon sufficient proof of such contract having been made and entered into being given, to the satisfaction of the said court, an order of court shall be made, authorising and appointing the executor or executors, administrator or administrators, or other legal representatives of such deceased person, or such other persons as the said court of common pleas may deem suitable and proper, fully to complete the said contract or contracts of such deceased person or person, and to make and execute a deed or deeds of conveyance, for and on behalf of the heir or heirs of such deceased person or persons, according to the terms and stipulations of such contract or contracts; and the person or persons so authorised by the said court of common pleas as aforesaid, shall pursue the same rules in making a conveyance, as are provided in case of a survivor or survivors; and such conveyance, when made according to the provisions of this act, shall be binding upon such heirs, and all other persons interested in the same manner as though the conveyance had been made by the person or persons making such contract or contracts, in his or their lifetime.

Executors or administrators may petition court to complete contracts of testators or intestates.

Sec. 4. That if any person or persons who have entered, or shall hereafter enter into any written contract, for the purchase of any land or other real property, has died or shall die, leaving an heir or heirs, such heir or heirs, his, her or their guardian or guardians, may compel the conveyance of such land, in the same manner as such deceased person might have done, agreeably to the provisions of this act.

Sec. 5. That it shall be the duty of the said court, before the granting of the order aforesaid, to secure or cause to be secured to, and for the benefit of the estate or estates of the said deceased party or parties, their just part and proportion of the consideration of the said contract; and the person petitioning for such order, shall pay to the clerk of the said court, for making the necessary entries, the sum of twenty-five cents, and if the said order be granted, the further sum of ten cents for every hundred words contained in the said petition and order, for recording the same.

EDWARD TIFFIN,

Speaker of the House of Representatives.

DUNCAN WARTHUR.

Speaker of the Senate;

January 16, 1810,

AN ACT to provide for the partition of real estate.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That all joint-tenants, tenants in common, and coparceners of any estate or estates, in lands, tenements or hereditaments within this state, may be compelled to make or suffer partition of such estate or estates, in manner hereinafter prescribed, and that where such estate or estates, is or may be situated in two or more counties, the proceedings under this act shall be had before the supreme court, when said court shall be in session, in any one of the counties where a part of the premises so to be divided shall be situated; and where such estate or estates, is or may be situated in one county only, the proceedings may be had before the court of common pleas of such county.

Sec. 2. That any person being a joint-tenant, coparcener or tenant in common, of any such estate or estates, or executor, administrator, guardian or agent of any such person, may file his or her petition in the supreme court or court of common pleas, as the case may require, praying that partition of such estate or estates may be made, which petition shall set forth the nature of the title or claim of the demandant, the tract or tracts of land, the tenements or hereditaments of which partition is demanded, and also the name

and place of residence of each joint-tenant, coparcener and tenant in common with such demandant, if they shall be known to such demandant, and if on examination, it shall appear that the demandant hath a good and legal right, to any part or portion of such estate or estates, then the court shall proceed, in the term in which such petition may be filed, to order and direct a partition to be had and made, in the manner prescribed by the provisions of this act.

Sec. 3. That the demandant in any petition, shall previously to the term of the court, to which he applies for the partition of any lands, give notice either by publication in some newspaper, in general circulation in each county where such lands may lie, or by giving personal notice to each and every person concerned, or their agent or attorney, at least forty days previous to the sitting of said court, setting forth the pendency of the petition and the demand thereof.

Notice to be given personally or by advertisement.

Sec. 4. That if at the first or any succeeding term, (in case a continuance hath been granted) after the filing such petition, it shall appear to the court that due notice hath been given, and if no sufficient reason shall appear why partition should not be made, the court shall proceed to order such partition, and shall issue their writ, directed to the sheriff of the county in which the estate or estates shall or may be, or to the sheriff of either of the counties in which the estate or estates shall or may be, in case such estate or estates is or are in more than one county; commanding him, that by the oaths of three judicious and disinterested freeholders of the vicinity, to be appointed by said court, who are not of kin to any of the parties concerned, cause to be set off and divided to the demandant in said petition, such part and proportion of such estate or estates, as the court shall have ordered and directed; and in making such partition it shall be the duty of said freeholders, to view and examine such estate or estates, to set apart the same in such lot or lots as will be most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts of such estate or estates, and if the bounds or title of any tract or tracts, or any part thereof shall be controverted, it shall be the duty of the said freeholders, to separate the same from the uncontroverted part and to make partition of the estate or estates, in such manner that a due proportion of the controverted, as well as of the uncontroverted part may be allotted to the demandant; and when partition of more than one tract is demanded in the same petition, the freeholders appointed to make partition, shall set off to each of the petitioners his proper proportion, in each of the several tracts of which partition is demanded, unless the several tracts of which partition is demanded, shall be owned by the same proprietors, and in the same proportion in each tract;

Court shall issue writ of partition

Command of writ.

Freeholders' duty in making partition.

in which case the whole share of any proprietor, in and to all the several tracts, may be set off to such proprietor, in any one or more of said tracts; if in the opinion of said freeholders such partition will be more advantageous to the proprietors generally, than to set off to each proprietor his proportion in each of the several tracts.

Defendants,
&c. in petition
may appear
and consent to
partition.

Sec. 5. That if at any time after the filing a petition as aforesaid, and before a writ shall have issued to the sheriff, the person or persons, joint-tenants, coparceners, or tenants in common, of whom partition is demanded, shall appear by him or themselves, or by his or their attorney, and shall pay the costs which have accrued on such petition, and shall consent to a partition of such estate or estates, by such person or persons as said joint-tenants, coparceners or tenants in common shall agree upon; and in case they do not agree upon any person or persons, to make such partition before the end of the term, then a writ shall issue to the sheriff as is herein before provided.

If lands cannot
be divided, in-
quest shall
make apprais-
ment.

Sec. 6. That when any writ of partition shall issue as aforesaid, if the inquest who are directed to make such partition, shall be of opinion that the estate or estates cannot be divided according to the demand of the writ, without prejudice to or spoiling the whole, the said inquest shall then make and return to the court, a just valuation and appraisment of such estate or estates; whereupon, if the said court shall approve of the said return, and if any one or more of the parties shall elect to take the said estate or estates at the appraised value, the same shall be adjudged to him or them, he or they paying or securing to be paid, to the other parties their proportions of the appraised value, according to their respective rights; and the sheriff shall, according to the said order of court, make and execute conveyances to the party or parties electing to take the same, subject nevertheless to a lien thereon, in favor of the others of said parties, until payment be made to them of their respective shares of the money as aforesaid; and in case the said parties shall not agree who shall take the said lands and tenements on the terms aforesaid, then the said court shall or may at the instance of the demandant, in the said petition, make an order for the sale of the said lands and tenements at public auction by the sheriff, who shall have holden the said inquisition; or his successor in office, after due and fair notice of the time and place of such sale, by advertisement published and set up in the several counties where the lands lie, and also in such public newspaper as shall be most likely to give fair and full notice of such sale, to all the parties concerned and others; which public notice shall be given at least twenty days before the time of sale, in cases where the lands all lie in the same county, and at least sixty days where the lands lie in different counties; and the said sheriff is hereby empowered and

One of parties
may elect to
take the estate.

No one agree-
ing to take the
estate, court
may order a
sale.

Notice to be
given.

Sheriff to make

ordered to execute deeds to the purchasers of the lands and tenements so aforesaid sold, on receiving payment of the consideration money, or taking sufficient security therefor to the satisfaction of the court, which money or securities shall be brought into court, before or at the time of the said sheriff's acknowledging the deed in open court, to be distributed and paid by order of the said court, to and amongst the several parties entitled to receive the same in lieu of their respective parts and proportions of said lands and tenements, according to their just rights and proportions.

Sec. 7. That in all cases where persons shall be appointed to make partition of lands, agreeably to the provisions of this act, it shall be their duty if there be any widow, who may be entitled to dower in the lands so to be divided, to set off to said widow her dower therein; and in case such lands shall be situated in two or more counties or two or more tracts, it shall be lawful to set off the dower in one or more counties or two or more tracts, as they may think most equitable.

Sec. 8. That the court before whom any partition shall be had, shall tax the costs and expenses which may accrue in such proceedings, equally between all parties owning lands in such tracts, of which partition is granted, in proportion to the interest each party may own, and shall at the term next after the partition is accepted, issue execution thereupon against such person or persons, their goods, chattels, lands, tenements and hereditaments, as shall not have previously paid their proportion of such costs and expenses so taxed.

Sec. 9. That the guardians of all minors are hereby respectively authorized and empowered, on behalf of their wards, to do and perform any act, matter or thing, respecting the partition of lands under this act, and the same shall be deemed as valid and effectual in law, to every intent and purpose, as if the same had been done by such minor, after his arrival at full age.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
 ALLEN TRIMBLE,
Speaker of the Senate.

February 26, 1820.

AN ACT providing for the recovery of money secured by mortgages.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That if any person or persons shall hereafter execute and deliver any mortgage for securing the payment of any sum or sums of money, bath or shall neglect or refuse to pay to the mortgagee or mortgagees, his or their heirs, ex-

Persons executing mortgage and refusing to pay the money due, mortgagee may sue out a

Writ of scire
facias,

executors, administrators or assigns, all monies due and owing, and which such mortgages was intended to cover and secure, according to the covenants and conditions in such mortgage, it shall and may be lawful for such mortgagee or mortgagees, or for his, her or their heirs, executors, administrators or assigns, at any time after the last day, whereon such sum or sums of money hath or shall become due and payable, according to the conditions and covenants of the said mortgage, to sue out a writ of scire facias against the said mortgagor or mortgagors, or his, her or their heirs, executors or administrators, which the clerk of the supreme court, or the clerk of the court of common pleas for the county in which the premises so mortgaged may be situated, is hereby authorised; and on application for that purpose, required to issue, directed to the proper officer, commanding him that by two good and lawful men of his county, he make known to the defendant or defendants in such writ, that he, she or they be and appear before the court, to shew cause, if any there be, why the said mortgaged premises should not be taken in execution and sold to satisfy the money due and owing according to the conditions and covenants contained in such mortgage; and upon the return of the scire facias, it shall be lawful for the defendant or defendants to come in and plead payment or satisfaction for all or any part of the money demanded by the plaintiff or plaintiffs, or any other legal plea in bar, or avoidance of the deed or money thereon demanded, as the case may require, and thereon the parties shall proceed to issue and trial as in other cases.

Command of
the writ.

What defend-
ant may plead.

Defendant fail-
ing to appear,
court shall as-
sess damages
and a writ of
levari facias
may issue.

Sec. 2. That if the defendant or defendants in such writ of scire facias, on being returned summoned, or on two writs of scire facias returned nihil, shall not appear, then judgment by default shall be entered, and the court shall proceed according to law, to assess the damages and to enter final judgment thereon, on which a writ of levavi facias, may issue, by virtue whereof the mortgaged premises shall be taken in execution, and disposed of in the same manner and under the same regulations that lands and tenements are or may be by law disposed of for the satisfaction of judgments.

Amount due
not paid by
sale of land,
residual to be
taken as a
debt of record,
&c.

Sec. 3. That if the mortgaged premises, so taken in execution, be not sufficient to satisfy the said judgment, then the residue of said judgment, so remaining unsatisfied, shall be deemed and taken to be a debt of record, for which the plaintiff or plaintiffs may issue a writ or writs of scire facias, and proceed thereon to judgment and execution, as in other cases: *Provided*, That the sheriff or other officer executing a deed by virtue of the directions herein contained, shall not be bound to warrant and defend the right or title of the property so as aforesaid sold and conveyed.

Proviso,

Sec. 4. That nothing herein contained shall affect the

Tight of any person or persons who may set up any claim to such mortgaged premises, by purchase from or under the mortgagor or otherwise, and which claim in law shall be paramount to the claim of such mortgagee; nor shall any thing contained herein be construed to prevent such claimant from availing himself of any defence that the mortgagor might or could have set up, in bar or discharge of such mortgage, or of any fraud or collusion between the mortgagor and mortgagee.

Nothing in this law shall affect a title paramount to that of the mortgage, &c.

Sec. 5. That all money secured by mortgage, executed prior to the taking effect of this act for the recovery of money secured by mortgage, be, and the same is hereby made recoverable in the same manner that money secured by mortgage was made recoverable by the laws in force at the time such mortgage was executed, any law, usages or customs to the contrary notwithstanding.

Rights accruing under former laws saved.

Sec. 6. That an act, entitled, "an act providing for the recovery of money secured by mortgage," passed the twelfth day of February, eighteen hundred and five, and an act supplementary to an act, entitled, "an act for the recovery of money secured by mortgage," passed January the twentieth, eighteen hundred and seven, are hereby repealed.

Acts repealed.

This act shall take effect and be in force from and after the first day of May next.

Effect.

EDWARD TIFFIN,
Speaker of the House of Representatives.
DUNCAN M'ARTHUR,
Speaker of the Senate.

January 2, 1810.

AN ACT against forcible entry and detainer.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That two justices of the peace shall have authority to enquire by jury, in the manner hereinafter directed as well against those who make unlawful and forcible entry into lands or tenements, and detain the same, as against those who having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found, upon such enquiry, that an unlawful and forcible entry hath been made, and that the same lands or tenements are held and detained, with force, or that the same, after a lawful entry, are held unlawfully and with force, then such justices shall cause the party complaining to have restitution thereof.

Two justices to enquire into forcible entries and detainers.

Sec. 2. That when complaint shall be made, in writing, to any two justices of the peace of any unlawful and forcible entry into any lands or tenements and detainer as

Justices on complaint to

does not appear to defend, the justices shall proceed to the enquiry in the same manner as if he were present; and when the jury shall appear, they shall be empaneled to enquire into the entry or forcible detainer complained of, and the justices shall lay before the jury the exhibited complaint, and shall administer an oath or affirmation to the jurors to well and truly try whether the complaint of E. F. now laid before them is true, according to evidence; and if the jury shall find no part of the same true, they shall return a general verdict of not guilty; and it shall be the duty of the justices to render up judgment against the complainant, and thereupon tax the bill of costs and issue execution against the said complainant, returnable in twenty days; and if the jury shall find the same true, they shall return a general verdict of guilty or they shall return a special verdict of such parts as they do find true; and the justices shall render up judgment for the complainant to have restitution of the premises and costs, and shall immediately, after the expiration of ten days from the time of entering up said judgment of restitution, issue their writ of restitution accordingly; which writ shall be in the form following, to wit:

Service.

Form of oath
of jurors.

Judgment.

The State of Ohio,

County, ss.

A. B. and C. D. two of the justices of the peace in and for said county, to the

of said county,

Greeting:

Form of writ
of restitution.

Whereas at the court of enquiry of forcible entry and detainer, or an unlawful forcible detainer, (as the case may be) held before us, at in said county of on the day of in the year of the jurors empaneled and sworn according to law, did return their verdict of guilty; whereupon it was considered, by us, that the said E. F. should have restitution of the premises described in his complaint; (or any particular part thereof, as the case may be) therefore, we require you, that taking with you the force of the county, if necessary you cause the said G. H. to be forthwith removed from the premises, and the said E. F. to have the peaceable restitution of the same; and also that you levy of the goods, chattels or lands of the said G. H. the sum of being costs taxed against him, on the trial aforesaid, together with for this writ, and satisfy yourself your legal fees; and for want of such goods, chattels or lands of the said G. H. by you found; you are commanded to take the body of the said G. H. and him commit to the common jail of said county, there to remain until he shall pay the sum aforesaid, together with all fees arising on the service of this

writ, or until he be discharged by due course of law, and make return of this writ with your proceedings thereon, within twenty days from the date thereof; Witness our hands and seals at
 aforesaid, the
 day of _____ in the year

A. B. } Justices of
 C. D. } the Peace.

Talesmen allowed.

Sec. 6. That if by accident or challenge, there should not be a full jury, the sheriff or other officer (as the case may be) shall fill the paunel with talesmen as in other cases.

No appeal.

Sec. 7. That no appeal shall be allowed from the judgment of the justices: *Provided*, That the proceedings of the said justices may be removed by certiorari into the court of common pleas holden in such county; and be there revised or set aside for irregularity, if such there be; nor shall such judgment or the judgment rendered in the verdict of the jury hereinafter mentioned, be a bar to any after action, brought by either party: *Provided, also*, That no writ of certiorari to remove the proceeding of said justices shall issue after the expiration of ten days from the day on which such judgment was rendered.

Certiorari allowed.

Proviso.

Before certiorari issues, bond to be given.

Sec. 8. That the person applying for a writ of certiorari, shall, before the same is issued, give bond with good and sufficient security to the defendant in certiorari, to be approved of by the clerk of the court issuing the same, in the penal sum of five hundred dollars, conditioned for the faithful prosecution of the said suit, and in case of failure, that he will pay all costs, rents and damages which may be assessed to the defendant in certiorari, as is hereinafter provided, which bond shall be lodged with said clerk for the use of the defendant.

Condition.

Proceedings where judgment below shall be reversed.

Sec. 9. That in all cases when the proceedings of the justices of the peace shall be brought up before the court of common pleas, in manner aforesaid, and the judgment of such justices shall be set aside or reversed by such court, the court shall retain the cause before them and shall proceed to final judgment thereon, as in cases of appeal at the return term of the writ of certiorari, unless for good cause shewn, the court may continue the same, and if upon the trial of the cause, the jury by their verdict shall find the defendant guilty of forcible entry and detainer, or forcible detainer only, the court shall render judgment that the complainant have restitution of the premises in question and recover costs and shall order a writ of restitution to issue accordingly, returnable to the next term of said court.

Sec. 10. That in case the plaintiff in certiorari shall fail or neglect to prosecute said suit to final judgment, or

shall not succeed in setting aside the proceedings in the court below the court of common pleas shall order the sheriff to summon three disinterested freeholders of said county, any two of whom shall proceed to view the premises and return to the clerk of said county under their hands, (they being first duly sworn faithfully to discharge such duty,) the worth of the premises and damages sustained during the pendency of said writ; and the amount of the appraisement, so returned, shall be the rule of damages which the plaintiff shall recover in any suit brought upon the bond given upon obtaining the writ of certiorari.

Proceedings where judgment below shall be affirmed.

Sec. 11. That whenever complaint is made, under the provisions of this act, and the plaintiff does not reside in the county, it is hereby made the duty of the justices, before whom the same is made, or either of them, before any warrant is issued, to take a bond with sufficient security, in the sum of one hundred dollars, payable to the party complained against, conditioned for the payment of all costs that may accrue, in case judgment be rendered against the complainant, which bond shall be filed with one of said justices for the benefit of those interested.

Non-resident plaintiffs to give bond for costs.

Sec. 12. That in case judgment be rendered against any party residing out of the county, or in case said party shall remove out of the county after judgment, it shall be lawful for said justices to issue their execution for costs, directed to the sheriff of the county where the party resides or may be found, which execution shall be returnable sixty days after date.

Execution for costs may issue to another county.

Sec. 13. That in case any one of the justices, before whom judgment shall be obtained, shall die, or his office in any manner become vacant, before judgment shall be executed, the remaining or surviving justice shall carry the same into effect.

Surviving justice may execute judgment.

Sec. 14. That proceedings in this act may be had in all cases against tenants holding over their term, in sales of real estate on execution, after such sale shall have been examined by the proper court, and the same have been adjudged legal, where the judgment debtor was in possession at the time of the rendition of the judgment by virtue of which such sale was had; and when the defendant is a settler or occupier of land without any colour of title, and to which the complainant has the right of possession.

In what cases writ will lie.

Sec. 15. That in all suits, under the provisions of this act, the justices shall each be entitled to receive the sum of seventy five cents, together with the same fees that are allowed by law for issuing similar writs and other process; and the jurors on rendering their verdict, shall each receive fifty cents, to be paid by the party succeeding, which shall be taxed in the bill of costs and recovered as in other cases.

Justices' and jurors' fees.

Sec. 16. That the act entitled "an act, against forcible

entry and detainer," passed the fifteenth day of January, eighteen hundred and twenty, the act entitled "an act to amend the act entitled "an act against forcible entry and detainer," passed the eighteenth day of December, eighteen hundred and twenty-one, and the act entitled "an act, further to amend the act, entitled "an act, against forcible entry and detainer," passed the tenth day of January, eighteen hundred and twenty-three, together with all other acts and parts of acts coming within the purview of this act, be and the same are hereby repealed: *Provided*, That all causes of action which shall have arisen prior to the taking effect of this act, shall be prosecuted in the same manner as if this act had never passed.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
 ALLEN TRIMBLE,
Speaker of the Senate.

January 16, 1824.

AN ACT regulating enclosures.

Where there is a division fence, it shall be kept in repair at joint expense.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio*, That whenever the fields, meadows, lots or other enclosures of any two or more persons are divided by a fence or palings of any kind, such fence or palings shall be erected and kept in repair at the joint and equal expense of the parties owning the enclosures, on each side of such fence or palings: *Provided always*, That when either of the parties thinks proper to vacate such field, meadow, lot or other enclosure, that he shall be released from the before recited provisions of this act.

Where one erects a fence and the other wishes to make an opposite enclosure, he shall pay half the value, &c.

Sec. 2. That in all cases where a fence or palings has been, or hereafter may be erected, by any person on the line of his, her or their land, or that on which he, she or they may have a lease, and the person owning or leasing the land adjoining thereto, shall make or cause to be made, an enclosure or enclosures on the opposite side of such fence or palings, so as the same may answer the purpose of enclosing one side of his, her or their field, meadow, lot or other enclosure, such person or persons shall pay to the person erecting such fence, one half the value thereof, to be adjudged and assessed by the fence viewers of the township in which such fence is situate, and recovered by action of debt, before any court having competent jurisdiction thereof.

Sec. 3. That whenever the parties concerned, as in the first section of this act mentioned, cannot agree between

themselves on the part or portion of such fence or palings by each party to be kept in repair, either party may apply to the fence viewers of the township in which such fence is situated, who shall proceed, on application as aforesaid, to view and assign to each party, his, her or their equal part of such fence or palings, by him, her or them to be kept in complete repair, which decision shall be final and conclusive between the parties; and the said fence viewers shall be entitled to demand and receive, for each days service to be rendered as aforesaid, seventy-five cents, each to be paid in an equal proportion by the persons interested.

Where parties cannot agree about repairs, fence viewers may settle the controversy.

Sec. 4. That if any horses, neat cattle, or other beasts, shall injure or trespass on the ground or enclosure of any person in consequence of any partition fence erected as aforesaid, not being a sufficient and legal fence, the person failing or neglecting to keep his part of such partition fence in complete repair, shall forfeit and pay to the person injured, all damages thus sustained, which shall be assessed by three judicious men to be appointed by a justice of the peace of the township, and recovered by action of debt, before any court proper to try the same.

Horses, &c. trespassing, partition fences not legal, persons in default to pay damages.

Sec. 5. That in all cases whenever the fields, meadows, lots or other enclosures of two or more persons are divided by a fence or paling of any kind, and where either of the parties think proper to vacate their part of such field, meadow, lot or other enclosure, or to make a lane or passage between the same, such person shall be at liberty to remove his or her part of said fence or paling, on giving six months notice in writing to the other party or parties owning the adjoining fields, meadows, lots or other enclosures, or to his or her agent where such party is not a resident of the county.

Persons wishing to vacate field, &c. may remove his part of fence, &c.

Sec. 6, That the act entitled "an act, regulating enclosures," passed January twenty-fourth, one thousand eight hundred and seven, and "an act supplementary to the act regulating enclosures," passed January fifteenth, one thousand eight hundred and twenty one, be, and the same are hereby repealed.

Acts repealed.

This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 3, 1830.

AN ACT to restrict the entailment of real estate.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That from and after the taking effect of this act, no estate in fee simple, fee tail, or any lesser estate in lands or tenements, lying within this state, shall be given or granted by deed or will to any person or persons, but such as are in being, or to the immediate issue or descendants of such as are in being at the time of making such deed or will, and that all estates given in tail shall be and remain an absolute estate in fee simple to the issue of the first donee in tail.

This act to take effect and be in force from and after the first day of June next.

MATTHIAS CORWIN,
Speaker of the House of Representatives.
THOMAS KIRKER,
Speaker of the Senate.

December 17, 1811.

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AN ACT Defining a lawful fence, and providing against trespassing animals.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That if any horse, mare, mule or ass, or any cattle, hogs, sheep or goats, shall break into any grounds, being enclosed with a strong and sound worm fence, sufficiently **Lawful fences.** staked and ridged, or locked at each joint, five feet six inches high, or with strong post and rails or posts and palings five feet high, or with a hedge two feet high, upon a ditch three feet deep and three feet wide, or instead of such hedge, a rail fence of two feet and a half high, or with a fence five feet six inches high, composed of strong sound timber, put up in any other proper manner not herein particularly expressed, and the owner or occupier of such enclosure shall consider him or herself aggrieved thereby, the person so injured may apply to the fence viewers of the township, who shall forthwith repair to the place where such injury was done, and there diligently examine such fence, and for refusal or neglect so to repair and examine as aforesaid, the fence viewers shall respectively be liable to a fine of two dollars, to be recovered on suit of the party injured.

Sec. 2. That if, in the opinion of the fence viewers, the fence over or through which the trespassing animal entered, is of such height and strength as is defined by the first section of this act, and in all other respects such a fence as **Fence viewers to assess damages when animals have trespassed, &c** good husbandmen generally keep, they shall proceed, from view and enquiry, to assess the damages sustained by such

applicant from such trespassing animal or animals, which assessment, including the sum due the fence-viewers for their services, by this act allowed, the said fence viewers or a majority of them shall, under their hands and seals, certify and deliver to the person sustaining the damages, and if the owner or possessor of such trespassing animal or animals aforesaid, refuses to pay the said damages on demand, the person so injured may deliver said certificate to any justice of the peace within the township, who shall issue process thereon, as in other cases of damages, and after trial had, shall enter up judgment and issue execution thereon, agreeable to law. Justices to issue process upon certificate.

Sec. 3. That if it shall appear to such justice that damage hath been done to the plaintiff, he shall give judgment for the amount thereof (or double the amount, as the case may be) with costs of suit, and shall issue execution thereon, in the same manner and under like regulations as is by law directed in other cases tried before a justice of the peace; but if it shall appear that the plaintiff hath not sustained any damage, the justice shall give judgment against him, and award execution thereon for the costs of suit: *Provided nevertheless,* That either party shall have the privilege of an appeal to the court of common pleas, as in other causes tried before a magistrate. Appeal allowed from decision of justice.

Sec. 4. That the sum of fifty cents per day, shall be allowed to each of the viewers of fences, for their services rendered under this act; and if any person directed to view and report the situation of any fence as aforesaid, shall fail or refuse to do the same, not having a reasonable excuse for such failure or refusal, such person shall be subject to a fine not exceeding two dollars, at the discretion of the magistrate, for the use of the township. Fence viewers' fees. Penalty for neglect of duty.

MICHAEL BALDWIN,
Speaker of the House of Representatives;
DANIEL SYMMES,
Speaker of the Senate,

February 2, 1805.

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AN ACT authorizing aliens to hold lands in this state, by purchase or otherwise.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That it shall be lawful for any and all aliens that now may have, or that hereafter shall be entitled to have, within this state, any lands tenements or hereditaments, either by purchase, gift, devise or descent, to hold, possess and enjoy the same, as fully and completely as any citizen of the Uni-
H h

ted States or this state can do, subject to the same laws and regulations, and not otherwise.

Sec. 2. That this act shall be in force from and after the passage thereof.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATHANIEL MASSIE,

Speaker of the Senate.

February 3, 1804.

AN ACT defining the duties of the Auditor of State.

Auditor to
keep his office
at seat of gov.

To give bonds,

And keep a
seal.

Shall issue
bills.

To keep re-
cords and pre-
serve files.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the auditor of state shall keep an office at the seat of government, and do and perform all duties appertaining thereto which are or may be enjoined on him by law, and previous to entering on the duties of his office, he shall enter into bond, with two or more securities, such as shall be approved of by the governor, in the sum of ten thousand dollars, payable to the state of Ohio, conditioned for the faithful discharge of his duties; which bond shall be recorded and filed in the office of the secretary of state.

Sec. 2. That the auditor shall keep a seal for the use of his office with the device of "*The Seal of the Auditor for Ohio,*" to be by him used officially, which shall be called the seal of the auditor for the state of Ohio, and all official copies taken from the records in his office or other documents issuing therefrom, shall be under seal, certified and signed by the auditor, and all such copies or other documents, issued by the auditor in manner aforesaid, shall be received as legal evidence in any court of record or elsewhere within this state.

Sec. 3. That the auditor shall, from time to time, issue bills payable at the state treasury, for all monies which may be by law directed to be paid; such bills shall be printed on separate sheets, leaving sufficient space at one end of each sheet to indent and number them; each sheet shall be indented and numbered, and the number corresponding therewith entered on the part of the sheet from which such bill was cut; and he shall carefully preserve in his office the indented part of each sheet containing the corresponding number of the bill; he shall issue such bills when requested for ten dollars, or twenty dollars, or for any fraction between them, adding such fraction to ten dollars, or for the whole amount which appears due to the person entitled thereto, but for any sum under ten dollars he shall issue a bill for the whole amount.

Sec. 4. That the auditor shall make and preserve fair and accurate records in his office, in good durable books,

(to be by him procured at the expense of the state) of all the public accounts, and keep a regular file, in progressive order, of all receipts and other vouchers relative thereto, and also make fair and accurate records of all such other documents as have been, or may be by law made returnable to his office, and shall also receive, examine and liquidate all accounts against the state, and issue bills payable at the treasury, agreeably to the third section of this act, for all monies due from the state, and shall make out an accurate statement thereof, and of the public accounts and funds and the unexpended balances of the several appropriations, if any, up to the fifteenth day of November preceding each session, and report the same to each house, on the third day of their annual sessions; he shall at the same time, also make out and report, to each house, a true and accurate account of the receipts and expenditures of the state for the preceding year, together with the amount of all lands charged with tax within each county, with the several rates therein designated as returned to his office, together with such observations on the finances of this state, as he shall conceive proper for the consideration of the general assembly; and he shall also make out and attach to his annual report, the aggregate amount of all bills or orders by him issued or drawn on the treasury in each year.

Other d. at' g.

Sec. 5. That all accounts against the state, shall be presented to the auditor, who shall examine and adjust the same, and issue a bill or bills, redeemable at the state treasury for such balance or amount as may be found due from the state which bill shall specify the name of the person to whom payable, and bear the date of settlement; a list of such bills the auditor shall keep in a book or books, to be by him provided for that purpose, in which he shall enter in progressive order, the number of such bills or orders by him issued, the name of the person to whom issued, the date of issuing, and the amount of the bill or order issued.

Accounts against state shall be presented to him.

Sec. 6. That the faith of this state is hereby pledged for the redemption of all bills, signed, attested and issued by the authority and agreeably to the provisions of this act; and when such bills shall have been redeemed at the treasury and are deposited with the auditor, by the treasurer with his mark of redemption thereon, the auditor shall also so mark said bills as to prevent their further circulation.

Faith of state pledged for the redemption of bills.

Sec. 7. That the auditor shall be and is hereby barred and excluded from deriving, obtaining or applying, directly or indirectly, to his own proper use and benefit, any emolument or gain for negotiating or transacting any business in his department, other than is allowed him by law; neither shall he offer or receive any bill, audited order or account, on any pretence whatever, at less value than is expressed therein.

Not to charge illegal fees.

To submit
book to gen'l
assembly.

Sec. 8. That the auditor shall, at any time when there-
to required, submit his books, accounts and vouchers to the
inspection of the general assembly, or to any committee ap-
pointed by them for that purpose.

Fees for copies

Sec. 9. That the auditor shall deliver, to any person
calling therefor any certified copy of surveys or other do-
cuments in his office, on the party applying therefor. pay-
ing to him twenty five cents for each copy of survey, and
twelve and a half cents for every hundred words contained
in any copy of documents, and all monies by him received
pursuant to the provisions of this section, shall be paid into
the state treasury for the use of the state.

To send forms
to C. auditor's
&c.

Sec. 10. That the auditor shall, from time to time, pre-
pare and transmit to the county auditor of each county,
such general forms and instructions, in conformity with the
laws in force, as, in his opinion, is necessary to secure
uniformity and correctness in listing, charging, collect-
ing, transferring and accounting for the public revenue;
and the auditors, listers and collectors in their respective
counties shall be bound to observe and pursue the same;
and the auditor of state shall also annually furnish the coun-
ty auditor of each county with a durable book, bound and
constructed in such manner as to receive a record of the
duplicate of the land charged with tax within such county
which book shall be transmitted to the county auditor on or
before the first day of May in each year.

Make deeds
for lands sold
for taxes.

Sec. 11. That the auditor of state, be and he is hereby
authorized to make deeds for any tract or part of any tract
of land that has heretofore been sold for taxes in the same
manner that non resident collectors were authorized to do,
by virtue of the laws heretofore in force on that subject, and
to the deed or deeds thus made, the auditor shall affix his
seal of office, which shall be evidence of the execution of
such deed; such deed shall have all the force and effect of
deeds heretofore made by the non-resident collectors, and
for every deed thus executed, he shall be entitled to receive
seventy five cents.

To ascertain
the time, &c.
lands become
subject to tax-
ation.

Sec. 12. That the auditor of state is hereby authorized
and required to apply to, and receive from the proper of-
fices or places, such drafts of general surveys, evidence of
purchase, entry or grant as will enable him to ascertain the
name of the original owners, the quantity of land contained
in each tract, the time when lands may become subject to
taxation, and such other information as may be necessary to
carry this act into effect; and the expense of procuring such
documents shall be paid out of the contingent fund, on the
order of the auditor.

To send lands
subject to tax,
C. auditor.

Sec. 13. That the auditor of state shall transmit to each
of the several county auditors, on or before the first day of
June in each and every year, a list or statement of lands

which may become subject to taxation, within such county, agreeably to the returns transmitted to the auditor of state from the several land offices

Sec. 14. That the auditor shall annually compare the lists of defalcations, transmitted from each county auditor, with the duplicate sent to his office from said county, for the same year, and all lands on which, from such comparison, it shall appear that the taxes have not been paid, shall be considered as delinquent, and shall be recorded in a book, to be kept by the auditor for that purpose, and charged with penalties and interest as is or may be provided by law.

Shall record lands delinquent for taxes.

Sec. 15. That the auditor shall, on or before the first day of May annually, transmit to each of the several county auditors a list of lands, within said county, which were returned delinquent for the preceeding year, together with the amount of taxes, penalties and interest charged on each tract.

And send list to C. auditor.

Sec. 16. That where, from a comparison of the list of defalcations transmitted from the county auditor with the duplicate of said county, as provided by this act, it shall appear that the same tracts are returned delinquent for two years in succession, the auditor of state shall record such delinquency and charge the tracts with the additional penalty and interest to which the same shall have become subject, and also the tax of the third year, and transmit a separate list, of such lands as shall be, so as aforesaid, a second time returned delinquent with the taxes, interest and penalties charged thereon to the county on the first day of August annually, with directions, in case the amount of said taxes, interest and penalties be not paid by the last day of October in said year, to proceed to advertise and sell the same in the manner pointed out by law for the sale of lands for taxes: *Provided*, That no tax shall be received at the office of the

Taxes not paid for two years to be sold.

Proviso.

Sec. 17. That the auditor shall, annually, on or before the first day of April, in each year, make out an apportionment of taxes collected on lands to which the several counties shall, by law be entitled, and in making said apportionment, he shall have due regard to the amount collected from lands lying within each county, whether the same be received by the collector, the county treasurer or be paid into the state treasury, on the tax duplicates, or on delinquent lands, and shall issue his order on the treasurer of state in favor of the treasurer of each county, or in favor of such person as may be duly authorized by the county treasurer of any county to receive the same, for the balance of taxes so as aforesaid, found due to such respective county: and he shall take from the county treasurer or other person receiving such order receipt therefor.

Auditor to make out apportionment of taxes collected and issue his order, &c.

County treasurer receiving more than proportion, auditor or to draw for amount.

Sec. 18. That where from the several laws authorizing the payment of money into the county treasuries a greater sum shall be paid into the treasury of any county, on account of tax on land, than the amount of that county's proportion of the land tax of the current year, the auditor of state is hereby authorized to cause the balance due the state treasury, to be transmitted or drawn for, in such manner as he may think most expedient, and he is hereby authorized to allow such compensation for the transmission of the said balance to the state treasury, as he may think just and reasonable, not exceeding one per cent on the amount.

Collectors of state revenue, delinquent to be proceeded against according to law.

Sec. 19. That if any collector, sheriff or other officer, concerned in the collections of state revenue, shall fail to collect, or fail to make a regular return, or fail to make settlement, or fail to pay over all monies wherewith he may stand charged, at the time and in the manner required of him by law, the auditor is hereby required, immediately after the expiration of thirty days next after the time within which the collector or other officer was bound, by law, to perform either of the duties mentioned in this section, to make out an accurate account of the sum due from such delinquent collector, or other officer, and transmit the same to the county auditor of the proper county, with directions to such county auditor to proceed against such delinquent collector, or other officer, and his securities in the manner pointed out by law: *Provided, however,* That where it shall be made appear to said auditor, that such default was owing to said collector's not having received his duplicate within the requisite time, or to some inevitable accident, the said auditor, in his discretion, may omit to charge said collector with the penalties accruing by law, and to postpone the instructions for bringing suit, not exceeding thirty days.

Proviso.

Auditor in certain cases may remit penalties and apply taxes paid.

Sec. 20. That whenever it shall be made appear, to the satisfaction of the auditor, that any person has or may hereafter become liable to the payment of penalties, through the act or negligence of any officer required to discharge any duties relative to the levy and collection of state revenue, he shall remit the penalty, thus incurred upon the person or his agent, paying into the state treasury the full amount of taxes due, with the lawful interest thereon; and when any person has paid or may hereafter pay the taxes on any tract or tracts of land, by a number or description different from the real number or description, the auditor, on satisfactory evidence being produced of the error, is hereby authorized to apply the taxes thus paid in such manner as may be just, and as was intended by the person paying the same.

To give treasurer

Sec. 21. That on the treasurer of state, depositing the bills redeemed at the treasury with the auditor, he shall en-

for a credit to the treasurer for the amount of bills, thus deposited, and also give to the treasurer a receipt therefor.

rrer credit for bills.

Sec. 22. That the auditor, on receiving from any collector of the land tax, the receipt of the treasurer of state for monies paid by such collector into the treasury, shall charge the treasurer with the amount thereof; and he shall in like manner, on receiving from any such collector the receipt of the county treasurer of any county, for the amount of said county's proportion of the land tax, or any part thereof, or on receiving the certificate of the county auditor that any money belonging to the state has been paid into the county treasury, charge such county therewith, as the whole or part of such county's proportion of the land tax, as the case may be.

To charge treasurer of state or county with monies.

Sec. 23. That the auditor shall pay out of the contingent fund, appropriated for his office, all claims legally presented to him, under the provisions of the several acts directing the mode of redeeming lands sold for taxes, where the same has not already been paid.

Pay claims out of contingent fund.

Sec. 24. That if any land shall be sold for the tax, the property of any minor, insane person or persons in captivity, such person or persons shall have his or their possession restored, on his her or their complying with all the requisitions of the act directing the mode of redeeming certain lands, sold for tax, and commencing the legal course as directed under the aforesaid act, within one year after such disability, shall be removed, and any land, and town lots sold for the tax heretofore, or that shall hereafter be sold for tax, property of any individual, other than minors, insane person or persons in captivity, such person or persons shall have his her or their possession's restored, on his, her or their complying with the aforesaid requisitions, within two years after the sale of such lands and town lots, and paying at the same time into the state treasury, in addition to the amount for which the land and town lots so redeemed was sold, fifty per cent thereon, the purchaser, his heirs and assigns, shall be entitled to draw the money deposited as aforesaid, in the same manner as pointed out in the aforesaid act.

Lands of minors &c sold for taxes may be redeemed

Lands of others may be redeemed.

Sec. 25. That when any tract of land has been heretofore or shall be hereafter sold for tax, the same having been regularly paid such sale is hereby declared void, and the purchaser on producing the certificate of sale to the auditor of state, shall be entitled to have his money refunded from the state treasury and the auditor of state shall pay the same out of the money appropriated for refunding taxes twice, or improperly paid.

Sale of lands for taxes, which have been paid, void.

Sec. 26. That the auditor of state shall make a general list of the land on which the tax remains due and unpaid prior to the year one thousand eight hundred and twenty-three, within the Virginia Military district, north of the indian

A list of delinquent lands, N. indian boundary &c.

to be made,
and lands ad-
vertised, &c

Judgment to
be rendered in
Franklin coun-
ty.

boundary line, so called, and lying without any organized county, charging each tract with the tax, interest and penalties which may have accrued agreeably to the laws in force, for the different years the tax on said lands may have remained unpaid, to which he shall add the tax, interest and penalty accruing thereon, for the year one thousand eight hundred and twenty three, and also the tax for the current year, which list he shall certify under his official seal, and transmit the same to the clerk's office, in the county of Franklin and cause a transcript thereof to be advertised six weeks successively in a newspaper printed at the seat of Government, setting forth, that at the next succeeding court of common pleas for said county, a motion will be made to said court for a judgment, in the name of the state of Ohio, for the amount of tax, interest and penalty against the person in whose name said tax, interest and penalty is charged, and it shall be made the duty of the auditor of state, to appear in court according to the terms of said notice and demand a judgment as aforesaid in all cases, when he may be satisfied that such tax, penalties and interest may remain due and unpaid, and the further proceedings shall be had thereon in said court, by the officers thereof, and by the auditor of state, who are hereby bound to perform all and singular the duties that the county officers are bound to perform under the act for the remission of penalties, and for the sale of lands for taxes, passed January the thirtieth one thousand eight hundred and twenty-two.

Auditor to
make dupli-
cate of lands,
N. of the in-
dian boundary,
&c.

Proceedings to
be had then or
as in other
cases.

Sec. 27. That the auditor of state shall on or before the first day of August in each year, make out a complete duplicate of all lands lying north of the indian boundary line, so called and without any organized county, in the same manner that county auditors are required to make duplicates for their respective counties, and the same shall be kept in his office for the purposes of receiving taxes from the proprietors and the said lands on which the taxes, interest and penalties are not paid by the time specified for the payment of taxes in other cases shall be charged with tax interest and penalties agreeably to law, and proceedings shall be had, and the land on which the tax interest and penalties, as aforesaid, are not paid at the state treasury before the same shall be sold at the seat of government, in the same manner under the directions of the auditor of state, as is by law provided in cases of delinquent lands charged with taxes in the several counties.

Sec. 28. That the act entitled an act defining the duties of the auditor and treasurer of state passed January thirteenth, one thousand eight hundred and sixteen, an act to amend the several acts, defining and regulating the duties of auditor and treasurer of state, passed January twenty ninth; one thousand eight hundred and twenty-two, and all other

acts and parts of acts coming within the purview of this act, Acts repealed.
be and the same are hereby repealed.

This act to take effect and be in force from and after the Effect:
first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 24 1824.

*AN ACT declaring what lands situate within the state of Ohio,
are subject to the payment of tax, and defining the duties of
the respective owners thereof in listing, transferring and pay-
ing the tax which may, from time to time, be assessed there-
on.*

Sec. 1. *Be it enacted by the General Assembly of the state of
Ohio,* That all lands within this state, the property of indi- Lands of indi-
viduals, &c. bodies corporate or politic, except such as are ex- subject to tax,
empted by the second section of this act, shall be and the
same are hereby declared to be subject to taxation and
charged therewith yearly and every year, to be levied and
collected in such manner as now is or may hereafter be di-
rected by law.

Sec. 2. That all tracts of land with the improvements,
not exceeding fifteen acres, the title of which is vested in
any person or persons, for the use, and in trust for any reli-
gious society within this state and occupied by such society
for the use of a meeting house, or burying ground; all lands
sold by congress for the term of five years, from and after the
day of sale, as is provided in the act of congress, approved
thirtieth of April eighteen hundred and two, entitled "an
act to enable the people of the eastern division of the terri- Certain lands,
lots, &c. ex-
empt from tax
ation for state
purposes.
tory northwest of the river Ohio, 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" and all lands which are the property of any
Academy, College or other seminary of learning, which now
is, or hereafter may be established within this state, together
with all lands, in-lots and out-lots the property of the state
of Ohio, shall be and the same are hereby declared free and
exempt from any tax whatever, and all in or out lots included
within the plat of any town that now is or may be regularly
laid out and recorded according to law shall be, and the
same are hereby declared to be exempt from the payment
of a state tax.

Sec. 3. That all lands subject to taxation, shall be rated
or classed as first, second, or third rate, agreeably to the

Classification
of lands.

following rules, to wit: where the largest proportion of a tract is of the best quality, it shall be denominated first rate, where the largest proportion is of the most inferior quality, it shall be denominated third rate, and where the largest proportion is inferior to the best, and superior to the worst quality, it shall be denominated second rate.

Proprietor to
list his lands.

Sec. 4. That it shall be the duty of every proprietor, whose lands may, after the first day of May, be subject by law to taxation, to list the same with the county auditor, of the county in which the lands lie, immediately after the same shall become subject to taxation, on pain of having the same entered for taxation by the county auditor as first rate land.

Selling to trans-
fer lands so
purchased.

Sec. 5. That it is hereby made the duty of every proprietor selling the whole or any part of a tract of land listed for taxation in his name, to cause the tract or part of a tract so sold to be transferred to the purchaser, on the books of the county auditor, in the county in which the lands so sold may lie, within six months after such sale shall be completed furnishing said county auditor with a complete description of the land sold as aforesaid.

Purchaser may
have lands
transferred.

Sec. 6. That if the proprietor selling any tract or part of a tract of land shall fail to cause the same to be transferred to the purchaser as provided in the foregoing section, the purchaser may cause the same to be transferred as therein provided, upon producing satisfactory evidence of his title, and in either case from the time of making such transfer, said land shall in all subsequent duplicates stand charged with taxes, in the name of the purchaser.

When lands
are divided
must be relist-
ed.

Sec. 7. That in all cases where any tract of land listed in the name of any one or more proprietors, shall be divided in consequence of a sale of part thereof; and such division shall cause the tracts so apportioned to be of different qualities according to the rules provided by law for classing lands for taxation, application may be made by either proprietor, to the county auditor, on producing to him satisfactory evidence of the fact, to relist the tract apportioned and set off to him; and in such case the proprietor of the remaining lands shall relist his part, on pain of having the same relisted by the county auditor as lands of the first class.

When parti-
tion has been
had must be
relisted.

Sec. 8. That where any tract of land owned by two or more persons as joint-tenants, co-parceners, or tenants in common shall be divided under the act for the partition of real estates or otherwise each proprietor after such division, shall relist the part which may be set off to him in such division, with the county auditor, in the manner pointed out in this act within six months after such division may have taken place, on pain of having the same relisted by the county auditor as land of the first class.

Sec. 9. That every resident proprietor owning lands

In other counties, than that in which he lives; and every non-resident proprietor shall be permitted to pay the taxes charged on such lands into the state treasury at any time after the auditor of state shall have received from the auditor or auditors of the county or counties in which said lands lie a copy of the lists of land tax until the first day of January thereafter, in the payment whereof such proprietor shall obtain from the auditor of state a certificate of the amount of tax charged, pay the same to the treasurer of state, obtain his receipt, deliver such receipt to the auditor of state, and take from said auditor his receipt therefor.

Taxes may be paid to auditor of state.

Sec. 10. That any proprietor of lands which on the books of the auditor of state, may appear a second time delinquent, shall be permitted at any time before said lands are returned to the auditor of the county for sale, to pay the tax, interest and penalties charged thereon to the treasurer of state, in the manner which is pointed out in the preceding section of this act.

Proprietors may pay tax, interest, and penalty before lands returned for sale.

Sec. 11. That the proprietor of any tract of land transmitted a second time by the auditor of state, to the county auditor charged with the tax, interest and penalties of the two preceding years and tax of the current year as pointed out by law, may at any time thereafter, before the sale thereof, be made by the county auditor as provided by law, pay into the county treasury of the county where the lands lie, the tax, interest and penalties charged thereon; and in making such payment it is hereby made the duty of such proprietor to apply to and obtain from the county auditor a certificate of the amount of the said tax, interest and penalties charged on the land, so as aforesaid, returned a second time delinquent, pay the amount to the county treasurer, obtain his receipt and deliver such receipt to the county auditor.

Proprietors may pay tax, &c. of delinquent land to C. Auditor.

Sec. 12. That if any proprietor of the lands which are subject to the payment of tax, shall refuse or neglect to pay the tax charged thereon, either in the county where the land lies, or at the state treasury, on or before the thirty first day of December, after the same shall be charged with tax arrearsably to law, said land shall remain charged with all arrears of tax, and the lawful interest thereon, until the same shall be paid, to which there shall be added a penalty of twenty-five per cent, on the amount of tax charged for each year, the same may have been delinquent.

Interest and penalty for delinquency.

Sec. 13. That the state shall have a perpetual lien on all lands subject to taxation within the state, for the amount of all tax, interest and penalties which have been, or may hereafter be charged thereon until the taxes, interest and penalties, shall be paid, which lien shall in no wise be destroyed or affected by any sale or transfer of said lands, to which the state is not a party.

State retains lien for taxes, &c.

Sec. 14. That every person shall be liable to pay tax for the lands of which he or she shall stand seized, or may have the care of either as guardian or executor or by curtesy, or in dower or for life or in right of his wife, or as agent or attorney, such agent or attorney having funds of his principal in his hands; and it is hereby made the duty of every person being so seized, or having the care of lands as aforesaid, either as guardian or executor, or by curtesy, or in dower, or for life or in right of his wife, or as agent or attorney, such agent or attorney having funds of his principal in his hands as aforesaid, to list the same for taxation as herein before provided, and pay the tax which may yearly, and every year be assessed thereon; and every person so being seized or having the care of lands as aforesaid, as guardian and neglecting or refusing either to list or to pay the tax on the lands of which he or she is so seized, or has the care of as aforesaid, shall be liable in an action on the case to his or her ward or wards for any damage which his or her ward or wards may have sustained by reason of such neglect or refusal; and every person so being seized or having the care of lands as aforesaid as executor and neglecting or refusing either to list or to pay the tax on the lands of which he or she is so seized, or has the care of, shall in like manner be liable in an action, on the case to the devisee or devisees of the person whose executor he or she is, for any damage, which such devisee or devisees may have sustained by reason of such neglect or refusal; and every person so being seized or having the care of lands as aforesaid either by curtesy or in dower or for life or in right of his wife, and neglecting or refusing, either to list or to pay the tax on the lands of which he or she is so seized or has the care of, as aforesaid, shall forfeit to the person or persons next entitled to the said lands either in remainder or reversion, all the estate which he or she so neglecting or refusing as aforesaid may have in the said lands; and shall moreover be liable in an action on the case to the person or persons next entitled to the estate for any damage, he, she or they may have sustained by reason of such neglect or refusal; and every person so being seized, or having the care of lands as aforesaid, either as attorney or agent, such attorney or agent having funds of his principal in his hands neglecting or refusing either to list or to pay the tax, on the lands of which he or she is so seized, or has the care of as aforesaid, shall be liable in an action on the case, to his or her principal for any damage which he or she may have sustained by reason of such neglect or refusal; and every attorney, or agent, or guardian or executor, so being seized or having the care of lands as aforesaid, who shall be either put to any trouble or expense in attending to the listing or paying of the tax on the lands of which he or she is so seized or has the care of

Guardians, executors, tenants by curtesy or in dower, agents, &c. to list land and pay taxes,

Liable to an action for negligence,

as aforesaid, or who has to advance his or her own money for listing or paying the tax on the said lands, a reasonable compensation for the time spent, the expenses incurred and money advanced as aforesaid, shall be deemed in all courts a just charge against the person or persons for whose benefit the same has been advanced, and the same shall be preferred to all other debts or claims, and be a lien on the estate real and personal, of the person or persons for whose benefit the same was advanced.

Advances for
... purpose to
... a lien upon
estate.

Sec. 15. And that in all cases where any tract or tracts of land may be owned by two or more persons, either as joint tenants or co-parceners, or tenants in common and one or more of the proprietors thereof shall have paid or may hereafter pay the tax, or tax, interest, and penalties chargeable on his, her or their proportion or respective proportions of such tract or tracts, and one or more of the remaining proprietor, or respective proprietors shall have failed or may hereafter fail to pay his, her or their proportion or respective proportions of the tax, or tax, interest and penalties chargeable on such tract or tracts of land and partition of such tract or tracts, be afterwards made or had between them, the tax, or tax, interest and penalties, so as aforesaid, paid by such proprietor or respective proprietors, on his, her or their proportion or respective proportions shall be deemed to have been paid on the proportion or respective proportions of said tract or tracts so set off to such proprietor or respective proprietors on such partition, and such proprietor or respective proprietors so paying the tax or tax, interest and penalties as aforesaid, shall hold the tract or tracts so apated or set off to him, her or them respectively, free and discharged from the payment of the residue of the tax, or tax, interest and penalties charged on the said tract or tracts of land before partition; and the residue of the tax, or tax, interest and penalties charged on said tract, or tracts of lands before partition remaining unpaid at the time of said partition shall be deemed and adjudged as attaching to the proportion or respective proportions set off on said partition to the delinquent proprietor or respective proprietors of said lands, who shall not have paid his, her or their proportion or respective proportions of the said tax, or tax interest and penalties charged on the entire tract or tracts before partition, and such tract or tracts so as aforesaid set off to such delinquent proprietor or respective proprietors on said partition shall remain charged with the said tax, or tax, interest and penalties in the same manner as though said partition had been made before said tax, or tax, interest and penalties had been imposed, and said tract or tracts had been originally listed for taxation in the name or names of such delinquent proprietors or respective proprietors,

When one of
two or more
proprietors
have paid tax-
es, &c. and
partition is
had, the tax
shall be deem-
ed to be paid
upon the land
held in sever-
ally by him
who thus paid.

Effect. This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 25, 1824.

AN ACT levying a tax on land, and for other purposes.

Rates of taxation on lands, Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That there shall be levied and paid for the year one thousand eight hundred and twenty four, on each hundred acres of first rate land; one dollar and twenty-five cents; for each hundred acres of second rate land, eighty-seven and a half cents, and for each hundred acres of third rate land, fifty six cents, and in the same proportion for any greater or less number of acres.

20 per cent. to be paid into C. treasury. Sec. 2. That twenty per cent of the nett tax collected from lands lying within each county, shall be paid into the treasury of such county, for county purposes, which shall be ascertained and paid over in the manner pointed out, in the act defining the duties of the auditor of state.

School fund loaned to state to be paid. Sec. 8. That the amount arising from the Virginia military School Lands, heretofore loaned to the state, together with the interest thereon shall be re-paid, and the auditor and treasurer of state are hereby authorized to place the amount thereof to the credit of the aforesaid fund.

Act repealed. Sec. 4. That the act levying a tax on land, and for other purposes," passed January twenty-seventh, one thousand eight hundred and twenty three, be and the same is hereby repealed.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 24, 1824.

AN ACT defining the duty of collectors of the land tax.

Collector to take an oath and give bond. Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That the collector of the land tax in each county shall, before entering on the duties of his office, take and subscribe an oath, or solemn affirmation for the faithful discharge of the duties of his office, before the auditor of his county or some other competent authority, and give bond with two or more

good and sufficient securities, to the satisfaction of the auditor of his county, in double the amount charged on the lists of land tax to be collected by him for the current year: which bond shall be made payable to the state of Ohio, conditioned for the faithful performance of the duties of his office of collector, and for the payment of all monies which may be collected by him, and which he may be bound to pay over as required by law; which bond and oath, or solemn affirmation given, taken and subscribed as aforesaid, he shall deposit with the county treasurer, taking his receipt therefor.

Condition,

Sec. 2. That the collector after having deposited his bond and oath, or solemn affirmation as aforesaid, shall, on or after the first day of August, call on the auditor of his county and deposit the treasurer's receipt with him, and receive from said auditor, a copy of the lists of land tax, which he, the said collector has to collect; and after receiving such copy, and previous to the first day of December, in each year, he shall proceed to demand from each person residing within his county, the amount of tax charged to such person on his tax list, and upon receiving the amount of tax charged on any tract of land, he shall give to the person paying the same, a receipt therefor, and enter the same on his tax list.

Shall make personal demand of each resident.

Sec. 3 That the collector in each county immediately after receiving the lists of land tax as aforesaid, shall give public notice by advertisement, for three weeks in succession, in some newspaper in general circulation in his county, of the amount of tax charged on each one hundred acres of first, second and third rate land, and also of the time he will commence the collection of tax and of the time he will attend at the county seat for the purpose of receiving the same.

To give notice.

Sec. 4. That when any tract of land, charged with tax on the lists of any collector, or charged on such lists with tax, interest and penalties, may be owned by one or more persons; such collector shall receive from any person, tendering the same, his proportion of such tax or such tax, interest and penalties due thereon, and receipt for the same; describing in a proper manner each tract or part of a tract on which the same has been paid.

One of two joint owners may pay his part of tax.

Sec. 5. That it shall be the duty of the collector after having received the list of land tax on or before the first day of December annually, to call upon every person charged with a state tax, within his county at the residence of such person for the purpose of receiving such tax.

Must call at residence of party.

Sec. 6. That the collector of the land tax in each county, be and he is hereby authorized, whenever he may deem it necessary, to appoint one or more deputies to assist him in the collection of tax, and may require of such deputy, bond with such security as he may deem sufficient; every such deputy shall be governed by the provisions of this act, and

May appoint deputies.

Shall be responsible for acts.

shall pay over all monies which he may collect to the principal collector, when thereto by him required, and in case he fail so to do, he and his securities shall be liable to the same penalties and to be proceeded against in the same manner, by such principal collector as such principal collector is liable to and may be proceeded against for a failure in the performance of his duty as collector, as is herein-after provided: and the amount which may be recovered, by such principal collector, against such deputy collector, and his securities, shall be for the sole use and benefit of such principal collector, and such principal collector shall in all cases be responsible for all the acts of and all monies collected by such deputy.

Shall attend at seat of justice during month of Dec'r.

Sec. 7. That the collector shall attend at the seat of justice of his proper county during the month of December in each year, for the purpose of receiving the balance of tax not previously collected either from residents or non-residents; and no penalty shall accrue until the time for collecting the tax in each year shall have elapsed.

May be allowed 6 per ct.

Sec. 8. That the collector of the land tax in each county, shall be allowed by the county auditor on his settlement with him, as fees for collecting the tax assessed on lands in his county, such compensation, not exceeding six per cent. on the amount by him collected, as the commissioners of the county may have determined on at the time of appointing him.

To settle with auditor on first day of Jan'y.

To make oath to delinquent list, &c.

Sec. 9. That the collector shall settle with the auditor of his county, on the first day of January in each year, and return delinquent all lands contained on his lists of land tax, on which the tax shall not have been paid previous to that day; he shall permit said county auditor to take from his list of land tax, correct duplicate lists of all lands so by him returned delinquent, and when taken he shall sign and testify to the correctness of said lists under oath or solemn affirmation, and after the said county auditor shall have deducted the amount of tax charged on the delinquent lists, so by him returned as aforesaid, together with the amount of his percentage, from the total amount of tax charged on his tax lists and certified under his hand at the foot of said delinquent lists, the balance to be by him paid into the state treasury, or the balances to be paid into the state and county treasuries according to law, and deliver one of said lists to him; it is hereby made his duty to deposit such delinquent lists, so signed, testified to and certified as aforesaid, with the auditor of state, and procure from said auditor a certificate of the amount, to be by him paid into the state treasury according to law, after deducting from the amount certified by the county auditor the amount of mileage, allowed to said collector for travelling to and from the seat of government, as hereinafter mentioned.

Sec. 10. That the collector of land tax in each county shall pay over to the treasurer of state, all monies by him collected on his lists of land tax, agreeably to the certificate of the auditor of state, on or before the fifteenth day of January in each year, and take duplicate receipts therefor, one of which he shall deposit with the auditor of state; and he shall in like manner pay over to the county treasurer of his county on or before said day, all monies by him collected as aforesaid, agreeably to the certificate given by the county auditor for that purpose, and take from said treasurer duplicate receipts therefor, one of which he shall deposit with the auditor of his county, and one of them with the auditor of state.

When to pay
over money
collected.

Sec. 11. That the collector of the land tax in each county shall be allowed by the auditor of state, the sum of eight cents per mile for travelling to and from the seat of government, to be computed from the seat of justice of his proper county, in order to pay into the treasury of state the monies by him collected on his tax list.

Travelling fees

Sec. 12. That if any collector of the land tax shall fail to collect, or fail to make a regular return, or fail to make settlement, or fail to pay over all monies wherewith he may stand charged, at the time and in the manner required of him by law, then and in either of those cases, upon the auditor of state giving to the auditor of his county instructions for that purpose, as by the nineteenth section of the "act defining the duties of the auditor of state," is pointed out, he and his securities, on application by the county auditor to the clerk of the court of common pleas of his county, for a summons against him and his securities on the bond given by him as collector, shall have judgment entered against them the first term of said court, after the return of said summons and execution for the amount due from said collector with legal interest and ten per cent. penalty thereon: (unless it shall appear, by disinterested testimony, that justice cannot then be done, and the court shall for such cause grant further time,) and from such judgment there shall be no appeal, and execution shall forthwith issue thereon, and the sheriff or other proper officer shall levy on and sell the property of such delinquent collector or his securities, without valuation or appraisement, and the sheriff shall pay over the money so collected into the state treasury, in the same manner as the collector was bound to do, taking from the treasurer triplicate receipts therefor, one of which he shall deposit with the state auditor, one with the auditor of his county, and the other receipt he shall keep as his voucher therefor.

For negligence
&c. liable to
suit and penal-
ty, unless, &c.

Neither ap-
peal or valua-
tion allowed.

Sec. 13. That if the sheriff or other officer, to whom execution may be delivered as provided in the preceding section shall fail to perform the several duties required of him by this act, he and his securities shall be liable to the same

How to proceed
against sheriff
for neglect.

penalties, and to be proceeded against in the same manner, as is provided in the preceding section of this act, in case of delinquent collectors.

Must settle or
not be re ap-
pointed.

Sec. 14. That no collector of the land tax shall be appointed a second time, unless he produce, to the commissioners of the proper county, a receipt that he has settled his collection for the preceding year.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 25, 1824.

AN ACT to postpone the sale of lands for taxes, and for other purposes.

WHEREAS it has been represented to this general assembly, that there are many errors in the delinquent lists of lands charged with taxes prior to the year 1820, and that judgments have in many cases been obtained for tax, interest and penalty, not actually due:—

Therefore, for the purpose of giving the Auditor of state, and the several county Auditors further time to correct such errors—

Judgments, &c
for taxes due
on land, sus-
pended.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That all further proceedings under and by virtue of the act entitled, "an act providing for the remission of penalties, and for the sale of land for taxes," passed January 30, 1822, relating to the obtaining judgment for taxes due, or to the advertising and selling any lands against which judgment has been obtained for taxes, shall be suspended until the first day of May next: *Provided,* That from and after the first day of May next, proceedings shall be had in all respects, in pursuance of the act aforesaid, and all persons concerned shall proceed as though this act had not been passed: *Provided also,* That should any sales have taken place, in any county after the passage of this act, and before the same shall reach the Auditor of such county, the provisions of this act shall not in any way whatever affect such sales.

Proviso.

Proviso.

Errors to be
corrected.

Sec. 2. That the Auditor of State, and each county Auditor shall endeavor, by every means in their power, to correct all errors in the lists of lands charged with taxes prior to the year 1820; and if they shall find that any judgment has been rendered for any tax, interest and penalty erroneously

charged, or which had been paid in whole or in part, they shall make such corrections in the delinquent lists in their office, or by discharge of any part, or the whole of any judgment so rendered and not legally due, as the truth and justice of each case may require.

Sec. 3. That in all cases where judgments shall have been entered, and land advertised for sale agreeably to the provisions of the "act for the remission of penalties and for the sale of lands for taxes," previous to the first day of May aforesaid, and no error shall have been discovered, if the amount of said judgments are not paid, then the said lands shall be exposed to sale on the first day of June next, and such other proceedings be had, as if this act had not been passed.

Lasts to be sold on 1st day of June.

Sec. 4. That the Auditor of State shall immediately take measures to obtain a knowledge of all lands within this state which were originally obtained from the United States, and have since reverted back to the said United States in consequence of any law or regulation of the general government, and shall certify the same to the proper county Auditors, to the end that they may be stricken from the tax list: *Provided*, That if it shall appear that the lands aforesaid, or any part thereof, have again been purchased or located; the tax improperly charged, shall be stricken off and the land continued on the proper duplicate with the tax that may have accrued since the second purchase or location as aforesaid.

Auditor to obtain knowledge of lands reverted to U. States.

Proviso.

Sec. 5. That the Auditor of State shall immediately furnish each county Auditor with a copy of this act, and such instructions as he may deem proper, to carry the same into effect and shall cause notice of the provisions of this act to be published in two newspapers printed at Columbus, and in the National Intelligencer, a paper printed at Washington City, for three weeks successively.

Auditor to furnish copies of this act, &c. and give notice

Sec. 6. That the state treasurer, and the treasurers of the respective counties, be, and they are hereby authorised to receive, until the first day of May next, the full amount of taxes legally due on any tract of land charged with taxes prior to the year 1820, with legal interest on each year's taxes, from the time the same was due, whether judgment has been rendered against said lands or not; and in case the taxes and interest on any land shall be paid on or before the said first day of May next, as aforesaid, all penalties which may have accrued thereon, shall be, and the same are hereby remitted: *Provided*, That the owner or owners of such lands shall pay all costs that may have accrued in the court

Taxes may be received until first May next.

Proviso.

of common pleas in consequence of application for judgment against such lands.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

December 15, 1823.

—:00:—

AN ACT directing the mode of redeeming lands sold for taxes.

Minors, feme
covert, insane
persons, or in
captivity, may
redeem lands
sold for taxes,
how.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That where lands have been or may hereafter be sold for taxes, belonging to a minor or minors, feme covert, insane person, or person in captivity, who have the right by law, to redeem the same, such person or persons, his, her or their agent or attorney shall apply to the auditor of public accounts, for a written statement, containing the amount of tax, interest and penalties for which such land was sold, together with the amount of taxes paid by the purchaser, with legal interest thereon, which statement the auditor is hereby required to furnish, under his hand and seal of office, on application as aforesaid, for which the auditor shall have a right to demand and receive the sum of one dollar; and the person or persons, his, her or their agent or attorney, so applying who have had or may hereafter have land situated within the Virginia Military District sold for taxes, having the right of redemption as aforesaid, shall deposit the full amount contained in such written statement, with the state treasurer, and when situated in other parts of this state, with the treasurer of the county in which the land thus sold shall lie, who are hereby authorized and required to receive and receipt for the same; and on payment as aforesaid, such applicant or applicants shall forthwith proceed to give notice in at least two of the public papers printed within this state (one of which shall be in general circulation within the county where the land is situated) therein describing the land thus sold, in the same manner as it was described when entered for taxation, the original proprietor's name, and the quantity in the original tract, in whose name sold, and to whom, and the quantity sold, the water course and county, if known, and therein notify the purchaser, his, her, or their heirs or assigns, that he, she, or they will proceed at a subsequent court of common pleas, to be held within the county where the land so to be redeemed may be situate, naming the term of said court, to exhibit the proof of his, her, or their right of redemption in such land, and that the amount of the redemption money has been deposited with the treasurer as

Notice to be
given.

aforesaid, which advertisement shall be inserted at least six weeks successively, previous to the sitting of said court.

Sec. 2. That where any money shall hereafter be deposited with the state treasurer for the redemption of lands as aforesaid, the person or persons making such deposit shall deliver the treasurer's receipt to the auditor of public accounts, who shall charge the treasurer with the amount thereof, file the same in his office, and issue his receipt therefor, which receipt shall be received in court as the evidence of such deposit; and where money shall be deposited with the county treasurer for the purposes aforesaid, his receipt therefor shall be delivered to the clerk of the commissioners of the proper county, who shall file the same in his office, and charge the treasurer with the amount thereof, and issue his receipt therefor, which receipt shall be received in court as the evidence of such deposit.

Treasurer's receipt for monies deposited, to be delivered to auditor, who shall give a receipt which shall be evidence.

Sec. 3. That on producing to the court of common pleas, the auditor's statement, as required by the first section of this act, together with the receipt of the auditor or clerk of the commissioners (as the case may be) for the deposit made with the proper treasurer, the court shall proceed to hear the evidence of the claimants, and of the purchaser, his heirs or assigns, (if he or they attend and desire to be heard) and if upon such examination it shall appear to the court, that the claimant or claimants have a legal right to redeem such land, or any part thereof, the court shall adjudge the same to him, her or them, on paying the amount of damages and costs as required by law; and the clerk of the court shall at any time thereafter, furnish the purchaser or purchasers, his heirs or assigns, with a certified copy of such decision, and on the same being produced to the proper treasurer, shall entitle such person or persons to draw the money deposited as aforesaid: *Provided*, That the collector's certificate, deed or conveyance made therefrom, shall also accompany the same, and remain filed in the treasurer's office.

Receipts to be produced in court.

Purchasers to be furnished with copy of decision, and may draw the deposits.

Provido.

Sec. 4. That in case any improvements have been made on lands redeemed under the provisions of this act, the court shall (in case the parties cannot agree as to the value of the improvements) appoint three judicious disinterested men, to value the said improvements, under oath or affirmation, and return the value thereof, under their hands to the said court, who shall have the same entered on record, and on payment thereof, award the claimant restitution of the lands so redeemed.

Court may appoint 3 men to value improvements.

Sec. 5. That at the same time the treasurer makes his quarterly reports to the auditor of the bills by him redeemed at the treasury, he shall also deposit with the auditor the receipts by him taken for all monies paid over agreeably to the third section of this act, and the auditor shall file the same in his office, and give the treasurer a receipt therefor,

Treasurer to deposit with auditor receipts.

and shall credit the treasurer with the amount of the receipts thus deposited.

On compromise money may be drawn on collector's receipt. Where party fails to establish his right, money may be drawn on clerk's certificate.

Sec. 6. That if any compromise should take place between the parties after the redemption money is deposited with the treasurer, such money may be drawn out of the treasury by the person holding the collector's certificate, in the same manner pointed out in the third section of this act, or if the person claiming the right of redemption, should fail to establish such right to the satisfaction of the court, such person shall on the certificate of the clerk of the court where the same was tried, be entitled to receive from the treasurer, the money which such person may have deposited in the treasury; and the treasurer shall take a receipt for the same, and file it with the certificate of the clerk in his office, which receipt shall be deposited with the auditor at the same time that other receipts are under this act, and by him entered to the credit of the treasurer.

Treasurer's fees.

Sec. 7. That each person who shall deposit money in the state or county treasury, under this act, shall at the same time pay to the treasurer as a compensation for receiving, receiving for, safe keeping and paying out the same, the sum of twenty five cents for each and every tract or part of a tract thereby intended to be redeemed.

When deed has been recorded, the party who redeems, may record certificate and deed shall be void.

Sec. 8. That where the deed of the collector, or of any other person deriving title therefrom, has been recorded in the recorder's office of the proper county, and the proprietor or proprietors thereof, has or have proven himself, herself or themselves entitled to the right of redemption, agreeably to the provisions of the act under which such land may have been or hereafter may be sold for the non payment of tax, or agreeably to any other law authorizing or directing the mode of such redemption, such person or persons, his, her or their agent, attorney or other legal representative or representatives, shall be entitled to receive an official certificate from the clerk of the court where such proof may have been made, or from the state treasurer, or treasurer of any county where such deed or conveyance may have been deposited or endorsed, (as the case may be) which official certificate shall be recorded in the recorder's office where such deed or conveyance has been recorded: Whereupon, such deed or conveyance shall be cancelled and deemed in law, null and void, as it relates to so much of said land as may have been redeemed as aforesaid.

Acts repealed.

proviso.

Sec. 9. That the act directing the mode of redeeming certain lands sold for taxes, passed on the thirty-first day of January, eighteen hundred and seven, and an act amendatory thereto, passed on the twenty-first day of February, eighteen hundred and twelve, be and the same are hereby repealed: *Provided*, That all applications heretofore made,

for the redemption of land, together with all decisions and transactions thereon, shall be conducted and carried into effect in the same manner, and be equally valid in law as if this act had never passed.

MATTHEIAS CORWIN,

Speaker of the house of representatives.

PETER HITCHCOCK,

Speaker of the Senate

January 4, 1816.

AN ACT establishing Boards of Commissioners.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That there shall be elected, in the manner hereinafter provided three commissioners in each county in this state; and they shall have authority to do and perform any act or duty required and enjoined by law; the said commissioners, except in case of vacancy, shall be elected by the qualified electors in each township, at the October, annual election; and whenever any new county is hereafter created, the associate judges thereof, shall appoint three commissioners, and one county auditor, who shall hold their offices until the next annual election, and their successors are qualified, and no longer, at which annual election three commissioners shall be elected by the qualified electors, whose time of service, shall be determined in the same manner as pointed out by the second section of this act, which election shall be conducted and returned agreeably to the provisions of an act entitled, "An act to regulate elections."

Three county commissioners

Associate judges to appoint them and auditor in new counties.

Sec. 2. That the commissioners thus elected shall, at their next meeting, determine, by lot, for what time they shall severally continue in office, one whereof shall continue until the next October annual election, one until the annual October election next succeeding, and one until the annual October election next succeeding; and at the October annual election, next after the first election and at each and every subsequent October annual election, there shall be elected one commissioner, who shall continue in office for the term of three years; and, in all cases until his successor shall be elected and qualified: *Provided* That nothing in this section contained shall be so construed as to affect the term of office of any commissioner heretofore elected and qualified.

To determine by lot what time they shall serve.

One elected annually.

Provide.

Sec. 3. That if any of the commissioners shall die, remove from the county, resign or decline to serve in said office, the associate judges or a majority of them, in their respective counties shall appoint a commissioner or commissioners to fill such vacancy or vacancies, and such person or persons so appointed shall continue in office, until the

Associate judges to fill vacancies.

next succeeding October annual election, at which election there shall be elected some person or persons, as commissioner or commissioners, to fill such vacancy or vacancies, and each commissioner, so chosen, shall continue in office until the expiration of the term for which his predecessor was elected; and it shall be the duty of the clerks of the court of common pleas, in their respective counties, to make out for each person elected as commissioner, a certificate of his election, and deliver the same to the person entitled upon demand without fee.

Clerks to give certificate to each commissioner elected.

Election how contested.

Sec. 4. That if the election of any commissioner shall be contested, the same shall be decided and conducted in the same manner as is directed in the case of contested elections of sheriffs and coroners.

To take an oath.

Sec. 5. That before any commissioner shall enter upon the duties of his office, he shall take an oath or affirmation, before some person authorised to administer the same, faithfully and impartially to discharge the duties of a commissioner, and the person administering such oath shall give a certificate, that the same hath been done, to the clerk of the court of common pleas, who shall file the same with the returns of the person elected.

Board to hold three sessions in each year.

Sec. 6. That the board of commissioners shall hold three sessions in each year, at the seat of justice in their respective counties, which sessions shall be held on the the first Mondays of March, June and December; at which sessions they shall hear and determine applications for roads and bridges, and at their June session they shall examine and compare the accounts and vouchers of the county auditor and treasurer, and cause the auditor to publish a statement of the receipts and expenditures for the current year, and shall assess and determine the rate of county levy for the current year, and shall appoint the county treasurer and county collector, and collector of the land tax, and direct in what sum bond with security, shall be taken of the county treasurer, by the county auditor; and no session of the board of commissioners shall continue a longer time than three days except at their June sessions.

Power and duty.

May hold extra session.

Sec. 7. That the board of commissioners, at any one of their stated sessions, may take every necessary and proper order for erecting or repairing public buildings or bridges, and may hold an extra session at such times as they may appoint, for entering into contracts for erecting or repairing public buildings or bridges, and the auditor shall not draw upon the treasurer to make any payment thereon until an order to that effect is made by the commissioners.

May empower C. auditor to make repairs, &c.

Sec. 8. That the county commissioners be, and they are hereby authorised, to empower the county auditors, of their respective counties, to make such repairs or improvements to the public buildings of their counties as may be necessary:

Provided, The costs of such repairs or improvements shall *Provided* not exceed twenty-five dollars.

Sec. 9. That it shall be the duty of the county commissioners, in their respective counties, to fix the compensation to be allowed to the collectors of the state and county tax, agreeably to the laws on that subject, to audit and allow the accounts of the township listers, viewers and surveyors of roads, markers and chain carriers to set off new townships and alter the bounds of old ones, to do and perform the duties required of them by the act, entitled "an act to authorise the establishment of poor houses," and the act, entitled "an act for the relief of idiots who are in helpless and indigent circumstances," and also to make the appointment of appraisers of school lands where not otherwise provided for by law. *Power and duty.*

Sec. 10. That when the commissioners of any county shall be of opinion the auditor of said county, cannot under the act regulating the fees of civil offices, receive a sufficient compensation for the services by him rendered, they shall be authorised to allow him such further sum as they may deem just to be paid out of the county treasury on the order of said commissioners. *May allow an additional compensation.*

Sec. 11. That the commissioners, in each county, shall cause the auditor of their county to keep a just and accurate record of all their corporate proceedings, and carefully to preserve all the books papers and documents of their proceedings. *Auditor to keep records, &c.*

Sec. 12. That the commissioners of each county shall receive from the auditor of such county the bond which such auditor is required to give, and the oath which he is required to take and subscribe, and shall file the same with the treasurer of the county, taking his receipt therefor. *Comrs. to deposit aud. bond with with treasurer.*

Sec. 13. That the county commissioners, where the same has not already been done, shall, on application, deliver to the county auditor all books, lists, transfers and papers, in their possession relative to the taxation of lands in their respective counties. *C. Aud. to receive books, &c.*

Sec. 14. That if any commissioner shall be guilty of misconduct in office, he shall on conviction thereof, by indictment, before the court of common pleas of the proper county, be fined, at the discretion of said court, in any sum not exceeding four hundred dollars, with costs, which fine shall be paid into the county treasury for the use of the county. *Comr. liable to fine for misconduct.*

Sec. 15. That no commissioner shall, directly or indirectly, as contractor, be concerned in any contract for work to be done or materials to be furnished for the county under the penalty of one hundred dollars to be recovered by an action of debt qui tam before any court having recognition thereof, one half to the informer and the other half *Not to be concerned in any contract with county.*

for the use of the county; and such commissioner shall moreover be deprived of any compensation he was to receive on such contract, any thing in the same to the contrary notwithstanding.

Commissioners
created a body
corporate.

May sue and
be sued, &c.

Sec. 16. That the commissioners, in each county, shall be capable of suing and being sued, of pleading and being impleaded in any court of judicature within this state, and they are hereby authorised and required to ask, demand and recover by suit or otherwise, any sum or sums of money or other property due to such county, on account of advances made by them, on any contract with any person or persons for the erection or repairs of public buildings or bridges, or on any other contract which, by the provisions of this act they are authorised to enter into, and in like manner to sue for and recover damages for the breach of any such contract so by them entered into as aforesaid; and in like manner to sue for and recover, in money, the value or amount of any labor, or article of value subscribed instead of money, to aid in raising or repairing public buildings or bridges, where such labor, or article of value, upon their requisition, shall not have been performed in a reasonable time; and the money so recovered, in either of the above cases, shall be by them paid into the treasury of the county; and they shall take the treasurer's receipt and file the same with the auditor of the county.

May administer
oaths.

Sec. 17. That the commissioners, or either of them, are hereby authorised and empowered to administer all oaths or affirmations necessary in discharging the duties of their respective offices

Provide house
for courts.

Sec. 18. That until proper buildings are erected, at the place fixed on for the permanent seat of justice, it shall be their duty to provide some suitable place for holding the courts of such county.

May fill vacancies
in office of
collector.

Sec. 19. That in all cases where any person has heretofore been, or hereafter may be appointed a county collector, or collector of land tax, and either before or after giving bond and commencing his collections, shall have become incapable of completing the same, either by death, removal or resignation, or by absconding, or from any other cause, the commissioners shall appoint a collector, to collect either the whole or the residue of the taxes charged and unpaid on the duplicate of such collector, so being incapable of completing the same as aforesaid.

Fees of listers
and appraisers

Sec. 20. That the commissioners, in each and every county in this state, shall allow the listers and appraisers, in their respective counties or townships, a sum not exceeding one dollar and twenty-five cents per day, for each day they may be employed in listing, appraising and making out duplicates of their respective townships.

Sec. 21. That if any person or persons shall conceive

him, her or themselves aggrieved, by the decision of the commissioners, in any case, such person or persons may, within fifteen days thereafter, appeal to the next court of common pleas, notifying the commissioners of such appeal, at least ten days before the time of trial, which notice, shall be in writing and delivered personally to the commissioners, or left with the auditor of the county; and the said court shall at their next session, hear and determine the same, which decision shall be final. Appeals allowed from decision of commissioners.

Sec. 22. That "the act entitled, an act establishing boards of commissioners" passed January fifth, one thousand eight hundred and ten; and an act supplementary thereto, passed February twenty fourth, one thousand eight hundred and twenty; an act regulating the duties of county auditor and county commissioners, passed February second, one thousand eight hundred and twenty one; an act supplementary thereto, passed February second, one thousand eight hundred and twenty-two; and an act entitled "an act to amend the act regulating the duties of county auditor and county commissioners, and other purposes," passed January twenty-seventh, one thousand eight hundred and twenty three; and all other acts coming within the purview of this act, be, and the same are hereby repealed. Act repealed.

This act shall take effect and be in force from and after the first day of June next. Effect.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate,

February 25, 1824.

AN ACT defining the duties of county auditor.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That there shall be chosen by the qualified electors of each county within this state, on the second Tuesday in October, bi-ennially, one county auditor for each county, who shall receive from the clerk of the court of common pleas of his county, free of expense, a certificate of his election, and hold his office two years from the first day of March next succeeding, and until his successor shall be elected and qualified. How Elected and term of Office.

Sec. 2. That the county auditor in each county shall, previous to entering upon the duties of his office, give bond to the state of Ohio, with two or more securities, to the satisfaction of the commissioners of his proper county, in the penal sum of two thousand dollars, conditioned for the faithful discharge of the duties of his office, and moreover take Condition.

To take and subscribe an oath. and and subscribe, before some person qualified to administer oaths, an oath or solemn affirmation, faithfully and impartially to discharge the duties of his office, which bond and oath or solemn affirmation, subscribed as aforesaid, he shall deliver to the commissioners of his county, to be by them deposited with the treasurer of the county.

Bond forfeited by mal cond^t. Sec. 3. That the county auditor and his securities shall be liable to be prosecuted on his bond, at the suit and in behalf of the state, or in behalf of any person aggrieved for any malconduct or omission of the duties enjoined on him by law.

May appoint deputies, who shall give bond &c. Sec. 4. That the county auditor in each county, be and he hereby is authorized to appoint one or more deputies; and every deputy so appointed shall, upon taking an oath of office and giving bond with security to his principal, be thereupon vested with the same powers relative to the taking lists of lands as his principal, he shall act under the direction and agreeably to the instructions of his principal, and he answerable to his principal for any malconduct or neglect of duty, and his principal, shall in all cases be liable for any misconduct or neglect of duty of his deputy.

May administer an oath. Sec. 5. That the county auditor in each county, and his deputy or deputies are, each, hereby authorized to administer any oath or solemn affirmation, rendered necessary in order to the due execution of his office.

Election, how contested. Sec. 6. That if the election of any county auditor shall be contested, the same shall be conducted and decided, in the same manner, as is or may be directed, in the case of contested elections of sheriffs or coroners.

Auditor elect indebted for tax as collector, must pay or his office to be considered vacant. Sec. 7. That if any person before his election as county auditor, has been a collector of tax, and who at the time of his election may be indebted to the state or any county for any of the tax which he was bound to collect and pay over, shall not, twenty days previous to the time provided by law for the commencement of the duties of his office as county auditor, produce to the commissioners of the proper county, satisfactory receipts, signed by the proper authority for the full payment of all tax with the collection and payment of which he was charged, the commissioners of the proper county shall consider the office of such person vacant, and proceed to fill the vacancy as hereinafter provided.

Certain officers not eligible. Sec. 8. That no judge of the courts of common pleas or supreme court, or clerk of either of the said courts, or county commissioner shall be eligible to the office of county auditor.

County Commissioners to fill vacancies. Sec. 9. That where a vacancy shall happen, in the office of county auditor, either by death or removal from the county or removal from office or resignation or otherwise to the commissioners of the county, are hereby authorized and required, to meet and appoint a suitable person to fill such vacancy, and the auditor thus appointed, shall give bond,

take and subscribe the oath of office as by this act required, and continue in office until the first day of March next succeeding his appointment, and until a successor is elected and qualified.

Sec. 10. That the county auditor shall deliver over to his successor in office, all books, papers and other property belonging to his office, whenever the said office shall become vacant in any way, except by death; and in case of death the books, papers and other property belonging to his office shall, by his legal representatives, be given over to his successor in office.

Books, &c. to be delivered to successor.

Sec. 11. That it is hereby made the duty of the county auditor of each county, to keep a just and accurate record of all the corporate proceedings of the commissioners of his county; he shall keep his office at the seat of justice of his county, carefully preserve the records of the proceedings of the commissioners, and such papers and documents as they may direct, and do and perform all such matters and things as is or may be required of him by law.

To keep his office at seat of justice, &c.

Sec. 12. That the county auditor in each county shall examine and allow all accounts, debts and demands, which now are or hereafter shall be justly chargeable upon the county, except such accounts as by the act, entitled "an act, establishing boards of commissioners," are to be allowed by the commissioners; and such accounts as are to be allowed by the respective courts; and it is hereby made his duty to issue orders upon the treasurer of his county in favor of all creditors for the sum or sums of money, so as aforesaid examined and allowed by him, or allowed by the commissioners of his county, or by the respective courts of his county, agreeably to law; and the orders so as aforesaid granted, shall be numbered in their order and entered in a book which he shall procure for that purpose, at the expense of his county, and such orders shall be received in payment of county tax.

Shall examine and allow accounts, &c.

Sec. 13. That the county auditor in each county shall make out alphabetical duplicates of the county tax, assessed by the commissioners of the county, conformable to the listers returns; one of which he shall deposit with the county treasurer, for the inspection of those who may wish to examine the same, and deliver the other to the collector of the county, on or before the first Monday of August annually.

To make duplicate of county tax.

Sec. 14. That where the county collector or the trustees of any township or officers of any recorded town, shall have returned to the county auditor a delinquent list of unimproved or unoccupied town lots or parts of lots, the owner or owners of which do not reside within the limits of such town, on which the tax assessed has not been paid within the time required by law, he is hereby required, at the time he makes out his duplicates of county levy, to make out separate duplicates of all lots or

To make out separate duplicates of lots delinquent and attach a penalty.

parts of lots, so as aforesaid returned to him delinquent, whether for county, corporation or township tax, adding to the tax of the year for which such lots or parts of lots was returned delinquent, a penalty of twenty-five per cent, and continue to charge all such lots or parts of lots annually with the tax and penalty aforesaid, until the amount of the several years tax and penalties shall be equal to the one fourth of the first appraised value, after which he shall direct the county collector to make sale of such lots or parts of lots according to the law defining his duties.

Sec. 15. That the county auditor in each county shall draw an order on the county treasurer, in favor of the treasurer of the township, or corporation, as they may severally be entitled, for the amount collected on the delinquencies of lots certified from such township or corporation to the auditor as aforesaid.

Shall draw an order for amt^t collected.

Sec. 16. That the county auditor in each county, on the final settlement with the collector of county tax may upon evidence to him satisfactory, make reasonable and just allowance to the collector for delinquencies in collecting, which may be owing to any persons who are chargeable on his duplicate, absconding or being insolvent; and he is hereby vested with full power to examine on written interrogatories, or otherwise such collector, under oath or affirmation, touching the delinquencies.

To allow collector for delinquencies.

Sec. 17. That in all cases where the recorder of any county within this state shall have heretofore purchased or may hereafter purchase any blank book or books for the use of his office wherein to record deeds and other instruments of writing, he shall be allowed and paid therefor out of the monies in the county treasury, and the auditor of each county in this state, is hereby authorized and required to examine the accounts and vouchers of all recorders for the books aforesaid, when presented; and if the auditor is satisfied that the accounts of such recorder are just and right, he shall thereupon issue an order upon the treasury of the county for such sum, as he may deem equitable and sufficient to pay said recorder for his trouble and expense in purchasing said books.

Recorders to be paid for bl. books, &c.

Sec. 18. That the county auditor in each county shall carefully preserve in his office all such copies of entries, surveys, extracts, and other documents as heretofore hath been or hereafter may be transmitted to his office from the auditor of state according to law.

Shall preserve copies of entries, &c.

Sec. 19. That each and every tract of land which now stands entered upon the list or duplicates as resident or non-resident, shall be and remain in the same class as now listed, and annually charged with tax accordingly, until it shall be made appear to the satisfaction of the county auditor that such tract of land stands classed at a rate either superior or

May change class of land on duplicate to real quality.

or inferior to its real quality and on sufficient proof under oath being produced to that effect, the county auditor is hereby authorized upon the arrears of tax being paid if any be due thereon, to change the rate or class of such tract to that of its real quality.

Sec. 20. That the county auditor in each county be and he hereby is authorized and empowered, to correct all errors that may from time to time be discovered in the lists of land within his county, or that may be listed with him for taxation; and when at any time it is ascertained to his satisfaction, that any entry or survey or subdivision thereof, contains a greater or less quantity of land than is therein called for, he shall correct the lists so as to have entered for taxation the actual quantity of land, that may be contained in any such entry or survey, or subdivision thereof.

Correct errors,
&c.

Sec. 21. That the county auditor in each county, on satisfactory proof being made to him that the tax on any lands within his county or that may be entered with him for taxation, (on which arrearage of tax is charged) has heretofore been paid, in whole or in part, he is hereby authorized to correct the list of tax charged and strike therefrom any arrearages that he may ascertain to have been improperly charged thereon; and also to remit any penalty that may have accrued without the fault or negligence of the proprietor or agent of any such lands on the payment of the tax and interest that may be found due thereon to the collector of the land tax of the county, and producing to him the collectors receipt therefor; and he shall make out a correct statement of all such corrections and receipts, and annually forward the same with his copy of the lists of land tax to the auditor of state.

Correct tax &c

Sec. 22. That the county auditor in each county shall on or before the first Monday of August, annually, in each and every year, make from the books and lists in his office, complete duplicate copies of all the lands situate within his county, subject to taxation with the tax charged, showing the total amount of road and state tax and the quantity of first, second and third rate land, in the making whereof he shall have special regard to all new entries, alterations and transfers which may have been legally made in his office previous to the first Monday in May in each year, and govern himself by such forms as he may from time to time be furnished with by the auditor of state, consistent with the rules and regulations which now are or may be prescribed by law for the listing of lands for taxation; one of these copies for the tax list he shall deliver to the collector of the land tax of his county, after such collector is duly qualified to receive the same, one copy to be made out in a book to be provided by the auditor of state, certified and signed by the county auditor, he shall forward to the auditor of state, on or before the fifteenth day of September in each year, in such manner as he shall di-

He shall make
duplicates of
the land in his
county, shew
ing classes of
land, tax, &c.

One copy shall
be delivered to
the collector;
the other to
state auditor.

rect, and the other copy he shall carefully preserve in his office.

To charge treasurer with tax received. Sec. 23. That the auditor in each county, on receiving from the collector of the land tax, the receipt of the county treasurer for monies paid by such collector into the county treasury, shall charge the treasurer with the amount thereof.

To take of collector duplicate lists of lands taxed and not paid. Sec. 24. That on the collector of the land tax in any county in this state applying to the auditor of his county, within the time prescribed by law, in order to settle the amount of tax contained in his list of land tax, it is hereby made the duty of such auditor to take from such collectors list of land tax, correct duplicate lists of all lands on which the tax shall not have been paid to said collector, and to require of such collector to sign and testify to the correctness of said lists, under oath or solemn affirmation; and after deducting the amount of tax charged on such delinquent lands, and the amount of percentage allowed such collector from the total amount of all tax, charged on such collectors list of land tax, to certify under his hand at the foot of the delinquent list, by this section required to be made out and attested to under oath or affirmation, the balance or balances to be by such collector paid into the state treasury, or into the state and county treasuries according to law, but he shall not certify a greater balance to be paid into the county treasury, than such counties proportion of the nett proceeds of tax collected in said county; one of which delinquent lists so as

Collector to testify to correctness of list.

Auditor to certify balance to be paid by collector.

Lists to be deposited.

aforsaid made out, he shall deliver to such collector, to be by him deposited with the auditor of state, and the other he shall preserve on file in his office.

to charge lists with tax, &c. of preceding years. Sec. 25. That the auditor in each county, on receipt from the auditor of the state, of the lists of lands within his county which were returned delinquent for the peceeding year, together with the amount of tax, penalty, and interest charged on each tract, shall, in making out the duplicate copies of land tax, for his county, charge each tract in addition to the tax for the current year, with the tax, interest and penalty of the preceding year.

To sell lands delinquent for two years.

Note of sale.

Sec. 26. That the auditor in each county, on receiving from the auditor of state, the lists of land situate within his county a second time delinquent, with the tax, interest and penalties charged thereon for the two preceding years, together with the tax for the current year, with directions in case the amount of the tax, interest and penalties charged thereon be not paid by the last day of October in the said third year, to proceed to advertise and sell the same in the manner pointed out by law, and shall not enter said lands on the duplicate copies of the lists of land tax for the said third year, but in case the said tax interest and penalties charged thereon, be not paid by the last day of October in said year, he shall forthwith thereaf-

ter cause notice thereof to be advertised four weeks successively in a newspaper printed in his county, if any such there be, and if not, in some newspaper in general circulation therein, to all concerned, that if the tax interest and penalties, for the two preceding years, together with the tax of the current year, charged on said delinquent lists be not paid into the county treasury, and the treasurers receipt produced therefor, by a day to be named in said notice, that then and in that case each tract of land so returned delinquent on which the tax, interest and penalties might remain unpaid or so much thereof as become necessary for that purpose, would on said day, be exposed to sale at the court house or usual place of holding courts in such county, on the second Monday of December thereafter, in order to satisfy said tax, interest and penalties: *Provided*. That not more than seventy five cents per square shall, in any case be allowed for advertising the delinquent list as herein before mentioned.

Provided

Sec. 27. That the auditor in each county, on the day notified by him for the sale of delinquent lands, in order to satisfy the tax, interest and penalties due thereon as pointed out in the preceding section of this act, shall attend at the court house or usual place of holding courts in his county, and proceed to sell the lands contained in the delinquent list, at public auction, to the person or persons who will pay the said tax, interest and penalties charged thereon for the least quantity thereof; in the selling whereof he shall offer each tract separately, beginning with the first tract contained on said delinquent list, and so continuing on through the said list, until each tract contained thereon or so much of each tract as may be necessary to satisfy the said tax, interest and penalties shall be sold or offered for sale, and the person or persons offering at said sales to pay the said tax, interest and penalties for the least quantity of any tract of land so offered, shall be the purchaser of such quantity; and such auditor may continue the said sales from day to day, until each tract contained on said delinquent list shall have been sold or offered for sale as aforesaid.

Lands to be sold at public auction in separate tracts

Sale may be continued from day to day

Sec. 28. That if any person to whom any tract or part of a tract of land shall be struck off and sold by the county auditor for the tax, interest and penalties charged thereon as provided in the preceding section of this act, shall neglect or refuse forthwith to pay to the treasurer of such county the full amount of the tax, interest and penalties so charged upon it, and for the payment of which it was sold, and to produce to the said county auditor the treasurers receipt therefor, such tract of land shall, again on the succeeding day be exposed to sale, by the said county auditor, as other delinquent lands, and the person so failing shall pay a penalty of twenty-five per cent, on the amount of said tax, interest and

If purchaser shall not pay &c. lands again to be offered for sale and purchaser subject to penalty.

penalties to be recovered in an action of debt prosecuted by the county auditor, in the name of the state of Ohio, before any court having jurisdiction thereof; and the same when recovered, shall be paid into the treasury of such county as other tax, interest and penalties are by the preceding sections of this act directed to be paid, and the treasurer's receipt taken therefor and deposited with the county auditor.

Lands not selling, forfeited to the state.

Sec. 29. That each and every tract of land, returned by the auditor of state to the county auditor a second time delinquent charged with the tax, interest and penalties of the two preceding years, to which has been added the tax of the current year, and advertised for and exposed to sale, and not sold for want of bidders, as provided in the two preceding sections of this act, shall be and the same is hereby declared forfeited to the state of Ohio; and from thence forward all the right, title, interest and claim of the former proprietor, thereto shall be considered divested out of such former proprietor and vested in the state of Ohio to be disposed of by the state as the legislature thereof, by their act may direct: *Provided*, That if the owner of any tract of land which has been or may hereafter be sold or forfeited as aforesaid, shall, by himself or agent, at any time before the state shall have disposed of any such tract of land, forfeited to the state as aforesaid, pay into the state treasury all taxes, interest penalties and costs, due at the time of such forfeiture, together with the amount of tax that would have been charged on said land had no such delinquency, sale or forfeiture happened; the state shall in such case relinquish all claim to any such tract of land so sold or forfeited; and the auditor of state shall give to such land-holder, his agent or attorney, a certificate of relinquishment on the part of the state.

Proviso.

Auditor to charge treasurer with monies received.

Sec. 30. That the auditor in each county, shall charge the treasurer of his county with all monies paid into the county treasury, under the provisions of the two preceding sections of this act, and transmit an account of the amount thereof to the auditor of state, on or before the fifteenth day of January next thereafter.

He shall record proceedings on sales.

Sec. 31. That the auditor in each county, shall on any sale being made by him of delinquent lands as herein before provided, make a fair entry, descriptive thereof, in a book to be provided by him for that purpose, and shall also record in said book all the proceedings relative to the advertising, selling and conveying said delinquent lands; which record shall be good evidence in all courts holden within the state.

Sec. 32. That the county auditor in each county, on a sale being made by him of a part of a tract of land to any person or persons, for the tax, interest and penalties due thereon, as herein before provided, shall give to the purchaser

or purchasers a certificate of such purchase, directed to the county surveyor of his county, requiring such surveyor to proceed, at the request of the purchaser or purchasers to lay off by metes and bounds, as near a square as may be, at the most North-Westerly corner of said tract, the quantity of land so purchased; and in such case, on the purchaser or purchasers producing to him the surveyors plat and certificate of survey of the land so sold as aforesaid, or in case of a sale being made by him of an entire tract of land to any person or persons for the tax, interest and penalties due thereon, as herein before provided, he shall in either case, on the purchaser or purchasers paying to him the sum of one dollar, execute and deliver to such purchaser or purchasers a deed therefor in due form, which deed shall convey to the purchaser or purchasers, all the right, title and interest, both legal and equitable of any former proprietor, proprietors or owners of, in and to the land so sold; and such deed shall be received in all courts as prima facie evidence of title to the purchaser or purchasers.

Certificate to be given to purchaser

Land purchased to be laid off in a square at N. E. corner.

Deed to be made by auditor.

Effect of such deed.

Sec. 33. That the county auditor in each county, on a sale made by him of an entire tract of land for the tax, interest and penalties due thereon, as herein before provided, shall list the same for taxation in the proper rate, in the name of the purchaser or purchasers thereof; and where he has sold as aforesaid, only a part of a tract, he shall in like manner list for taxation the part sold to the purchaser or purchasers, and the part which remains unsold, in the name of the proprietor or proprietors, if known, and if not known, he shall list it in the name in which it stands charged.

When an entire tract sold to be listed in name of purchaser.

How listed when part is sold.

Sec. 34. That if any proprietor whose lands may hereafter become subject by law to taxation, shall neglect or refuse to deliver in a list of the same to the county auditor of the county in which the lands lie, it is hereby made the duty of such county auditor, immediately to proceed to enter such lands for taxation as land of the first class, in the manner herein before provided for the listing of lands by him, where the proprietor thereof has neglected or refused to list the same, and charge the same with tax accordingly.

Proprietors refusing to let land, it shall be listed in first class.

Sec. 35. That in all cases where any tract of land listed in the name of any one or more proprietors, shall be divided in consequence of a sale of part thereof; and such division shall cause the tracts so apportioned to be of different qualities, according to the rules provided by law, for classifying land for taxation, the county auditor of the county in which the lands lie, shall on the application of either party, and he, she or they producing to him satisfactory evidence of the existence of the fact, permit each tract so apportioned, to be re-listed by the proprietor thereof, of the proper rate as by law required for listing of lands; and in case either party neglects or refuses to re-list his her or their part, the

When lands are divided, may be re-listed.

county auditor shall relist the same as lands of the first class.

C. auditor may relist lands when partition has been had un less, &c.,

Sec. 36. That if the proprietor of any tract of land, which may be set apart to him in a division between joint tenants, coparceners, or tenants in common, either under the act for the partition of real estate or otherwise, shall for the space of six months next after such division may have taken place, neglect or refuse to relist the tract which may be aperted and set off to him in said division, as required by law, the county auditor of the county in which said lands lie, shall relist the same as lands of the first class.

Auditor may after listed rate.

Sec. 37. That in all cases in which it shall be made appear, from legal evidence to the satisfaction of the county auditor, that any tract of land situate in his county is listed of an improper rate, he shall alter the listed rate of said tract from a higher to a lower or from a lower to a higher rate.

Tax or delinq't list may be paid, how

Sec. 38. That where the auditor of state may transmit to the auditor of any county, any tract of land a second time delinquent, charged with the tax, interest and penalties of the two preceding years, with the tax of the current year, and if the proprietor of such tract of land so as aforesaid returned delinquent, shall apply to such county auditor at any time before the same shall be sold for a certificate of the amount of tax, interest and penalties, charged on said land, it is hereby made the duty of such county auditor to give such certificate, and on such proprietor producing to him the receipt of the treasurer of his county, for the full amount of said tax, interest and penalties so charged as aforesaid, he shall give to such proprietor a receipt therefor, charge the treasurer of his county with the amount, and transmit a certificate therefor, to the auditor of state, and enter said tract on the tax list for the succeeding year.

Purchaser of land for taxes may petition for partition.

Sec. 39. That when any lands shall be sold for tax, the property of any individual, joint-tenant or tenant in common, in such lands the purchaser, his heirs or assigns may petition for partition thereof, agreeably to the act to provide for the partition of real estate, and the county auditors certificate of sale to the purchaser, his heirs or assigns, shall be good and sufficient evidence to the court, on which to order partition to be made agreeably to the aforesaid act.

When lands may be in common and one proprietor has paid tax and

Sec. 40. That in all cases where any tract of land may be owned by two or more persons as joint-tenants or tenants in common, and one or more of the proprietors shall have paid, or may hereafter pay the tax penalties and interest, chargeable on his part or proportion of such tract; and any tax, penalties, and interest on any other part or proportion of said tract shall remain unpaid, and partition of such tract shall be made, whereby the part or proportion on which the tax, penalties, and interest shall have been paid, shall be set

off to the owner thereof, such owner shall hold the same free from all such tax, penalties and interest charged on such tract in common before partition, and so as aforesaid remaining unpaid and free from all liabilities therefor; and such tax, penalties and interest shall be considered and adjudged as attaching to, and shall be and remain charged on the proportion of such tract, which shall be set off or remain to the proprietor on whose proportion such tax, penalties and interest shall not have been paid previous to such partition.

partition had,
tax paid shall
apply for his
benefit who
paid it.

Sec. 41. That the county auditor for the time being, is hereby authorized to make deeds for any land that has heretofore been sold for tax, under the act, entitled "an act, levying a tax on land," passed February twentieth, eighteen hundred twenty, or the act to amend the said act, passed February second, eighteen hundred twenty one, in the same manner as provided for in the aforesaid act, and that nothing in this act shall in any manner affect the title to any tract of land sold under said act for the tax interest and penalty accruing under either of said acts but the same shall be as valid in the purchaser as if the tax interest and penalties accrued under this act.

Auditor to
make deed for
land heretofore
sold &c.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 23, 1824.

AN ACT, regulating county levies.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That all in and out-lots in towns, with the improvements thereon, all other houses over the value of one hundred dollars, except, as hereinafter excepted, all stud-horses, and all other horses, mares, mules, asses, and neat cattle, of three years old and upwards, within this state are hereby declared chargeable for defraying the county expenses with in which they may respectively be found; *Provided,* That where any person owns but one head of neat cattle, he or she, shall not be liable to pay any tax therefor, if he or she is not possessed of other property subject to tax for state or county purposes.

What shall be
taxed for coun-
ty expenses.

Sec. 2. That the following property, be and the same is hereby exempted from taxation for township, road or county purposes, that is to say, all mills, all woolen and cotton manufactories, all manufactories of paper, salt, iron or glass, all lots set apart for school houses, academies, colleges, or any public buildings, or any other public grounds within any recorded town plot, with the buildings or any of them, and all

Property ex-
empt from tax-
ation.

tracts of land, with the houses and improvements, not exceeding fifteen acres, the title of which is vested in any person or persons, for the use and in trust for any religious society within this state, and occupied by such society for the use of a meeting house and burying ground, and all town lot or lots or parts of a lot or lots, the property of the state of Ohio, is hereby exempt from any tax or taxes whatever.

Sec. 3. That the listers of the several townships in each county in this state, are required between the twenty-fifth day of April, and the twenty-fifth day of May, annually, to take from each person within their respective townships, a list of all property by him, or her owned, or possessed, subject to taxation as aforesaid, and after writing the same in a book, to be by him kept for that purpose, he shall distinctly read the list to the person giving the same, and require him, or her, to answer whether it is a true list of all his, or her property subject to taxation for county purposes, and if the said list shall be correct the person giving the same shall sign his or her name thereto, and each lister shall make out two accurate alphabetical lists thereof in the form following:

Lister to take
all property
subject to tax.

Proprietors names.	Houses.	Value.	Lots.	Stud-Horses.	Rate.	Horses, Mules and Asses above three years old.	Neat cattle above three years old.	Total amount.

Form of List.

To whom lists are to be delivered. one of which lists he shall on or before the first Monday of June annually, deliver to the township clerk, to remain in his office for the inspection of all who may choose to examine the same, and the other list he shall deliver to the commissioners of the county, on or before the first Monday of June annually.

Appraisers duty.

Sec. 4. That it shall be the duty of the appraisers of property in each and every township, forthwith after the listers have completed their lists of taxable property, to proceed to view and appraise all houses which are subject to taxation, agreeably to the provisions of this act, all lots in towns, all out-lots adjoining thereto, and after having ascertained the value thereof, to make out and sign two fair and alphabetical lists, agreeably to the foregoing form, one of which the appraisers shall deliver to the township clerk, on or before the first Monday of June annually, to remain in his office for the inspection of all who may choose to examine the same, and the other copy he shall deliver to the commissioners on or before the next annual meeting, on the first Monday of June.

To make duplicate lists

In and out lots to be listed by their numbers

Sec. 5. That all in and out-lots in towns, whether improved or unimproved, shall be listed for taxation by their respective numbers, and the appraisers in each township, before they proceed to the appraisal of any town property, shall procure a plat of all towns in their respective districts, by which they shall be guided in the view and appraisal thereof, and in all sales for the payment of taxes, the town lots shall be sold by their numbers.

Appraisers to get plat of towns.

Houses &c. may be exempt from tax.

Sec. 6. That when the ordinary revenue of any county shall be sufficient to pay the current expenses of such county, and discharge any debts contracted by such county for the erection of public buildings or other public purposes, it shall be lawful for the commissioners of every such county to exempt houses in the country therein, and improvements on town lots for taxation, and in case of the exemption of houses in the country from taxation, if there be no recorded towns within any one or more townships, it shall be unnecessary for the townships in which there are no recorded towns, at their election of township officers, to choose appraisers of houses and in case of the exemption of improvements on town lots from taxation, the appraisers of property shall appraise the lots without the improvements thereon: *Provided however.* That houses in towns, shall be equally subjected to taxation with houses in the country.

Lots may then be appraised. Proviso.

Sec. 7. That if any person shall refuse to give a list of his or her property when required by the lister, agreeably to this act, or shall fraudulently omit to give in any part of his or her property, it shall be the duty of the lister to take a list of such persons property thus refused or omitted to be listed, from the best information he can obtain, and he shall distinctly note the list taken in either of those cases, and such

property shall be taxed four fold, to be collected and paid over as other taxes, and the lister shall notify the persons thus charged to attend the board of commissioners at their succeeding meeting on the first Monday in June; and in case the commissioners shall be satisfied that such omission was not made with fraudulent intent, they shall tax the property of such person or persons, at the rate of other property of the same description, agreeably to this act.

Person refusing to give list or committing a fraud, lister may take a list and property shall be taxed four fold.

Sec. 8. That if the owner or occupier of any of the aforesaid objects of taxation, his, her or their agent or attorney, owing to any particular circumstance, not previously concerted or designed by him, her or them, have it not in his her or their power to give in a list when called on at their place of residence, or where such property may be, and such person or persons do forward to the lister, a certified list of all their property, by him, her or them held at the time the lister called for a list, it shall be lawful for the lister to receive and enter the same, and make a note thereof.

Lister may receive a list from person after he has called, &c.

Sec. 9. That if any lister or appraiser shall fail to take in, appraise, and return true lists of all the taxable property within his township, as herein before directed, such lister or appraiser shall forfeit and pay for every such offence, any sum not exceeding two hundred dollars, to be recovered at the suit of the county auditor, in any court having jurisdiction of the same, and by him paid into the county treasury for the use of the county.

Listers & appraisers liable to fine for failure of duty!

Sec. 10. That the commissioners of each county shall levy a county tax agreeably to the following rates of taxation, viz: on each stud-horse, not exceeding the rate he stands at the season; on all other horses, mares, mules, and asses, three years old and upwards, a sum not exceeding thirty cents per year, on all neat cattle, three years old and upwards, a sum not exceeding ten cents per head, and on all other property made subject to taxation by this act, a sum not exceeding one half of one per cent on the appraised value thereof; and the person at whose stable any stud-horse or horses may be kept, shall and is hereby declared to be bound for the payment of the tax levied on such stud-horse or stud-horses as shall be kept on his premises: *Provided*, That if any stud-horse be kept any part of his time within one county and a part in another county, then and in that case the owner of such horse or stable, shall only stand bound to pay a sum in each county not exceeding one half of the rate at which such stud-horse stands at for the season.

Rate of taxation, &c.

Sec. 11. That if any person or persons shall conceive him, her or themselves aggrieved by the conduct or decision of the lister or appraiser, such person or persons may appeal to the county auditor, notifying the lister or appraiser (as the case may be) of his, her or their grievance at least ten days before the time fixed on for hearing, which notice

Appeals may be taken to the Auditor.

shall be in writing and delivered personally or left at his most usual place of abode.

Sec. 12. That the act entitled "an act, regulating county levies, passed the twenty-seventh day of February, eighteen hundred and sixteen, and all other acts and parts of acts, coming within the purview of this act, be and the same are hereby repealed.

This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
ALLEN TRIMBLE,
Speaker of the Senates

February 23, 1824.

AN ACT defining the duties of Collectors of County tax.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That the collector of the county tax, in each county, before entering upon the duties of his office, shall give bond to the state of Ohio, for the use of the county, with such security as the county auditor may approve of, for double the sum contained on the duplicate of such collector, conditioned for faithfully collecting and paying into the county treasury, the full amount of the tax by him to be collected, on or before the first day of January next following; and shall moreover take and subscribe, an oath or solemn affirmation, before some competent authority, for the faithful discharge of the duties of his office; which bond and oath, so as aforesaid given, shall be lodged with the county auditor.

Collectors to give bond, &c.

Not to be released from bond until tax paid, &c.

Sec. 2. That no county collector, nor his securities, shall be released from any bond which may be given by them, pursuant to the first section of this act, until he shall produce to the county auditor, the county treasurer's receipt for the full amount of tax contained on his duplicate, except such part thereof as may be returned delinquent as herein after provided, and for which he may receive a credit, on his final settlement with the county auditor.

To call at residence of each person & make demand

Sec. 3. That the collector in each county having given bond, and taken and subscribed the oath or affirmation as required by the first section of this act, shall immediately after the first Monday in August, annually, call upon the county auditor for his duplicate, and proceed to collect the county tax; in the doing of which it is hereby made his duty, on or before the first day of November next following, to call at the last place of residence of each person or persons charged with a county tax, if he or they so charged live within his county, and make a personal demand thereof, in

case the person or persons so charged can be found at his or their last place of residence, where the collector shall so call for the purpose of demanding tax as aforesaid.

Sec. 4. That if any person or persons charged with a county tax, shall refuse or neglect to make payment thereof to the said collector, on or before the said first day of November in each year, such county collector shall have power, at any time after the said first day of November, until the first day of March next thereafter, to levy on the personal property of such delinquent, and after giving ten days public notice in the county of the time and place of sale, to sell the same, or so much thereof, as may be necessary to satisfy the tax so as aforesaid, in arrears and unpaid; and to return the overplus, if any there be, to the owner or occupier of such property; and the collector of the county tax shall, for levying, advertising and making sales as aforesaid, receive the same fees, as are by law allowed to constables for similar services, to be made of the goods and chattels of such delinquent.

Collector may levy on personal property & sell the same.

Sec. 5. That the collector of the county tax shall keep a fair and accurate statement of the distress made, and sale of property for tax, with his proceedings and costs thereon, and shall lay the same before the auditor of his county, on or before the first day of March next after receiving his duplicate as herein before required.

To keep account of sales.

Sec. 6. That whenever the tax on any improved or occupied lot or part of a lot, in any recorded town is not paid, on or before the first day of November, annually, and no goods or chattels can be found whereon to levy, the collector may levy on such lot thus charged, and after giving thirty days notice of the time and place of sale, therein describing the lot by number, the proprietor's name, if known, and the tax due thereon, (either by the publication of such notice in a newspaper printed in the town where the lot lies, or by posting up notices thereof in four public places in the said town, and one at the door of the court house of the county) proceed, in the town aforesaid, to sell the same or so much thereof as will discharge the tax and costs: *Provided however*, and the true intent and meaning of this section is that if the proprietor shall, at any time either before or on the day appointed for the sale of any lot before the sale has been actually made, come forward and pay the tax charged on said lot and the costs which have accrued in advertising the same, the collector shall receive and receipt for the same and desist from the sale thereof.

May sell lots how.

provide.

Sec. 7. That whenever any town lot or lots, or any part thereof shall be sold at vendue by any collector of tax, agreeably to the provisions of this act, it shall be the duty of such collector to lodge with the recorder of the county, in which such lot or lots may be situate, within ten days after the

Deposit with Recorder his proceeding under oath.

vendue and sale aforesaid, the notification of such sale posted up by him, the newspaper containing the advertisement of such sale, if any with a certificate accompanying the same, under oath, setting forth the amount of tax charged on such lot, that such tax remained unpaid, and that such notification was posted up according to law, which notification and certificate shall be recorded by such recorder. A certified copy of such record shall be competent testimony touching those facts, in any suit in which the validity of the collector's deed may be brought in question, and the said newspaper shall be kept on file by said recorder, and such recorder shall be entitled to receive such fees of said collector for recording as is given in other cases for similar services.

Collector to
make deed to
purchaser.

Sec. 8. That when any town lot or part thereof shall be sold for the tax due thereon, the collector making such sale shall give to the purchaser a certificate expressing the number of such lot and the quantity sold, which shall in all cases begin at one side of the lot, and extend from the front, back to the outline and at any time thereafter make a deed to the purchaser, which shall vest him with a sufficient title, and such deed shall be prima facie evidence of title, in case the tax for that year had not been paid previous to the sale, and the said collector shall, on or before the first Monday of January following, transmit to the auditor of his county a list of all lots or parts thereof sold, describing the same as aforesaid, also the purchaser's name, which list the said auditor shall keep in his office, and any certificate by him given to any person, entitled to the right of redemption by this act, shall be deemed good evidence of the sale.

Tax unpaid on
unimproved
lots, penalty
accrues.

So for corpora-
tion taxes.

Sec. 9. That when the owner or owners of unimproved or unoccupied town lots or parts of lots do not reside within the limits of such town, and the tax assessed upon such lot or lots or part of a lot or lots shall not be paid, within the time required by law, the collector shall make return of all such delinquent lots or parts of lots to the authority from whence he received his duplicate, whereupon a penalty of twenty-five per centum upon the amount of each year's tax shall be incurred, and each lot or such part thereof as may be delinquent, shall be bound for the tax and penalty due thereon, and the owner or subsequent purchaser shall be liable therefor; and the trustees of all townships and officers of incorporated towns shall, in like manner, cause all lots, returned to them delinquent as aforesaid for township or corporation tax, to be certified to the auditor of the county, stating the number and appraised value together with the tax and penalties due on each lot.

Sec. 10. That the collector, on receiving from the county auditor the duplicate of lots or parts of lots returned delinquent as provided in the preceding section of this act, con-

taining the number and appraised value of each lot or part of a lot, with the tax and penalties due on each lot or part of a lot, with directions to sell the same as by this act pointed out, shall make sale of such lots or parts of lots in order to satisfy the said tax and penalties due thereon; in the advertising and selling of the lots or parts of lots so as aforesaid returned delinquent and directed by the county auditor to be sold, the collector shall in all respects be governed by the preceding sections of this act, which provides for the sale of improved or occupied lots, and the same title to vest in the purchaser, in case the tax and penalties for the years charged had not been paid as is provided for the sale of improved or occupied lots.

Collector to sell unimproved lots for taxes, &c. as improved lots are sold.

Sec. 11. That the money received by the collector, on account of the sale of such delinquent lots, shall be paid by said collector to the county treasurer, the same as other tax.

Money how paid.

Sec. 12. That where any town lot or part of lot shall be sold for tax under the provisions of this act, the owner or owners thereof at the time of the sale, his, her or their heirs, executors, administrators or assigns, shall have the right to redeem the same at any time, within three years from the date of such sale by paying to the purchaser thereof his or her heirs, executors, administrators or assigns, the amount of tax, interest and penalties for which the said lot or part of lot was sold, and the costs of recording the collectors deed therefor, with interest on said money, until paid, together with twenty five per cent thereon; *Provided* That any infant, feme covert or person imprisoned or absent from the United States, at the time of such sale, shall be entitled to the right of redemption, under the provisions of this section, at any time within three years after the removal of such disability of infancy, coverture, imprisonment or absence.

Redemption, in what manner made.

Proviso.

Sec. 13. That whenever the tax, interest, penalties and costs, are tendered to the purchaser of any lot or part of lot or to his heirs, executors, administrators, or assignee, agreeable to the provisions of the preceding section, such purchaser his heirs, executors, administrators or assignee shall convey by a deed of release, to such person entitled to redeem the same, the title vested by such sale for taxes in such lot or part of lot, and shall surrender the possession of such lot or part of lot, to the person or persons entitled thereto.

Purchaser on tender to execute deed of release.

Sec. 14. That every judgment creditor, who has a lien upon any lot, or part of lot, sold for taxes, shall have the same right to redeem the same as the owner thereof shall by this act be entitled to.

Judgment creditor may redeem.

Sec. 15. That when any purchaser, or his heirs, executors, or administrators or assignee who may be entitled to re-

Person having right to redeem

may file petition in court.

ceive the same, shall refuse to accept the money tendered to redeem any lot or part of lot sold for taxes, or shall refuse to release the title thereto, it shall be lawful for the person or persons entitled to redeem the same, to file a petition in the office of the clerk of the court of common pleas of the proper county, setting forth the facts necessary under this act, to entitle him to the right of redemption; whereupon a summons shall issue against the person or persons of whom the redemption is claimed, requiring him or them to answer the said bill under oath, on the first day of the next term of the court aforesaid, and the said court shall, if the defendants deny the facts stated in the bill, hear and determine the case upon the proofs exhibited, which shall be by depositions in writing, and if upon such hearing the court shall determine that the applicant is entitled to redeem the lot or lots named in said petition, or if the defendant or defendants named therein shall fail to answer the said bill, they shall enter a decree against said defendants, compelling them to convey by deed of release or quit claim, the said lots, or parts of lots to the person entitled to the same, agreeably to this act, and also compelling the said defendant to pay the costs, and if such defendant or defendants, fail to make such conveyance within the time mentioned in the said decree; then the said decree shall operate as such conveyance.

Collector to pay tax to co. treasurer.

Sec. 16. That the collector in each county, shall pay into the county treasury the full amount of the tax contained in his duplicate, on or before the first day of January next after receiving the same, except such part of the tax contained therein as he may have to collect by distress and sale of the goods and chattels of the delinquent as provided in the fourth section of this act; and he shall pay the full amount of the tax collected by distress and sale, into the county treasury, on or before the first day of March, annually; and in either case he shall take from the treasurer a receipt, and deposit the same with the county auditor on his settlement with him.

Auditor may settle with collector, how.

Sec. 17. That the collector in each county, on his final settlement with the county auditor, upon producing satisfactory evidence shall be entitled to a reasonable and just allowance for delinquencies in collecting, which may be owing to any person who are charged on his duplicate, absconding or being insolvent; and in every case of application by him to be allowed for such delinquencies he shall be compelled, if the county auditor deem it necessary; before such allowance is made, to answer such interrogatories, under oath or affirmation, as the auditor may put to him touching such delinquencies.

Collector fees

Sec. 18. That the collector of the county tax in each county, shall be allowed for collecting, and paying over the same into the county treasury, any sum not exceeding six

per cent. to be allowed him on his final settlement with the auditor.

Sec. 19. That if any collector of county tax, shall demand or receive from any person more than his or her proper tax, or shall, in the sale of property for tax, act contrary to the provisions of this act, he shall for every such offence, pay double the amount of damages sustained, to be recovered by the party injured, in a special action on the case, before any court having jurisdiction thereof.

Liabie for im-
Proper conduct

Sec. 20. That if any collector shall fail or neglect, either to pay into the county treasury the full amount of the tax contained on his duplicate, on or before the first day of January, next after receiving his duplicate, except such part of the tax contained thereon as he may have to collect by distress and sales of goods and chattels of the delinquent, or shall fail or neglect in like manner to pay into the county treasury the amount of any tax contained on his duplicate which he may have to collect by distress and sale as aforesaid, on or before the first day of March next after receiving his duplicate, or shall fail or neglect to make settlement with the auditor, within ten days next after the said first day of January and first day of March, for the amount of tax, contained on his duplicate, so by him required to be paid into the county treasury as aforesaid, such county collector so failing and his securities shall be liable to be proceeded against in a summary way, on motion of the county auditor in the court of common pleas of the county, such county auditor, previous to making such motion, giving such delinquent collector and his securities, his her or their heirs, executors or administrators ten days previous notice, in writing, delivered personally or left at their usual place of abode; and such court on motion of the county auditor and proof of notice as aforesaid, shall give judgment against such delinquent collector, his securities, his or their heirs, executors or administrators, as the case may require, for the amount due the county with twelve per cent. damages and all costs thereon: *Provided*, That if any collector shall produce to the court, before whom he is notified to appear, his account duly authenticated, judgment shall not be given for more than the balance due to the county with interest as aforesaid, and costs; and in the latter case the court may tax the delinquent collector and his securities, in any sum they may deem a reasonable compensation to the county auditor for giving the notice aforesaid.

What acts of
collector shall
forfeit his
bond.

How bond
shall be col-
lected.

Sec. 21. That if any person or persons shall conceive him, her or themselves aggrieved by the conduct of the collector, such person or persons may appeal to the county auditor, notifying the collector of his, her or their intention and the cause of his, her or their grievance, at least ten days before the time fixed on for hearing, which notice shall be in

Appeals al-
lowed from
collector.

writing, and delivered personally or left at his most usual place of abode.

Vacancies, &c.
may be filled
by commis-
sioners.

Sec. 22. That in all cases where any person, heretofore hath been or hereafter may be appointed a county collector, hath or shall after giving bond and commencing his collection become incapable of completing the same, either by death, removal, resignation, absconding or from any other cause, the commissioners of the county shall, as directed by law, appoint a collector to collect the residue of the tax charged and unpaid on the duplicate of such delinquent collector, such collector so appointed, on giving bond and taking the oaths required of collectors of the county tax by this act, shall have the same powers and be under the same restrictions and obligations as other county collectors; and when the whole or any part of the tax charged and unpaid as aforesaid, shall be collected and paid into the proper county treasury, after deducting the fees for collecting, the balance shall be allowed by the county auditor as a credit on the bond of such delinquent collector.

Bond may be
cancelled
when securi-
ty pays am't.

Sec. 23. That in all cases where the securities of such collector or any one of them, heretofore hath or hereafter may pay over all monies by such collector actually collected, and all monies collected by such security, it shall be lawful for the county auditor to cancel the bond of such collector and his securities, so soon as the whole collection for that year shall have been completed, agreeably to the preceding section of this act, and in every case where the security of any such delinquent collector as aforesaid, shall have paid the whole or any part of the amount due on the bond of such delinquent collector as is prescribed in the preceding section of this act, it shall be the duty of the county auditor to refund to the security whatever balance may be found to have been paid over and above the amount due the county on such bond.

Receipts of se-
curities good
tax in certain
cases.

Sec. 24. That in all cases where any security may have collected all or any part of the tax not collected by the collector, before his death, absconding or other disability, the receipt given by such security shall be taken and deemed to be a full discharge of the tax due from the person holding the receipt of such security for the same, and the security shall be held liable to the county for the amount, and the person paying the same, shall have no action against such security to recover back the amount paid.

Shall not be
twice appoint-
ed, unless, &c.

Sec. 25. That no collector of county tax shall be appointed a second time, unless he produce to the commissioners of the proper county a receipt that he has settled his collections for the preceding year.

Acts repealed.

Sec. 26. That the several acts regulating the duties of collectors of county tax, be and they are hereby repealed.

This act shall take effect and be in force from and after the fifteenth day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.

ALLEN TRIMBLE,

Speaker of the Senate.

February 23, 1824.

AN ACT defining the duties of county treasurers.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That the treasurer of every county that now is, or may hereafter be erected and established, shall continue in office for one year from the time of his appointment, and until his successor is chosen and qualified; but shall be subject to be removed from office by the commissioners of the county for any neglect or misconduct therein, and before entering upon the duties of his office, he shall give bond to the state of Ohio, with such security as shall be approved of by the county auditor and in such sum as the commissioners of his county shall have directed, conditioned for the paying over all monies which may come into his hands for state, county or other purposes, and shall also take and subscribe an oath or affirmation before some competent authority, for the faithful discharge of the duties of his office, which bond and oath shall be filed in the office of the county auditor.

Treasurer to continue in office one year.

To give bond.

Condition.

Sec. 2. That it shall be the duty of each county treasurer to keep a fair and accurate account of all monies which he may receive, and all disbursements made, which shall shew the time when received, and from whom, and also, when and to whom paid, and shall at all times be subject to the inspection of the auditor and commissioners, which account, together with the vouchers for each payment, by him made during the past year and all monies remaining in the treasury, shall be submitted to the examination of the commissioners at their annual meeting in June, that the same may be compared and finally settled: and the said treasurer shall receive for his services a sum equal to four per centum on the amount of all monies by him received and accounted for.

His duties.

Fees.

Sec. 3. That the treasurer of each county, shall when any order drawn on him as treasurer, is presented for payment, if there be money in the treasury for that purpose, redeem the same, and he shall mark on the face of such order, "redeemed," and the date of such redemption, and sign his name thereto: and on the first Monday in March, June, September and December in each and every year, he shall

Shall redeem orders.

Deposit bills quarterly.

O o

deposit the bills thus redeemed with the auditor of his county, and take his receipt therefor.

Orders presented and not paid to be endorsed.

Sec. 4. That where any order shall be presented and not paid, it shall be the duty of the treasurer to endorse on the back of said order, "not paid for want of funds," together with the date of said presentment, and sign his name there-to, and said order shall from thenceforth bear an interest of six per cent. per annum until paid.

To give notice when in funds to redeem.

Sec. 5. That so soon as the treasurer of the county shall have sufficient funds in his possession to pay off the orders in circulation on which interest is accumulating, it is hereby made his duty to give notice in some newspaper having general circulation in the county of his readiness to redeem all orders drawing interest, and from the date of such notice, the interest on such orders shall cease to accrue.

To deliver books, &c. to successor.

Sec. 6. That when any county treasurer shall be removed from his office, or shall resign, or shall remove out of the county, he shall deliver up to the succeeding treasurer, all the money, books, public accounts, and papers belonging to the county, whole and und-faced, and when any county treasurer shall die, his executors or administrators shall deliver in like manner all the money, public accounts, and papers belonging to the county, that may have come to his, or their possession.

Effect.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 20, 1824.

—:00:—

AN ACT for ascertaining the boundaries of counties.

Order to issue by commissioners to surveyor.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That whenever it shall appear to the commissioners of any county, that the boundary lines of the county are not sufficiently ascertained, it is hereby made the duty of the commissioners to issue their order to the surveyor of the county, requiring him to ascertain and survey such line or lines.

Commissioners to give notice to those of adjoining county.

Sec. 2. That it shall be the duty of the commissioners of any county, where the county line or lines are to be run, to give notice to the board of commissioners of the county or counties adjacent, declaring their intention of running the line or lines of said county; and said commissioners receiving such notice shall, if they think proper, order the county surveyor of such county, to proceed and run such lines with

the surveyor or surveyors of the adjoining county or counties, at such time and in such manner as shall be fixed upon by the commissioners of said counties.

Sec. 3. That each county surveyor shall forthwith make out a return of such survey to the clerk of his respective county, whose duty it shall be to make record thereof. Surveyor to make return to clerk.

Sec. 4. That the county surveyors shall receive for their services, done conformable to the directions of this act, such compensation as may be allowed by the commissioners of the county to which each surveyor respectively belongs, to be paid out of the county treasury, on the commissioners' order. Surveyors' compensation.

This act shall take effect, and be in force from and after the passage thereof. Effect.

MICHAEL BALDWIN,
Speaker of the House of Representatives.
JOSEPH KERR,
Speaker pro. tem. of the Senate.

December 29, 1804.



AN ACT, providing how money shall be appropriated in counties or districts attached, and for the division of the money remaining in the treasury of the county or counties from which a new county may be laid off.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That when any tract or district shall be laid off into a new county, and shall remain, or be attached to, or made a part of an organized county, for the purpose of enjoying county privileges, the tax arising from land and personal property within the organized county, and county or district attached, shall be appropriated in the following manner, to wit: the expenses of the county shall first be paid from the whole tax, except appropriations made for roads, bridges or public buildings within the original organized county, then the remainder of the tax on land and personal property shall be divided according to the quantity of land and personal property, within the organized county, and the county or district attached, from which the tax was paid; and the commissioners shall appropriate the proportion or part belonging to the county or district attached, within the same, for the purpose of making roads, bridges or public buildings. Money how divided and appropriated.

Sec. 2. That when any new county shall be laid off and organized, the money which shall remain in the treasury of the county or counties from which the new county was taken, after deducting all just debts and demands which were due

New counties or owing at the time of setting off the new county, except to have money such debts as shall have been contracted for public buildings in treasury according to land in the old county, shall be divided according to the land and taxable property, &c. and other taxable property within the new county, and the county or counties from which the new county was taken, from which the tax was paid, and the treasurer of the new county, is hereby authorised to call on the treasurer or treasurers of the county or counties, from which the new county was taken; and the treasurer or treasurers are hereby required to pay over the same, according to the proportion before mentioned: *Provided however,* No monies donated or given to said county by individuals for erection of public buildings, or other purposes, or monies received as clear profit, on the sale of county town lots, the property of said old counties shall be subject to such division, but shall be and remain the property of said old counties.

Proviso.

Commissioners of old county to settle and give an order to those of new.

Sec. 3 That it is hereby made the duty of the commissioners of any new county heretofore laid off, or that may hereafter be laid off and organized, from one or more counties, to call on the commissioners of the county or counties from which such new county was taken, for a settlement of the money which shall remain in the treasury of the said county or counties, and the commissioners of such old county or counties, are hereby ordered and directed, when called on by the commissioners of such new county, to settle with them, within three months thereafter, and give an order on the old county treasury, in favor of the new county treasurer, for the amount of money due such new county, agreeable to the provisions of the second section of this act, and the old county treasurer is hereby ordered and directed to pay the same to the treasurer of such new erected county, as aforesaid.

Commissioners of old counties refusing to settle, &c. may be attached.

Sec. 4. That if the commissioners of such old county, shall refuse or neglect to settle with the commissioners of such new county, and give them an order on their treasurer, for the amount as aforesaid, when called on; then, and in that case, it shall be the duty of the court of common pleas, of the old county, upon the application of the commissioners of the new county, to proceed in a summary manner, upon notice, to compel the commissioners of such old county to make such settlement, and give such order; and the court of common pleas shall enforce any order they may make in the premises, by attaching the persons of the commissioners of the old county, until such order is complied with, and the costs of the application paid.

Orders, how to be paid.

Sec. 5. That if there be not money in the treasury of the old county, to pay the before mentioned order when presented, it shall be the duty of the treasurer of said county to pay the order out of the first money received by him for county purposes.

Sec. 6. That the act entitled, "An act, providing how money shall be appropriated, in counties or districts attached, and for the division of the money remaining in the treasury, from which a new county may be laid off," passed December 29th, 1800; and an act, to amend the act aforesaid, passed January the 25th, 1819, be, and the same are hereby repealed.

This act to take effect and be in force from and after the first day of June next.

Effect.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 11, 1820.

AN ACT establishing seats of justice.

Sec. 1. Be it enacted by the General Assembly of the state of Ohio, that for each new county heretofore established or which may be established during the present, or any future session of the legislature, three commissioners shall be appointed by a resolution of both branches of the legislature, whose duty it shall be to examine and determine what part of said county, so established, is the most eligible for the establishment of a seat of justice within the said county; and it shall be the duty of the secretary of state immediately to notify the persons of their several appointments.

Sec. 2. That no person residing within the county so established, or holding any real property therein, or who has not arrived to the age of twenty-five years, and no person who has not been a resident within the state one year, shall be eligible as a commissioner.

Sec. 3. That the commissioners or any two of them, within sixty days after the notification of their appointment, shall assemble at some convenient place in that county, where the seat of justice is to be established, giving twenty days notice, published in some newspaper printed or circulated in said county, or by having the same posted up in three of the most public places therein, notifying the inhabitants thereof, of the time, place, and purport of their meeting; and the said commissioners, when assembled, after having taken an oath or affirmation, before a magistrate or some other person legally authorized to administer oaths, to faithfully discharge the duties assigned them by this act, shall proceed to examine and select the most proper place as a seat of justice, as near the centre of the county as possible, paying regard to the situation, extent of population and quality of

land, together with the convenience and interest of the inhabitants.

To make report to next court of C. P

Sec. 4. That the commissioners, after having agreed upon the place for the seat of justice, shall make report thereof to the next court of common pleas, to be held in said county, if the same shall have been organized, but if the county shall not have been organized, then to the court of common pleas of any county to which such new county or any part thereof may be attached for judicial purposes; and if no town has been previously laid off, at the place agreed on by the commissioners, the court shall appoint a director, who, after giving sufficient security for his faithful performance, shall be fully authorized to purchase the land of the proprietor or proprietors for the use of the county, but in no case shall he be authorized to give a greater sum per acre than the price stipulated by the commissioners who selected the site, and proceed to lay off said land into lots, streets and alleys, under such regulations as the court may prescribe; and the said director is hereby further authorized to dispose of the said lots, either at public or private sale, as the court may direct, and to make legal conveyance of the same, in fee simple to the purchaser: *Provided always*, That the lands thus purchased and laid off into lots, shall not exceed seven hundred acres.

Director may be appointed.

Powers.

Provide,

How proceeds of sale shall be applied.

Sec. 5. That the first proceeds of the sale of said lots, shall be applied to the payment of the land, and defraying the necessary expenses of laying off the lots, and the residue of the money shall be paid into the county treasury.

Director may be attached for not paying over money.

Sec. 6. That if any director appointed by virtue of this act, shall refuse to pay into the county treasury any money that may be in his hands, arising from the sale of lots, on demand of the county treasurer, it shall be the duty of the court of common pleas, on application of the county treasurer, to proceed in a summary manner, on thirty days notice being given, to order such director to pay over any monies in his hands; and the court of common pleas is hereby authorized to enforce any order they may make in the premises, by attaching the person of such director, or issuing execution, as in other cases: *Provided*, That said director shall, in all cases, on the payment of any money into the county treasury, in pursuance of this act, take duplicate receipts therefor; one of which he shall deposit with the county auditor of the county, who shall charge the treasurer therewith.

Provide.

If title is bad, another spot may be selected.

Sec. 7. That if the land agreed on by the commissioners, cannot be purchased at the price limited, or if a good and legal title in fee simple cannot be obtained, the commissioners shall, forthwith select the next most eligible place for the seat of justice.

Bribe, in commissioners,

Sec. 8. That if any commissioner shall receive money, or any species of property as a bribe, either directly or indirectly

ly, in the execution of his office, he shall on conviction before any court having jurisdiction thereof, forfeit and pay a sum not exceeding one thousand nor less than three hundred dollars, for the use of the county together with costs of suit. punished.

Sec. 9. That each commissioner, appointed for the purpose of establishing seats of justice, shall receive the sum of three dollars for each day he may be employed in discharging the duties required of him, by the provisions of this act, to be paid out of the treasury of the county where said proceedings shall be returned, and to which the said new county is attached, the amount of which, with the interest thereon, shall be refunded by the new county so soon as the same shall be organized, unless otherwise provided by law, and each director appointed, shall be paid such compensation as the court of common pleas of the new county shall allow. Compensation to comm'rs. Director, how paid.

Sec. 10. That it shall be lawful for any of the courts of common pleas within this state, whenever they may deem it necessary, when there shall be a vacancy in the office of director for any town within this state, occasioned either by death, removal, resignation or otherwise, to appoint for the towns in their proper counties, a director from time to time, to fill such vacancy, in the same manner and under the same regulations as herein before prescribed. C. C. P. may fill vacancy.

Sec. 11. That the act entitled "an act, establishing seats of justice," passed January eleventh, eighteen hundred and twenty; and the act to amend the act entitled "an act, establishing seats of justice," passed January fifth, eighteen hundred and twenty-two; and the act to amend the act, establishing seats of justice, passed January twenty-seventh, eighteen hundred and twenty-three, be, and the same are hereby repealed. Acts repealed.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,

February 3, 1824.

Speaker of the Senate.

AN ACT providing for the erection of public buildings.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That there shall be erected and finished in each county within this state, whenever the commissioners of the county may deem it necessary, a good and convenient court house, a strong and sufficient jail or prison for the reception and confinement of prisoners and criminals: Also one or more convenient fire-proof buildings, in some convenient place or places, near the court house, in which shall be kept the offices of the clerk of the supreme court, court of common pleas, master in chancery, recorder of deeds, and county auditor: *Provided however,* That the commissioners a- What buildings may be erected for the convenience of the county. Provide.

foresaid may, at their discretion, provide and finish one or more suitable rooms within the walls of the court house, for the use of the whole or part of the offices aforesaid; and the commissioners may assign such room or rooms, to the use of such officer or officers as they may deem expedient.

Commissioners may purchase ground, &c.
Other powers in erecting such buildings.

Sec. 2. That every court house, jail or other building to be erected as aforesaid shall be formed of such materials, and of such dimensions and on such place or places as the commissioners shall direct within the limits of the town wherein the seat of justice of such county shall be established: And they are hereby authorised to plan and project said buildings, and to purchase for the use of the county, such ground as they may deem necessary, whereon to erect all or any part of the buildings aforesaid, the expense of which purchase, shall be paid out of the county treasury.

Cells may be erected in jails &c.

Sec. 3. That the commissioners of each county are hereby authorised and required to build and construct, within the walls of each jail already erected, or which may hereafter be erected, one or more cells or dungeons, for the confinement of criminals, sentenced to solitary imprisonment; and the commissioners are hereby authorised to finish, repair and alter any of the buildings specified in the first section of this act, already erected or which may be erected in any county within this state.

Commissioners to give notice that contracts may be made, &c.
Purchaser to enter into bonds.
In what cases contract may be declared vacated.
Proviso.

Sec. 4. That when the commissioners shall determine to erect any of the buildings aforesaid, or to finish, repair or alter any of the buildings already erected in any county within this state; they shall advertise the same, at least three weeks in succession, in a newspaper in general circulation in such county, or by posting up an advertisement in five public places within said county, stating the day they will attend at the place of holding courts in said county, to enter into contracts for the same; at which time and place the commissioners shall proceed to sell at public auction, to the lowest bidder, the whole or any part of the labour to be performed, or the furnishing of materials for the building designed to be erected, finished, altered or repaired, and the lowest bidder shall be the purchaser, if in the opinion of said commissioner he be a proper person to undertake such work, and said purchaser shall enter into bond, payable to the state of Ohio, with such security as the commissioners shall approve, for the use of the county; conditioned for the faithful performance of the contract, agreeably to the stipulations thereof, and on default of the contractor or contractors, for want of attention or competent knowledge to carry on the work agreeably to contract, the said commissioners shall have power to declare the contract vacated, and shall proceed to make another contract as herein directed: *Provided*, That when any repairs are to be made as aforesaid, the cost of which shall not exceed forty dollars, the commissioners may enter into such contract in such man-

ner as they may think proper, without giving notice as here-
in required.

Sec. 5. That the commissioners are hereby authorized to receive donations of land money, or other property; and to appropriate the same, together with any money in the county treasury, belonging to the county, to the payment of the expense of erecting, finishing, repairing or altering any of the buildings aforesaid. Donations may be received, &c.

Sec. 6. That in case the funds of any county shall not be sufficient to defray the expenses of erecting the public buildings aforesaid, or to discharge any debts that have previously been contracted by the erection thereof; the county commissioners are hereby authorized to levy a tax, in addition to the tax which may be authorized to be levied for county purposes, not exceeding one half of the amount of the county tax aforesaid: and said additional tax shall be charged and levied on the same kinds of property which may be liable for county tax; and added to and collected with said county tax, by authority of the same duplicate, in the same manner and within the same time that said county tax may be collected. Commissioners may levy tax to pay expenses.

Sec. 7. That the "act providing for the erection of public buildings," passed January twenty-second, eighteen hundred and ten, and the act in addition to the act providing for the erection of public buildings, passed January twenty-fifth, eighteen hundred and thirteen, be, and the same are hereby repealed. Acts repealed:

This act to take effect and be in force from and after the first day of June next. Enacted.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 10, 1824.

AN ACT to authorise the establishment of poor houses.

Sec. 1. Be it enacted by the General Assembly of the state of Ohio, That the commissioners of each and every county within this state shall be and they are hereby authorised to erect and establish poor houses within their respective counties, whenever in their opinion, such a measure will be proper and advantageous, and for that purpose it shall be lawful for the said commissioners to purchase such lot or tract of land as they may judge necessary for the accommodation of the institution: Commissioners may erect poor houses. *Provided,* That if the commissioners of any county shall think proper to purchase land and erect a county poor house, under the provisions of this act, the ex- Proviso.

pense of such purchase and erection shall be defrayed by a tax levied on the objects of county taxation for that express purpose, which tax shall be collected and paid over in the same manner that other county taxes are collected.

Seven persons to be appointed directors. Sec. 2. That so soon as the commissioners of any county shall have completed a house as aforesaid, for the reception of the poor, and yearly and every year thereafter it shall be their duty to nominate and appoint seven judicious persons, inhabitants of their county, who shall form a board of directors to take charge of, and manage the affairs of the said poor house; the board of directors shall continue in office one year and until their successors are nominated and appointed, and they shall at their first meeting, elect a president and secretary of their own body, whose duty may be prescribed and defined by the board.

Directors a body politic. Sec. 3. That the board of directors, a majority of whom shall form a quorum to transact business, shall be a body corporate and politic, with perpetual succession, and shall be known by the name of "the Board of Directors of the poor house of

Name.

county," (inserting the name of their county) and by that name they may sue and be sued, defend and be defended, in any court within this state; they may have a common seal which they may alter or change; they may make all such contracts and purchases as may be necessary for the institution, and may prescribe such rules and regulations, as they shall think proper for the management and good government of the same, and for introducing the practice of sobriety, morality, and industry among its inhabitants; they shall meet quarter yearly at such place as they may agree on, and the president with the consent of any two members of the board, may call a special meeting at any time, subject however to such regulations and provisions as may be made by any future act of the legislature of this state.

Board may appoint a superintendent. Sec. 4. That the board of directors shall appoint a superintendent, who shall reside in some apartment of the poor house or other building contiguous thereto, and shall receive such compensation for his services, perform such duties and give such security for their faithful performance, as the board shall judge proper; he shall be governed in all respects by the rules and regulations of the board and may be removed by them at pleasure; he may require all persons received into the poor house to perform such reasonable and moderate labor as may be suited to their age, sex and bodily strength, the proceeds of which shall be applied to the use of the institution, in such manner as the board of directors may point out, the superintendent shall receive into the poor house, any person who shall produce to him such an order or voucher as is or may be required by the laws of this

state, to entitle such person to be received and supported as a pauper; and he shall enter in his book the name and age (as near as may be) of every person received into the poor house, together with the day on which such person was received

Sec. 5. That the board of directors shall cause the poor-house to be visited, at least once in every month by a committee of their body, which committee shall carefully examine the condition of the paupers, the manner in which they are fed, clothed, and otherwise provided for and treated; they shall ascertain what labor they are required to perform, and shall inspect the books and accounts of the superintendent and make report at the next meeting of the board; the board shall yearly and every year report to the commissioners of the county, the state of the institution, with a full and correct account of all their proceedings, contracts and disbursements; and the expense of establishing and supporting the institution, shall be paid on the order of the county commissioners out of any money in the county treasury not otherwise appropriated.

They shall cause the paupers to be visited, &c.

Sec. 6. That if the commissioners of any county on application for that purpose by the trustees of any township therein, shall refuse or decline to establish a poor house within their county, as is herein before provided, it shall be lawful for each and every township and town corporate, within such county, to establish a poor house for the reception and support of its own poor; and in case the said commissioners shall at any after period resolve to establish a poor house for the county, no township or town corporate that may have established a poor house as aforesaid, or shall in any other way provide for the support of their poor, shall be chargeable with any part of the expense of erecting or supporting the same.

Townships and towns corporate may erect poor houses.

Sec. 7. That if at a township meeting, called by the trustees of the township for that purpose (of which meeting the trustees shall have given at least fifteen days notice in some newspaper circulating within their township, or by advertisement set up in ten public places therein) a majority of the legal voters assembled shall vote in favor of establishing a township poor house, it shall be the duty of the trustees of such township to procure by purchase or otherwise, a convenient site, and erect thereon such buildings and other improvements as in their opinion may be necessary for the accommodation of the poor of their township; and it shall be lawful for the said trustees to levy and cause to be collected within their township, such tax as may be necessary to defray the expense of the establishment, which tax shall be levied on such objects as are liable to be taxed for county purposes, and to be collected and paid over in the same manner as taxes are collected and paid over under the

Trustees may purchase, &c. a site and erect poor house, &c.

May levy a tax to defray expense.

"act for the relief of the poor," according to the assessment made and returned to the county commissioners, and in like manner the trustees shall levy, yearly and every year, such a tax as may be necessary to defray the current expenses of the institution.

Electors to appoint three directors.

Sec. 8. That so soon as the township poor house is ready for the reception of the poor, it shall be the duty of the electors of said township, at the time of electing other township officers, to elect three directors of said poor house; and it shall be the duty of said board of directors within one month after entering on the duties of their office, to determine by lot which of said directors shall go out of office at the expiration of one year: which at the expiration of two years; and which at the expiration of three years; and forever after there shall be annually elected one director of said poor house, to hold his office three years, and until his successor is chosen and qualified; the board of directors so constituted, shall be a body corporate and politic, with perpetual succession, to be known by the name of "The Board of directors of the

To be a body corporate.

Name.

Poor House," (inserting the name of the township;) the said board of directors shall be vested with all the rights, powers and privileges, and shall be required to perform the same duties, and shall conduct in the same manner as is herein before pointed out and provided in relation to the board of directors of county poor houses, excepting only that their reports and statements shall be made to the trustees of their township, and not to the county commissioners; and the superintendent by them appointed shall proceed and conduct in the same manner as is required of the superintendent herein before mentioned.

In whom property vests.

Sec. 9. That the property purchased or otherwise acquired for the use of a county or township poor house, shall be vested in the board of directors of such poor house, and their successors in office.

Town corporate may appoint their own agents.

Sec. 10. That when a poor house shall be established by any town corporate within this state, for the accommodation and support of the poor of such corporation, such poor house shall be under the exclusive management of the body corporate by which it may be established, and such agents and superintendents as they may from time to time appoint; and the expense of erecting and supporting such poor house shall be defrayed by such corporation, and thereafter no tax shall be assessed on the inhabitants of such town corporate, for the support of any pauper residing without the limits thereof.

When poor houses are erected, overseers discharged.

Sec. 11. That the overseers of the poor within any county in which the commissioners shall have established a poor house, and the overseers of the poor of any township or town corporate, in which the trustees or corporation shall have established a poor house agreeably to the provisions of this act,

shall be released and discharged from the performance of so much of their duty as relates to the receiving and providing for the support of the poor; and the said overseers on receiving an order or warrant from the trustees of their township, in favor of any pauper, shall endorse thereon an order to the superintendent of the poor house, requiring him to receive and provide for such pauper.

MATTHIAS CORWIN,
Speaker of the House of Representatives,
 PETER HITCHCOCK,
Speaker of the Senate.

February 26, 1816.

AN ACT to provide for the recording of town plats.

Sec. 1 *Be it enacted by the General Assembly of the State of Ohio,* That whenever any town shall hereafter be laid out within this state, the proprietor or proprietors of such town, shall cause a true and accurate map or plat thereof to be recorded in the recorder's office, of the county where the same lies, before any lot or lots therein be offered for sale; and if any person or persons shall sell, or offer for sale, any lot or lots within such town before the plat thereof be recorded as aforesaid, such person or persons shall forfeit and pay the sum of ten dollars for every lot so sold. Plats of towns to be recorded before sale of lots. Penalty.

Sec. 2. That such maps or plats as are required by this act to be recorded, shall particularly set forth and describe all the public ground within such town, by its boundaries, courses and extent, and whether it be intended for streets, alleys, commons or other public uses, and all the lots intended for sale by progressive numbers, and their precise length and width; and the map so made and acknowledged before a justice of the peace or associate judge of the court of common pleas of the proper county where the town lies, or before a judge of the supreme court, and certified under the hand and seal of the judge or justice taking such acknowledgment, and recorded, shall be deemed a sufficient conveyance to vest the fee of such parcels of lands as are therein expressed, named or intended to be for public uses in the county in which such town lies, in trust to and for the uses and purposes therein named, expressed or intended, and for no other use or purpose whatever. What the plat shall set forth and describe. Plat so made and acknowledged, shall vest fee of land, intended for public use, in the county.

Sec. 3. That if any proprietor or proprietors, their agent or attorney, shall cause any map of a town to be recorded as aforesaid, which does not set forth and describe in manner aforesaid, all and every parcel of ground which has been, or shall be promised or set apart by the original articles of sale, for public uses, and other lots, such person or persons shall Forfeiture for causing improper plat to be recorded.

forfeit and pay double the value of the ground so promised, and not set forth on the map, three fourth parts thereof to the use of the county wherein such town lies, for the express purpose of purchasing ground within, and for the use of such town in lieu of that which was so promised, and the other fourth part to the use of the person prosecuting.

Debt, qui tam, lies for recovery of forfeiture

Sec. 4. That the several forfeitures arising under this act, may be recovered in an action of debt qui tam, before any court having cognizance of the same, and in any action to be brought for any penalty incurred under this act, where judgment shall be given for the plaintiff, the court shall also award to him his legal costs of suit, and if, in any case the body of a proprietor cannot be found, the property of such proprietor shall be liable to be attached as for any other demand; and where any forfeitures are not by this act otherwise appropriated, three fourth parts thereof shall be applied to and for the use of the county in which they accrue, and the other fourth part to the use of the person prosecuting for the same.

Proprietor's property may be attached.

MICHAEL BALDWIN,
Speaker of the House of Representatives.
 DANIEL SYMMES,
Speaker of the Senate.

February 14, 1805.

AN ACT providing for the vacating of town plats, and for other purposes.

C. C. pleas may alter or vacate towns.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio.* That the courts of common pleas are hereby authorized and empowered on application made by the proprietor or proprietors of any town within their proper county, to alter or vacate the same, or any part thereof.

Proprietor to give notice.

Sec. 2. That if any proprietor or proprietors of a town shall be desirous of altering or vacating the same, or any part thereof, such proprietor or proprietors shall give notice, in writing, of such intended application, in at least two places in the county wherein such town may be situated, one to be set up in the most public place in said town, and one on the court house door of said county, and insert a copy of the same in a newspaper, printed or in circulation in said county, at least sixty days prior to the sitting of the court to which he, she or they intend to make such application.

Persons owning, lots agreeing, court may alter or vacate towns.

Sec. 3. That if such applicant or applicants shall produce to said court satisfactory evidence that the notice, required by the preceding section of this act, has been given, and that all persons owning any lot or part thereof in said town, have agreed that the whole or a part thereof shall be altered or vacated, the court shall proceed to alter or vacate said town

or any part thereof, and order their proceedings therein to be recorded by their clerk with the records of said court: *Provided*, That the vacating of any town plat or any part of a town plat shall not vacate any part of a state or county road.

Sec. 4. That the clerk of the said court shall give to the applicant a certified copy of such record, for which he shall be entitled to receive the sum of fifty cents, and it shall be the duty of such applicant to have such certificate recorded by the recorder of the county, within three months thereafter.

Proprietor's
and clerks duty.

MATTHIAS CORWIN,
Speaker of the house of representatives.
THOMAS KIRKER,
Speaker of the Senate.

December 21, 1811.

AN ACT defining the mode of laying out and establishing state roads

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio*, That all state roads to be hereafter laid out within this state, shall be viewed, surveyed, established and returns made thereof, agreeably to the provisions of this act, and shall be established and complete returns made of the same within one year from the passage of this act, by which said road or roads may be granted or authorized to be laid out respectively.

Returns of
state roads to
be made in
one year.

Sec. 2. That when ever the General Assembly shall by law authorize any road or roads to be laid out and established within this state, and shall appoint commissioners to lay out and establish the same, said commissioners shall employ a skillfull surveyor, chain carriers, a marker and other assistants if necessary, all of whom shall meet at the place where the road is to commence which they have been appointed to lay out and establish, and proceed to the discharge of the duties of their appointments respectively, at such time as shall be agreed on by the said commissioners; subject to the restrictions prescribed in the first section of this act: *Provided* That each commissioner, surveyor and chain carrier, shall before entering on the duties of his appointment, take an oath or affirmation to discharge his duty faithfully and according to law.

Commissioners
to appoint surveyor,
chain carriers, &c.

Provided.

Sec. 3. That each state road shall be laid out from the place of beginning to the place of termination, on the most direct route that suitable ground can be found whereon to establish the same, always having a regard to the intermediate points (if any) in such road; and all state roads that shall be hereafter established agreeably to the provisions

Roads to be
66 feet wide.

of this act, shall be opened and considered public highways, sixty six feet wide

Roads to be surveyed and marked.

Surveys and returns, how made.

To be recorded when.

Compensation and how paid

Persons aggrieved, how redressed.

Sec. 4. That the commissioners appointed to lay out and establish any state road, shall cause the same to be correctly surveyed and marked throughout the whole distance of the same, and note the courses and distances thereof, and at the end of each mile, shall mark the number thereof, on a tree or on a monument by them erected for that purpose: And the commissioners and surveyor of each road, shall make a certified return of the survey, and plat of the whole length of said road, specifying in said return the distance the same may have been laid out, in each county; one complete copy of which return shall be signed by a majority of the commissioners, and the surveyor, and immediately deposited in the commissioners office of each county in which any part of said road may be laid out, and from thenceforth said road shall be considered a public highway; and the county commissioners shall cause said returns to be recorded and placed on file in their office: And the road commissioners aforesaid shall forward by mail to the secretary of state, within thirty days after the view and survey of said road shall be completed, a complete copy of the aforesaid returns.

Sec 5. That each road commissioner and surveyor employed to lay out and establish any road, under the provisions of this act, shall receive one dollar and fifty cents, and all other persons so employed seventy five cents each, per day for their services aforesaid, the amount of which expenses shall be paid out of the county treasuries of the counties wherein such road may be established, in proportion to the distance the same may be established in each county respectively, on the order of the county auditor: And the road commissioners aforesaid, shall in all cases certify to the commissioners of each county aforesaid, the whole length of time each person may have been employed in laying out and establishing such state road, also, the full amount of compensation due to each person for the services aforesaid.

Sec. 6. That if any person or persons shall consider him, her or themselves aggrieved by the laying out and establishing any state road through his, her or their land such person or persons may prefer his, her or their complaint in writing, to the county commissioners; who shall appoint three disinterested freeholders to assess the damages [if any] sustained by such complainant or complainants: And the freeholders aforesaid, shall meet, and after having taken an oath or affirmation, truly and impartially to assess the damages which said complainant or complainants will sustain by reason of opening said road, they shall proceed to examine the road aforesaid, through the land of such complainant or complainants, and assess the damages sustained, [if any].

and in assessing said damages, said freeholders shall adjudge how much less valuable the land or premises of the complainant or complainants has been or will be rendered by opening said road; and they shall make out, certify, sign and deliver a report of the same, to the commissioners of the county, at their next succeeding session after such assessment of damages, and if the commissioners shall deem it just and equitable, they shall direct the county auditor to issue his order on the county treasurer for the amount (if any) of damages assessed as aforesaid: *Provided*, That all complaints under the provisions of this section, shall be made within six months after the road complained of shall have been laid out and established: But complaint may be received by said commissioners at any time within six months from the passage of this act, for damages heretofore sustained by the laying out and establishing state roads, and such complaint shall be proceeded in and damages awarded according to the provisions of this act.

Damages to be paid by counties.

Proviso.

Sec. 7. That each commissioner appointed to lay out a state road under the provisions of this act, is hereby authorized to receive subscriptions or donations for the opening or improving said road or any part thereof, which donations or subscriptions they shall deposit with the auditor of the county in which the road for which such donations or subscriptions were made shall be situated, to be appropriated for the opening and improving said road, under the direction of the supervisor of the proper district, and the supervisor aforesaid shall be authorized to collect the amount of such subscriptions by action of debt as in other cases.

Commissioners of roads may receive donations, &c.

JOSEPH RICHARDSON,
Speaker of the House of Representatives;
ALLEN TRIMBLE,
Speaker of the Senate.

February 25, 1824.

AN ACT for opening and regulating roads and highways.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio*, That all roads and highways which have been or may hereafter be laid out and established agreeably to law, within this state, shall be opened and kept in repair in the manner hereinafter provided, and all county and township roads, shall hereafter be laid out and established agreeably to the provisions of this act, and all county roads shall be sixty feet wide, and township roads not exceeding forty feet wide.

County roads 60 feet wide,
township roads 40.

R r

Application for roads shall be by petition to commissioners

Sec. 2. That all applications for laying out or altering any county road, shall be by petition to the commissioners, signed by at least twelve land holders of the county, residing in the vicinity where said road is to be laid out or altered: and said petition shall specify the place of beginning, the intermediate points (if any) and the place of termination of said road: and one or more of the signers to said petition shall enter into bond with sufficient security, payable to the state of Ohio, for the use of the county, conditioned for the payment of all costs and expenses arising from the view and survey of said road, unless the same shall be established a public highway.

Bonds to be given for costs.

Notice shall be given previous to petition presented.

Sec. 3. That previous to any petition being presented, praying for a county road or for the alteration of a county road, notice thereof shall be given by advertisement, set up in three public places in each township through which any part of said road is designed to be laid out, or altered, (as the case may be,) at least thirty days previous to the meeting of the commissioners at which the petition shall be presented: and on the petition being presented and the commissioners satisfied that notice has been given as aforesaid; they shall appoint three disinterested and respectable land holders of the county, as viewers of said road, and a skilfull surveyor to survey the same; and the said commissioners shall issue an order directing said viewers and surveyor to proceed on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view, survey and lay out said road; or to view, survey and make the alteration in said road (as the case may be.)

Viewers and surveyor to be appointed.

Viewers to be sworn.

Sec. 4. That it shall be the duty of the viewers and surveyor appointed as aforesaid, after receiving at least six days previous notice, by one of the petitioners, to meet at the time and place specified in the order of the commissioners aforesaid, or within five days thereafter, and after taking a solemn oath or affirmation, faithfully and impartially to discharge the duties of their appointments respectively, shall take to their assistance, two suitable persons as chain carriers and one marker, and proceed to view, survey and lay out (or alter as the case may be.) said road as prayed for in the petition, or as near the same as in their opinion a good road can be made, at a reasonable expense, taking into consideration the utility, convenience, inconvenience and expense which will result to individuals as well as to the public if such road shall be established and opened (or altered, as the case may be) and the surveyor shall survey said road under the direction of the viewers, and cause the same to be conspicuously marked throughout, noting the courses and distances, and at the end of each mile, shall cause the number of the same to be marked on a tree or a monument erected for that purpose, he shall also make out and

Duty of viewers and surveyor in laying out roads

deliver to one of the viewers without delay, a correct certified return of the survey of said road, and a plat of the same; and the viewers shall make and sign a report in writing, stating their opinion in favour or against the establishment or alteration, (as the case may be) of such road, and set forth the reasons for the same: which report together with the plat and survey of said new road or alteration, (as the case may be) shall be delivered to the clerk of the commissioners, by one of the viewers, on or before the first day of the session of the county commissioners next ensuing, and it shall be the duty of the commissioners on receiving the report of the viewers aforesaid, to cause the same to be publicly read on two different days of the same meeting, and if no legal application shall be made to them for a re-view of said road or alteration and they are satisfied that such road, or alteration will be of public utility, and the report of the viewers being favourable thereto, they shall cause said report, survey and plat to be recorded, and from thenceforth said road shall be considered a public highway: and the commissioners shall issue their order directing said road to be opened; but if the report of the viewers be against such proposed road or alteration, (as the case may be) then no further proceeding shall be had thereon; and the obligor or obligors in the bond securing the payment of costs and expenses, shall be liable for the full amount of such costs and expenses; *Provided*, That in all cases where any oath or affirmation is required to be taken by any person under the provisions of this act, the same may be administered by the surveyor or any one of the viewers or re-viewers who have previously been sworn or affirmed themselves.

Sec. 5. That after the viewers of any county road shall have made return in favor of the same agreeably to the preceding section, and before said return shall be recorded, and the road established, it shall be lawful for any citizen of the county to apply to the commissioners for a review of said road, by petition, signed at least by twelve land holders of that part of the county through which said road is proposed to be established; and the commissioners shall on such petition being presented, and they satisfied the same is just and reasonable, appoint five disinterested respectable land holders of the county, to re-view said road, and issue their order to said re-viewers, directing them to meet at a time specified in said order, or within five days thereafter: And said re-viewers shall meet, after having received six days previous notice by one of the petitioners; and after taking the oath or affirmation required by the preceding section of this act, shall proceed to examine the route, surveyed and marked for said road by the former viewers, and make a report in writing to the commissioners, stating their opinion in favor or against the establishment of said road, and their reasons

Duty of commissioners.

Provided.

Review may be had.

Proceedings upon review.

for the same: And if the report of the re-viewers be in favor of said road, the same shall be established, recorded and opened agreeably to the provisions of the preceding section of this act: and the person or persons bound for the same, shall pay into the county treasury, the amount of the costs and expense of such re-view: But if the report be against the establishment of such road, no further proceedings shall be had thereon; and the persons executing the first bond, or bond given previous to the first viewers being appointed, shall pay into the county treasury the amount of the costs and expenses of the view, survey and re-view of said road: *Provided*, That previous to any appointment of re-viewers being made as aforesaid, one or more of the petitioners for such re-view, shall enter into bond with good security payable to the state of Ohio, for the use of the county, conditioned for the payment of all costs and expenses arising from such re-view, unless the report of the re-viewers shall be against the establishment of such road.

Proviso,

Proprietors of land injured by road may apply for damages.

Sec. 6. That if any person or persons through whose land any county road may be laid out, shall feel injured thereby, such person or persons may make complaint thereof, to the county commissioners at any regular meeting within six months after said road shall be established; and the commissioners shall appoint three disinterested freeholders of the county, whose duty it shall be, after having taken an oath or affirmation to discharge their duty faithfully and impartially, to proceed and view said road the whole distance the same may have been established through the premises of the complainant, and assess and determine how much less valuable the land or premises of said complainant has been or will be rendered by the opening said road; and they shall report the same in writing to the commissioners, at their next meeting thereafter: And if the commissioners shall be satisfied that the amount so assessed and determined, be just and equitable; and if the amount so assessed and determined shall exceed the amount of the costs of such view and assessment, they shall cause the amount aforesaid, to be paid to the complainant out of the county treasury; but if the amount so assessed shall not exceed the amount of the costs of such view and assessment, the complainant shall pay into the county treasury the full amount of such costs.

County roads may be vacated upon petition.

Proceedings upon petition.

Sec. 7. That when any county road shall be considered useless, any twelve land holders residing in that part of the county where such road is established, may make application by petition to the commissioners of the county, to vacate the same; setting forth in said petition the reasons why said road ought to be vacated: which petition shall be presented and publicly read at a regular session of the commissioners, and no other proceedings shall be had thereon, until the next session of said commissioners, when it shall

again be read as aforesaid; and if no objection be made, the commissioners may, on the last day of that session, declare said road vacated, or any part thereof, which they may deem unnecessary to keep open for public convenience; but if objections be made in writing, signed by at least twelve landholders, the commissioners shall appoint three disinterested persons to view said road, who shall take the same oath or affirmation, as is required by the fourth section of this act, and proceed to view the road aforesaid, and make a report of their opinion thereon, and their reasons for the same, to the commissioners: and if said viewers shall report in favor of vacating such road or any part thereof, the commissioners may, if they shall deem it reasonable and just declare said road vacated, agreeably to the report of the viewers; but in case said viewers shall report against vacating said road, then and in that case no further proceedings shall be had thereon: *Provided*, That previous to any petition being presented under the provisions of this section, the same notice shall be given as is required by the third section of this act.

Objections to petitions may be made in writing.

Proceedings after objection

Proviso.

Sec. 8. That an appeal from the final decision of the commissioners on any petition for a new county road, or for vacating or altering any county road, shall be allowed to the court of common pleas: *Provided*, That notice of such appeal be given by the appellant or appellants during the same session of the commissioners, at which said decision was made; and the appellant or appellants shall within fifteen days thereafter, enter into bond with good and sufficient security, for the payment of all costs and expenses arising from such appeal: And the court of common pleas may, (if in their opinion justice and the interest of the public require the same,) order another view of said road, or make any other order, which they may deem just and reasonable in the case: And no order shall issue for opening any county road until fifteen days after the same shall have been established; at which time the clerk of the commissioners may issue such order, by direction of the commissioners, unless an appeal has been perfected agreeably to the provisions of this section.

Appeals allowed.

Proviso:

Sec. 9. That the following persons, required, to render services under this act, shall receive a compensation for each day they shall be necessarily employed, as follows, to wit: Viewers and re-viewers one dollar; chain carriers and markers, seventy-five cents; and surveyor one dollar and fifty cents each, to be charged as costs and expenses, and paid out of the county treasury on the order of the county auditor.

Compensation to viewers and others.

Sec. 10. That when the place of beginning or true course of any county road shall be uncertain, by reason of

When lines,
&c. of road
uncertain, com-
missioners may
appoint review-
ers.

the removal of any monument or marked tree, by which such road was originally designated, or from any other cause; the county commissioners of the proper county may appoint three disinterested free holders of the county, to re-view and straighten said road if they shall deem it necessary; and said re-viewers shall cause said road to be correctly marked throughout, as in case of new roads and a correct survey to be made of the same, and shall make a return of said survey, and a plat of said road, to the commissioners who shall cause the same to be recorded as in other cases; and from thenceforth said road surveyed as aforesaid shall be considered a public highway.

Persons refus-
ing to perform
duties under
this act, to be
fined.

Sec. 11. That if any person who shall be appointed by the county commissioners as a viewer, re-viewer or surveyor of any road, shall refuse or neglect to perform the duties required by this act, without making a satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding five dollars, to be recovered by action of debt, by any person suing for the same, before any justice of the peace within the township wherein the person so appointed and refusing or neglecting may reside, to be appropriated as other fines, under the provisions of this act.

Supervisors to
keep up finger
or guide boards.

Sec. 12. That each supervisor within his district, shall erect and keep up, at the expense of the township, at the forks of every state and county road, a post and guide board or finger board, containing an inscription in legible letters, directing the way and distance to the next town or towns, or public place or places situated on each road respectively.

Persons may
petition to
change road
upon their own
land.

Sec. 13. That if any person or persons through whose land any county road is, or may be established, shall be desirous of turning said road through any other part of his or their land, such person or persons may by notice and petition agreeably to the second and third sections of this act, apply to the commissioners of the county while in session, to permit him or them to turn said road through any other part of his or their land on as good ground and without increasing the distance to the injury of the public, and upon the receipt of such petition the commissioners shall appoint a surveyor and three disinterested land holders of the county, as viewers of said road, who, or any two of whom shall proceed to view and survey the ground over which said road is proposed to be turned, and ascertain the distance which said road will be increased by such proposed alteration, and make out a report in writing stating the several distances so found, together with their opinion as to the utility or inutility of making said alteration, and if said landholders shall report to the commissioners that the prayer of the petitioner or petitioners is reasonable and that the alteration will not place the road on worse ground, or increase

Reviewers to
be appointed.

Upon return
by viewers
commissioners

the distance to the injury of the public, they shall upon receiving satisfactory evidence, that the proposed new road has been opened a legal width, and in all respects made equal to the old road for the convenience of travellers, the commissioners aforesaid may, (if in their opinion the same will be just and reasonable,) declare said new road a public highway and make a record thereof; and at the same time vacate so much of the old road as is embraced by the new: *Provided*, That the person or persons desiring the alteration aforesaid shall pay all the costs of the view, survey and return of said alteration, and such person or persons shall enter into bond with sufficient security for the payment of said costs, before the viewers shall be appointed; and the applicant for any alteration as aforesaid shall in all cases open and improve the new road at his own expense, agreeably to the provisions of this section.

Sec. 14. That if any person or persons shall, for the convenience of themselves and neighbors, wish to have a township road laid out from the plantation or dwelling place of any person or persons, or from any mill or house of public worship, to any public road, or from one public road to intersect another, it shall be lawful for such person or persons to petition the trustees of the proper township for the same, after giving twenty days previous notice thereof, by advertisement posted up at three public places in said township, setting forth in said advertisement the place of beginning and place of termination of said proposed road; and on such petition being presented to the trustees, and they being satisfied that the proper notice has been given as aforesaid, the petition shall be read in open meeting of said trustees, and they shall appoint three disinterested land holders of the township and a surveyor, who shall after being duly sworn, take to their assistance two chain carriers and a marker, and proceed at the time directed by the trustees, or within three days thereafter, to view the ground along which such road is proposed to be established as near the prayer of the petitioner or petitioners, as a good road can be had at a reasonable expense, and shall take into consideration the advantages and disadvantages which will arise to the applicant or applicants for said road, as well as to the owner or owners of the land through which it is proposed to establish the same, and the amount of damages him or they may sustain; and said viewers shall make a report in writing to the trustees, setting forth their opinion in full on the subject, which report, together with a return and plat of the survey of said road, shall be deposited with the township clerk, who shall notify the trustees thereof, whereupon the said trustees shall at their next meeting, cause said report to be read, and if the same be in favor of establishing said road, and the trustees deem it reasonable and just, the clerk

may declare road a public highway.

Proviso.

private roads, &c. how laid out.

To be kept in repair by petitioners, who shall pay all costs.

of the township shall enter the said report on record, and the trustees shall issue their order to the petitioner or petitioners or any of them, to open said road; and from thenceforth the same shall be considered a private or township road, subject to be kept open and in repair at the expense of the applicant or applicants for the same; but if the viewers shall report that the prayer of the petitioner or petitioners is unreasonable and ought not to be granted, no further proceedings shall be had thereon by said trustees: And all costs accruing under the provisions of this section, shall be paid by the person or persons making application for such road.

Trustees of townships and supervisors when & where to meet for settlement

Sec. 15. That the trustees of townships shall meet at the place of holding their annual township elections, on the first Monday of March annually, at which time and place the several supervisors of the township shall attend, and each produce his lists and accounts together with the township treasurer's receipt for all taxes, fines, penalties and forfeitures by him collected; and the trustees are hereby authorized and required to adjust and settle all accounts so produced to them and to allow such amount for delinquencies as they shall think just and reasonable; and if upon a fair and accurate settlement, there shall appear to be a balance due to any supervisor, for his services under this act, the trustees shall give him an order on the township treasurer for the amount due: *Provided*, That the supervisor shall in all cases be held accountable for the full amount of labor due in his district, unless for good cause shewn the trustees shall deem it just to remit the same.

Proviso.

Trustees to divide townships into road districts.

Sec. 16. That the trustees of townships shall, on the first Monday of March annually, divide their respective townships into suitable and convenient road districts and cause a brief description of the same, to be entered on the township records: And in case any public road shall be established as a part of the line or boundary of any township, the trustees in the adjoining townships, shall meet at some convenient place, as soon after the first Monday of March as convenient, and apportion such road or roads between the two townships as justice and equity may require, for the purpose of opening and improving the same; and the supervisors and inhabitants of each township shall be bound to work on said road or roads accordingly.

Roads upon line of townships to be apportioned to each.

Who shall open roads and when the labour shall be performed.

Sec. 17. That all male persons between twenty one and sixty years of age, who have resided three months within this state, and who are not a township charge, shall be liable yearly and every year, to do and perform two days work on the public roads, under the direction of the supervisor, within whose district they may respectively reside; and it shall be the duty of every supervisor to order out every such resident as aforesaid, between the first day of April and first day of July annually, to do and perform the work aforesaid

on the public roads within his district, and if any such resident, being personally warned by the supervisor, or by leaving a written notice at his place of abode, or by some person under the direction of the supervisor by whom such warning can be proven, shall refuse or neglect (having had three days notice) to attend, by himself or substitute, to the acceptance of the supervisor, on the day and at the place directed by the supervisor, or having attended, shall refuse to obey the directions of the supervisor, or shall spend the time in idleness or inattention to the duty assigned him; every such delinquent shall forfeit and pay for every such neglect or refusal, the sum of one dollar, to be recovered by action of debt, before any justice of the peace, at the suit of the supervisor, within whose district such delinquent may reside, having first made a personal demand of the same, and the monies so collected shall be paid over to the township treasurer, and accounted for, by the said supervisor, at the annual settlement with the trustees of his township, and in case any person shall remove from one district to another, who has prior to such removal, performed the whole or any part of the labor aforesaid, or in other respects has paid the whole or a part of the amount aforesaid, in lieu of such labor, and shall produce a certificate of the same, from the supervisor of the proper district, such certificate shall be a complete discharge for the amount therein specified. and every person called upon to perform any labour upon the public roads and highways under any of the provisions of this act, shall appear at the place appointed by the supervisor, with such necessary tools, or implements as said supervisor may direct: And the supervisor may, if necessary for the improvement of the roads, order any person owning the same, to bring a team of horses or oxen, and waggon or plough, to be employed or used on the roads under the direction of said supervisor, who shall allow such person a reasonable compensation for the use of such team, waggon or plough, in discharge of any labor or tax due from said person: *Provided*, That all persons who may be deemed by the supervisors unable to perform, or cause to be performed the two days work required by this section, shall be exempted from the requisitions of the same: *Provided also*, That whenever it shall happen in consequence of sickness, absence from home, or any other cause that the two days work aforesaid, shall not be performed within the time specified in this section, the supervisor shall be authorized to compel the performance of such work at any other time.

Penalty for not attending when required or not obeying directions, &c.

Persons having performed labor and removing, may be discharged, on certificate, &c.

Tools, oxen, &c. may be required.

Powers.

Proviso.

Fines, &c. to be collected by supervisors and appropriated to repairing roads.

Sec. 18. That the several supervisors within their respective districts, shall collect by suit or otherwise, all fines, forfeitures and penalties, arising and accruing under the provisions of this act, unless the collection thereof, is otherwise herein provided for, and pay the same into the township

Actions may
be defended on
-gen. issue, &c.

treasury, on or before the first day of March annually, taking the treasurer's receipt for the same; which receipt shall be the proper voucher for the supervisor to settle with the trustees for the amount thereof; and all fines and forfeitures sued for and recovered under the provisions of this act by any other person than a supervisor shall be paid over without delay by the justice of the peace or constable, collecting the same, to the township treasurer taking his receipt therefor, and the trustees shall cause all monies so paid into the county treasury, to be immediately appropriated to repairing the public roads in such township; and if any person shall be sued for doing or performing any act or thing required or authorized by this act, such person may plead the general issue and give this act, and the special matter in evidence, and no suit or action shall be brought or maintained, unless it shall have been commenced within six months after the cause of such action shall have arisen: *Provided*, That nothing in this section shall be so construed as to prevent the trustees of any township, from collecting or recovering any monies in the hands of the township treasurer or supervisors of highways.

Supervisors'
duty in open-
ing and repair-
ing roads,

Sec. 19. That it shall be the duty of each and every supervisor to open or cause to be opened all public roads and highways which have been, or may hereafter be laid out and established, through any part of the district assigned to such supervisor, and keep the same in repair; for which purpose the supervisors are hereby authorized to enter upon any unimproved lands, near or adjoining the public roads, to cut and carry away any timber, to dig or cause to be dug any gravel, sand or stone, or gather any loose stone which may be necessary to improve or repair the roads; and to enter on any lands adjoining or lying near the roads, to make such drains or ditches through the same, as they may deem necessary for the benefit of the roads, doing as little injury as may be, to the owner or owners of such lands; and the drains or ditches so made shall be kept open by such supervisors if necessary, and shall not be stopped or obstructed by the owner or occupier of such lands, or any other person or persons, under the penalty of forfeiting a sum not exceeding ten dollars for each offence, to be recovered and appropriated as provided in the eighteenth section of this act: and if any person or persons shall feel aggrieved by any supervisors cutting or carrying away any timber or stone as aforesaid, and shall make complaint thereof to the commissioners of the proper county, they shall proceed to ascertain and cause to be paid the damages, which such complainant or complainants shall have sustained in the same manner, in every respect, as is provided by the sixth section of this act, in the case of damages sustained by the laying out and opening county roads.

May enter up-
on lands, cut
timber, &c.
and party in-
jured may ap-
ply to com-
missioners and
obtain dama-
ges.

Sec. 20. That if any person shall obstruct any public road or highway and suffer such obstruction to remain, to the hindrance or inconvenience of travellers, every person so offending shall, for every such offence, forfeit and pay any sum not exceeding ten nor less than two dollars, to be recovered by action of debt, at the suit of any supervisor or other person suing for the same, before any justice of the peace, within the township where such offence was committed; and if such person shall suffer such obstruction to remain, to the hindrance and inconvenience of travellers after being notified or requested to remove the same, and a reasonable time shall have elapsed to effect such removal, such person shall be deemed guilty of the second offence against the provisions of this section and for every additional neglect or inattention to remove the obstruction, after like notice and time, such person shall be considered guilty of an additional offence: and all streets and alleys in towns which are, or may be laid out agreeably to law, shall be, and the same are hereby declared public highways for every purpose whatever; but the county commissioners shall not alter or vacate, or cause to be altered or vacated any such streets or alleys.

Penalties for obstructing roads &c.

Streets and alleys in towns, public highways.

Sec. 21. That each and every supervisor, who shall neglect or refuse to perform the several duties enjoined on him by this act, or, who shall under any pretence whatever, give or sign any receipt or certificate, purporting to be a receipt or certificate for labor or work performed or money paid, unless the labor shall have been performed or tax paid, prior to the giving or signing such receipt or certificate, every supervisor so offending, shall forfeit and pay for every such offence, not less than two dollars nor more than twenty-five dollars, to be recovered by indictment in the court of common pleas, or by action of debt before any justice of the peace within the township where such supervisor may reside; and it is hereby made the duty of the trustees of townships to prosecute all offences against the provisions of this section: *Provided*, That if any supervisor shall conceive himself aggrieved by the judgment of such justice of the peace, he may, on giving sufficient security to said justice for the payment of costs, appeal to the court of common pleas, who shall make such order thereon as to them shall appear just and reasonable: *Provided further*, That this section shall not be construed to prevent any person from prosecuting any supervisor for an offence against the provisions thereof.

Supervisors liable for negligence, misconduct, &c.

Proviso.

Supervisor, when prosecuted before a justice, may appeal.

Further proviso.

Sec. 22. That there shall be a road tax charged and paid on all lands within this state which is or may be liable or chargeable with a state tax, as follows, to wit: fifty cents on every hundred acres of first rate land; thirty seven and a half cents on every hundred acres of second rate land, and

A road tax to be charged and paid on lands.

Amount of tax twenty-five cents on every hundred acres of third rate land, for the special purpose of opening and improving the public roads, which tax shall be charged by the state auditor and county auditors on the same list or duplicate, and at the same time they shall charge the state tax, and said road tax shall be collected and paid over by the same person, and within the same time that the state tax shall be collected within each county respectively, and the amount of road tax so received or collected within any county in this state, shall be paid over to the county treasurer immediately after the collector shall have settled with the county auditor and obtained a certificate of the amount so collected.

By whom collected, &c.

Land holders may work out tax at 50 cents per day.

Certificates to be given.

Proviso.

Sec. 23. That every resident landholder and agent of non-resident landholders, shall have the liberty to work out the amount of their land tax for road purposes, on the public roads and highways, at the rate of fifty cents for each days work which may be performed under the direction of the supervisor of the district where such resident landholders may reside, and it shall be the duty of each supervisor to give a certificate to each and every person who may have worked out the whole or any part of his land tax for road purposes, which certificate shall specify the amount of tax so paid in labor, and the township wherein such work was performed, also that said work was done between the first day of April, and the first day of October, which certificate shall in no case exceed the amount due from the person to whom it is given, and the collector shall receive all such certificates in discharge of said tax: *Provided*. That in all cases the labor in payment of land tax for road purposes shall be performed within the township where the land is situated, and said labor shall be performed at such time between the first day of April and first day of October as shall be appointed by the supervisor.

C. auditors to give notice of amount of tax on land for road purposes, &c.

Supervisors to give notice within their district of the time they will attend, &c.

Sec. 24. That the county auditor of each county shall in the month of April annually, give notice by advertisement in some newspaper in general circulation in said county, three weeks in succession, of the amount of taxes charged for that year, on each hundred acres of first, second and third rate land for road purposes, and that said tax may be discharged in labor on the public roads at the rate of fifty cents for each days work performed; and the supervisors of highways of the several districts shall give three days notice to the several landholders residing within their districts respectively, of the time and place they will attend and direct the work to be performed as aforesaid; and in case the whole of said tax due from residents within any district shall not be paid in pursuance of the first notice as aforesaid, in consequence of absence from home, sickness, or other inability, the supervisor shall appoint a time that he will again attend and superintend the work due from such delinquents, and shall give notice as aforesaid to such delinquents.

Sec. 25. That it shall be the duty of the county auditor and county treasurer immediately after the collector shall have settled and paid over the road tax, to examine the certificates paid over by said collector in discharge of road tax by him collected, and ascertain as near as practicable, the amount of said certificates received from each township respectively, and the treasurer shall charge the township with the amount so received from each; and the auditor and treasurer aforesaid shall apportion the money received and paid over by said collector as road tax among the several townships so that each will receive the amount of money actually received for tax on land situate therein; and the county treasurer shall pay over the amount of the money assigned to each township, to the treasurer of such township on demand, taking his receipt therefor.

Townships to be charged with amount of certificates, &c

Sec. 26. That all monies received into the state treasury in discharge of land tax for road purposes, shall be paid over to the county treasurers of the counties wherein the lands are situated, on which said tax was paid respectively, on the order of the auditor of state, which order shall be issued at the same time that the order for the counties portion of the land or state tax shall be issued; the county auditor and county treasurer shall without delay, apportion said money, together with all road tax received into the county treasury on account of any arrearages of road tax, or on account of the sale of any land for the non payment of taxes among the several townships in their county, so that each township will receive the amount of said tax actually paid on all lands situated in such township, and the county treasurer shall pay over the money aforesaid to the proper township treasurer agreeably to the twenty-fifth section of this act.

Money received into state treasury or road tax to be paid to county treasurer.

Money to be apportioned and paid over to township treasurers.

Sec. 27. That whenever the treasurer of any township shall have received any money from the county treasurer, agreeably to the provisions of this act, he shall notify the trustees of the township of the same, who shall cause the money so received, to be appropriated to building bridges or repairing the public roads within their township, by advertising and selling to the lowest bidder such job or jobs, of work as they may deem expedient, equal to the amount of money to be appropriated as aforesaid; and whenever the labor shall be performed agreeably to the contract or conditions of the sale, the trustees or any two of them, shall draw an order on the treasurer of the township, in favour of the person or persons who have performed, such labor, for the amount due for the same, which order shall be paid by the township treasurer on demand: and the township trustees be, and they are hereby authorised to purchase, for the use of the township a sufficient number of ploughs and scrapers, for the purpose of facilitating the labor on the public roads, and the same shall be used exclusively for that

Trustees of township to appropriate money on roads, &c.

To purchase
ploughs and
scrapers.

purpose, and the cost or expense thereof, shall be paid out of any monies in the township treasury on the order of the trustees; and it shall be the duty of the trustees to cause the ploughs and scrapers so purchased, to be put in the possession of some supervisor or supervisors who will take care of and preserve the same while they are not in use; and if there shall not be a sufficiency of money in any township treasury to purchase a suitable number of ploughs and scrapers, the trustees may cause the same to be procured by the application of any labor or tax for road purposes which may be due within said township to the purchase of the same.

Commissioners
may divide
money arising
in V. M. dis-
trict.

Sec. 28. That where any difficulty shall arise in the distribution of the money collected from lands in the Virginia military district, agreeably to the provisions of this act, it shall be the duty of the commissioners of the county to divide the money among the townships, as they may deem just and equitable, apportioning to each township the amount collected from the same, as near as practicable.

Trustees lia-
ble to fine for
non perform-
ance of duty.

Sec. 29. That each and every trustee of any township within this state who shall refuse or neglect to do and perform all and singular the duties enjoined on him or them by the provisions of this act, he or they shall be fined in any sum not exceeding fifty dollars, nor less than five dollars; each to be recovered before any justice of the peace of the county by any person suing for the same, and appropriated as other fines under this act: *Provided*, That if any such trustee shall conceive himself aggrieved by the judgment of such justice of the peace, he shall have the same right of appeal as is given in civil suits or cases, and under similar restrictions.

Proviso.

Supervisors
may at any
time remove
obstructions
from roads or
repair bridges,

Sec. 30. That any time during the year when any public road shall be obstructed by the fall of timber or any other cause or any bridge shall be impaired so that the passage of teams or other travellers on said road or bridge shall be difficult or dangerous; and the supervisor of the district, in which such obstruction or impaired bridge may exist, shall be notified of the same, it shall be his duty to cause such obstruction to be removed or bridge repaired, for which purpose he shall immediately order out such number of the inhabitants of his district, as he may deem necessary to remove said obstruction or repair said bridge, and each and every person or persons who shall after having one days notice refuse or neglect to attend with proper implements, wherewith to labor at the time and place appointed by the supervisor, or having attended, shall refuse to obey the directions of the supervisor, or shall spend the time in idleness or inattention to the duty assigned him or them, every such delinquent or delinquents shall forfeit and pay the sum of one dollar to be recovered, paid over, accounted for, and appro-

May call out
inhabitants of
his district.

Penalty for re-
fusal, &c.

riated agreeably to the provisions of the seventeenth and eighteenth sections of this act, and in all cases where any person shall, (under the direction of his supervisor) perform more labor on the public roads than may be due from him, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate shall be received for the amount specified in the same, in discharge of any labor which may be due from such person in any succeeding year under the provisions of the seventeenth section of this act: *Provided*, That this section shall not be so construed as to require any supervisor to order out or direct any person to perform more than two days work in any one year over and above the amount of labour due from such person agreeably to the provisions of this act. Proviso.

Sec. 31. That the act entitled an act for opening and regulating roads and highways, passed February twenty-sixth, eighteen hundred and twenty; and the act entitled an act to amend an act entitled, an act for opening and regulating roads and high ways, passed February second, eighteen hundred and twenty-one, be, and they are hereby repealed. Acts repealed.

This act shall take effect and be in force from and after the first day of June next. Effect.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 26, 1824.

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AN ACT for the better security of toll and other bridges within this state.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio*, That if any person shall wilfully deface, obliterate or destroy the letters, figures or other characters, in any painted, written or printed list of the rates of tolls, or any other painted notice affixed or posted up in any place upon any toll bridge within this state, for the information of passengers and others, every person so offending shall forfeit and pay to the owner or owners of such toll bridge, where such injury was done, any sum not exceeding fifteen dollars, nor less than five dollars; to be recovered at the suit of the owner or owners of such toll bridge, before any justice of the peace in the township in which such offence may be committed. Persons obligating, &c. list of rates of tax, liable to action.

Sec. 2. That if any person shall ride or drive over any such bridge faster than a walk, every person so offending shall forfeit and pay to the owner or owners of such bridge any sum not exceeding five nor less than one dollar to be sued for and recovered as is provided in the first section of this Not to ride or drive faster than a walk.

Proviso.

act: *Provided*, That the owners of such bridge shall cause to be painted in large letters and put up in a conspicuous place at each end of the bridge a notice cautioning all persons against riding or driving on the bridge faster than a walk.

Forfeiture for driving over bridge greater no. of cattle than allowed by owner.

Sec. 3. That if any person shall drive over any such bridge, at one time any drove of cattle or horses in greater numbers than the owner or owners of such bridge shall permit and allow, such person or persons being warned by such owner or owners of the number of cattle or horses permitted or allowed to be driven over such bridge at any one time, every person so offending shall forfeit and pay to the owner or owners of such bridge, any sum not exceeding twenty dollars to be sued for and recovered as is provided by the first section of this act.

Regulation of free bridges.

Sec. 4. That such free bridges on all public roads as in the opinion of the county commissioners in their respective counties throughout this state are of public utility, and demanding their attention shall be provided for as in the second and third sections of this act, and the county commissioners are authorized and required to place up the like notice as is required in the second section of this act, and likewise the number of neat cattle and horses admitted to cross said bridge at any one time, under the same penalties as provided for in the aforesaid sections, to be sued for and recovered at the suit of the county commissioners, or their agent or agents in an action of debt before any justice of the peace in the township in which said bridge or bridges are erected, and paid into the county treasury, to be applied to the repairing of said bridge.

Common law remedies remain.

Sec. 5. That nothing in this act contained shall be construed to take away from the owner or owners of such bridge any action for damages which without this act they might have had against any person for any injury done to such bridge.

Act repealed.

Sec. 6. That the act for the better security of toll bridges within this state, passed February fourth, eighteen hundred and fifteen, be repealed.

Effect.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.

ALLEN TRIMBLE.

Speaker of the Senate.

February 11, 1824.

AN ACT concerning bills of exchange.

WHEREAS bills of exchange are accounted in all payments as ready money; and it is expedient for the advancement of trade and commerce, that the credit of such bills should be preserved, by making the same a sufficient security, and expediting the recovery of money thereupon:—
Therefore,

Sec. 1. Be it enacted by the General Assembly of the state of Ohio, That when any bill of exchange shall be drawn for the payment of any sum of money, and such bill shall be legally protested, for non-acceptance or non-payment, the drawer or endorser, shall be subject to the payment of fifteen per cent. damages thereon, if drawn on any person living without the jurisdiction of the United States, and ten per cent. damages thereon, if drawn on any person living within the jurisdiction of the United States, and without the jurisdiction of this state; and the bill shall, in all cases, bear an interest of six per cent. from the date of the protest until the money therein drawn for, shall be fully satisfied and paid.

This act to be in force from and after the passage thereof,

ABRAHAM SHEPHERD,
Speaker pro tem. of the House of Representatives,
DUNCAN M'ARTHUR,
Speaker of the Senate.

January 31, 1810.

AN ACT, making certain instruments of writing negotiable.

Sec. 1. Be it enacted by the General Assembly of the state of Ohio, That all bonds, promissory notes, bills of exchange foreign and inland, drawn for any sum or sums of money certain and made payable to any person or order, or to any person or bearer, or to any person or assigns, shall be negotiable by endorsement thereon, so as absolutely to transfer and vest the property thereof, in each and every endorsee successively; but nothing in this section shall be construed, to make negotiable any such bond, note or bill of exchange, drawn payable to any person or persons, alone and not drawn payable to order. bearer or assigns.

Sec. 2. That any endorsee, to whom any such bond, note or bill of exchange, made negotiable by the preceding section, is made payable by such endorsement or endorsements, may in his own name, institute and maintain, an action on

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such bond, note or bill, for the recovery of the money due thereon, against the maker, drawer or obligor: or against the endorsee, having first used due diligence to obtain the money of the drawer, maker or obligor.

Defence to bills
&c. endorsed
after day of
payment.

Sec. 3. That if any such bond, note or bill of exchange, shall be endorsed after the day on which it is made payable; and the endorsee shall institute an action thereon, against the maker, drawer or obligor, the defendant shall be allowed to set up the same defence that he might have done, had the same action been instituted in the name, and for the use of the person to whom the said bond, note or bill, was originally made payable.

Defence to
bills &c. en-
dorsed before
day of pay-
ment.

Sec. 4. That if any such bond, note or bill of exchange, shall be endorsed on or before the day on which the same is made payable, and the endorsee shall institute an action thereon, the defendant may give in evidence at the trial, any money actually paid on said bond, note or bill of exchange, before the same was endorsed or assigned to the plaintiff, on proving that the plaintiff had notice of the said payment, before such endorsement was made and accepted.

What shall be
due diligence.

Sec. 5. That if any endorsee of any bond, note or bill of exchange made negotiable by this act, on trial of any suit instituted thereon, against any endorser, shall prove a demand made of the maker, drawer or obligor, of such bond, note or bill of exchange, at the time the same became due, or within a reasonable time thereafter, it shall be adjudged due diligence, under the second section of this act, unless by the express terms of the endorsement, the plaintiff was bound to prosecute, the maker, drawer or obligor, or use other means to procure payment from the maker, drawer or obligor,

Sec. 6. That the act, making certain instruments of writing negotiable, passed January twenty fifth, eighteen hundred and ten, be, and the same is hereby repealed: *Provided*, nothing in this act, shall be so construed, as to affect any suit now pending, on any bond, note or bill of exchange, made negotiable by said act hereby repealed, nor to affect the right of any payee, obligee or endorsee of any bond, note or bill of exchange, drawn or executed previous to the taking effect of this act.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 25, 1820.

AN ACT for the relief of Sureties and Bail in certain cases.

Sec. 1. *Be it enacted by the General Assembly of the state of* **Ohio**, That when any person or persons, shall hereafter become bound as surety or sureties, by bond, bill or note, for the payment of money or other valuable thing, and shall apprehend that his or their principal debtor or debtors, is or are likely to become insolvent or remove from the county or state, without previously discharging such bond, bill or note, so that it will be impossible or extremely difficult for such surety or sureties, after being compelled to pay the amount of the money or other valuable thing which may be due by such bond, bill or note, to recover the same back from such principal debtor or debtors, it shall and may be lawful for such surety or sureties, in every such case, provided a right of action shall have accrued on such bond, bill or note, to require by notice in writing his or their creditor or creditors, forthwith to put such bond, bill or note, by which he or they may be bound as surety or sureties as aforesaid, in suit; and unless the creditor or creditors, so required to put such bond, bill or note in suit, shall in a reasonable time commence an 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 of the money or other article of value, due by such bond, bill or note, the creditor or creditors, or the assignee or assignees of such bond, bill or note, so failing to comply with the requisitions of such surety or sureties, shall thereby forfeit the right which he or they would otherwise have to demand and receive of such surety or sureties, the amount which may be due by such bond, bill or note.

may
require by notice principals to put in suit bonds, bills or notes &c.

If suit not commenced in a reasonable time and due diligence sureties &c. discharged.

Same notice may be given executors &c. with same effect.

Sec. 2. That any surety or sureties, or in case of his or their death, then his or their executors or administrators may, in like manner and for the same cause, make such requisition of the creditor or creditors, or his or their executors or administrators, as it is herein before enacted may be made by a surety or sureties 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 surety or sureties, his or their executors or administrators making the same, shall have the same relief as is herein before provided for a surety or sureties, where his or their creditor or creditors shall be guilty of a similar failure.

Guardians'

Sec. 3. That nothing in this act contained shall be so construed as to effect the bond with collateral conditions, or the bonds which may be entered into by guardians, executors, administrators or public officers.

bonds &c. not affected.

Sec. 4. That the rights and remedies of any creditor or creditors, against any principal creditor or creditors shall in no wise be affected by this act, any thing herein to the contrary notwithstanding.

Rights of creditors not affected.

Surety prosecuted to judgment may sue out a capias against principal &c.

Sec. 5. That when any surety has been sued and judgment rendered against him, for the debt of the principal debtor, he may sue out a capias against the person or persons for whom he is surety, and any court of competent jurisdiction is hereby authorized to render judgment for the proper amount on the return of the process, from which judgment there shall be no appeal; and in all cases where the judgment against the surety shall have been obtained before a different justice or court, it shall be the duty of such surety to produce a transcript thereof to the justice or court so rendering judgment against the principal debtor, and on which judgment, when obtained before a justice of the peace, stay of execution shall be for one month less than that allowed to the surety in the transcript aforesaid.

When bail has been compelled to pay, court may issue scire facias

Sec. 6. That when any bail has been compelled to pay the amount of any judgment or any part thereof, the court or justice before whom such judgment was rendered may, upon the request of such bail, issue a scire facias against the person or persons against whom judgment was originally given, to appear before such court or justice, which shall be served and returned by the proper officer, and the said court or justice, (as the case may be) shall proceed to hear and determine the said suit as in other cases, and in such cases there shall be no stay of execution.

Transcript may be sent to another county where &c.

Sec. 7. That when the defendant shall have removed or resides out of the county or township wherein judgment was originally given, the court or justice before whom such judgment has been entered, may, upon the request of such bail grant a transcript of such judgment, and the defendant shall be proceeded against on such transcript, by any court having cognizance thereof, in the same manner as directed in the sixth section of this act.

Sec. 8. That the "act for the relief of sureties in certain cases" passed February eleventh, eighteen hundred and fourteen; and the "act for the relief of bail in certain cases," passed January thirtieth, eighteen hundred and eleven, be, and the same are hereby repealed.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
ALLEN TRIMBLE,

Speaker of the Senate.

February 22, 1820.

AN ACT, for the limitation of actions.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That all actions hereinafter mentioned shall be commenced within the several times hereinafter limited, after the cause of such action shall have accrued, and not after.—Actions of ejection 21 years.

First, actions of ejectment, or any other action for the recovery of the title or possession of lands, tenements or hereditaments, within twenty-one years: *Provided,* That actions for forcible entry and detainer, or forcible detainer only, shall not be commenced after two years, from the time such right of action accrued.—Case covenant debt 15 years

Second, actions upon the case, covenant and debt, founded upon a specialty or any agreement, contract or promise in writing within fifteen years.—Case and debt upon simple contract 6 years.

Third, actions upon the case and debt founded upon any simple contract not in writing within six years.—Trespass detinue trover replevin 4 years.

Fourth, actions of trespass upon property, real or personal, detinue, trespass for any injury done to the person, actions of slander for words spoken or for a libel, actions for malicious prosecutions and for false imprisonment, actions against officers for malfeasance or nonfeasance in office, and actions of debt qui tam, within one year: *Provided* That Trespass to person &c. 1 year.

when any action for a forfeiture or penalty, shall be given and limited by statute, such action shall be commenced within the time limited by such statute. Provido.

Sec. 2. That if any person who shall be entitled to have or commence any action of ejectment for the recovery of the title or possession of lands, tenements or hereditaments, shall be within the age of twenty-one years, insane, feme covert, imprisoned or without the United States, and territories thereof, at the time such cause of action shall have accrued, and if any person who shall be entitled to institute any other action limited by this act, shall be within age as aforesaid, insane, feme covert, imprisoned, or without this state, at the time such cause of action shall have accrued, every such person shall have a right to commence any such action, within the time hereinbefore limited, after such disability shall be removed. Rights of infants &c. saved.

Sec. 3. That if in any action commenced within the time limited by this act, judgment shall be arrested or reversed, or if the plaintiff shall be non suited or any suit shall be abated and the time limited as aforesaid shall have expired, the plaintiff may commence a new action: *Provided,* That such action shall be commenced within one year after the judgment has been arrested or reversed, or such suit has been abated or a non suit had as aforesaid. When judgment &c. arrested new action may be brought. Provido.

Sec. 4. That when any person against whom there is cause of action, as aforesaid, shall have left the state and remained out of the same, or shall reside or have resided

out of the state at the time such cause of action shall have accrued, or shall have removed to any place unknown to the person in whose favor such cause of action may exist, during such time as is limited by this act, the person who may have such cause of action shall have a right to commence his or her action, against such person within such time as is limited as aforesaid, after his or her return or removal to the state, or if within the state then within such time, after his or her place of residence shall have been discovered; and in all actions arising from contract, when any part of the principal or interest, shall have been paid or a demand made therefor, within the time herein limited, such action may be commenced within the time hereinbefore limited, after such payment or demand.

Statute does not begin to run when sent or has left the state &c.

Payment of part or demand

Act repealed.

Proviso.

Sec. 5. That the act entitled, "an act for the limitation of actions." passed January twenty fifth, one thousand eight hundred and ten, be, and the same is hereby repealed: *Provided*, That nothing in this act shall be construed to extend to any action or cause of action which may have been heretofore barred by any statutes of limitation; but all such actions and causes of action, shall be adjudged and decided under the statutes by which they have respectively been barred.

Effect.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 25, 1824.

AN ACT for the relief of insolvent debtors.

The court of C. P. to appoint a commissioner of insolvents, who shall give bond.

Proviso.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio*, That the court of common pleas in each county in this state shall appoint a suitable person to take charge of all insolvent estates and to perform all and singular the duties hereinafter specified, who shall be denominated commissioner of insolvents, and who shall hold his office during three years, and until his successor shall be appointed and qualified; said commissioner shall give bond to the state of Ohio with sufficient security to be approved by the court, in the sum of two thousand dollars, conditioned for the faithful discharge of his duties as such commissioner, and the same shall be lodged with the treasurer of the proper county: and may be prosecuted for the use of any person who may be injured by a breach of the condition thereof: *Provided*, That such bond may be renewed from time to time by order of

the court, and the amount thereof enlarged when the property of insolvents, to a greater value than two thousand dollars, may come to the hands of such commissioner.

Sec. 2. The commissioner of insolvents shall take charge of all real estate, monies, goods, wares and merchandize, rights and credits of all persons applying for the benefit of this act, and shall sell, transfer and dispose thereof to the best advantage, and distribute the same, or the proceeds thereof, among the creditors of the insolvent, and the said commissioner is hereby authorized and empowered, to determine and adjust all controversies that may arise in the settlement of such estate, either by compromise or arbitration, and may prosecute or defend any suit in law or equity, which to him may appear necessary and proper for the settling such insolvents estate: and no suit pending at the time of the assignment of such insolvents estate to said commissioner, shall abate or be discontinued by reason of such assignment, but the same shall be prosecuted or defended in such manner as though such assignment had not been made: but any new suit which may be commenced, shall be brought in the name of said commissioner, or in the name of the insolvent, as the case may require.

Power and duty of commissioner.

Sec. 3. That any person desirous of taking the benefit of this act, shall make and deliver to said commissioner an accurate schedule of all debts by him owing, to whom due, and for what consideration arising and how secured, whether by bond, note or verbal contract, account or otherwise; and also of all debts and demands to him due, or in any manner accruing, and of all property of every kind and description, whether real or personal, by him owned, possessed, or claimed, and he shall convey, transfer and assign to said commissioner in trust, for the benefit of his creditors, by deed or instrument of writing, all debts and demands to him due or to become due or in any manner accruing, and all property in possession or otherwise of every kind and description whatsoever and wheresoever, but no particular form of words shall be necessary for said conveyance, either for personal or real property, so the meaning thereof be intelligible, and such person shall at the same time make the following oath before said commissioner:—

Person applying under this act to make a schedule of property, and shall assign same to commissioner in trust and take an oath.

I, A. B. do swear (or solemnly, sincerely and truly declare or affirm) that I have delivered up, conveyed and transferred to the commissioner all property that I have or claim any title to or interest in, and all debts, rights and claims which I have, or am any way entitled to in possession, remainder or reversion (the necessary wearing apparel and bedding of myself and family and such other articles as are by law exempt from execution excepted) and that I have not directly or indirectly at any time sold, conveyed, lessened or disposed

Form.

ed of for the use of any person or persons, or intrusted any part of monies or other property, debts, rights or claims thereby to defraud my creditors, or any of them, or to secure the same, to receive or expect any profits, benefits or advantages thereby; and shall likewise under oath, answer such questions relating to his circumstances and the situation of his property and the causes which occasioned his insolvency, as the said commissioner shall propose, which oath, examination, questions and answers shall be reduced to writing and subscribed by said insolvent.

Commissioner shall advertise and sell property.

Sec. 4. That said commissioner shall immediately upon the assignment of the property of said insolvent, proceed to sell and dispose of the same at public vendue, having first given at least fifteen days notice by advertisement, in some newspaper of general circulation in the county, and by advertisement set up in four of the most public places in the county one of which shall be set up on the door of the court house, which advertisements shall state the time, place and conditions of said sale, and shall also state that said insolvent will apply to the next court of common pleas, for the benefit of the act for the relief of insolvent debtors: *Provided*, That if fifteen days exclusive, do not intervene between the date of said advertisement and the next court, then said advertisement shall give notice, that application will be made to the next succeeding court of common pleas, to be holden in said county.

Proviso.

He may sell on credit and call a meeting of creditors.

Sec. 5. That said commissioner shall sell the property so advertised at a credit of not more than nine nor less than three months, taking notes with good security therefor, but may in his discretion require prompt payment for sums under five dollars; and immediately after said sale, he shall call a meeting of the creditors, by giving similar notice as above, by advertisement, and having settled and adjusted said claims, so far as practicable, he may assign the notes obtained at said sale, to said creditors, if they or of any them shall elect to take the same in part or full payment of their claims, and in such proportion as they may be entitled upon an equitable distribution of said insolvent's estate; but when claims are doubtful, either in favor of, or against such insolvent, a due regard shall be paid to the final settlement and adjustment of such claims, in said distribution and payment as aforesaid, and said commissioner shall at the end of each succeeding six months, continue to make distribution in property or money as the same may come to his hands; and if any creditor shall refuse or neglect to present his claim at the first meeting of said creditors, he shall forfeit his dividend or share in said first distribution, but if said creditor shall afterwards satisfy said commissioner that his failing to present his claim was not wilful, but for a just and reasonable cause, he shall have his share made up to him in the

Appeals by creditors allowed.

next dividend, and be put in that respect on an equal footing with other creditors: *Provided however*, That no person who may have received a dividend fairly, shall be compelled to abate or refund the same or any part thereof: *Provided also*, That any dispute or contest arising between said commissioner and any creditor of said insolvent, relative to the settlement of said creditor's claim, may be appealed to the next court of common pleas by said creditor, on his giving a written notice to said commissioner to that effect, which notice shall state the particular cause of exception or complaint, and said court shall settle and determine and adjust the same in a summary way, without pleadings.

Sec. 6. The commissioner of insolvents in each county shall keep his office at the seat of justice, he shall also keep a record of his proceedings in each insolvent's case that may come before him, which record shall be open at reasonable time for the inspection of the insolvent or any of his creditors. And all proceedings of said commissioner shall be subject to the superintending control of the court of common pleas which court may upon the oath of any person interested, shewing sufficient grounds therefor require such commissioner to shew cause why he has not made settlement and final distribution of any insolvent's estate and may thereupon take such order as right and justice may require.

Commissioner to keep his office at seat of justice.

To be under control of C C

Sec. 7. That at the court of common pleas to which said insolvent shall apply for the benefit of this act as aforesaid, said commissioner shall exhibit said schedule, and his proceedings under this act, or a certified copy thereof, (at which time said insolvent shall attend) and the court shall grant a certificate to said insolvent of his having obtained the benefit of this act, but the court may direct another examination of the insolvent on oath as aforesaid, particularly if any creditor or other person interested shall require it, and shall in their discretion, grant or withhold such certificate, and may hear testimony for or against said application.

Commissioner to exhibit schedule to C C

Certificate of insolvency may be granted or not

Sec. 8. That when any person shall be arrested or be in custody on mesne or final process in any civil action, the sheriff, or other officer, having such person in custody, shall at his request bring him immediately to said commissioner, who shall, if required, make out a schedule for such prisoner, receive the assignment of his property, and take his examination on oath as aforesaid; whereupon said commissioner shall give a certificate thereof to such prisoner and the sheriff or other officer shall forthwith discharge said prisoner and if said caption was on mesne process, he shall return the facts and thereup, on said defendant shall be considered in court and the suit shall proceed as in other cases: *Provided*, That in all cases when any person is arrested or be in custody upon mesne or final process, as aforesaid, before he shall be discharged as aforesaid, he shall give to said commissioner a

Person in custody in civil actions may be brought before court, and be discharged on certificate

Provide

bond with good and sufficient security in a sum equal to double the amount of his schedule, conditioned for his appearance at the term of the court of common pleas at which the application for the benefit of this act as aforesaid, may be made, which bond shall be cancelled only upon such insolvent's obtaining a certificate as aforesaid from the court, or by his surrendering himself a prisoner to the proper officer; and said bond may be prosecuted against the obligors to final judgment and execution, for the use of any person interested, as appearance bail bonds may be prosecuted: *Provided also*, That nothing in this act contained, shall be so construed as to retain in imprisonment any person desirous of taking the benefit of this act and complying with the provisions thereof, who shall have no property, or such only as by this act the insolvent is permitted to retain.

Proviso

The effect of com'r. certificate

Of the courts' certificate

Sec. 9. That the certificate of said commissioner shall protect such insolvent from imprisonment in any civil action, until the term of the court at which such insolvent shall have advertised his intention to apply as aforesaid, and the certificate of said court shall protect such insolvent forever after from imprisonment, for any suit or cause of action, debt or demand mentioned in said schedule; and if any sheriff or other officer shall wilfully and knowingly arrest any person contrary to the provisions of this section, the person so offending shall forfeit and pay to the party injured, any sum not exceeding two hundred nor less than fifty dollars.

Frauds punished with imprisonment in penitentiary

Sec. 10. That if any person who shall have applied for the benefit of this act shall, either before or after such application conceal or secrete any of his property, or shall convey or in any manner dispose of the same or any part thereof in trust for his own use, or dispose of the same to the injury of his creditors, intending thereby fraudulently to avoid the provisions of this act, he shall, on conviction thereof, be confined in the penitentiary and kept at hard labor, not less than one, nor more than seven years.

Commissioners fees

Clerks fees

Sec. 11. That said commissioner of insolvents shall have the right to retain for his own use out of each insolvent's estate six per cent. on the first hundred, and four per cent. on each additional hundred dollars, and all expenditures necessarily incurred in selling, collecting and paying over the same, to be approved by the court: and the clerk of the court of common pleas for issuing certificate of discharge, filing papers and entering a memorandum of the proceedings in the minute book, shall receive one dollar and no more.

What property insolvent may retain

Sec. 12. That said commissioner shall permit the said insolvent to retain the necessary bedding and wearing apparel for himself and family, and such other property as by law may be exempt from execution, which shall be inventoried in a separate schedule, and the said commissioner or court, as the case may require, shall judge of the sufficiency or excess of

said bedding or wearing apparel, and allow him to retain the whole or any part thereof in their discretion.

Sec. 13. That no person shall be permitted to take the benefit of this act unless he shall have resided one full year immediately preceding his application, in the state of Ohio, and six months in the county where such petition is made, and any person applying, who shall not have resided five years within said state, shall in addition to the other facts stated in his oath, declare that he did not come or remove into this state for the purpose of taking the benefit of the act for the relief of insolvent debtors.

What residence in the state required

Sec. 14. That until a commissioner shall be appointed in any county in this state, or where the court cannot procure a suitable person to accept said office, the county auditor shall perform the duties of commissioner of insolvents.

County auditor may perform duty

Sec. 15. That the act for the relief of insolvent debtors, passed February second, eighteen hundred and five, be, and the same is hereby repealed.

Act repealed

This act shall take effect and be in force from and after the first day of June next.

Effect

JOSEPH RICHARDSON,
Speaker of the house of Representatives
ALLEN TRIMBLE,

Speaker of the Senate:

February 23, 1824.

AN ACT for the relief of the poor.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That the overseers of the poor in each and every township in this state, appointed agreeably to the provisions of a law, entitled "an act to provide for the incorporation of townships," shall have the care and management of all paupers within the limits of their respective townships.

Overseers of the poor to have the care of paupers

Sec. 2. That upon complaint made to the overseers of the poor, that any inhabitant or inhabitants of the township, is or are in a suffering condition and unable to support himself, herself or themselves, it shall be the duty of such overseers of the poor, forthwith to acquaint the trustees of the township therewith, and if said trustees or a majority of them upon enquiry, shall be of opinion that the person or persons for whom support is required, ought to be relieved at the expense of the township, they shall immediately issue a warrant to the said overseers, directing them to take such person or persons under their care, and afford them such

Trustees may issue warrant &c. for support of paupers

support as their circumstances may require; and in case the said overseers shall enter in their books as town poor, or relieve any person or persons without obtaining such warrant or order (except in cases of necessity) they shall not be entitled to receive any compensation therefor.

Overseers to advertise for contracts to take care of paupers

Sec. 3. That it shall be the duty of said overseers immediately upon the receipt of such warrant or order from the trustees of their township, to set up a notification in three public places in the township, which notification shall specify some place and time at which said overseers will attend for the purpose of receiving proposals for the maintenance of such pauper or paupers, and the said overseers are hereby authorized to contract with such person or persons as they shall think suitable to take charge of and maintain said pauper or paupers upon the most reasonable terms: *Provided*, The time specified in the said notification for the disposal of said pauper or paupers, shall not be less than five, nor more than ten days from the date thereof.

What shall gain a settlement in townships

Sec. 4. That any person or persons (other than those herein after provided for) residing one year in any township in this state, without being warned by the overseers of the poor for said township to depart the same, shall be considered as having gained a legal settlement in such township, every indentured servant, legally brought into this state, shall obtain legal settlement in the township where such servant first served his or her master or mistress the space of twelve months; every married woman during coverture and after her husband's death, shall be considered legally settled in the place where he was last legally settled; but if he shall have no known legal settlement, then she shall be considered as legally settled in the place where she was last legally settled before marriage; and the overseers of the poor, upon receiving information that any person has come within the limits of their township to reside, who will be likely to become a township charge, shall issue their warrant or order

Settlement of married women

Persons may be warned to depart townships

to any constable of the township, commanding said constable forthwith to warn such person to depart the township; by reading said warrant or order of the overseers in his or her presence and bearing, or by leaving an attested copy thereof at his or her last place of residence; and it shall be the duty of the constable receiving such warrant or order, to make immediate service thereof in manner above directed, and to certify on the back of such warrant, that he read the same in the presence or hearing of the person therein named, to depart the township, or left an attested copy thereof at his or her last place of residence, as the case may be, which warrant the said constable shall immediately lodge with the clerk of said township, who shall record the same within three days thereafter in the book containing the records of the township.

Sec. 5. That when any person or persons shall become chargeable in any township in which he, she or they have not gained a legal settlement, it shall be the duty of the overseers of the poor of such township to cause such person or persons, so soon as the state of his, her or their health will permit, to be removed to the township where he, she or they were last legally settled, (if such person or persons have any legal settlement in this state;) and the overseers of the poor of such township shall receive such pauper or paupers thus removed, and provide for him, her or them in manner directed by the third section of this act; and the township in which such pauper or paupers have gained a legal settlement, and to which he, she or they are thus transported, shall pay the said overseers of the township which have thus supported and removed said pauper or paupers all reasonable charges for such support and removal; and on refusal may be compelled by an action of debt, brought against the trustees of said township, before the court of common pleas of the county in which either or both the townships may be situated, and the trustees of each and every township in this state, are hereby empowered to sustain said action against the trustees of any other township in this state, for thus supporting and removing their own poor; but in case any person or persons becoming chargeable to any township as aforesaid, shall have no legal settlement within this state, the overseers of the poor in such township if directed by the trustees, may remove such person or persons to the state or county where he, she or they have a legal settlement, unless such person or persons shall give sufficient security to indemnify the said township.

Paupers not having gained a legal settlement to be removed.

Overseers to be paid by townships when paupers have settlement

Trustees may sue and be sued for removal of paupers

Sec. 6. That the said overseers with the consent and approbation of a justice of the peace of the township, shall have the power to bind out to apprenticeship all such poor children as have no parents or guardians, or have parents or guardians who are unable to support them; males until the age of twenty-one, and females until the age of eighteen years: *Provided, however,* That if the parents or guardians of such child or children shall think themselves aggrieved by the decision of the overseers and magistrate as aforesaid, such parent or guardian shall have a right of appeal to the court of common pleas of the proper county, who shall make such order therein as to them shall seem equitable and proper.

Poor children may be bound out by overseers and justice

Provide

Sec. 7. That the said overseers shall keep fair and accurate accounts of all expenses incurred for the support of the poor within their respective townships, and make entries in a book, of the names of all the poor, with the time when each of them became chargeable, and of all warrants or orders delivered to them by the trustees, with the time when the same was delivered, together with an account of

Overseers to settle with trustees

their own services rendered; and on the first Monday of March annually, the said overseers shall meet the trustees of their respective townships, and exhibit their said books and accounts, which the said trustees are hereby authorized to audit and allow, together with such compensation to the said overseers for their services, as shall in the opinion of the said trustees be deemed just and reasonable.

Trustees to issue orders on treasurer for all demands
 Sec. 8. That it shall be the duty of the trustees, in each and every township, to issue orders on the township treasurer for any and all such demands as may accrue from the provisions of this act; and the said trustees shall procure a book at the expense of their respective townships, in which they shall record all orders by them issued, noting each order by its proper number, which book the said trustees shall lay before the annual township meeting to be delivered over to their successors in office.

Trustees may levy a tax for support of poor
Proviso
 Sec. 9. That the trustees of each and every township in this state, are hereby authorized and empowered whenever it may be found necessary, to levy a tax for the support of the poor, and to compensate the overseers of the poor, for their services: *Provided*, Such articles only shall be subject to taxation as are made liable by law to taxation for county purposes; and it shall be the duty of the township clerk, to make out two duplicates of the tax so levied, one of which he shall deliver to a constable of such township, and the other to the township treasurer, within twenty days from the time of the trustees levying the same; and the constable on receiving such duplicate shall proceed to collect the same, and be governed in all respects by the eighth section of the act entitled, "an act for the incorporation of townships."

Deeds of gift &c. to poor, good
 Sec. 10. That all gifts, grants, devises and bequests hereafter to be made, of any houses, lands, tenements, rents, goods, chattels, sum or sums of money to the poor of any township, by deed, gift or by the last will and testament of any person or persons or otherwise, shall be good and valid in law, and shall pass such houses, lands, tenements, rents, goods and chattels to the trustees of such township and their successors in office for the use of their poor respectively, under such regulations as shall from time to time be made by law.

Act repealed
 Sec. 11. That the act entitled, "an act for the relief of the poor," passed the nineteenth day of February, one thousand eight hundred and ten, be, and the same is hereby repealed.

This act to take effect and be in force from and after the ^{Effect} first day of May next.

MATTHIAS CORWIN,
Speaker of the House of Representatives,
 PETER HITCHCOCK,
Speaker of the Senate

February 10, 1816.

—*—*—*—
AN ACT to regulate black and mulatto persons.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That from and after the first day of June next, no black or mulatto person shall be permitted to settle or reside in this state, unless he or she shall first produce a fair certificate from some court within the United States, of his or her actual freedom, which certificate shall be attested by the clerk of said court and the seal thereof annexed thereto by the said clerk. Persons of color to produce certificate of freedom.

Sec. 2. That every black or mulatto person residing within this state, on or before the first day of June, one thousand eight hundred and four, shall enter his or her name, together with the name or names of his or her children, in the clerk's office in the county in which he, she or they reside; which shall be entered on record by said clerk, and thereafter the clerk's certificate of such record shall be sufficient evidence of his, her or their freedom; and for every entry and certificate, the person obtaining the same, shall pay to the clerk twelve and a half cents: *Provided nevertheless,* That nothing in this act contained shall bar the lawful claim to any black or mulatto person. To enter their names in cl's office. Provided.

Sec. 3. That no person or persons, residents of this state, shall be permitted to hire or in any way employ any black or mulatto person unless such black or mulatto shall have one of the certificates as aforesaid, under pain of forfeiting and paying any sum not less than ten, nor more than fifty dollars, at the discretion of the court, for every such offence, and one half thereof for the use of the informer, and the other half for the use of the state, and shall moreover pay to the owner, if any there be of such black or mulatto person, the sum of fifty cents for every day he, she or they shall in any wise employ, harbor or secrete such black or mulatto person, which sum or sums shall be recoverable before any court having cognizance thereof. Citizens not permitted to hire colored persons, unless they produce certificate of freedom.

Sec. 4. That if any person or persons shall harbor or secrete any black or mulatto person, the property of any person whatever, or shall in any wise hinder or prevent the lawful owner or owners from re-taking and possessing his or Persons harboring or secreting or prevent

ing owners
from taking,
punished.

her black or mulatto servant or servants, shall, upon conviction thereof, by indictment or information, be fined in any sum not less than ten, nor more than fifty dollars, at the discretion of the court, one half thereof for the use of the informer, and the other half for the use of the state.

To have certi-
ficates corded.

Sec. 5. That every black or mulatto person who shall come to reside in this state, with such certificate as is required in the first section of this act, shall, within two years, have the same recorded in the clerk's office, in the county in which he or she means to reside, for which he or she shall pay to the clerk twelve and a half cents, and the clerk shall give him or her a certificate of such record.

Owner of
slaves may ap-
ply to associ-
ate judge or
justice

Sec. 6. That in case any person or persons, his or their agent or agents, claiming any black or mulatto person that now are or hereafter may be in this state, may apply, upon making satisfactory proof that such black and mulatto person or persons is the property of him or her who applies to any associate judge or justice of the peace within this state, the associate judge or justice is hereby empowered and required, by his precept, to direct the sheriff or constable to arrest such black or mulatto person or persons, and deliver the same in the county or township where such officers shall reside, to the claimant or claimants, or his or their agent or agents, for which service the sheriff or constable shall receive such compensation as they are entitled to receive in other cases, for similar services.

Persons not to
remove ne-
groes, etc.
without prov-
ing property.

Sec. 7. That any person or persons who shall attempt to remove, or shall remove from this state, or who shall aid and assist in removing contrary to the provisions of this act, any black or mulatto person or persons, without first proving, as hereinbefore directed, that he, she or they is or are legally entitled so to do, shall on conviction thereof before any court having cognizance of the same, forfeit and pay the sum of one thousand dollars, one half to the use of the informer, and the other half to the use of the state, to be recovered by action of debt, qui tam, or indictment, and shall moreover be liable to the action of the party injured.

ELIAS LANGHAM,
Speaker of the House of Representatives.
NATHANIEL MASSIE,
Speaker of the Senate

January 5, 1804.

AN ACT to amend the last named act.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio, That no negro or mulatto person shall be permitted*

to emigrate into and settle within this state, unless such negro or mulatto person, shall within twenty days thereafter, enter into bond with two or more freehold sureties, in the penal sum of five hundred dollars, before the clerk of the court of common pleas of the county in which such negro or mulatto may wish to reside, (to be approved of by the clerk,) conditioned for the good behavior of such negro or mulatto, and moreover to pay for the support of such person, in case he, she or they should thereafter be found within any township in this state, unable to support themselves; and if any negro or mulatto person shall migrate into this state, and not comply with the provisions of this act, it shall be the duty of the overseers of the poor of the township where such negro or mulatto person may be found, to remove immediately, such black or mulatto person, in the same manner as is required in the case of paupers.

Negroes, &c not to settle in this state without giving bonds.

Condition;

Not complying to be removed.

Sec. 2. That it shall be the duty of the clerk, before whom such bond may be given as aforesaid, to file the same in his office, and give a certificate thereof to such negro or mulatto person; and the said clerk shall be entitled to receive the sum of one dollar for the bond and certificate aforesaid, on the delivery of the certificate.

Clerk to file bond and give a certificate.

Fees.

Sec. 3. That if any person, being a resident of this state, shall employ, harbor or conceal any such negro or mulatto person aforesaid, contrary to the provisions of the first section of this act, any person so offending, shall forfeit and pay for every such offence, any sum not exceeding one hundred dollars, the one half to the informer, and the other half for the use of the poor of the township in which such person may reside, to be recovered by action of debt, before any court having competent jurisdiction, and moreover be liable for the maintenance and support of such negro or mulatto, provided he, she or they shall become unable to support themselves.

Residents of this state shall not employ, harbor, or conceal negroes contrary to this act.

Sec. 4. That no black or mulatto person or persons shall hereafter be permitted to be sworn or give evidence in any court of record, or elsewhere, in this state, in any cause depending or matter of controversy, where either party to the same is a white person, or in any prosecution which shall be instituted in behalf of this state against any white person.

Not permitted to give evidence when either party is white.

Sec. 5. That so much of the act, entitled "an act to regulate black and mulatto persons," as is contrary to this act, together with the sixth section thereof, be and the same is hereby repealed.

Part of an act repealed.

This act shall take effect and be in force from and after the first day of April next.

Effect,

ABRAHAM SHEPHERD,
Speaker of the house of representatives.

THOMAS KIRKER,
Speaker of the Senate.

January 25, 1807.

W w

AN ACT to punish kidnapping.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That if any person or persons, under any pretence whatsoever, shall by violence, fraud or deception, seize upon any free black or mulatto person, within this state, and keep or detain such free black or mulatto person in any kind of restraint or confinement, with intent to transport such free black or mulatto person out of this state, contrary to law, or shall in any manner attempt to carry out of the state any black or mulatto person, without having first taken such black or mulatto person before some judge of the circuit or district court, or justice of the peace, in the county wherein such black or mulatto person was taken, agreeably to the provisions of the above recited act of congress, and there prove his right to such black or mulatto person; every such person so offending, shall be deemed guilty of a high misdemeanor; and on conviction thereof before any court having competent authority to try the same, shall be confined in the penitentiary of this state, at hard labor, for any space of time not less than one, nor more than ten years, at the discretion of the court.

This act to take effect from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ROBERT LUCAS,
Speaker of the Senate.

January 25, 1819.

—:00:—

AN ACT regulating Marriages.

Who may join
in marriage.

Proviso,

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That male persons of the age of eighteen years, female persons of the age of fourteen years, not nearer of kin than first cousins, and not having a husband or wife living may be joined in marriage: *Provided always,* That male persons under the age of twenty one years, female persons under the age of eighteen years, shall first obtain the consent of their fathers respectively, or in case of the death or incapacity of their fathers, then of their mothers or guardians.

Ministers &c.
may solemnize
marriage.

Sec. 2. That it shall be lawful for any ordained minister of any religious society or congregation within this state, who has, or may hereafter obtain a license for that purpose, as herein after provided, or for any justice of the peace in his county, or for the several religious societies agreeably to the rules and regulations of their respective churches, to

join together as husband and wife, all persons not prohibited by this act.

Sec. 3. That any minister of the gospel, upon producing to the court of common pleas of any county within this state, in which he officiates, credentials of his being a regular ordained minister of any religious society or congregation, shall be entitled to receive, from said court, a license, authorizing him to solemnize marriages within this state, so long as he shall continue a regular minister in such society or congregation.

Ministers may obtain license and how.

Sec. 4. That it shall be the duty of every minister, who is now or hereafter shall be licensed to solemnize marriages as aforesaid, to produce to the clerk of the court of common pleas in every county in which he shall solemnize any marriage, his license so obtained, and the said clerk shall thereupon enter the name of such minister upon record as a minister of the gospel, duly authorized to solemnize marriages within this state, and shall note the county from which said license issued; for which service no charge shall be made by such clerk.

Ministers to file licenses with clerk, who shall enter names on record.

Sec. 5. That when the name of any such minister, is so entered upon the record, by the clerk aforesaid, such record, or the certificate thereof, by the said clerk under the seal of his office, shall be good evidence that the said minister was duly authorized to solemnize marriages.

Record or copy evidence.

Sec. 6. That previous to persons being joined in marriage, notice thereof shall be published (in the presence of the congregation,) on two different days of public worship, the first publication to be at least ten days previous to such marriage, within the county where the female resides, or a license shall be obtained for that purpose, from the clerk of the court of common pleas in the county where such female may reside.

Before marriage, parties must publish, or get a license

Sec. 7. That the clerk of the court of common pleas, as aforesaid, may enquire of the party, applying for marriage license as aforesaid, upon oath or affirmation, relative to the legality of such contemplated marriage, and if the clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license; and if any of the persons intending to marry, shall be under age, and shall not have had a former wife or husband, the consent of the parents or guardians shall be personally given before the clerk, or certified under the hand of such parent or guardian, attested by two witnesses, one of which shall appear before said clerk and make oath or affirmation, that he saw the parent or guardian, whose name is annexed to such certificate, subscribe, or heard him or her acknowledge the same; and the clerk is hereby authorized to administer such oath or affirmation, and thereupon issue and sign such license, and affix thereto the seal of the county; the clerk shall be entitled to

License how obtained.

Parents or guardians must consent.

License to be under seal.

Clerk's fees. receive as his fee for administering the oath and granting license, with the seal affixed thereto, recording the certificate of marriage, and filing the necessary papers, the sum of seventy five cents; and if any clerk shall in any other manner issue or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars, to and for the use of the party aggrieved.

Penalty.

Certificate of marriage to be sent to clerk.

Penalty for Sec. 8. That a certificate of every marriage hereafter solemnized, signed by the justice or minister solemnizing the same, shall be transmitted to the clerk of the county wherein the marriage was solemnized, within three months thereafter, and recorded by such clerk; every justice or minister (as the case may be) failing to transmit such certificate to the clerk of the county in due time, shall forfeit and pay fifty dollars, and if the clerk shall neglect to make such record, he shall forfeit and pay fifty dollars to and for the use of the county.

Penalty for acting contrary to law.

Sec. 9. That if any justice or minister, by this act authorized to join persons in marriage, shall solemnize the same, contrary to the true intent and meaning of this act, the person so offending shall, upon conviction thereof, forfeit and pay any sum not exceeding one thousand dollars, to and for the use of the county, wherein such offence was committed; and if any person not legally authorized, shall attempt to solemnize the marriage contract, such person shall, upon conviction thereof, forfeit and pay five hundred dollars, to and for the use of the county wherein such offence was committed.

Proof of publication and consent before ministers, &c.

Sec. 10. That it shall be the duty of every minister or justice of the peace before he shall solemnize any marriage between the parties, either of whom is required by the first section of this act, to obtain the consent of his or her parent or guardian (except in cases where licence shall have been obtained from the clerk of the court of common pleas.) to be satisfied that the intention of marriage between such parties has been duly published, and also that the consent of such parents or guardian has been obtained, either by acknowledgment in presence of such minister or justice of the peace or by a certificate, under the signature of such parent or guardian, and attested by one or more credible witnesses, who shall be present for the purpose of satisfying such minister or justice of the peace that such certificate was actually signed by the parent or guardian for the purpose aforesaid.

Debt or indictment to recover fines.

Sec. 11. That any fine or forfeiture arising to the county in consequence of the breach of this act, shall be recovered by an action of debt, or by indictment, with costs of suit in any court of record having cognizance of the same.

Laws repealed

Sec. 12. That the law regulating marriages passed February sixteenth, one thousand eight hundred and ten, and the act amending the said act, passed January eleventh, one

one thousand eight hundred and twenty-two, be, and the same are hereby repealed.

This act shall take effect and be in force from and after Effect. the first day of June next.

JOSEPH RICHARDSON
Speaker of the House of Representatives.
 ALLEN TRIMBLE.
Speaker of the Senate.

January 6th, 1824.

AN ACT concerning divorce and alimony.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That the supreme court shall have the sole cognizance of granting divorces where either of the parties had a former wife or husband living, at the time of solemnizing the second marriage, or where either of the parties shall be wilfully absent from the other three years, or in case of adultery, or where either of the parties is actually impotent at the time of the marriage, or in case of extreme cruelty, or where either party has been or shall hereafter be sentenced to imprisonment in the penitentiary and is actually imprisoned therein for any infraction of the criminal laws of this state: *Provided,* Application shall be made for a divorce during the time of imprisonment aforesaid. Supreme court to grant divorce for adultery, &c.

Sec. 2. That in all cases where divorces shall be applied for, the complainant shall file his or her petition in the office of the clerk of the supreme court, three months before the sitting of the said court, and shall also serve the adverse party with a copy of said petition, within one month after filing the same in the office aforesaid, unless the party is not resident in the county in which case public notice shall be given in one of the newspapers of the state, for three months, which petition shall state the true cause of complaint; whereupon if the party complained of reside within the county a summons shall issue requiring the party to appear before the judges of the said court and answer the allegation of said petition; which answer shall be received without oath, and if the party complained of shall not appear, or appearing shall deny the fact or facts stated in the said petition, the court shall thereupon proceed to hear and determine the same, and it shall be the duty of the court to assign counsel to either party, when they are not of sufficient ability to pay an adequate compensation, and such counsel or attorney shall not charge or receive any compensation for such services. Provido. Petition to be filed three months before session of court A copy of petition to be served or notice given. A summons to issue. Counsel to be assigned.

Sec. 3. That if upon trial, it shall appear by disinterested testimony to the satisfaction of the court, that the party

Court to de-
cree marriage
dissolved, and
for what cau-
ses.

complained against, had a husband or wife of a former marriage living, or was guilty of adultery, wilful absence, extreme cruelty, or where either party has been or shall hereafter be sentenced to imprisonment in the penitentiary, and shall be actually imprisoned therein for any infraction of the criminal laws of this state, or shall have been impotent at the time of marriage, then in any such case the court may proceed, by sentence or decree, in the same court to pronounce the marriage between the parties dissolved, and both of them freed from the obligation of the same: *Provided*, That the confession of neither of the parties shall be received as testimony: *Provided always*, That the dissolution of such marriage shall in no wise affect the legitimacy of the children thereof, and the court shall take such order for the distribution, care and maintainance of the children of such marriage, (if any there be) as shall appear just and reasonable and the circumstances of the parties may require: *Provided however*, That the court in their discretion, and where the evidence shall justify such decree, may grant alimony and a divorce from bed and board, or either, instead of a dissolution of the marriage contract.

Provision.

Proof of co-
habitation and
reputation al-
lowed as to
marriage.

Sec. 4. That in all cases where an application is made for a divorce, under the provisions of this act, proof of cohabitation and reputation of the marriage of the parties may at the discretion of the court, be taken and received by the court as sufficient evidence of such marriage, any law usage or custom to the contrary notwithstanding.

Divorce for
husbands ag-
gressor, woman
restored to
lands, if for
wife's court
may order part

Sec. 5. That when a divorce shall be decreed in case of the aggression of the husband, the woman shall be restored to all her lands and tenements, and be allowed out of the husbands real and personal estate such share as the court shall think reasonable, having regard to the personal property that came to him by marriage and his estate at the time of the divorce; but if the divorce shall arise from the aggression of the wife, the court may order to her, restoration of the whole or part of the lands, tenements and hereditaments, (as to them shall appear to be just and right,) and also such share of the husbands personal property as may appear reasonable, all circumstances considered.

Wife may be
barred of dower.

Sec. 6. That when the cause of divorce shall arise from the aggression of the wife, she shall be barred of her right of dower whether there be issue or not.

Wife allowed
alimony.

Sec. 7. That the said court shall have power to grant alimony to the wife for her sustenance during the pendency of a petition filed for any of the causes aforesaid; and in all the cases aforesaid where she may file a petition of alimony alone, without the prayer for the dissolution of the bonds of matrimony.

Sec. 8. That all applications for a divorce, under this

act, shall be made within the county where the parties lived, at the time of their separation or application. Petition to be filed where parties lived.

Sec. 9. That this act shall take effect and be in force from and after the first day of June next: and the act concerning divorce and alimony, passed January eleventh, one thousand eight hundred and twenty-two, be, and the same is hereby repealed. Effect. Repeal.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 7, 1824.

AN ACT regulating the mode of taking the enumeration of the white male inhabitants above the age of twenty one years.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That the lister of taxable property in each of the several townships within this state, shall in the year one thousand eight hundred and nineteen, and every fourth year thereafter, take the enumeration of all white male inhabitants above twenty one years of age, whose usual place of residence shall be in any family within his township, or who may be found therein, without any settled place of residence in any other township, but are inhabitants of the state at the time of taking such enumeration. Township lister's duty.

Sec. 2. That the lister shall take the enumeration of the white male inhabitants every fourth year, agreeably to the provisions of the first section, at the same time he is or may be required by law to take the list of taxable property; and shall make out a list of the names, of said white male inhabitants, in alphabetical order, and return the same to the clerk of the court of common pleas, at the same time he is or may be required by law to make return to the county commissioners, of the list of taxable property. To take enumeration every four years.

Sec. 3. That each of the clerks of the courts of common pleas in the several counties, shall file in his office, and carefully preserve the several lists returned as aforesaid, and shall make out a statement of the aggregate amount of the white male inhabitants, above the age of twenty one years within his county, agreeably to the returns made to him as aforesaid, under his hand and the seal of the court, and transmit the same to the speaker of the senate, within ten days after the commencement of the next session of the general assembly. Clerks to file lists and transmit aggregate to speaker of Senate.

Sec. 4. That it shall be the duty of the governor, on or before the first Monday in January in each year, when the enumeration of the white male inhabitants is required to be Governor issue proclama-

taken by the first section of this act, to issue his writ or proclamation to the clerks of the courts of common pleas, of the several counties within this state, directing them on or before the first Monday of February next succeeding, at the time they shall make out the apportionment of jurors, to be sent to the trustees of the different townships within their respective counties, to give notice to said trustees that an enumeration of the white male inhabitants above the age of twenty-one years, is that year to be taken, and the trustees of the several townships shall give notice of the same, at the time notice is given of township elections, and the trustees shall give special instructions to the listers of their several townships to take said enumeration agreeably to the provisions of this act.

Trustees to give notice to electors to choose a lister.

Sec. 5. That the trustees of the several townships in any county, where the county commissioners do not levy a tax on personal property, for the year in which an enumeration is by this act required to be taken, on being notified as aforesaid shall at the time of advertising township elections, give notice to the electors of their township to choose a lister who shall perform the duties required of listers by this act, and if from any other cause, no lister should be elected in a township, or if the lister should die or remove out of the township, or be unable to perform the duties required of him by this act, the township trustees shall appoint a lister, who shall perform all the duties required of a lister by this act.

May appoint a lister in certain cases.

Penalty on clerks and justices for negligence, &c.

Sec. 6. That if any clerk of the court of common pleas shall neglect or refuse to perform all or any of the duties required of him by this act, he shall forfeit and pay for every such offence, a sum not exceeding three hundred dollars; and if any lister shall fail to take an enumeration as herein directed, or shall fail to make out and return a list at the time required by this act, or shall through neglect or design, make out or return a false list of the enumeration for his township, he shall forfeit and pay the sum of thirty dollars; all of which fines or penalties imposed by this section shall be recovered by indictment for the use of the county.

Listers' fees.

Sec. 7. That the county commissioners shall allow the listers such compensation for the duties performed by them under the provisions of this act, as they shall deem reasonable, to be paid out of the county treasury, on the order of the commissioners.

Act repealed.

Sec. 8. That the act, entitled "an act, regulating the mode of taking the enumeration of the white male inhabitants, above twenty-one years of age," passed April the six-

teenth, eighteen hundred and three, be, and the same is hereby repealed.

THOMAS KIRKER,
Speaker of the house of representatives.
 ABRAHAM SHEPHERD,
Speaker of the senate.

January 17, 1817.

AN ACT defining the duties of persons taking up stray animals, and securing to the owners, boats and other water crafts found going afloat.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio.* That it shall be lawful for any person holding land in this state, by deed, title bond or lease for three or more years, and being in possession thereof to take up any strays running at large, within the township where such taker up resides: *Provided,* That no person shall be allowed to take up any neat cattle or hogs after the first day of April and before the first day of November annually, nor shall any compensation or fees be allowed to any person for taking up any stray animal from the range where such animal usually runs at large or when the owner of such stray is known to the taker up, except as is provided in the seventh section of this act.

What persons
 authorized to
 take up strays?

Provided

Sec. 2. That every person taking up any stray or strays, shall advertise the same in writing, within five days, at three public places, within the township where the taker up resides, giving an accurate description of the marks, brands, colour, size and supposed age of such stray or strays; and if any alteration has been made in such marks or brands within his knowledge the same shall be particularly stated and described therein, and if no person shall claim and prove his or her right to such stray or strays, within twenty days after such advertisement, the taker up shall go before a justice of the peace within the township, and make oath when and where he found such stray or strays, and that he hath neither trimmed, docked nor altered the brands or marks of such stray or strays, or suffered the same to be done, or if any such alteration has been made within his knowledge shall state the same; and the said justice shall issue an order to two respectable freeholders, or house-holders to be named in such order, commanding them forthwith to view and appraise such stray or strays, and to return to him, upon oath or affirmation, their appraisement with a true and accurate description of the marks, brands, size, colour and supposed age of such stray or strays and the taker up shall give notice of such order to the parties therein named; and upon the return being made of the appraisement and description as aforesaid, such justice

How taker up
 and justice of
 peace shall
 proceed.

shall record the same in his stray book, together with the names of the taker up and appraisers, and transmit such appraisal within fifteen days, to the clerk of the court of common pleas of the county, who shall record the same in his stray book, and file the original in his office; and in all cases where the stray shall be a horse, mare or gelding, it shall be the duty of such justice, within ten days after he shall have received such return from the freeholders or house-holders as aforesaid, to transmit a certified copy thereof by post or otherwise, to some printer most convenient to the place where such animal was taken up, with a request to such printer to insert the same in his newspaper for three weeks successively; and the taker up of such stray or strays shall deposit with such justice the sum of one dollar, to be paid by the justice to the printer, who may publish the same, and also, the sum of twenty-five cents for the expense of conveying the copy aforesaid to the printer; and in all cases, the taker up of any stray or strays as aforesaid, shall pay to the justice for his services under this act, the sum of fifty cents, and also deposit with him the sum of twenty-five cents to be transmitted by such justice to the clerk of the court of common pleas, with the appraisal aforesaid, for his services under this act: *Provided*, That if two or more strays of the same species shall be taken up by one person at the same time, they shall be included in the same entry, and in such case the justice and clerk aforesaid shall receive no more than for one of such species; and the clerk shall cause a list of all strays with the descriptions thereof given as aforesaid, to be affixed at the door of the court house on the first day of the court next holden after such returns have been made to his office.

Proviso

Clerk to set up list of strays at court house door.

Any person may take up strays without any settlement in this state.

Sec. 3. That it shall be lawful for any person to take up any stray or strays found running at large, without any settlement of this state, and the taker up of any such stray or strays, shall forthwith go before the nearest justice of the peace, and make the oath required by the second section of this act, and that he hath neither trimmed, docked nor altered the brands or marks thereof: and if the taker up be a freeholder or house-holder within the county where such justice resides then the justice and the taker up shall be governed by the rules and regulations prescribed in the preceding section of this act; but if it shall appear to the satisfaction of such justice, that the taker up is not a resident of the county and a freeholder or house-holder as aforesaid, he shall rule the taker up to give sufficient security to such justice, for the safe keeping and delivery of such stray or strays, agreeably to the provisions of this act, and on producing such security, the justice shall make a record thereof in his stray book, and proceed in the same manner as if such stray had been taken up by a freeholder or house-holder; but if the

taker up should fail or refuse to give such security, the justice shall issue his warrant to any constable of the township, to take into his charge or deliver to any freeholder or householder; who will take charge of such stray or strays and proceed in the same manner as if such stray or strays had been taken up within the settlement.

Sec. 4. That the owner or owners of any stray or strays, taken up as aforesaid, on making satisfactory proof of his or their right thereto, before any justice of the township within one year after the same was taken up, shall be entitled to demand and receive such stray or strays with the increase if any: *Provided*, The same shall be of the horse kind, or within six months if the same shall be any other kind of stray or strays, having first paid as a reward to the taker up, for each horse kind the sum of one dollar; for every head of neat cattle, fifty cents; for every sheep, hog or goat, above six months old, twelve and a half cents, together with the legal fee paid by the taker up, and reasonable charges for keeping such strays; but if the taker up and the owner should disagree on the sum to be paid for keeping as aforesaid, it shall be lawful for either party to apply to a justice of the peace, within the township, to nominate three disinterested freeholders whose duty it shall be to make such allowance for keeping such strays, as to them shall appear just, and forthwith to certify the same, under their hands to such justice upon oath or affirmation, and if the owner shall fail or refuse to pay the sum so adjudged, together with the fees and award aforesaid, within forty days thereafter, it shall be lawful for the taker up to deliver such stray or strays to any constable of the township, who shall after giving ten days notice, by advertisement at three of the most public places within the township, of the time and place of sale, proceed to sell the same for ready money, to the highest bidder, to satisfy the costs and charges aforesaid, and the constable after paying to the taker up the fees, reward and charges aforesaid and deducting one dollar for his own fee, shall pay the remainder to the owner of such strays.

Sec. 5. That when the appraised value of any stray or strays of the same species taken up as aforesaid, does not exceed five dollars, and no person shall appear within one year after such taking up, if the same shall be of the horse kind, or within six months, if the same shall be any other kind of stray or strays, and prove his or her right thereto, the right of such stray or strays shall be vested in the taker up; but if the valuation shall exceed five dollars, and no owner appear as aforesaid, the taker up shall apply to the justice to whom the return was made of the appraisement, marks, brands, size, colour and supposed age of such stray or strays, for a copy of such return which said justice is hereby required to

Owners may
prove strays.

Provided

Expenses, how
ascertained.

When stray
shall vest in
taker up and
when to be
sold.

give from his stray book, which copy the taker up shall forthwith deliver to a constable of the township; and the constable shall immediately advertise such estray or estrays for sale, at three public places in the township mentioning the time and place of sale, which shall be ten days from the time of advertising, and which sale shall be made at some public place in said township, between the hours of ten o'clock A. M. and four o'clock P. M. at which time and place the taker up shall deliver such stray or strays to the constable, and take his receipt therefor, and transmit the same to the township treasurer; and the constable shall proceed to sell the same to the highest bidder, upon a credit of nine months, to be given to the purchaser for the amount of what such property sell for, more than will pay the expense of taking up, posting and keeping, which expense shall be ascertained in the manner directed by the fourth section of this act and also reserving for his fee the sum of one dollar; and it shall be the duty of said constable, after paying the above expenses and fees, to take an obligation from the purchaser for the balance due, with one or more sufficient securities, resident within the township, payable to the township treasurer or his successor in office, and to deliver the same to the said treasurer for the use of the township in which the stray or strays is taken up; and each treasurer, to whom bond is given as aforesaid, is hereby authorized and empowered to sue for, recover and receive for the purposes aforesaid, all monies due thereon: *Provided*, That when any property is sold as aforesaid, and the owner shall claim the same within three years and prove his, her or their right thereto, to the satisfaction of a justice of the peace of the proper township, the justice shall issue his order to the treasurer, requiring him to sign over the obligation or any judgment thereon to such claimant for his use, or pay over the money, if paid into the treasury, on such bond, and the treasurer shall pay over the same accordingly.

Proviso

Sec. 6 That if any person taking up any estrays as aforesaid, shall still the same, abuse or suffer it to be abused, either by working, riding, neglecting to feed or in any other manner, so that such stray shall in consequence thereof die or be lessened in value, or shall take or cause such estray or estrays to be taken out of the township more than two days at any one time, or shall by his or her neglect, suffer such estray or estrays to escape; or if any person shall knowingly purchase any estray or estrays, contrary to the provisions of this act, the person so offending shall be liable to the action of the party injured, and upon conviction thereof shall pay the full amount of damages sustained, and the costs of suit: If any person who may have taken up any horse, mare or gelding, shall in any manner work or use the

Persons abusing stray, &c. liable to action.

same, such person shall be debarred from receiving any compensation for keeping such estray.

Sec. 7. That if any stoned horse of one and a half years old or upwards, shall be found running at large, out of the enclosed ground of the owner or keeper of the said horse, it shall be lawful for any person to take up such horse, and forthwith give notice thereof to the owner or keeper, if the said owner or keeper be known; and if the owner or keeper do not appear within five days thereafter, and pay to the said taker up, two dollars as a compensation for his trouble; the taker up shall then proceed to advertise said horse, and the same proceedings shall be had in every respect as hereinbefore provided for in cases of stray horses: *Provided*, That the taker up may, after the expiration of twenty days from the time of advertising, geld or procure to be gelded the said horse which shall be done at the risk and expense of the owner.

Stoned horse
may be taken
up and treated
as stray.

Provido

Sec. 8. That it shall be lawful for any person finding any boat or other water craft gone or going a drift within this state, or any of the waters adjoining thereto to take up and secure such boat or craft, and if no person shall claim and prove his right to such boat or craft within thirty days thereafter, the taker up shall cause such boat or craft to be viewed by two freeholders or house holders of the township, who shall after viewing the same, give a description thereof in writing, together with the value of such boat or craft, and certify the same under their hands, which certificate the taker up shall deliver within five days to some justice of the peace within the township, who shall make a record thereof in his stray book, and the taker up shall, at the same time, pay to the justice the sum of twenty five cents for his service, and deposit the sum of twenty five cents in the hands of the said justice, to be by him transmitted, together with the certificate aforesaid, within fifteen days, to the clerk of the court of common pleas, and the clerk shall enter the same in his stray book and file the original in his office: *Provided always*, That if the taker up is not a freeholder or house holder within the county, the justice may if he shall deem it necessary, rule him to give security, as in the case of stray animals taken up under this act; and on neglect or refusal to comply with such rule the justice may take such boat or craft into his own possession, or deliver it to any freeholder of the township who will take charge thereof, and in either case the justice or person taking charge thereof shall pay to the taker up the reward allowed by this act, and proceed in the same manner as is required of the person taking up such craft.

Boats adrift
may be taken
up.

Provido

Sec. 9. That the owner of such boat or craft, on proving his right thereto within the time hereinafter limited, and paying to the taker up for each flat or keel boat the sum of

Owners of boats, &c., may prove their rights.

two dollars; for each scow or lighter the sum of three dollars; for each Kentucky or Orleans boat, the sum of five dollars; and for each skiff, perogue, or canoe the sum of seventy-five cents, together with the fees allowed by this act, shall be entitled to demand and receive such boat or craft taken up as aforesaid.

When boat shall vest in taker up—when sold,

Sec. 10. That if the appraised value of such boat or craft does not exceed two dollars, and if no person shall appear within two months after the taking up thereof and prove his right thereto, the right of such boat or craft shall be vested in the person taking up the same; but if the value shall exceed two dollars, and the owner does not appear and prove his right thereto, within two months, then the taker up shall deliver the same to any constable of the township and take his receipt therefor and the constable shall proceed to advertise, sell and pay over the money arising therefrom, in the same manner as is directed in the case of stray animals by the fifth section of this act; and the owner of such boat or craft sold as aforesaid, shall be entitled to receive the amount thereof out of the township treasury, in the same manner as is provided by the said section in the case of stray animals: *Provided*, That if the appraised value of any boat or craft taken up upon the shores of Lake Erie shall not exceed eight dollars; and no person shall appear and prove his right thereto within the time provided by this section, such boat or craft shall be vested in the person taking up the same.

Proviso

How to sell strays when new townships are laid off.

Sec. 11. That the several township treasurers shall pay over all monies in their hands belonging to the treasury, and also deliver all books, and all bonds deposited in their hands, to their successors in office; and when any new township shall be set off within the bounds of which there shall be any stray or strays, which agreeably to this act ought to be sold, it shall be the duty of the justice to whom the return of the appraisement of such stray or strays was made or his successor in office, to furnish a copy of such appraisement to the constable, whose duty it would have been to sell such stray or strays had not such township been so set off, and the constable furnished with such copy shall proceed to advertise and sell such stray or strays in the same manner as herein before provided; and the proceeds of such sale after paying the incidental expenses, shall be paid into the treasury of the township so set off, for the use of such township.

Towns, &c. not to make by-laws contrary to this act.

Sec. 12. That nothing in the act to provide for the incorporation of towns and nothing in any special act for the incorporation of any town or village in this state, shall be so construed, as to authorize the making of any bye laws or ordinances, or to enforce the same of any such town or village which shall subject any animals, the property of any person, not residing within the limits of such town or village, to be

taken up and dealt with in any other manner than is provided for in this act.

Sec. 13. That from and after the passage of this act, it shall be the duty of the township treasurer in each township within this state, to furnish each justice of the peace within the same, at the expense of the township, with a book of sufficient size for the purpose of recording all strays, the appraisement of which shall be returned to his office; and should the office of such justice become vacant by his term of service expiring, resignation or otherwise, he or his legal representatives shall deliver the said book to the clerk of his township, and it shall be the duty of such clerk to deliver over such book to the person who shall succeed said justice in office; whose duty it shall be to furnish a copy of such appraisement in the same manner as if he had been in office at the time the return of such appraisement was made.

Record books
for strays.

Sec. 14. That if any person shall neglect to perform the duties required by this act or shall do any thing contrary thereto, such person shall forfeit and pay a sum not exceeding one hundred dollars, nor less than one dollar to be recovered by action of debt before any court having cognizance thereof, and shall moreover be liable to the action of the party injured: It is hereby made the duty of each township treasurer to sue for, collect and pay over all monies arising by virtue of any forfeiture incurred by this act, for the use of the township.

persons neglecting
duties sub-
ject to fine, &c.

Sec. 15. That the act entitled, "an act defining the duties of persons taking up estray animals and securing to the owners, boats and other water crafts found going a drift," passed January twenty second one thousand eight hundred and ten; and the act supplementary to the act, defining the duties of persons taking up estray animals, passed January twenty eighth, one thousand eight hundred and seventeen, the act entitled "an act to amend the act defining the duties of persons taking up estray animals and securing to the owners, boats and other water craft found going a drift passed February twenty second, thousand eight hundred and twenty; and the act entitled an act to prevent stoned horses from running at large, passed January seventeenth one thousand eight hundred and six, be, and the same are hereby repealed.

Acts repealed.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 18, 1824.

AN ACT for the inspection of certain articles therein enumerated.

C. C. P. may appoint inspectors, who may appoint deputies.

Must give bond and take an oath.

Previous

Inspectors' duties

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That it shall be the duty of the court of common pleas of each county in this state, at their first, or any subsequent session, after this act shall take effect, to appoint where it may be necessary, one inspector of flour, meal and biscuit, one inspector of beef, pork, lard and butter; one inspector of pot and pearl ashes; and one inspector of fish, who shall each have the power of appointing as many deputies to act under them, as their respective duties in office may require, for the conduct of the deputy, the principal shall be accountable and liable; and before any inspector or deputy inspector, shall enter upon the duties of his office, he shall take an oath or affirmation, that he will faithfully and impartially execute the duties required of him by law, and each inspector shall moreover enter into bond, with sufficient freehold security, made payable to the state of Ohio which bond shall be deposited with the treasurer of such county, in the penal sum of five hundred dollars, conditioned for the faithful and impartial performance of the duties required of him by law, and every person who may think himself injured by the incapacity, neglect or misconduct of such inspector or his deputy or deputies, may institute a suit on a copy of the bond, certified by the treasurer for the use of the person suing: *Provided,* That the treasurer shall not be liable for costs, and in case the party suing shall obtain judgment, he may have execution as in other cases, and the bond shall not become void on the first or any subsequent judgment: *Provided also,* That suit be instituted within one year, after the cause of action shall have accrued.

Sec. 2. That it shall be the duty of the inspectors or their deputies, within their respective counties, to inspect (as the case may be,) all wheat or rye flour, indian corn or buckwheat meal, biscuit, butter, lard, pork, beef, fish, and pot or pearl ashes, on application made to him or them for that purpose and when inspected, stamp on the cask containing the same (with branding irons, to be provided by the inspector for that purpose, and paid for, out of the county treasury,) the name of this state with the name of the county where inspected, also the kind and quality of the article inspected; which branding irons shall be made and lettered as may be directed by the courts of common pleas respectively, and every inspector shall make in a book to be provided by him, for that purpose, fair and distinct entries of all articles inspected by him or his deputies, with the names of the persons for whom each article was inspected.

Sec. 3. That all flour and meal shall be packed in well made casks of seasoned timber, twenty seven inches in length

when finished, with a cut head of seventeen inches, tightly bound with ten smart hoops, or four flat hoops two inches broad, secured with four nails in each end hoop, and three nails in each outward bilge hoop, each barrel to contain one hundred and ninety six pounds of flour or meal, and the tare of the cask shall be marked on the head of each barrel of flour or meal, by the miller, with a marking iron, and the weight of the flour or meal shall be branded on the cask, with a branding iron to be by him provided for that purpose; and when flour or meal shall be exhibited for inspection, the inspector shall bore and search the same with a proper instrument, so as to ascertain if it be sweet, and of the kind and quality marked by the miller, and if he shall judge it sweet and of good quality, he shall plug up the whole tight and cause the same to be branded as is prescribed in the second section of this act, but if on examination, the flour or meal, shall be found sour, of bad quality or not merchantable, it shall be condemned, but if merchantable, though of a quality inferior to or different from that represented by the millers brand, said brand shall be erased, and the proper quality marked thereon by the inspector.

Flour &c. how packed.

Sec. 4. That it shall be the duty of each miller or mill owner, to brand or cause to be branded on the head of each barrel, the quality of the flour contained therein, and the initial letter of his christian name, and his surname in full; and if any miller or mill owner shall refuse so to brand the same, he or they so offending, shall on conviction thereof forfeit and pay for each offence, the sum of five dollars for the use of the county, and if any miller or any other person shall pack, or cause to be packed any bran shorts or unmerchantable flour, with intent to defraud, the person or persons so offending shall, on conviction thereof, forfeit and pay for every such offence, a sum not less than one hundred dollars, nor more than five hundred dollars, for the use of the county, to be recovered before any court having competent jurisdiction, and moreover be liable to the action of the party injured for damages.

Millers to brand barrels.

Punished for neglect.

Sec. 5. That all barrels for beef or pork, shall be made of sound well seasoned white oak timber, clear of sap wood, twenty-nine inches in length, when finished with a cut head of seventeen and a half inches diameter, tightly bound with strong hoops, one third of the length thereof, at each end, and when packed and headed up the outward hoop on each end, shall be secured with four nails of suitable size.

Size pork barrels.

Sec. 6. That each barrel of beef or pork, put up for exportation in this state shall contain two hundred pounds weight, of sound, clean, well slaughtered meat, and such only as is well fattened, which shall be denominated as follows: "mess beef," shall be cut, as near as may be into well formed pieces of ten pounds, so that twenty pieces shall

To contain 200 lbs.

Mess and prime what. make the weight and shall be well assorted, excluding legs, leg rounds, necks and shoulder clots; "prime beef," shall be cut in like manner, and shall be well assorted, but may include not exceeding two leg rounds, leaving out the point of the neck and all clotted pieces, fifty five pounds of clean, fair dry salt, and four ounces of salt petre, shall be put into each barrel, and when the barrel is packed and headed, it shall be filled up with strong pickle.

Of what barrel of prime pork shall consist.

Sec. 7. That each barrel of "prime pork" shall consist of twenty five pieces weighing eight pounds each as near as may be, making two hundred pounds, which may include one head and a half, and six shanks, excluding the legs and snouts, so as to be composed of the assorted meat of one hog and a half hog; each barrel of "mess pork" shall consist of twenty five pieces, of eight pounds weight each, as near as may be, making two hundred pounds of pork, taken from the middlings or sides of hogs, weighing upwards of two hundred pounds each; each barrel of "navy pork" shall consist of twenty five pieces of eight pounds each, as near as may be, making two hundred pounds of pork assorted, excluding all shanks and faces, no hog to weigh less than one hundred and fifty pounds nett, the pieces of pork shall be packed on the edge, with at least fifty pounds of clean fair salt, and two ounces of salt petre to each barrel, and when thus packed and headed, each barrel shall be filled up with strong pickle.

Mess.

Navy.

Butter and lard.

Sec. 8. That all butter and lard shall be packed in tight and well seasoned firkins or kegs, on each of which, shall be marked with a marking iron, the tare and nett weight of the butter or lard, therein contained, and the inspector or his deputy shall bore each firkin or keg of butter or lard, and by examining diagonally from one head to the other with a hollow instrument or searcher, so as to be able to discover the quality of the whole, ascertain that it be clear of mould, rancid or musty taste, in which case he shall brand the same, as is provided in the second section of this act.

Biscuit casks biscuit.

Sec. 9. That all casks wherein biscuit shall be packed for exportation, shall be of the same size and quality of those specified for flour in the third section of this act, the tare and nett weight marked thereon with a marking iron, a true invoice of which shall be delivered by the owner to the inspector, or his deputy, when called on to inspect the same, and the inspector or his deputy, shall thereupon proceed to unhead each cask and inspect the same and if he shall judge the same to be good and merchantable, he shall brand the same as directed by the second section of this act.

Sec. 10. That all fish barrels shall be made of good sound seasoned white oak timber, clear of sap, well bound with twelve sufficient hoops, or eight flat hoops, at least two

inches broad, secured with four nails at least in the chine-hoops, and four wooden pins in the outward bidge hoops, and shall contain at least two hundred pounds weight of clean fish in each barrel, and that only one species of fish shall be packed in the same barrel; and that previous to any two hundred pounds weight of fish being packed or barreled as aforesaid, said fish shall be corned down with twelve pounds of salt, for a space of time not exceeding twenty-four, nor less than twelve hours; immediately after which they shall be cleaned and packed with fifty pounds weight of good salt to each barrel.

Sec. 11. That it shall be the duty of every person or persons who shall hereafter take any fish, to the amount of three barrels within any of the waters of this state, to bury the offalls, a depth of at least two and a half feet beneath the surface of the earth, or burn the same within two days after such are taken and cleansed, and any person or persons refusing or neglecting to comply with the provisions of this and the preceding section, shall be fined in any sum not exceeding fifty dollars, nor less than five dollars, with costs of suit, to be recovered by action of debt before any justice of the peace having jurisdiction thereof, at the suit of the trustees of the township in which the offence shall be committed; which sum when collected shall be paid over by said justice into the county treasury, to and for the use of the county.

Offalls of fish, to be buried.

Sec. 12. That all casks for pot and pearl ashes, shall be made of good seasoned white oak timber, full bound by having two thirds thereof covered with good hoops, and shall be two feet six inches in length, and eighteen inches in diameter at each head and the tare and nett weight of all barrels of pot and pearl ashes shall be marked or branded on the head of each cask, by the inspector or his deputy in the manner prescribed in the second section of this act.

Pot and pearl ashes.

Sec. 13. That if on view, the inspector or his deputy who shall be called upon for that purpose shall find that any of the barrels, firkins or kegs heretofore mentioned shall not be sufficient and made in conformity to the provisions of this act, such inspector or deputy shall desist from any further inspection of the contents, and judge the same unmerchantable, and thereupon condemn and brand the said barrel or other cask accordingly: *Provided*, That nothing in this section contained shall be so construed as to prevent a repacking of such articles in proper and sufficient barrels and casks, and when done may be inspected and passed, if found good and merchantable as in other cases under this act.

Contents condemned for bad casks,

Proviso.

Sec. 14. That if any owner or possessor of any article or articles in this act mentioned, shall conceive him or herself

Owner injured by inspector

how to get redressed. aggrieved by the inspector or deputy condemning the same, he she, or they may apply to any justice of the peace of the township, who shall issue his warrant to three disinterested freeholders of the township, one of whom to be nominated by the owner or possessor, one by the inspector or deputy, and the other by the justice of the peace, directing them to examine such article or articles and to make a report thereof to him, and if they shall concur with the inspector or deputy, they shall certify whatever the deficiency is, in which case the owner or possessor shall pay all costs arising on the review.

Forfeiture for neglect of duty.

Sec. 15. That if any inspector or deputy inspector shall fail or neglect to do the duties annexed to his office, or shall be convicted of partiality, or of having acted contrary to the directions of this act, he shall forfeit and pay for every such offence, a sum not exceeding fifty dollars, with costs of suit to be recovered before any court having jurisdiction thereof, for the use of the county, and shall moreover be liable to the party injured for damages.

Fees.

Sec. 16. That the inspectors to be appointed as aforesaid, shall receive the following fees for their services aforesaid, viz: For each and every barrel of wheat or rye flour, three cents; For each and every barrel of corn or buck wheat meal, two cents; For every barrel of biscuit, six and a fourth cents; For every firkin or keg of butter or lard three cents; For packing and inspecting every barrel of pork or beef, twenty-five cents; For every barrel of fish, twenty five cents; and for every barrel of pot or pearl ashes, six and a fourth cents; all which fees shall be paid by the owner of the articles inspected as aforesaid, and if any inspector or deputy inspector, shall receive any greater sum than is herein provided, or shall directly or indirectly purchase any article or thing by him inspected and condemned as unfit for exportation, he shall forfeit and pay for every such offence, a sum not exceeding fifty dollars, together with costs of suit, to be recovered before any court having jurisdiction thereof, to and for the use of the county.

May be removed.

Sec. 17. That the courts of common pleas, of their respective counties aforesaid, shall have full power and authority, on complaint and sufficient cause shewn, to remove from office any inspector appointed under this act, or to fill any vacancy that may occur by death, removal or otherwise, and if any person or persons shall counterfeit the aforesaid brands or marks or either of them, or impress the same on any cask, barrel, firkin or keg containing articles subject to inspection by this act, he, she or they so offending and being legally convicted thereof, shall be deemed guilty of forgery, and dealt with accordingly.

Forgery, to alter &c. brands.

Certificate of cause of con-

Sec. 18. That the inspector in all cases where he may have condemned any of the articles in this act enumera-

ted, shall forthwith on demand execute and deliver to the denotation to owner or owners thereof, his or their agent, a certificate, be given. distinctly setting forth the time and place and cause of such condemnation.

Sec. 19. That the act for the inspection of certain articles therein enumerated, passed February seventh, eighteen hundred and twenty, and an act amendatory thereto, Acts repealed, passed February first, eighteen hundred and twenty-one, be and the same are hereby repealed.

This act shall take effect and be in force from and after Effect. the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 21, 1824.

AN ACT fixing the rate of toll for grinding.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the owner or occupier of all grist mills within this state, shall be entitled to the one tenth part of all wheat, rye or other grain ground and bolted, and the one twelfth part of all rye, malt, buckwheat, ground or chopped only, and the one eighth part of all corn ground in said mills; *Provided,* That the owner or occupier of any horse mill shall, in like manner, be entitled to the one eighth part, but may take the one fourth part of all grain ground, or ground and bolted by said horse mill, when the owner or occupier thereof finds horses or team to grind the same. Toll, a tenth of wheat, &c.

Sec. 2. That the owner or occupier of every mill aforesaid shall be accountable for the safe keeping of all grain received in said mill for the purpose of being ground therein, and shall deliver the same when ground, or ground and bolted, (as the case may be) with the bag or bags, cask or casks which were delivered in said mill with the grain, to the owner when called for; *Provided,* That the bag or bags, cask or casks left as aforesaid, shall be distinctly marked with the christian and surnames of the owner or owners thereof: *Provided also,* That nothing herein contained shall be so construed as to charge or make accountable any owner or occupier of any mill, for the loss of any grain, bag or bags, cask or casks which shall happen by robbery fire or other accident, without the fault or neglect of such owner or occupier, or that of any miller employed by such owner or occupier. Millers accountable for grain, &c.

Sec. 3. That if the owner or occupier of any mill, their representative, agent or miller, shall take a greater proportionate quantity of toll than is herein before authorized, and Penalty for taking unlawful toll.

be duly convicted thereof, before any court having jurisdiction of the same shall be fined for every such offence in any sum not exceeding twenty dollars, at the discretion of the court, one half to the township, and the other half to the person prosecuting, and shall moreover be liable at the suit of the party injured for damages.

Act repealed. Sec. 4. That the act entitled "an act, fixing the rate of toll for grinding," passed January twelfth, one thousand eight hundred and five, be and the same is hereby repealed.
Effect. This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 14, 1824.

AN ACT, to regulate judicial proceedings where banks and bankers are parties, and to prohibit issuing bank bills of certain descriptions.

In actions against banks plaintiff may declare for money had and received.
Sec. 1. *Be it enacted by the General Assembly of the state of Ohio.* That in all actions brought against any bank or banker, whether of a public or private character, to recover money due from such bank or banker, upon notes or bills by him or them issued, the plaintiff may file his declaration for money had and received, generally, and upon trial, may give in evidence to support the action, any notes or bills of such bank or banker, which such plaintiff may hold at the time of trial, and may recover the amount thereof with interest from the time the same shall have been presented for payment, and payment thereof refused, or from the time that such bank or banker shall have ceased and refused to redeem his notes with good and lawful money of the United States.

Stockholders may be made party.
Sec. 2. That when any of the partners or stockholders of any bank or banking company shall live without the county where the said bank or banking company is or was established, it shall be lawful for the plaintiff in any action brought in pursuance of this act, to issue summons into any other county in this state for the purpose of making such partner or stockholder a party to said action, and after judgment in said action in favor of said plaintiff, he may sue out a scire facias against any such partner or stockholder, who may not have been made a party to the suit aforesaid directed to any county in this state, to make such partner or stockholder a party to said judgment, and on return thereof duly served, the court shall make such partner or stockholder

Scire facias first process on judgment.

der a party defendant to said judgment unless good cause be shewn to the contrary.

Sec. 3. That a writ of fieri facias shall be the first process upon a judgment obtained against any bank or banker, upon which the sheriff or other officer shall enter the banking house of the judgment debtor, and demand payment of the amount of such judgment, interest and costs, and if payment be not immediately made, the officer shall levy on the bank notes, money or other chattels which he may find in the banking house or elsewhere, the property of the judgment debtor and shall proceed thereon as in other cases.

Writs of attachment writs & how issued.

Sec. 4. That if the bank or banker, against whom judgment is had, shall have no banking house at which such bank or banker transacts banking business, or if no chattel property can be found whereon to make a levy, or if the property taken shall not be sufficient to satisfy the judgment, interest and costs; the officer shall make return thereof upon the writ; and upon such return being filed in the clerks office of the court of common pleas of the county, the plaintiff may thereupon demand a writ of attachment against the rights and credits of such bank or banker, and the clerk shall thereupon issue such writ, directed to any proper officer in the county from which such writ may have issued, which writ shall recite the judgment, execution and the return upon which it is founded and the officer receiving such writ shall summon as a garnishee, any debtor to such bank or banker, who may be within his county, to appear before the court of common pleas at the return of such writ, and answer such matter, touching any debt he may owe such bank or banker, as may be put to him: *Provided always,*

Proviso.

That those persons who have been, or are at the time of such service, directors of the bank against which judgment shall have been entered, and remains unsatisfied, shall in all cases be first summoned as garnishees; and from the time of making such service, all monies due and owing to the bank or banker, in the writ mentioned, shall be held and considered as due to the judgment creditor until his judgment be satisfied, and no payments made thereafter, to the bank or banker with whom the debt was contracted, shall be credited to the person making the same, against the plaintiff in attachment, nor shall the stock owned by any debtor to the bank or banker, against whom proceedings are had under this act, be allowed as a set off or liquidation of all or any part of the debts, as against the judgment creditor: *And provided*

Proviso.

also, That no person who may be summoned as garnishee, under the provisions of this section, shall be obliged to pay the debt due by him to any bank or banker, and which may be attached in his hands, in any different or other way than he would have been obliged to pay the same to the original creditor or creditors, and he shall be allowed the same dis-

counts, credits and offsets which he would have been allowed if the claim against him, had been settled in a due course of law in favor of the original creditor or creditors.

Cashiers &c. may be summoned on attachment.

Sec. 5. That the cashier, clerk or other officer having charge of the funds of such bank or banker, may in like manner be summoned upon such attachment, and from the time of the service of such summons, all the funds of such bank or banker shall be bound in law for the payment of the judgment and costs in the writ mentioned.

Debt's may be examined on oath.

Sec. 6. That if the persons summoned or any of them, shall appear on the return of the writ of attachment, the court shall proceed to examine each one separately, upon oath or affirmation, touching the amount he was indebted to the bank or banker upon the day the service was made, and shall render judgment against each separately, without declaration or other pleading, for the amount confessed to be due on that day, except in cases when the persons summoned, or any number of them are responsible as principals, securities or endorsers for the same debt, in which case there shall be a joint judgment against them for the amount; but in case of any cashier, clerk or other officer holding the funds of such bank or banker, if such cashier, clerk or other officer shall deliver into court all the funds of such bank or banker, which he states on oath or affirmation to have been in his possession on the day of service of the process upon him, he shall be discharged from all further process or proceedings; and the funds so delivered up shall be disposed of in such manner as the court may direct, to be applied to the payment of the judgment, interest and costs upon which the attachment issued, as well as the costs that may have accrued upon the attachment.

No judgment for costs against def't.

Sec. 7. That no judgment upon attachment shall be rendered for costs against the person summoned; and when the debt from the person summoned, to the bank or banker is not due until a future day, the time of payment shall be specified in the judgment, and no execution shall issue until after that day; in every other respect execution shall be had upon such judgment as in other cases.

Debtor to have credit with banks for money paid.

Sec. 8. That for all monies paid on an attachment under this act, the debtor or debtors paying the same, shall have credit against the bank or banker, to whom the same was due, for the amount, and if any overplus shall remain in the hands of the officer, after the payment of the original debt, interest and costs, and all the costs of the attachment, it shall be paid over to such bank or banker or their order; and if a sufficient sum to satisfy the whole debt and costs as aforesaid, shall not be made on a writ of attachment an alias writ of attachment may issue, upon which the proceedings shall be the same as on the first writ.

Endorsed note may be jointly

Sec. 9. That when any sum of money due and owing to

any bank or banker, shall be secured by endorsement on the bill, note or obligation for the same, it shall be lawful for such bank or banker to bring a joint action against all the drawers or endorsers, in which action the plaintiff or plaintiffs may declare against the defendants for money lent and advanced, and may obtain a joint judgment and execution for the amount found to be due; and each defendant may make the same separate defence against such action, either by plea or upon trial, that he could have made against a separate action; and if in the case herein provided for, the bank or banker shall institute separate actions against the drawers and endorsers, such bank or bankers shall recover no costs: *Provided always*, That in all suits or actions prosecuted by a bank or banker, or persons claiming as their assignees, or under them in any way for their benefit the sheriff upon any execution in his hands, in favor of such bank or banker, their or his assignee as aforesaid, shall receive the note or notes of such bank or banker, from the defendant in discharge of the judgment; and if such bank or banker, their or his assignee, or other person suing in trust for the use of such bank or banker, shall refuse to receive such notes from the sheriff, the sheriff shall not be liable to any proceedings whatever, at the suit or upon the complaint of the bank or banker, their or his assignee as aforesaid. Provided:

Sec. 10. That it shall not be lawful for any bank or banker within this state, to issue notes or bills payable at a future day, and all notes or bills issued by any bank or banker within this state, shall be taken and held to be payable on demand, notwithstanding any day of payment be expressed in the body of the same. Banks not to issue bills payable at a future day.

Sec. 11. That when any bank or banker shall commence and continue to redeem their notes or bills with lawful money, the interest on their notes or bills shall cease from the commencement of such redemption, by their giving six weeks previous notice, in some newspaper having a general circulation in the county where such bank or banker transacts banking business, of the time they intend to redeem their notes or bills with lawful money. When interest on notes shall cease.

Sec. 12. That any plaintiff who shall have recovered judgment against any bank or banker as aforesaid may at his election, sue out on such judgment, while the whole or any part thereof remains unpaid, a writ or writs of fieri facias, et levari facias by virtue of which it is hereby made the duty of the officer to whom the same is directed, to levy on the goods and chattels of such bank or banker, body politic or corporate, and to sell the same as in other cases, on execution, and if goods and chattels cannot be found sufficient to satisfy such judgment or judgments, after disposing of what may be found in the manner aforesaid, it shall be the further duty of the said officer to levy on the lands, tenements or hereditaments, which such bank or banker, body politic or corporate, may hold by deed in fee simple, deed of trust,

or mortgage deed of conveyance, or by title bond or any other assurance whatever; and to sell the same under the restrictions and limitations hereinafter mentioned; and upon the receipt of the purchase money, to make to the purchaser or purchasers a deed, assignment, or transfer in writing therefor, therein and thereby conveying to him, her or them, all the right, title, interest and estate which such bank or banker, body politic or corporate, had in, or to the property sold, at the time the same was levied upon in manner aforesaid; and such purchaser or purchasers, after such sale, may pursue the usual legal means to foreclose the mortgage, or collect the amount due on such deed of trust, or mortgage deed of conveyance, or to reduce to possession such other estate whether legal or equitable as such bank or banker, body politic or corporate, might or could do, had such property not been sold.

Lands in trust
for banks may
be levied upon

Sec. 13. That when any person shall hold any lands, tenements or hereditaments by deed, in fee simple, deed of trust, or mortgage deed of conveyance; or by lease or title-bond or any other title or assurance whatever, in trust and for the use of such bank or banker, body politic or corporate, whether such trust be expressed in the deed or not, it is hereby made the duty of the officer holding a writ of fieri facias et levari facias against such bank or banker, body politic or corporate, after disposing of what goods and chattels may be found, in manner aforesaid, to levy on the lands, tenements and hereditaments so held by such person or persons in manner aforesaid, in trust and for the use of such bank or banker, body politic or corporate, and to sell the same under the restrictions and limitations hereinafter mentioned, and upon the receipt of the purchase money, to make to the purchaser a deed, therein and thereby conveying to him all the right, title, interest and estate which such bank or banker had in, or to the property sold, at the time the same was levied upon in manner and form aforesaid, and it is hereby made the duty of the person holding such lands, tenements and hereditaments in trust and for the use of such bank or banker, body politic or corporate, to make to the purchaser a deed upon demand, for the property sold, therein and thereby conveying to him all the estate such person had in the property at the time the same was levied upon, in manner aforesaid, and the equitable interest of such bank or banker, body politic or corporate to the property so sold, shall forever after be extinguished.

Officer to sell
lands after re-
port.

Sec. 14. That when any lands, tenements or hereditaments held by such bank or banker, body politic or corporate, by deed of trust, or mortgage deed of conveyance, lease, title bond or any other assurance whatever, are levied upon in the manner pointed out in the eleventh section of this act, or when any lands, tenements or hereditaments, held by any person by deed of trust, or mortgage deed of conveyance, ti-

the bond or any other assurance whatever in trust, and for the use of such bank or banker, body politic or corporate, whether the trust be expressed in the deed or not, and levied upon in the manner pointed out in the twelfth section of this act, the officer who made the levy shall immediately thereafter, appoint three judicious and disinterested men of his county, whose duty it shall be, under oath, to ascertain as nearly as practicable, the amount due on such deed of trust, or mortgage deed of conveyance, and for that purpose, they may examine any books or papers that they may think necessary, and may also examine the mortgagor, or grantor, and such other witness or witnesses as they may think necessary under oath, which oath any one of them are hereby authorised to administer, touching the amount due on such deed of trust, or mortgage deed of conveyance, and to report in writing to said officer, under their hands and seals within six days after their appointment, the amount they found due and owing on such deed of trust, or mortgage deed of conveyance; and upon such report being made to said officer, he shall advertise and sell said property, as nearly as may be, in the same manner pointed out for the sale of real estate, under the provisions of the act, entitled "an act regulating judgments and executions."

Sec. 15. That when any lands, tenements or hereditaments shall be taken in execution as aforesaid, which are or shall be mortgaged or conveyed by deed of trust or be held by any other title or assurance whatever, to secure a sum greater than the value thereof, the interest of the mortgagee or trustee in such lands, tenements or hereditaments shall not be sold for less than two thirds of the appraised value thereof; and when such lands, tenements or hereditaments are or shall be mortgaged or conveyed by deed of trust or any other title or assurance whatever to secure a sum not exceeding the value thereof, the same shall not be sold for less than two thirds of the sum which shall be due on such mortgage deed, or deed of trust, on the day of sale.

Must sell for two thirds appraised value.

Sec. 16. That where more than one tract of land is included in the deed of trust, or mortgage deed of conveyance or held by title bond or any other assurance whatever it is hereby made the duty of the officer to whom any writ or writs of execution may be directed, after having ascertained the amount due on such deed of trust, or mortgage deed of conveyance or any other title or assurance whatever in the manner hereinbefore directed, or when the amount due has been heretofore ascertained, to summon an inquest of five judicious and disinterested men of his county, whose duty it shall be to appraise, under oath, each tract of land contained in said deed of trust, or mortgage deed of conveyance, or any other title or assurance separately, and to report the same in writing to the said officer by whom they were summoned, whose duty it shall be if the

Tracts of land to be appraised separately and be so sold.

appraised value of such lands shall exceed the sum due on such mortgage deed, or deed of trust (or any other title or assurance) to apportion the amount found due on such deed of trust, or mortgage deed of conveyance, or other title or assurance among the several tracts of land specified in such deed of trust, or mortgage deed of conveyance or other title or assurance in just proportion to their appraised value, and after having advertised and made known the time and place of sale in manner aforesaid, to proceed and sell each tract of land contained in such deed of trust, or mortgage deed of conveyance or other title or assurance separately, for no less than two thirds of the amount apportioned to the same in manner aforesaid, and each of the tracts of land so sold as aforesaid, shall be liable to be redeemed by the grantor or in the deed of trust, or mortgage deed of conveyance, or other title or assurance, by the payment of the amount apportioned to the same, in manner aforesaid, to the purchaser, in the same manner as if the tract had been separately mortgaged or conveyed by deed of trust, or other title or assurance and the purchaser in like manner shall hold the same in the same manner as if separately granted in manner aforesaid.

Grantor in deed of trust may redeem.

Shall be sold as by act "regulating judgments &c"

Sec. 17. That when lands, tenements or hereditaments, are held by any bank or banker, body politic or corporate, in fee simple in the manner pointed out in the eleventh section of this act, or when lands, tenements, or hereditaments, are held by any person by deed in fee simple in trust and for the use of such bank or banker, body politic or corporate, in the manner pointed out in the twelfth section of this act, whether such trust be expressed in the deed or not, and are levied upon in the manner aforesaid, the officer levying shall cause the property so levied upon, to be appraised, advertised and sold, in the same manner as real estate is appraised and sold under the provisions of the "act regulating judgment and execution."

Purchaser may file a bill in equity

Sec. 18. That if the person holding lands, tenements, or hereditaments, in trust and for the use of such bank or banker, body politic or corporate, shall refuse or neglect, upon demand, to make to the purchaser, his heirs, or legal representatives, a deed in the manner pointed out in the twelfth section of this act, such purchaser, his heirs, or legal representatives may file a bill in equity, to compel a conveyance of the property sold, and if a decree shall be rendered in favor of the purchaser, his heirs or legal representatives, it is hereby made the duty of said court rendering such decree, further to decree, against the person so refusing, twenty five per centum damage on the whole amount for which such property was sold, and to issue execution, therefor, as in other cases in chancery.

Damages decreed

Sec. 19. That the court from which the execution issued,

shall make such allowance to the inquest appointed by said act for their services as to them may seem right, and if any person, being summoned to appear before the inquest to ascertain the amount due on the deed of trust, or mortgage deed of conveyance, shall refuse to appear, or refuse to give testimony before said inquest, it shall be the duty of the inquest to report such person to the next court of common pleas, who are hereby required to punish such person or persons, refusing to appear or to give testimony, in the same manner that witnesses are punishable in court for like offences; and the clerk of the court of common pleas, when required, shall issue subpoenas for witnesses to appear before said inquest at the time and place of their meeting, and the sheriff shall serve the same without delay, and the said sheriff, clerk and witnesses shall be allowed the same fees as is provided by law for similar services to be taxed to, and paid by the defendant or defendants in execution.

Witnesses refusing to appear punished

Fees

Sec. 20. That the plaintiff, at any time before his judgment shall be fully satisfied, may proceed thereon in either of the modes pointed out by this act, and having proceeded in one, he shall not be debarred from proceeding in the other, but may at any time proceed in either mode until such judgment shall be fully satisfied.

Plaintiff may proceed in either or both modes in this act

Sec. 21. That when any suit shall be brought before any justice of the peace, against any bank or banker, to recover money due from such bank or banker, upon notes or bills by them issued, for any sum made cognizable before a justice of the peace, and judgment shall be rendered, and execution shall be issued against such bank or banker; if the money shall not be made on the first execution issued, it shall be the duty of the justice, on request, to deliver to the plaintiff or his agent, a certified transcript of his docket, and on filing said transcript in the office of the clerk of the court of common pleas, of the proper county, and on the plaintiff's filing with said clerk an affidavit stating that the amount of said judgment or any part thereof is then due and unpaid, it shall be the duty of such clerk to issue process of attachment or fieri facias thereon, at the option of such plaintiff in the same manner as on a judgment originally recovered in such court.

Justices to certify transcript to court, when process of fieri facias may issue.

Sec. 22. That nothing herein contained shall be so construed as to take away the jurisdiction which either of the courts of this state, sitting as a court of chancery, may or might have in any case which comes within the provisions of this act.

Chancery jurisdiction not taken away by this act

Sec. 23. That no action shall be brought upon any notes, or bills hereafter issued by any bank, banker or bankers, and intended for circulation, or upon any note, bill, bond or other security given, and made payable to any such bank, banker or bankers, unless such bank, banker, or bankers; shall be incorporated and authorized by the laws of this state to issue

notes issued by unincorporated banks void

such bills and notes, but that all such notes, and bills, bonds, and other securities shall be held and taken in all courts as absolutely void.

Suits & under former to be governed by this act

Sec. 24. All suits heretofore commenced, under the provisions of an act entitled, "an act to provide for a more speedy and equitable collection of debts, where banks and bankers are parties," passed February second, 1821, or an act amendatory thereto passed February 2d, 1822, whether judgment has been obtained or not, or whether execution has been levied or not, shall in all respects be proceeded in the same manner as though such suit had been originally commenced under the provisions of this act; and the above recited acts, passed February 2d, 1821, and February 2d, 1822, be and the same are hereby repealed.

Acts repealed.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

January 23, 1824.

AN ACT, Supplementary to the act entitled "an act to incorporate certain banks therein named, and to extend the charters of existing incorporated banks."

Dividends of Banks appropriated to expense of government.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio.* That the dividends accruing on all shares of bank stock set off to, and vested in the state, and on all shares purchased with dividends which have accrued under the act, to which this is a supplement, shall be and the same are hereby appropriated to the ordinary expenses of government, and the auditor of state shall annually on or before the first day of January draw an order upon the cashier or chief clerk of such bank or banking company in favor of the treasurer of state for the amount of dividends annually, or semi-annually, accruing to the state on shares so as aforesaid set off, to, and invested in the state, and on all shares so as aforesaid purchased by the state, and charge the same to the treasurer with the amount thereof, and the treasurer shall receive and account for the same, as for other monies paid into the treasury, *Provided*, that so much of the dividends or shares, owned by the state in any bank, as may be necessary to pay any instalment, or instalments, which may at any time become due, on shares which have been purchased by the state, in such bank, shall be appropriated for that purpose.

Proviso

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 24, 1824.

AN ACT, to encourage the killing of wolves.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That any person who shall kill any wolf or wolves, Bounty for killing wolves within this state, shall receive the following compensation, that is to say:—for each wolf above six months old the sum of three dollars, and for each wolf under the age of six months, one dollar and fifty cents.

Sec. 2. That any person claiming such reward shall produce the scalp or scalps of the wolf or wolves so killed with the ears entire, within twenty days after such wolf or wolves have been killed, to the clerk of the court of common pleas of the county within which such wolf or wolves were killed, which clerk shall administer to the person producing the scalp or scalps as aforesaid the following oath or affirmation: (as the case may be,) “You A B, do solemnly swear or affirm, (as the case may be) that the scalp or scalps now produced by you is the scalp or scalps of a wolf or wolves (as the case may be) that were taken and killed within this county by you within twenty days last past, and you verily believe the same to have been over or under the age of six months, [as the case may be] and that you have not spared the life of any she wolf within your power to kill, with a design to increase the breed,” which oath or affirmation shall be by the clerk taken in writing and subscribed by the person presenting the scalp or scalps aforesaid. Scalps and ears to be produced in twenty days

Sec. 3. That the clerk before whom such oath or affirmation was made after causing the scalp or scalps to be destroyed in his presence, shall file the deposition so taken, in his office, and under the seal thereof grant to the person an order on the treasurer of state for the amount of monies that may be due such person by the provisions of the first section of this act, and the person receiving such order shall pay to the clerk granting the same twenty five cents, which order shall be received by any collector of the taxes on land in discharge thereof. Oath to be administered

Sec. 4. That the county commissioners of any county within this state, may increase the bounty for wolf scalps to six dollars, which additional bounty shall be paid out of the county treasury on the order of the county auditor. Clerk to destroy ears and give a certificate

JOHN BIGGER,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

December 22, 1821;

AN ACT for the maintenance and support of illegitimate children.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That on complaint made to any justice of the peace in this state, by any unmarried woman resident therein, who shall hereafter be delivered of a bastard child; or being pregnant with a child, which, if born alive, may be a bastard; accusing on oath or affirmation any person of being the father of said child, the justice shall take such accusation in writing, and thereupon issue his warrant directed to the sheriff, coroner or constable of any county of this state, commanding him forthwith to bring such accused person before said justice to answer to such complaint, and on return of such warrant, the justice in the presence of the accused person, shall examine the complainant under oath respecting the cause of her complaint, and such accused person shall be allowed to ask the complainant when under oath, any questions he may think necessary for his justification; all of which questions and answers together with every other part of the examination shall be reduced to writing by the justice of the peace, and if on such examination the party accused shall pay or secure to be paid to the complainant such sum or sums of money or property as she may agree to receive in full satisfaction, and shall further give bond to the overseers of the poor of the township in which said complainant shall reside, and their successors in office, conditioned to save such township free from all charges towards the maintenance of said child, then and in that case the justice shall discharge the party accused out of custody, on his paying the costs of prosecution: *Provided,* That the agreement aforesaid shall be made or acknowledged by both parties in the presence of the justice who shall thereupon enter a memorandum of the same upon his docket.

Warrant may issue when unmarried woman has been delivered of, or is pregnant with, bastard child

Proceeding thereon

Sec. 2. That when any woman has a bastard child, and neglects to bring a suit for its maintenance, or commences a suit and fails to prosecute to final judgment, the overseers of the poor, in any township, interested in the support of any such bastard child, where sufficient security is not offered to save the township from expense, may bring a suit in behalf of the township, against him who is accused of begetting such child or may take up and prosecute a suit begun by the mother of such child.

Overseers of poor may prosecute suit against putative father

Sec. 3. That in case such accused person do not comply with the provisions in the first section of this act contained, the justice to whom such complaint was made, shall bind such person in a recognizance to appear at the next court of common pleas, with sufficient security, in a sum not less than two hundred dollars, nor more than five hundred dollars, for the benefit of the township in which such bastard child shall be born, to answer such accusation, and to abide the order

Justice may order putative father to enter into recognizance who, failing may be committed

of said court thereon; and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer to such complaint.

Sec. 4. That if at the time of such court, the woman be not delivered, or be unable to attend, the court shall order the renewal of the bonds of recognizance, that the accused person shall be forthcoming at the next court after the birth of the child, at which the mother of said child shall be able to attend, and the continuance of such bonds shall be entered by order of said court, unless the security shall object thereto, and shall have the same force and effect as a recognizance taken in court, for that purpose.

The bonds may be renewed at court

Sec. 5. That where such accused person shall plead not guilty to such charge, before the court to which he is recognized, the court shall order the issue to be tried by a jury, and at the trial of such issue, the examination before the justice shall be given in evidence; and the mother of the bastard child shall be admitted as a competent witness, and her credibility be left to the jury: *Provided always*, That no woman shall be admitted as a witness as aforesaid who has been convicted of any crime which would by law disqualify her from being a witness in any other case, and on the trial of the issue, the jury shall in behalf of the man accused, take into consideration any want of credibility in the mother of the bastard child, also any variations in her testimony before the justice and that before the jury, and also, any other confession of her at any time, which does not agree with her testimony, or any other pleas or proofs made and produced on behalf of such accused person.

On plea of not guilty, issue to be tried by jury

Mother competent witness

Provide

Sec. 6. That in case the jury find the defendant guilty, or such accused person before the trial shall confess in court that the accusation is true, he shall be judged the reputed father of such child, and shall stand charged with the maintenance thereof, in such a sum or sums as the court shall order and direct, with payment of costs of prosecution; and the court shall require the reputed father, to give security to perform the aforesaid order; and in case the said reputed father shall neglect or refuse to give security as aforesaid, and pay the costs of prosecution he shall be committed to the jail of the county, there to remain till he shall comply with the order of the court: *Provided*, That such putative father confined in prison for not complying with the sentence and order of the court as in this section provided, shall be entitled to the benefit of the prison rules, and of the act for the relief of insolvent debtors, in the same manner and upon the same principles, as persons imprisoned for debt.

Father found guilty or confessing to stand charged with maintenance and give security or be committed.

Provide

Sec. 7. That the act entitled, "an act for the mainten-

plaintiff in the name and for the benefit of the defendant, a bond with two or more responsible persons of the county, as securities in treble the value of the goods and chattels replevied (which value shall be ascertained by the oath of two or more credible disinterested persons, whom the sheriff or other officer shall swear truly to assess the value thereof) conditioned that the plaintiff appear at the court to which the writ is returnable, and prosecute his suit to effect and pay all costs and damages which shall be awarded against him; which bond the sheriff or other officer shall return with the writ for the security and benefit of the defendant; and if the plaintiff shall neglect or refuse to cause such bond to be executed as aforesaid, within twenty four hours from the taking of such goods or chattels by virtue of such writ, the sheriff or other officer shall return such goods or chattels to the defendant; and if any sheriff or other officer shall deliver any property taken by writ of replevin to the plaintiff or detain the same from the defendant, without taking such security, or shall take insufficient security, he shall be liable in damages to the defendant. Condition.

Sec. 4. That on the return of every writ of replevin, the suit shall be subject to the same usages and rules of practice as in other cases; and if the plaintiff discontinue, become non-suit, or judgment be rendered against him on demurrer or he should otherwise fail to prosecute his suit to final judgment, then and in each of these cases it shall be lawful, and it is hereby made the duty of the court, when required by the defendant to empanel and swear a jury to enquire and assess the value of the goods and chattels so replevied as aforesaid, or if on trial of the issue joined, the jury should find for the defendant, then the value of said goods and chattels shall be assessed by such jury; and the court shall thereupon render judgment in favor of the defendant, for the value so found by the jury in either of the foregoing cases, with adequate damages not exceeding fifty per cent and interest from the time of their being replevied; but if the jury find that the defendant did unlawfully detain such goods and chattels, and that they were the property of the plaintiff, they shall assess adequate damages for such detention. Plaintiff non
sulted, jury to
be empaneled

If judgment
for defendant
damages to be
assessed.

Sec. 5. That the defendant shall not institute a suit on the bond given by the plaintiff as provided in the third section of this act, until he shall have issued an execution; and it shall be ascertained by the return of such execution, that the plaintiff has not in the county, personal or real estate whereon to levy and make the amount of the said judgment, penalty and costs. When plain-
tiff's bond may
be sued.

Sec. 6. That the act allowing and regulating writs of replevin passed twenty-second of January, one thousand eight hundred and thirteen, be, and the same is hereby repealed. Act repealed.

This act shall be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
 ALLEN TRIMBLE,
Speaker of the Senate.

January 2, 1874.

AN ACT authorizing and regulating arbitrations.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That all persons who have any controversy or controversies, except where the possession or title of real estate may come in question, may submit said controversy or controversies to the umpirage or arbitration of any person or persons, to be mutually agreed upon by the parties, and they may make such submission a rule of any court of record within this state.

Controversies may be submitted to arbitrator, except &c

Shall enter into bonds when they agree to make arbitration a rule of court.

Sec. 2. That when any persons have agreed to submit any matter or matters in controversy between them to umpirage or arbitration as aforesaid, and to make the same a rule of court, they shall enter into arbitration bonds, which bonds shall be conditioned for the faithful performance of the award or umpirage, and set forth the name or names of the umpire or arbitrators, and the matter or matters submitted to his or their determination, and shall also expressly state their agreement, that the submission may be made a rule of any court of record within this state, or that it may be made a rule of such particular court as they may name or point out in their submission.

Bonds shall specify some time & place.

Proviso.

Sec. 3. That the said arbitration bonds shall specify some time and place, at which the umpire or arbitrators shall attend to hear and determine upon the matter or matters in dispute, and also give said umpire or arbitrators liberty to adjourn, from time to time, until the umpire is prepared to make up his umpirage, or the arbitrators are agreed upon their award: *Provided*, Some time certain be fixed in said bonds, at which said umpirage or award shall be made up.

Clerk &c. of peace may issue subpoenas.

Sec. 4. That the parties shall have the benefit of legal process to compel the attendance of witnesses, which process shall be issued by the clerk of the court of common pleas for any county, or by any justice of the peace for the township where the arbitration or umpirage is held, so far as his jurisdiction extends, and shall be returnable before the umpire or arbitrators on a day certain, and any person disobeying such process, shall be deemed guilty of contempt of the court from which such process issued, and shall be subject

to the same penalties and forfeitures, as are provided for disobeying writs of subpoena in other cases; and the costs of such witnesses shall be taxed by the umpire or arbitrators, according to the provisions contained in the law ascertaining the fees of witnesses, which costs, together with the sum hereinafter allowed to the umpire or arbitrators, shall be stated in the award or umpirage, and shall be made a part of the rule of court, and all witnesses examined by the umpire or arbitrators, shall be under oath or affirmation, which oath or affirmation any justice of the peace of the proper county, is hereby authorized to administer.

Sec. 5. That the award or determination of the umpire or arbitrators, shall be drawn up in writing, and shall be signed by such umpire, or by a majority of the arbitrators agreed upon in the submission, and a true copy of the said award or umpirage shall, without delay, be delivered by the umpire or arbitrators, to each of the parties, and if either of the parties shall refuse or neglect to obey the said award or umpirage, the other party may return the same, together with the submission or arbitration bond to the court named in the submission, or if no particular court be named in the submission, then to the court of common pleas or the supreme court, and the submission and award or umpirage so returned, shall be entered on record, and filed by the clerk and a rule of court thereupon made, and after such rule is made, the party disobeying the same, shall be liable to be punished as for a contempt of court, either by sequestration or execution, as the nature of the case may require, which process shall not be stayed or impeded by order of any other court of law or equity, or by the court from whence it issued, until the parties shall, in all things, obey the award or umpirage, unless it shall be made to appear on oath or affirmation, that the umpire or arbitrators misbehaved, and that such award or umpirage was obtained by fraud, corruption or other undue means, and no testimony shall be received to impeach or invalidate the said award or umpirage, after the next term to which the submission was made a rule of court: *Provided*, That before any submission be made a rule of court, the party moving for such rule, shall produce to the court satisfactory proof of the due execution of the submission or arbitration bond, and also that the party refusing or neglecting to obey the award or umpirage, hath been furnished with a true copy thereof, at least ten days before the award or umpirage is returned to the clerk of any court in this state, to be entered on record, and filed in his office.

Award to be in writing.

Copies to be delivered to parties

Either of parties may return bond and award to court and have a rule.

Proviso.

MICHAEL BALDWIN,
Speaker of the House of Representatives,
 DANIEL SYMMES,
Speaker of the Senate,

February 14, 1805.

AN ACT, to regulate the admission and practice of attorneys and counsellors at law.

Attorneys and counsellors must be admitted by: two judges of the S. court. Sec. 1. *Be it enacted by the General Assembly of the state of Ohio.* That from and after the passage of this act, no person shall be permitted to practice as an attorney or counsellor at law, or to commence, conduct, or defend any action, suit or plaint in which he is not a party concerned, either by using or subscribing his own name, or the name of any other person unless he shall have been previously examined, and admitted by any two judges of the supreme court.

Judges to examine applicant. Sec. 2. That whenever any person shall apply to any two judges of the supreme court, to be admitted as an attorney or counsellor at law, it shall be the duty of the judges of said court, either by themselves or some person or persons, learned in law, by them appointed to examine such applicant, and if on such examination had, the said judges shall be of opinion that the applicant is qualified, and is of good moral character, they shall direct their clerk to administer an oath of office, and to record the admission of such applicant.

Oath to be administered.

Residence of one year required. Sec. 3. That no person shall be admitted to such examination, unless he shall have previously resided one year within this state, and shall produce from some attorney or counsellor at law, a certificate setting forth that such applicant is of good moral character. and that he has regularly and attentively studied the law during the period of two years previous to his application for admission. and that he believes him to be a person of sufficient legal knowledge and abilities to discharge the duties of an attorney or counsellor at law:

A certificate of moral character, two years study, &c. *Provided,* That any person residing in this state, producing satisfactory evidence to the said judges, that he has been regularly admitted as an attorney or counsellor at law, in any court of record within the United States, and has been in the practice of law in some one of the United States during the period of two years previous to his application for admission, may be admitted to an examination at any time, by producing to said judges, from some practising attorney or counsellor at law, a certificate setting forth, that such applicant is of good moral character and has sustained the character of an able and fair practitioner, and said applicant satisfying the judges aforesaid by affidavit or oath, that he actually resides in this state and intends to become a citizen thereof.

Proviso

Attorneys, &c. may be suspended. Sec. 4. That the supreme court or court of common pleas shall have power to suspend any attorney or counsellor at law, from practising in their respective courts, for misconduct in office, or for good cause shewn: *Provided always,*

Proviso. That every attorney or counsellor, before he is suspended, shall receive a written notice from the clerk of the court stat-

ing distinctly the grounds of complaint or the charges exhibited against him, and he shall, after such notice, be heard in his defence: and shall be allowed reasonable time to collect and prepare testimony in his justification: *Provided* also, That in case of a suspension by the court of common pleas, an appeal may be had to the supreme court.

Sec. 5. That no person shall hereafter be permitted to practise as an attorney or counsellor at law, in any court in this state, who is not a citizen of the United States, and who does not actually reside in this state, any license heretofore granted to the contrary notwithstanding, except in cases in which he shall have been employed before the taking effect of this act; or who holds a commission as judge of the supreme court, or a court of common pleas, or who is clerk of the supreme court or a court of common pleas in any court of which he is clerk, or who is a sheriff, coroner or deputy sheriff: *Provided*, That nothing herein contained shall in any wise prevent attorneys or counsellors at law, from practising in this state, who resides in states or territories which permit attorneys or counsellors at law, residing in this state to practise therein, and provided further that nothing in this act, contained, shall prevent any judge of any of the courts of this state, from finishing any business by him undertaken in the circuit or district courts of the United States prior to his appointment as judge.

Sec. 6. That if any suit shall be dismissed for the non-attendance of an attorney practising in any court of record within this state, such attorney not having a just and reasonable excuse, it shall be at his costs, and he shall be liable for all damages his client shall sustain by such dismissal or any other neglect of his duty, to be recovered in any court of record within this state; and every attorney receiving money for his client, and refusing or neglecting to pay the same when demanded, shall be proceeded against in a summary way, on motion before any court of record, either in the county, in which judgment shall have been rendered, on which such money shall have been collected, or in the county in which such attorney or counsellor shall reside, in the same manner and be liable to the same penalties as sheriffs and coroners are liable to, for money received on execution.

Sec. 7. That the act entitled "an act regulating the admission and practice of attorneys and counsellors at law, passed January twenty-seventh, eighteen hundred and ten, and the act amendatory thereto, passed January twenty-eighth, eighteen hundred and nineteen, be, and the same are hereby repealed.

Must be citizens of the U. States.

Judges, clerks &c prohibited from practising as attorneys &c

Proviso

Attorneys liable for negligence &c

Acts repealed

Effect.

This act shall take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
 ALLEN TRIMBLE,
Speaker of the Senate.

February 14, 1824.

AN ACT, securing certain persons from arrest, in certain cases.

What persons are privileged from arrest. Suits pending to be stayed. Time for arresting privileged persons. Electors on election days.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the members of the senate and house of representatives, and the clerks, sergeant at arms, door keeper and messengers, of either branch of the general assembly, shall be privileged from arrest during the sitting of the legislature, and also during the time necessarily employed in travelling to, and returning from the place of their meeting, allowing one day for every twenty miles of the distance, by the road most usually travelled, and all proceedings in suits pending, in which one of the persons above mentioned is a party, shall be stayed during the time aforesaid; and whoever shall arrest either of the persons above named, during the time they are entitled to privilege, as above provided, shall forfeit and pay, for every such offence, the sum of one hundred dollars, to be recovered with costs of suit, by action of debt, in the name and for the use of the person injured, and all persons legally qualified to vote for representatives to the general assembly, shall be privileged from arrest during the time of their attendance at the election, and while on the way going to and returning from such elections.

Judges, clerks S. C. and presidents of C. P.

Sec. 2. That the judges, clerks of the supreme court, and presidents of the court of common pleas, shall be privileged from arrest, while attending at the said courts, and also during the time necessarily employed in going to, holding and returning from the said courts, which it is made their duty to attend.

Associate judges and officers of court.

Sec. 3. That the associate judges of the several courts of common pleas within this state, during the sitting of their respective courts, and all attorneys, counsellors at law, clerks, sheriffs, coroners, constables and criers, and all suitors, witnesses and jurors, while attending court, and while going to and returning from court, shall be privileged from arrest.

Persons doing militia duty.

Sec. 4. That no person shall be arrested while doing militia duty under the order of his commanding officer, or while going to or returning from the place of duty or parade; nor shall any person be arrested in the senate

chamber or house of representatives, during their sitting, or any court of justice, during the sitting of the court, or the first day of the week, commonly called Sunday, or on the fourth day of the month of July, the anniversary of American Independence. Exempt from arrest in certain places & on certain days.

Sec. 5. That nothing herein contained shall be construed to extend to cases of treason, felony or breach of the peace: *Provided also*, That when a member, or any of the aforesaid members of the general assembly, shall be arrested during the sitting of the legislature, upon any charge of treason, felony or breach of the peace, it shall be the duty of the person issuing the process on which the arrest is made, forthwith to give written notice thereof to the house of which the person arrested shall be a member or officer. Privileges not to extend to treason felony and breach of peace. *Provide*

Sec. 6. That nothing herein contained shall be construed to privilege any person herein named from being served, at any time with a summons or notice to appear; and all arrests, not contrary to the provisions herein contained, made in any place, or on any river or water course, within or bounding on the state, shall be deemed lawful; and if any person shall be arrested contrary to the provisions herein contained, such person may and shall be discharged by a writ of habeas corpus, or in a summary way, by motion, before the court from which the process shall have issued, at the costs of the party suing out such process. Summons or notice to appear may be served at any time. *Persons unlawfully arrested may be discharged.*

Sec. 7. That an act entitled 'An act regulating privileges in certain cases,' passed December the sixth, one thousand seven hundred and ninety-nine, be and the same is hereby repealed. Acts repealed?

This act shall commence and take effect from and after the first day of June next. Effect?

MICHAEL BALDWIN,
Speaker of the house of representatives.
DANIEL SYMMES,
Speaker of the senate.

February 14, 1805.

AN ACT granting licenses and regulating ferries, taverns and stores.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That no person shall be permitted to keep a store or tavern in any county in this state, or a ferry across any stream running through or bounding thereon, without having obtained a license from the court of common pleas for the proper county: *Provided,* That any person opening a new store in vacation of court, may obtain a permit from the clerk there- No person to keep store, tavern, or ferry without license. *Provide*

of, on producing to the said clerk the certificate of the treasurer, of the said county, that he has paid into the county treasury, a sum which shall bear the same proportion to fifty dollars, as the time from the date thereof, until the first day of the next term of the court of common pleas, shall bear to three hundred and sixty-five days.

Notice must be given of application for tavern or ferry and petition presented

Sec. 2. That any person applying for a license to keep a tavern in this state or a ferry across any of the waters or streams running through or bounding thereon, shall produce satisfactory evidence to the court of his having given notice by advertising in three of the most public places in the township or neighborhood where the tavern or ferry is proposed to be kept, of his intention to apply for a license, and shall also present a petition or recommendation in writing subscribed by twelve or more respectable free-holders residing in the neighborhood, setting forth that a tavern or ferry (as the case may be,) is needed at said place, and that the applicant is a suitable person to keep the same, and the court of common pleas, on granting any license under the provisions of this act, shall fix the prices of said license, which for a store, shall not be less than ten dollars, nor more than one hundred dollars, having special regard to the apparent business done by the applicant, and to his situation for vending merchandize: *Provided*, That goods, wares and merchandize, of the growth, production or manufacture of the applicant, shall not be taken into the estimate upon which the price of his license shall be fixed: And the price of a tavern license shall not be more than forty dollars nor less than five dollars; and for a ferry not more than thirty dollars nor less than two dollars, having in each case a proper regard to the apparent advantages of the applicant's situation for business; and the clerk shall give the applicant a certificate of the same; and on the applicants producing the county treasurer's receipt for the payment of the sum so fixed, he shall receive a license under the seal of the court, which shall continue one year.

Price of licenses

Provide

To whom licence for ferries shall be granted.

Provide

Sec. 3. That the person owning or possessing lands on both sides of any stream where a ferry is proposed to be established, shall have exclusive right to a license for a ferry at such place; and when the opposite banks are owned by different persons, the right to the ferry shall be mutual; but if the owner does not apply, the court may grant a license to any person applying for the same, except where either of the landings are not on a public highway, the consent of the owner of the ground, shall first be had in writing: *Pr. ovided, however*, That nothing herein contained shall be so construed as to prevent any person from ferrying passengers across a small stream in high water, and the courts of common pleas are hereby authorised to direct their clerk to give any applicant a permit for that purpose, when in their opinion the streams is so small to justify the expense of a license, and *Pr.*

vided also. When any person shall apply for a renewal of his ^{Provide.} tavern or ferry license in the same house or at the same place where he kept the preceding year, the same may be granted or renewed without notice or petition.

Sec. 4. That when a license shall expire in vacation and the person who obtained the same shall procure a renewal, ^{License may include time in vacation.} the latter license shall include the time from the expiration of the former as well as the time to which it shall extend in future, and the applicant shall pay a rateable proportion for the whole time therein mentioned, and shall thereupon be exonerated from any penalty to which he would be otherwise liable: *Provided, however.* That in all applications for a ferry or tavern when objections are made, ^{Provide.} the court may grant or refuse the same at their discretion.

Sec. 5. That the clerk of any court of common pleas may grant a license or permit to any pedler or travelling merchant to retail goods, wares and merchandize for any time not exceeding one year from the date; said travelling merchant or pedler paying to the treasurer of said county, for the use of the state, at the rate of twenty dollars per annum, for the time mentioned in said license for each and every waggon, cart or other carriage, or each boat or other water craft, employed in the conveyance of such merchandize, and if any pedler or travelling merchant, shall vend, sell or retail, or shall offer to vend, sell or retail any goods, wares or merchandize without such license or permit, ^{Pedlers vending merchandize without licence to be fined.} he shall pay not less than eighteen nor more than sixty dollars, to be recovered with costs of suit before any justice of the peace of the county where the offence was committed, and if any pedler or travelling merchant, shall neglect or refuse to shew his license or permit to any person of full age demanding the same, it shall be conclusive evidence against him, of his not having a license, and it shall be the duty of each county-treasurer, who shall have received any money under the provisions of the preceding section, to pay over the same to the collector of land tax, within his county, on or before the first day of December in each year; and each collector, shall account for all money by him received and pay the same into the state treasury: *Provided,* That nothing in this act shall be construed to render it necessary for a pedler to obtain ^{Provide.} license, who uses no carriage or water craft, for the conveyance of his merchandize, nor to any one who deals only in books and stationary: *Provided also,* That no pedler or travelling merchant, shall take or receive any license or permit ^{Provide.} under the provisions of this act for a less time than three months.

Sec. 6. That every person obtaining a license to keep a ferry, shall provide and keep in complete repair, a good ^{Licensed ferry-men to keep good boat &c.} and sufficient boat for the safe conveyance of persons and property and when the river or creek over which the ferry

is kept, is passable, shall with a sufficient number of hands to work and manage the boat, give due attendance from day light in the morning until dark in the evening, and shall moreover at any hour of the night or day (that the creek or river can be passed) when called upon, convey the United States mail or other public express across said ferry, and if any person having obtained a license as aforesaid, shall fail or neglect to perform the duties herein enjoined or any of them, the person so offending shall forfeit and pay for every such offence a sum not exceeding five dollars, to be recovered before any justice of the peace of the proper township at the suit of any person prosecuting for and making due proof of such failure or neglect, and if any keeper of a ferry as aforesaid shall demand and receive a higher rate or sum for ferriages than shall be allowed by the court of common pleas of the county wherein such ferry is kept, the person so offending shall forfeit and pay for every such offence, a fine not exceeding ten dollars recoverable before any justice of the peace of the proper township, by any person making due proof thereof, to be disposed of as hereinafter provided.

Liab. for neg-
ligence, &c

Court to fix
rate of ferge

Sec. 7. That the court of common pleas at the same time they grant a licence to keep a ferry shall also fix the rate of ferriages which the ferry keeper may demand and receive for the transportation of persons and property, and it shall be the duty of the clerk of said court to furnish every person taking out a licence to keep a ferry, with a list of the rates of ferriage, which list the ferry keeper shall post up at the door of his ferry house or some conspicuous place convenient to said ferry.

Rioting &c per-
mitted in tav-
erns to be pun-
ished

Sec. 8. That if any licensed tavern keeper shall permit or allow any kind of rioting, revelling, gambling or drunkenness in his house, or on his premises, every such tavern keeper shall for every such offence, forfeit and pay a sum not exceeding fifty dollars, on the presentment or indictment of the grand jury, and the licence of such tavern keeper shall be forfeited, and the court shall not relievce such tavern keeper for the space of twelve months.

Grand jury to
have list of
licenced tav-
ern keepers

Judge to give
this act in
charge

Sec. 9. That every clerk of the court of common pleas shall on the first day of the term of each court, deliver to the grand jury an accurate list of all persons holding store, ferry or tavern licences within his county and it shall be the duty of the presiding judge to give this act in charge to the grand jury, whose duty it shall be to make enquiry and give information of any violation thereof, except in cases where jurisdiction is given to justices of the peace.

Fees for li-
cence

Sec. 10. That every person obtaining a licence or permit of any kind under the provisions of this act, shall pay to the clerk fifty cents for such licence or permit.

Venders of
merchandise

Sec. 11. That if any person shall keep a store, ferry or tavern, or shall retail any goods, wares or merchandize, or

vend or sell any spiritous liquors of any kind whaterer, to be drunk at the place where sold, or by less quantity than one quart, without being duly authorized, the person so offending shall forfeit and pay any sum not exceeding thirty dollars, to be recovered by indictment.

or spiritous liquors to be fined.

Sec. 12. That if any justice of the peace, clerk, sheriff or constable shall neglect or fail to comply with the requisitions of this act, the person so offending, shall forfeit and pay for every such offence a sum not exceeding fifty dollars, at the discretion of any justice of the peace, before whom the same may be recovered for the use of the county: *Provided*, That in all cases made cognizable by a justice of the peace, either party may appeal to the court of common pleas as in other cases.

Clerks &c. liable for not complying with this act.

Appeals allowed.

Sec. 13. That all actions or suits brought under the provisions of this act, shall be in the name of the state of Ohio, and the court taking recognizance thereof, shall keep a record of all fines and forfeitures recovered under the same, and sheriffs, constables or other officers shall pay all monies within twenty days after receiving the same into the county treasury: And justices of the peace and clerks of courts before whom any fine is recovered shall present an accurate account thereof to the county auditor on or before the first day of June annually: And clerks of courts shall in like manner, return a list of all licences by them issued (except pedlars license) and to whom, and the price of each respectively and it shall be the duty of the county auditor to inform and prosecute all offenders against this statute, especially such offences as are cognizable before justices of the peace.

Actions shall be prosecuted in the name of the state of Ohio.

Account of fines recovered to be presented to C. Auditor or

Sec. 14. That the act entitled "An act for granting licences, and regulating ferries, taverns and stores" passed the twenty fifth day of February, eighteen hundred and twenty, and the act, entitled "An act to amend an act, entitled an act, for granting licenses and regulating ferries, taverns and stores, passed the twenty third day of January, eighteen hundred twenty three, and all other acts and parts of acts coming within the purview of this act, be and the same are hereby repealed.

Acts repealed

This act to take effect and be in force, from and after the first day of June next.

Effect,

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 6, 1824.

AN ACT concerning apprentices and servants.

Sec. 1. Be it enacted by the General Assembly of the state of

How minors
may be bound
to service, &c

Ohio. That if any male person within the age of twenty-one years, or any female person within the age of eighteen years, shall be bound by indenture or covenant of his or her own free will and accord, and by and with the consent of his or her father, or in case of the death or inability of his or her father, by and with the consent of his or her mother or guardian, to be expressed in such indenture or covenant, and signed by such parent or guardian sealing and signing the same, and not otherwise, to serve as a clerk, apprentice, or servant in any art, craft, mystery, science, profession, trade, employment manual occupation, or labor, until, (if a male) he arrives at the age of twenty-one years, and if a female, until she arrive at the age of eighteen years, or for any shorter period of time then the said clerk, apprentice or servant, so bound as aforesaid, shall serve accordingly.

Trustees of
townships with
justice of
peace may
bind out desti-
tute children.

Sec. 2. That it shall be the duty of the trustees of townships by and with a justice of the peace, to bind out at their discretion any orphan, destitute child, or the child of any poor person who shall not provide for such child, as a servant or apprentice to any suitable person, who may be willing to take such child till the age of twenty-one years if a male; or eighteen years if a female, or for a less time; and it shall be the duty of all parents, guardians and trustees of townships, to insert the age of such minor or child if known, in such indenture or covenant together with the time he or she may have to serve and the date when the term of service shall expire, and when the minor or child's age is unknown, it shall be inserted according to the best information that can be obtained, which in relation to the time of service, shall be deemed the true age of such minor or child.

Age of minor
to be inserted
in indenture.

Covenants on
part of master
or mistress.

Sec. 3. That the indenture or covenant by which any minor or child may be bound in as aforesaid, shall at least, contain a stipulation on the part of the master or mistress, to teach or cause such minor child to be taught and instructed to read and write, and so much arithmetic as will include the single rule of three; and at the expiration of such term of service or apprenticeship to furnish such minor or child with a new bible, and at least two suits of common wearing apparel.

Indenture to
be recorded

Sec. 4. That the master or mistress shall have each indenture or covenant of service or apprenticeship, recorded within three months from the execution thereof by the recorder of the proper county, in a book to be provided by him for that purpose, for the recording whereof the master or mistress shall pay the said recorder, at the rate of ten cents for each hundred words; and no indenture or covenant of service or apprenticeship, hereafter executed, shall be valid without such stipulation, and recording, and all considera-

tions which shall be allowed by the master or mistress, in any contract of service or apprenticeship shall be secured to the sole use of the minor or child thereby engaged; and all contracts that shall be made by any parent, guardian, trustees of townships, or by any for himself or herself pursuant to this act shall, according to the tenure thereof be good and effectual in law against all parties, and the minors thereby engaged; and a certified copy of the record of any indenture, or covenant of service, or apprenticeship, shall be of equal validity with the original indenture, or covenant in all cases where the original cannot be had.

Sec. 5. That it shall be the duty of all parents and guardians, and of the trustees of townships for the time being to enquire into the usage of the minor, or child, bounden as aforesaid, and to defend such minor, or child, from the cruelty, neglect, or breach of covenant of the master, or mistress, for which purpose such parent, guardian, trustee, or minor, or child; by his or her next friend may complain against such master, or mistress, before any justice of the peace of the county, where such master or mistress may reside; and such justice of the peace is hereby required to summon such master or mistress, forthwith to appear before him, and if he can reconcile the parties to each other, he shall make such order therein, as the equity and justice of the case may require; but if he shall be unable to settle and accommodate the difference in dispute between the parties, he shall issue a venire to any constable of the township, to summon five disinterested freeholders, to be therein named, to meet at a time and place certain, not exceeding three days thereafter, which jurors, when met and qualified shall proceed to hear the evidence in the case, and if they find such master or mistress guilty of a breach of his or her indenture, or covenant, or of neglect, or refusal of necessary food or clothing or of cruelty toward such minor or child, they shall render their verdict in writing accordingly and assess the damages such minor or child may have sustained, and thereupon such justice shall render judgment, that such minor or child be discharged from his or her service or apprenticeship, with the damages and costs of suit, against such master or mistress, and award execution accordingly, in which case the indenture or covenant of service or apprenticeship, shall be deemed void from the rendition of judgment, and such minor or child, may be bound out anew, in the manner specified, but if the jury find the defendant not guilty, the justice shall render judgment for costs against such parent, guardian, next friend or trustees, (where the complaint of the trustees shall be without probable cause,) as the case may be, and award execution accordingly.

Sec. 6. That every person who shall counsel, persuade, entice, aid or assist any clerk, apprentice or servant, to run away, apprentice

Certified copy
evidence.

Remedies a-
gainst master
or mistress for
cruelty, &c. to
ward.

to run away
renders liable
to action.

away or absent himself or herself, from the service of his or her master or mistress, shall forfeit and pay a sum not exceeding fifty dollars, to be sued for and recovered by action of debt, with costs, by such master or mistress, before any justice of the peace, having cognizance thereof, and every person who shall entertain, harbor or conceal any clerk, apprentice or servant, knowing such clerk, apprentice or servant to have run away, shall forfeit and pay to such master or mistress triple damages, to be recovered in an action on the case before any court having competent jurisdiction thereof.

Concealing
or harboring
&c.

Apprentices
running away
liable to action

Sec. 7. That if any clerk, apprentice or servant, bounden as aforesaid, shall absent himself or herself without leave first obtained from the service of his or her master or mistress, or shall run away, so that said 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 be lawful for the master or mistress of such clerk, apprentice or servant, to have an action on the case, in any court having cognizance thereof, against such clerk, apprentice or servant, for the damages that such master or mistress may have sustained, by reason of the absence of such clerk, apprentice or servant.

Act repealed

Sec. 8. That the act concerning apprentices and servants, passed January twenty seventh, one thousand eight hundred and six, be and the same is hereby repealed.

Effect

This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE.

Speaker of the Senate.

February 23, 1824.

AN ACT to regulate the mode of petitioning the Legislature in certain cases.

Before petition
for a new coun-
ty, notice
must be given.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That previous to any petition being presented to any future legislature, praying that a new county may be erected in this state notice, of the intention of presenting such petition, shall be given at least thirty days before the ensuing session of the legislature, by advertising the same in a newspaper printed in each county from which such new county is intended to be taken, or in case no such paper is printed within such county or counties; then notice shall be given by advertisement to be fixed at the door of the house where courts are held for such county, for the aforesaid period of

thirty days, and such notice shall set forth the boundary lines of the new county for which the petitioners do intend to pray.

Sec. 2. That in all cases when petitions are intended to be presented to any future legislature whereby the particular right or privilege of any individual or individuals, bodies politic or corporate, may be affected or infringed, notice of such intention shall be given in the county or counties where the party or parties interested may reside, in the same manner, and for the same length of time, as provided in the first section of this act; but if the party or parties interested as aforesaid, do not reside within this state, then four months notice of such intended application shall be given in at least one of the public papers printed within this state, and the session to which such petition is contemplated to be presented; shall in all cases be designated in the notice, and no petition or memorial shall be received by any future legislature, that has been a longer time in circulation than six months previous to the commencement of the session, at which it is presented, nor shall any names of petitioners be written on a separate paper or sheet and attached to the petition.

When petitions are intended to be presented when individual rights may be affected notice must be given.

Sec. 3. That it shall be the duty of the speaker of that branch of the legislature, to which such petition or memorial may be offered, to enquire at the time such petition or memorial is presented, whether notice thereof has been given agreeably to the requisitions of this act, or whether such petition or memorial has been a longer time in circulation, than is allowed by this act, and if satisfactory proof of the aforesaid requisitions is produced, then such petition or memorial, shall be received.

When petition is presented, speaker to make inquiry.

Sec. 4. That all persons hereafter, petitioning the legislature, for the erection of a new county, or a review, or removal of a seat of justice, within this state, shall in their petition or petitions, identify the place, where they wish the seat of justice to be fixed, therein, and shall also present the notice, required by the first section of this act, with said petition.

For new county, &c. petition must shew where seat of justice is wanted.

Sec. 5. That the act entitled "an act, to regulate the mode of petitioning the legislature, in certain cases," passed February twenty-two, eighteen hundred and twenty, be, and the same is hereby repealed.

Acts repealed.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE.

Speaker of the Senate:

February 21, 1824.

AN ACT making a temporary appropriation of money, for certain purposes.

\$12000 appropriated to payment members &c. Sec. 1. *Be it enacted by the general assembly of the state of Ohio:* That the sum of twelve thousand dollars, be, and the same is hereby appropriated for the payment of members and officers of the present general assembly, in part of their compensation, for the present session, to be paid on the order of the auditor, out of the state treasury.

\$1000 to printer. Sec. 2. That the sum of one thousand dollars, be, and the same is hereby appropriated for the payment, in part, of the person employed to print the laws, journals, and bills, of the present session of the general assembly, agreeably to contract.

\$1500 to penitentiary. Sec. 3. That the sum of fifteen hundred dollars, be appropriated for defraying in part the expenses of the penitentiary. For the auditor of state, to enable him to refund money, where the taxes on lands have been twice or improperly paid, five hundred dollars; for the payment of Brigade Inspectors, the sum of five hundred dollars; and for the payment of Adjutants, a sum not, exceeding one hundred and fifty dollars, to Silas K. Everet, the sum of fourteen dollars, for services rendered as clerk of the committee, appointed by both houses to examine the report of the committee of revision, for the purpose of paying the bounty, allowed on wolf scalps, two thousand dollars.

Other appropriations.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,

January 6, 1824.

Speaker of the Senate.

AN ACT fixing the salary of the Governor, Secretary of state, Treasurer, Auditor, chief Clerk in the Auditor's office, Supreme judges, and President judges of the court of common pleas.

Salaries. Governor, Secretary, Treasurer, Auditor, Chief clerk, Judges Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That the several officers hereinafter mentioned, shall be entitled to receive for their respective services, the following sums annually, to commence from their respective appointments, and actually qualifying themselves according to law: To the Governor one thousand dollars; to the Secretary of state, eight hundred dollars; to the Treasurer of state eight hundred dollars; to the Auditor of state one thousand dollars; to the chief Clerk in the Auditor's office, six hundred dollars; to the Supreme judges, each twelve hundred dollars; and to the President judges of the courts of common pleas, each one thousand dollars, to be paid

quarterly, to wit: The thirty-first of March, the thirtieth of June, thirtieth of September, and thirty-first of December.

Sec. 2. That all fees or compensation allowed by law to the Auditor of state, for any certified copy or copies of surveys or other documents in his office, shall be paid into the state treasury for the use of the state. Fees of Auditor's office to be paid into treasury,

Sec. 3. That all acts and parts of acts allowing salaries to any of the officers named in this act, and so much of any acts as allows the treasurer a percentage on the three per cent fund be and the same are hereby repealed. Acts repealed,

This act to take effect and be in force from and after the passage thereof. Effect.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate,

February 23, 1824.

AN ACT defining the duties of justices of the peace, and constables in criminal and civil cases.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That the jurisdiction of justices of the peace, in criminal cases, within this state, shall be co-extensive with the counties where they may be respectively elected and reside, and they shall be conservators of the peace throughout the same; and each justice of the peace is authorised and required on view or complaint made on oath, to cause any person charged with a crime or a breach of the laws of this state, to be arrested and brought before him, or some other justice of the peace in said county, and such person to commit, discharge or let to bail, as the nature of the case may require, and recognize each witness as the nature of the offence may require, conditioned, that such witness shall attend on the first day of the court next, to be holden in the county, to give testimony, and not depart the court without leave; and all recognizances thus taken shall be returned by the justice taking the same into the said court of common pleas; in person, or said justice shall cause the same to be transmitted to the prosecuting attorney of the proper county, or to the clerk of the proper court, at as early a time as may be convenient, before the sitting of such court. Jurisdiction in criminal cases, May recognize witnesses. Justices to return recognizances to court &c.

Sec. 2. That the following forms shall be pursued and adopted by the justices of the peace, as nearly as the nature of the case will admit of, on all criminal proceedings, to wit:

Form of affidavit for warrant.

Form of affidavit on which to issue a state warrant.
 The state of Ohio, _____ county, ss.
 Before me A. B. one of the justices of the peace for
 personally came C. D. who being duly sworn according
 to law, do saith and saith than on _____ at
 (here describe the crime or offence) was per-
 petrated on the body or goods (as the case may be) of E. F.
 of _____ by a certain G. H. late of
 (or thus) and that he verily believes that a certain G. H.
 late of _____ is guilty of the fact, or that he has
 been aiding and assisting in the commission thereof, and
 further this deponent saith not _____ C. D.
 Sworn to and subscribed before me, at _____ A. B.

Form of warrant or an assault.

Warrant for an assault
 The state of Ohio, _____ county ss.
 [L. S.] To any constable of _____ Greeting—
 Whereas, complaint has been made before me, one of the
 justices of the peace, in and for the county aforesaid, upon
 oath of C. D. of _____ that E. F. of
 aforesaid, did on the _____ day of
 violently assault, or assault and beat him, the said C. D. at
 _____ in the county aforesaid: These are
 therefore, in the name of the state of Ohio, to command you
 that you take the said E. F. if he be found in your county,
 or further jurisdiction, and him safely keep, so that you have
 his body forthwith before me or some other justice to answer
 unto the said complaint and to be further dealt with according
 to law. Given under my hand and seal this
 day of _____ 18 _____

Form of a search warrant

Form of a search warrant.
 The state of Ohio, _____ county, ss.
 [L. S.] To any constable of said county, _____ Greeting:—
 Whereas, it appears to me, A. B. one of the justices of the
 peace in and for said county, that the following goods and
 chattels, to wit: (here describe the property or articles)
 have within _____ days last past, by some person or
 persons unknown, been feloniously taken, stolen and carried
 away out of the house or from the premises of C. D. of the
 county aforesaid; and that the said C. D. doth (on oath or
 affirmation,) declare that he verily believes that the said
 goods, or a part thereof are concealed in the dwelling house
 or out house of E. F. at _____ in said county; these are
 therefore in the name of the state of Ohio, to authorize and
 require you, with the necessary and proper assistance, to en-
 ter in the day time, into the said house on the premises of
 the said E. F. at _____ aforesaid, and there diligent-
 ly search, for the said goods and chattels; and if the same

or any part thereof, be found upon such search, that you bring the goods so found and also the body of E. F. forthwith, before me or some justice of the peace for said county, to be disposed of and dealt with according to law. Given under my hand and seal this day of 18

Form of a warrant for the peace, or good behaviour.

The state of Ohio, county ss. Form of war
[L. S.] To any constable of Greeting— rant for the
Whereas, A. B. of hath this day made peace or good
oath before me, that he has been threatened by C. D. of behaviour.
and is afraid that the said C. D. will beat
or wound him, he being in fear of his life, whereupon he
hath prayed surety of the peace against him—these are
therefore, in the name of the state of Ohio, to command you
to apprehend the said C. D. and bring him forthwith be-
fore me or some other justice of the peace within and for
said county, to find surety for his personal appearance at
the next court of common pleas, and in the mean time to
keep the peace, especially towards the said A. B. Given
under my had and seal, this day of 18

Form of a recognizance.

The state of Ohio, county ss. Form of recog
[L. S.] Be it remembered that on the day of nizance.
in the year A B, C. D.
and E. F. personally came before me, one of the justices of
the peace for said county, and severally acknowledge to
owe the state of Ohio dollars each, to be
levied on their goods and chattels, lands and tenements, to
the use of the said state, if default be made on the condi-
tion following, to wit: The condition of this recognizance is
such, that if the above bound A. B. shall personally appear
at the next court of common pleas, to be holden in and for
the county aforesaid, then and there to answer a charge of
and abide the judgment of the court, and not
depart without leave, then this recognizance shall be void
and of none effect, otherwise to remain in full force and vir-
tue in law.
Taken and acknowledged before me, at on the
day of (or if the recognizance Form of condi
should be to compel the attendance of witnesses, on behalf tion of recog
of the state, the condition should run thus;) The condi- nizance for at
tion of this recognizance is such that if the aforesaid A. B. tendance of
shall personally appear at the next court of common pleas, witnesses
to be holden within and for said county, (or at the supreme
court as the case may require) on the first day of the term,
to give testimony on behalf of the state, and the truth to
say on such matters as may be then and there required of

Provided, That nothing in this section, shall be construed **Further proviso** to extend to any case, where an actual battery shall have been committed.

Sec. 4. That constables shall be ministerial officers of the courts held by justices of the peace, in their respective townships, and it is hereby made the duty of constables, to apprehend and bring to justice, felons and disturbers of the peace, to suppress riots, and to keep and preserve the peace within their respective townships; and the limits of constables in the service of process in criminal cases, shall be co-extensive with the county in which they were elected or appointed and reside and in criminal cases, when persons are making their escape from justice, they are by this act empowered and authorised, to pursue after and take such absconding person, in any county within this state; and in serving subpoenas for witnesses, their jurisdiction shall extend throughout their respective counties only, and they shall moreover, serve such legal process in civil cases, as may be, by the justices of the peace to them directed, and govern themselves therein, agreeably to the provisions of this act, and do and perform such other services, as may be directed by law, and every constable within ten days after his election or appointment, and before he enters on the duties of his office, shall appear before the clerk of the township, and give bond, with one or more sureties resident in the township, such as the trustees thereof shall approve, in any sum not exceeding two thousand dollars, nor less than four hundred dollars, payable to the state of Ohio, conditioned for the faithful discharge of the duties of his office, and the township clerk, shall make an entry of such bond and file the same in his office.

Constables to be ministerial officers of justice's courts, to serve process in criminal cases, within county; to serve civil process as directed; and to give bond to the state of Ohio.

Sec. 5. That the powers of the justices of the peace in this state, shall in civil cases, be co-extensive with the township, in which they may respectively be elected and reside, and their jurisdiction in all such cases, shall extend, under the restrictions and limitations herein after provided, to any sum not exceeding one hundred dollars: and any justice of the peace may grant subpoenas for witnesses for either party, concerned in the cause pending, but such party shall not be allowed fees for travel or serving the same, if performed by himself; and the power of justices of the peace, to subpoena witnesses, and administer oaths, shall be co-extensive with the county: *Provided* That in case, any person or persons, at the desire of his or their creditors, shall voluntarily appear before a justice of the peace and confess judgment, in such case the jurisdiction of a justice of the peace shall extend to two hundred dollars, and be co-extensive with the county, and no appeal shall be allowed, on any judgment so confessed.

Justices jurisdiction in civil cases.

They may subpoena witnesses or administer oaths within county.

Jurisdiction in taking confessions.

Sec. 6. That every justice of the peace, shall keep a docket, in which he shall make a fair and accurate entry of

To keep docket and furnish

copies.

all actions and suits, instituted before him, with his proceedings thereon, and if either of the parties require a copy of the proceedings, the justice shall furnish the same.

When office become vacant, docket to be delivered to successor.

Successor to issue a scire facias and give judgment &c.

Sec. 7. That in all cases where the office of a justice of the peace in any township, shall become vacant in any manner, except by death, the docket of every such justice of the peace or transcript thereof, shall be duly certified by such justice, (or in case of death, by his executors or administrators,) and delivered to the successor of such justice of the peace, or some other justice in said township, on demand, together with all laws, the property of the state, that such justice of the peace, may have in his possession, at the time of the vacancy, and the justice of the peace receiving such docket or transcript, shall on demand of the plaintiff or plaintiffs, defendant or defendants, his, her or their agent or agents, proceed to issue a scire facias on any judgment specified on such docket or transcript, and on such scire facias being returned 'served,' and no good cause being shewn, by the defendant or defendants, in such scire facias, or where the scire facias may be returned 'nihil,' the justice shall enter judgment against the defendant or defendants named therein, and proceed to issue execution thereon, as in other cases; and in all cases where any person who is entitled to execution on the docket of any justice of the peace, that may have absconded, shall declare the same on oath or affirmation, before some other justice of the peace of such township, the justice of the peace before whom such oath or affirmation may be made, shall be authorised to demand, receive and retain the docket of such absconding justice of the peace, and proceed to issue a scire facias on any judgment therein entered, in the same manner he would be authorised to do, had the same been certified by such justice of the peace; and the justice of the peace retaining the docket of another justice of the peace, shall be accountable to such justice or his representatives, for all fees due such justice of the peace on said docket, when collected, as for other monies by him collected, in his official capacity, and in all cases when it may be necessary to procure a transcript from the docket of such absconding justice, it shall be lawful for the justice having possession of the same as aforesaid, to make out and certify the same, in the same manner, he would be authorised to give a transcript from his own docket: *Provided* That in all cases when the same justice shall be re-elected and qualified to fill such vacancy, such transcript or certificate, shall not be necessary, but such justice so re-elected and qualified may proceed in the same manner as if his former term of service had not expired.

The docket of an absconding justice may be retained and scire facias issue on any judgment.

Provide.

In what cases summons first process.

Sec. 8. That where a defendant is a householder within the township and resides within the same, a summons shall be the first process issued by virtue of this act, on which

summons the justice shall endorse the precise sum demanded by the plaintiff, together with the costs that have accrued, and the summons to be issued as aforesaid, shall specify a certain time, not more than twelve days from the date of such process; and also, a certain place at which the defendant is to appear, and shall be served at least three days before the time of appearance, mentioned therein, by reading the same to the defendant, or by serving him or her with a copy thereof, if required, but if he or she cannot be found, by leaving a copy at his or her house, or place of abode, in presence of some person of the family of the age of fourteen years or upwards, who shall be informed of the contents thereof; and the constable serving such summons shall endorse thereon the time and manner of service, and shall subscribe his name thereto; and in all cases where service of process is made by leaving a copy at the defendant's house, or place of abode, it shall be lawful for the justice of the peace, to continue the cause, from time to time; until the defendant shall have returned to his home, and received notice of the pendency of such suit, and such continuance, shall rest in the sound discretion of the justices of the peace, taking into view all the circumstances of the case: *Provided*, That in all cases, where it shall be sufficiently proved on oath or affirmation, to the satisfaction of the justice, that the plaintiff will be in danger of losing his, or her demand, unless the defendant be arrested, it shall be the duty of the justice, to issue a *capias*, which shall be proceeded in as herein after provided: *Provided also*, That where the plaintiff lives out of the township or county, and his demand is on any bond, promissory note or bill, delivered to any such justice of the peace, for collection, in that case it shall be discretionary with the justice to determine the most proper process to secure the debt to the plaintiff; any thing herein to the contrary notwithstanding: *Provided also*, That no person who is a resident and a householder, or freeholder, of the county in which any *capias* or summons may be issued against him, shall be bound to answer unto such summons or *capias* in civil cases, in any other township except in the township where such defendant actually resides, unless there is no justice of the peace within said township, who can legally issue said summons or *capias*: *Provided however*, That where two or more persons are severally bound, by virtue of any contract, and reside in different townships, in the same county, the plaintiff may commence his or her action, before a justice of the township, in which any one of the parties as aforesaid bound may reside, in which case the justice shall issue his process against the several parties, directed to any constable of his township, which process the constable is hereby authorised to serve, and return in the same manner as though the defendants resided in the township where the

How served
and returned.

Justice may
continue when
served by copy

Proviso-capias
may issue

Further proviso
as to issuing
process

Further proviso
as to same.

suit may have been commenced, any thing in this act to the contrary notwithstanding.

In what cases
capias first
process.

How served
and returned.

Defendant to
give bail or
stand commit-
ted, or be kept
by constable,
until, &c.

Sec. 9. That a *capias* may be issued in all cases, where the defendant is not a resident and householder of the county where such process shall be issued, upon which the justice shall endorse the precise sum demanded, together with the costs that have accrued, and the said *capias* shall be made returnable forthwith, after the service thereof, and the constable serving or executing the same, shall according to the command thereof, forthwith convey the defendant before the justice who issued the same, and the said justice shall thereupon, either cause the said defendant to give bail, for his, her or their appearing and abiding the event of the suit, or on neglect or refusal to give such bail, shall order the constable to convey him to the jail of the county, there to be kept in custody until the time appointed for the trial of the cause; which shall not exceed three days from the day of the return of the *capias*, or the justice may direct the constable to hold the defendant in his custody until the plaintiff shall have notice and time to attend and proceed to trial, and the constable who serves such *capias*, shall endorse thereon the execution thereof and sign his name thereto.

Sec. 10. That the recognizance of bail, to be taken as above directed, shall be in the following form, to wit:

Form of recog-
nizance of bail

Whereas, A. B. has been arrested and is in custody at the suit of C. D. in an action of _____ in the sum of _____ county, _____ township, ss. now therefore, you E. F. do acknowledge yourself special bail in said action, in the sum of _____ to be levied on your goods and chattels, lands and tenements, and for want thereof, on your body, if default be made in the condition of your recongizance, which condition is that the said A. B. shall be and appear before _____ and if judgment be given against him, (or her,) that he (or she) shall pay the costs and condemnation money, or render his (or her) body in execution. Signed and acknowledged before me this _____ day of _____ in the year _____

Justice may
hear cause in
absence of de-
fendant or
adj. are not
longer than 20
days.

Which recognizance shall remain with such justice, for the benefit of the plaintiff in the suit; and if the defendant does not appear after such recognizance entered into, at the time and place specified therein, and no sufficient reason be assigned to the said justice, why he or she does not appear, then the said justice may proceed to hear and determine the cause in the absence of such defendant, and when the parties to any suit, to be instituted under this act, shall appear at the time and place appointed for trial, the said justice shall proceed to hear and examine the allegations and proofs, and thereupon give judgment, with costs of suits, according to law and justice, unless he shall think it proper, on the ap-

application of either party, to adjourn the trial, which adjournment shall not be for a longer time than twenty days: *Provided*, That if either party or a material witness, shall live in another state or county, the party may on good cause shewn, by affidavit or otherwise, have the trial of the cause postponed, for any reasonable time not exceeding four months.

Sec. 11. That in all civil cases before a justice of the peace, the plaintiff, his agent or attorney, shall file with such justice a bill of the particulars of his demand, and the defendant if required by the plaintiff, his agent or attorney, shall file a like bill of the particulars, he may claim as a set off, and the evidence on the trial, shall be confined to the items set forth in said bills.

Parties shall file bills of particulars.

Sec. 12. That when parties agree to enter without process, before any justice of the peace, any action herein made cognizable before him, such justice shall enter the same on his docket, and shall proceed to judgment and execution, in the same manner as though a summons or capias had been issued, served and returned: and in all other actions, instituted by virtue of this act, when the plaintiff does not appear by himself or agent, the justice shall enter judgment against him for the costs: *Provided*, That the plaintiff shall not thereby be barred from renewing the action.

Actions may be entered without process. If plaintiff does not appear, plaintiff shall have judgment for costs. *Proviso.*

Sec. 13. That if in any case instituted as aforesaid, it shall appear at the trial, that there is a balance due to the defendant from the plaintiff, then the justice shall render judgment against the plaintiff in favor of the defendant, for the sum so appearing to be due, with costs of suit; and such defendant shall be entitled to execution therefor.

Defendant may have judgment for balance due.

Sec. 14. That if the defendant does not appear by himself or agent, at the time and place appointed for trial, and no just cause be shewn for his or her non-attendance, the justice may, at the request of the plaintiff, hear and determine the cause and render judgment.

If defendant does not appear, justice may hear cause.

Sec. 15. That when judgment shall have been rendered against the defendant in his absence, if he appear within ten days thereafter, and pays the costs, and requests the judgment to be opened, the justice shall grant a new trial, and appoint a day therefor, of which the defendant shall notify the plaintiff, at least six day prior to the day appointed.

In what cases new trial may be granted.

Sec. 16. That in all cases where judgment is rendered by a justice of the peace, within this state, upon any bond, sealed bill, promissory note or other instrument of writing, in which two or more persons are jointly and severally held and bound, and it shall be made appear to the justice by parole or other testimony, that one or more of said persons so bound, signed the same as surety or bail, for his or their co-defendant, it shall be the duty of the justice in entering judgment thereon, to certify which of the defendants, is principal

Execution shall be against principal before the property of surety shall be taken.

debtor, and which is surety or bail, and the said justice in issuing execution on any such judgment, shall issue execution commanding the officer to cause the money specified in the execution, to be made of the goods and chattels of the principal debtor, and for want of such goods and chattels of the principal debtor whereof to make the same, then, that he cause the same to be made of the goods and chattels of the surety or bail, and in all such cases the personal property of the principal debtor, within the jurisdiction of said justice, shall be exhausted before any of the property of the surety or bail, shall be taken in execution.

In what cases justice of an adjoining township, to have jurisdiction.

Sec. 17. That when there is no justice, resident in the same township with the defendant, or the justice shall be a father, son or brother to either the plaintiff or defendant, then any justice in an adjoining township, not interested, or father, son or brother to either party, shall have full and complete jurisdiction in such case.

Parties may submit causes to arbitration.

Sec. 18. That any time before judgment is entered, the plaintiff and defendant agreeing thereto, may have the cause submitted to an arbitration of three disinterested men, who shall be chosen by the plaintiff and defendant, and if the arbitrators be present, they shall hear and determine the cause on oath or affirmation, which shall be administered by the justice, but if the arbitrators chosen, be not present, the justice shall issue a subpoena for them to attend on the day, time and place fixed upon, which shall be served by the constable or parties, as they may agree; and when the arbitrators are met and qualified, they shall hear and determine the cause, make out their award in writing, any two of whom shall sign the same and make return thereof to the justice, who shall make an entry of the same on his docket, and thereon render judgment, which judgment rendered on such award, shall be conclusive on the plaintiff and defendant, unless it shall be made to appear to the court of common pleas on an appeal, or to the justice of the peace who rendered such judgment, and within ten days from the rendition of the same, that such award was obtained by fraud, corruption or any other undue means, and whenever satisfactory proof thereof shall be adduced before such justice within the period aforesaid, it shall be competent for such justice to open his judgment and set aside such award, and thereupon proceed to such final trial and judgment, as though such award had never been made; and no appeal shall be allowed to the court of common pleas, from any judgment of a justice of the peace rendered on an award, unless the party praying such appeal shall first file with such justice an affidavit, setting forth that he or she verily believes that such award was obtained by fraud, corruption or other undue means; and all arbitrators acting under the provisions of this section,

Proceedings in arbitrations before justices.

shall be entitled to receive sixty two and one half cents each, per day, for their services, and the same shall be taxed and collected as other costs. Compensation of arbitrators.

Sec. 19. That if upon appeal from the judgment of any justice of the peace rendered upon award, according to the provisions of the preceding section, the court of common pleas shall be satisfied that such award was obtained through fraud, corruption or other undue means, they shall order such award to be vacated, and shall proceed to hear and determine the cause upon its merits as in other cases of appeal, and if upon appeal as aforesaid, the court shall be of opinion that the award was not obtained by fraud, corruption or other undue means, they shall proceed to final judgment, in such manner as the justice of the peace ought to have done. Proceedings in court on appeal for awards

Sec. 20. That if any person or persons shall consider himself or themselves injured by any judgment of any justice of the peace, it shall be lawful for any such person or persons to appeal to the court of common pleas, at any time within ten days after rendering such judgment, by entering into a recognizance with at least one sufficient surety in a sum not less than fifty dollars, in any case, nor less than double the amount of the judgment rendered by the justice, including costs, conditioned for the payment of the debt, damages and costs that may accrue in the court of common pleas; and it shall be the duty of the justices if execution has issued, to recall the same, and thereupon the said justice shall deliver the transcript of his proceedings to the appellant, and it shall be the duty of the appellant to deliver the same to the clerk of the court of common pleas of the county in which such appeal is made, on or before the first day of the term next following such appeal, and all other proceedings before the said justice shall be stayed from the time of entering such appeal, and the person so appealing shall cause an entry of the appeal to be made with the clerk of the court, and the plaintiff in the court below, whether appellant or appellee, shall be plaintiff in the court above, and after such entry shall be made, the parties shall proceed in all respects, in the same manner as though the suit had been originally instituted in the said court, and reference shall be had to the proceedings in the court below, no further than to include in the judgment to be rendered, the costs taxed in the court below; and if the appellant shall fail to enter the appeal on the first or second day of the term next after such appeal is taken, the appellee may at the same term file a transcript of the proceedings and judgment of the justice, and the said cause shall, on motion of the appellee, be docketed for further proceedings and trial, in the same manner as if the appellant had entered the appeal; or the appeal shall be dismissed at the costs of Appeals allowed from judgments of justices by entering into recognizance. Penalty and condition of recognizance. Appellant shall enter appeal with clerk, failing appellee may do it; both failing, justice may issue execution

the appellant, and remanded to the justice, to be proceeded in as if no appeal had been taken; and if both the parties fail to enter the said appeal within the time allowed, the justice shall issue execution upon the judgment, as if no appeal had been taken; and the clerk of the court aforesaid, shall certify such dismissal to the justice, or on application shall certify that the appeal was not entered: *Provided*, That if the person or persons in whose favor judgment shall be rendered, shall appeal and not recover more than was recovered before the justice, in such case the appellant shall pay the costs of such appeal.

Proviso

Liability of surety in recognizance and before what court, &c.

Sec. 21. That when any appeal shall be dismissed, or when judgment shall be entered in the court of common pleas against the appellant, the surety in the recognizance of appeal, shall be liable to the appellee for the whole amount of the debt, costs or damages that may be recovered of the appellant; and when the whole amount of debt, costs or damages shall not exceed one hundred dollars, the surety may be proceeded against before the proper justice of the peace, by *scire facias*, as in case of bail for stay of execution upon judgments rendered before a justice of the peace; and where the whole amount of the debt and costs, or damages and costs, shall exceed one hundred dollars, the surety may be proceeded against in the court of common pleas of the proper county, by action of debt, founded upon said recognizance, an authenticated copy of which shall be received in court, as of equal authority with the original.

Proceedings when appeal is quashed.

Sec. 22. That when an appeal shall be taken from the judgment of a justice of the peace to the court of common pleas, and shall be quashed in court, upon account of any irregularity in taking or consummating such appeal, the cause for quashing the appeal shall be specified in the order of the court, and a transcript of such order shall be lodged with the justice, who shall thereupon proceed to issue execution in the same manner as if no appeal had been taken: *Provided*, That it shall be lawful in any appeal wherein the recognizance shall be insufficient in amount, or for want of form, or where the security shall be required as a witness for the appellant, for the court on motion to order a renewal of said recognizance, and direct the same to be certified to the said justice, from whom the appeal was taken, or to be recorded as the court shall direct.

Proviso

Suit may be brought for balances under \$100.

Sec. 23. That where the balance claimed to be due on any bond, note or bill or upon any open or unsettled account, shall be under one hundred dollars, the plaintiff may commence his suit before a justice of the peace, for the balance actually claimed to be due, and the justice shall have power to hear and determine all matters of controversy between the parties, without any regard to the amount of the original contract, and shall render judgment for the amount

actually due, as in other cases: *Provided*, The amount actually due shall not exceed one hundred dollars; and if an appeal be taken by either party, the plaintiff may declare for the whole amount, of the original contract or account, and the proceedings and trial shall be the same as in other cases, except that if the plaintiff appeal and recover a greater sum than one hundred dollars, exclusive of interest and costs, he shall not recover any costs.

Proviso as to appeals and costs.

Sec. 24. That in all cases where the proceedings of a justice of the peace are taken up before the court of common pleas, or supreme court, by a writ of certiorari, the clerk of the court shall require and take from the person requesting such writ previous to his granting the same, a bond with sufficient security, resident within his county, conditioned for the payment of all costs and charges, which have or may accrue on the same, together with the amount of judgment which may be rendered as hereinafter directed, in case he shall fail on trial, to obtain a judgment in his favor: *Provided*, That no justice of the peace shall obey any writ of certiorari, unless such writ shall bear date within fifteen days from the day on which such judgment was rendered, excepting writs of certiorari, allowed by the court of common pleas, on good cause shewn in term time; any law or usage to the contrary notwithstanding: *Provided also*, That the person applying for such writ, shall notify the other party in the suit, or his, her or their agent or attorney by leaving a written notice at his, her or their dwelling house or last place of abode, or by advertising the same in three of the most public places within his township, at least ten days previous to the sitting of the court: *Provided*, That number of days shall accrue previous to the sitting of the court.

Clerk to require bond previous to granting writs of certiorari.

Proviso

Writs of certiorari must bear date within 15 days of the judgment, except, &c.

Proviso

Sec. 25. That in all cases where the proceedings of a justice of the peace are brought up before the court of common pleas in manner aforesaid, and the judgment of such justice shall be set aside, or reversed by such court, the court shall retain the cause before them, and shall proceed thereon to final judgment, as in cases of appeal from the judgments of justices of the peace; and that in all cases where a judgment of a justice of the peace is reversed on certiorari, the plaintiff in certiorari shall recover all his costs up to the time of reversal, and shall have judgment and execution therefor, as if the cause was not retained for further trial.

How court shall proceed on certiorari.

Sec. 26. That if any person, against whom judgment is entered for any sum exceeding five dollars and not exceeding twenty dollars, shall enter such bail as shall be deemed sufficient security, for the amount of said judgment, interest and costs, and have the same entered on the docket of the justice, and signed by such bail, such person shall have stay of execution for three months, and for any sum above twenty dol-

For judgments between \$5 and \$20; party may have stay of execution 3 months.

Stay of execution for other sums.

lar, and not exceeding fifty dollars, execution shall be stayed for five months; and for any sum exceeding fifty dollars, execution shall be stayed eight months; and if the person against whom judgment was rendered, shall refuse or neglect to enter such bail, or shall fail to pay the person or persons recovering such judgment, or his agent, the full amount of the debt, together with the costs of suit, it shall be the duty of such justice who gave such judgment, unless otherwise directed by the party recovering the judgment, or his agent, to issue execution thereon, returnable to such justice within thirty days thereafter, commanding the constable to levy and make the debt, damages and costs, of the goods and chattels of the party against whom judgment was rendered; and for the want of such goods and chattels, whereon to levy and make the same, the plaintiff may at his option, direct an execution to issue, commanding the constable to take the body of the defendant or defendants, and convey him or them to the jail of the county; and the sheriff or keeper of such jail is hereby required to receive the person or persons so taken in execution, and him or them safely keep, until the sum so recovered and the costs of suit be fully paid, or they be otherwise legally discharged; and in default of such keeping the said sheriff shall be answerable to the party aggrieved, who shall have the same remedy against him, as is provided by law, in cases of escapes, and all property to be sold by execution, shall be advertised by the constable, at four of the most public places in the township, at least ten days previous to the day of sale: *Provided*, That if the defendant shall enter sufficient bail; for the stay of execution, or appeal within ten days after rendition of judgment, the justice shall recall the execution, and where bail is entered for the payment of debt and costs the first process shall be an execution against the goods and chattels of the defendant, and if goods and chattels cannot be found of the defendant sufficient to satisfy the execution, and a return thereof be made by the constable, the justice unless otherwise directed by the plaintiff, his, her or their agent shall issue a scire facias against the bail, which shall be served and returned by the constable, in the same manner that a summons is served and returned; and upon return thereof, the justice shall, unless for good cause shewn, enter judgment on which there shall be no stay of execution, and the justice shall forthwith unless otherwise directed as aforesaid, by the plaintiff his agent or attorney issue execution against the goods and chattels of the bail, for the amount of the judgment and costs, or such part thereof as shall remain unsatisfied, to be returned in the same manner as executions are in other cases; and if such execution shall be returned unsatisfied for want of goods and chattels, the plaintiff may demand execution on the original judgment, against the goods, chattels and body of the defend-

Justice shall cause execution when the defendant refuses to enter bail.

Constable to advertise property.

Justice may recall execution, &c.

Process of execution, when bail is entered.

Scire facias may issue against bail.

ant, and where any person has entered himself bail for stay of execution; and shall before the period of such stay has expired, remove into another county or state, the justice shall, if the plaintiff demand it, issue execution against the goods, chattels and body of the defendant.

Sec. 27. That in all cases not otherwise provided for, when it may become the duty of a constable to deliver in custody of the sheriff, the body of any person under the provisions of this act, the said constable before he shall be entitled to a receipt, shall deliver to the sheriff a certified copy of the execution or commitment, which copy shall be sufficient authority for the sheriff, to detain him in custody. Constable to deliver copy of execution, &c. with body

Sec. 28. That where any person or persons shall enter security upon the docket of any justice of the peace for the stay of execution, according to the provisions of this act; if such security or securities shall become apprehensive, that by delaying execution until the full term of the stay thereof shall have expired, such security or securities may be compelled to pay the judgment, he or they may go before the justice of the peace, upon whose docket he or they stand security of securities, and make and file an affidavit, that he or they are apprehensive of being compelled to pay the judgment, in case execution be further delayed; whereupon, at the request of such security or securities, such justice shall issue an execution against the principal debtor or debtors, which shall be proceeded on as in other cases: *Provided*, That if within ten days after levying such execution, the principal debtor or debtors, shall give other security to the satisfaction of the justice, for the stay of execution, for the time not expired, and shall pay the costs of such execution, it shall be taken back and stayed; and all subsequent proceedings shall be the same as though no such execution had been issued, except that in proceedings against such security or securities, a scire facias shall be issued against the person last entering security, in the first place; and no scire facias shall be had against the first security or securities, unless the last prove insolvent. Security for stay of execution may have execution against principal. *Provided*

Sec. 29. That when any judgment shall be obtained against any person, who shall have entered himself bail on the docket of any justice of the peace, agreeably to the provisions of this act, the original judgment shall remain good and valid in law, for the use of such bail, who at any time thereafter may sue out execution on such judgment, against the goods, chattels and body of the defendant, for the use of such bail, which shall be so endorsed by the justice, and such bail shall also be entitled to a transcript of such judgment for his own use, which shall have the same force and effect, as transcripts in other cases. When original judgment shall stand good for the bail.

Sec. 30. That in all cases where execution shall issue against any person or persons, on any judgment rendered be- When goods, &c. cannot be

found, justice
may forward
transcript to
clerk who may
issue scire fa-
cias and court
may direct
execution a-
gainst lands.

fore any justice of the peace, and goods and chattels cannot be found to discharge the same, and if it shall be suggested to the justice, who issued such execution, that the person is possessed of lands and tenements, the justice shall on the application of the person or persons, who recovered such judgment, or his, her or their agent, forward a transcript of such judgment to the clerk of the court of common pleas, who shall file said transcript in his office, and shall issue a scire facias against such person, to appear at the next term of the court of common pleas, and shew cause why execution should not issue, and in case such person neglects to attend or does not shew cause to the court, why execution should not issue, the court shall issue execution against the lands and tenements of such person in the same manner as though judgment had been obtained in said court.

Jurisdiction in
trespasses up-
on personal
property.

Sec. 31. That it shall be lawful for the plaintiff, in actions of trespass on personal property to commence his or her action in the township where such trespass shall have been committed; and in all such cases where the defendant or defendants shall not reside, or cannot be found in the township where such suit may be commenced, it shall be lawful for the justice before whom such suit may have been commenced, to issue his summons or capias as the case may require, directed to any constable of the township where such justice may reside, who is hereby authorised and directed to go into any township where the defendant or defendants shall reside, or may be found, within the county where such suit may be commenced, and make service and return of such summons or capias to the justice issuing the same, and the defendants shall be held as liable to answer to any such capias or summons, in the same manner as if such defendant or defendants resided in the township where such suit was commenced.

On real prop-
erty.

Sec. 32. That the jurisdiction of the justices of the peace shall extend to actions of trespass on real estate, in cases where the damages demanded for such trespass, shall not exceed the sum made cognizable by a justice of the peace in other cases; and no claim of title set up by the defendant, shall take away or affect the jurisdiction hereby given.

When bail has
been given on
judgments
confessed.

Sec. 33. That in all cases, where bail shall be entered for stay of execution upon judgments confessed, for a greater sum than one hundred dollars, the justices of the peace shall have power and jurisdiction to proceed by scire facias against the bail, and to hear and determine all matter of controversy arising thereon, in the same manner as if the original sum for which judgment was given, did not exceed one hundred dollars, and upon all judgments entered by confession before a justice of the peace, he shall issue execution

in the same manner and under the same regulations as is before provided in and by this act.

Sec. 34. That in all cases where, at the time of issuing execution upon any judgment before a justice of the peace, the defendant or defendants do not reside in the township where the execution is issued, but shall reside in some other township of the same county, it shall be lawful for execution to issue, directed to the constable of the township where such defendant or defendants actually reside, and it is hereby made the duty of said constable to levy said execution, collect and pay over the money to the justice of the peace, issuing the same as in other cases, and the justice shall have power to proceed against the bail for stay of execution, who may reside in any other township in the county, in the same manner he would be authorized to do, if such bail resided in his proper township.

In what cases justice may issue execution to another township.

Sec. 35. That when execution shall issue against any person or persons, on any judgment against such person or persons, and the constable to whom such execution shall be delivered, shall make return thereon, that sufficient goods and chattels cannot be found within the township where such justice may reside, and if it shall be suggested to the said justice, that the person or persons against whom judgment was rendered as aforesaid, hath or have goods and chattels within any other township in the county where the justice may reside, it shall be lawful for such justice to issue an execution on such judgment to any constable of the township where such goods and chattels may be found, which execution, the said constable is hereby authorized and required to execute and return to the justice issuing the same, in like manner as if such justice resided in the township, in which such goods and chattels were found.

Same subject continued.

Sec. 36. That in all cases where a justice of the peace shall issue an execution directed to a constable in a township, where the justice issuing the execution does not reside, it shall be the duty of the constable receiving such execution to execute and return the same in every respect, as if it were issued by a justice in the same township with the constable, and for every negligence and misconduct in proceeding with such execution, the constable shall be liable to be proceeded against as in other cases; and the justice issuing the execution, shall have power to send process out of his township, to bring such constable before him to be dealt with as right and justice may require.

Further continued.

Sec. 37. That constables shall have the same power to levy and collect executions issued for sums above one hundred dollars, when judgments have been confessed before justices of the peace, as they have in other cases; and in case any constable to whom such executions shall be directed, shall neglect to make return, or make a false return there-

Constable may collect execution on judgments confessed.

of, he shall be proceeded against as is provided in other cases.

Justice to issue scire facias on transcripts certified and signed.

Sec. 33. That in all cases where a transcript of the judgment of any justice of the peace within this state is duly certified and signed by the justice rendering such judgment, or other competent person, and delivered to another justice of the peace for the purpose of enforcing execution of the same, the justice to whom the same is delivered shall make an entry thereof on his docket, and shall issue a scire facias against the defendant, in such transcript, requiring such person to appear and shew cause (if any there be,) why execution should not issue against him for the amount of the judgment and costs, as stated in said transcript, or such justice may issue a capias against such defendant, and in either case if the defendant is found and cannot prove to the satisfaction of the justice, that he has paid the whole amount of the debt and costs, as stated in the transcript, the justice shall hold him to bail or issue execution for the same, or such part thereof as shall appear to remain unsatisfied, in the same manner, and under the same regulations, as the justice before whom the proceedings were originally had, might or could have done, had the defendant remained within his own proper township: *Provided*, That stay of execution shall only be had from the date of the original judgment; and in case of an appeal from such judgment rendered against the bail, the cause shall be tried in court on the proceedings had before the justice without any declaration or other pleadings.

Proviso.

Non resident plaintiff to deposit money or enter security for costs.

Sec. 39. That in all cases, where the plaintiff shall not reside within the township, in which he intends to bring suit, the justice before whom he intends to have the same entered, may previous to his issuing process or entering the same, demand and receive from the plaintiff, a sum sufficient to pay the probable costs, or cause such plaintiff to enter bail, resident within his proper township, conditioned for the payment of all costs which may accrue upon such suit, at the election of the plaintiff, which bail shall be entered by the justice on his docket, and signed by the bail, who shall be accountable for all costs.

Constables liable for false return &c.

Sec. 40. That in case the constable fails to make return as provided in this act, or makes a false return, the said justice being satisfied thereof, may, or on application of the person or persons in whose favor execution is issued, his, her or their agent, shall issue a scire facias against such constable, directed to any person he may think proper, who will serve the same, commanding said constable to appear before him, to shew cause why an execution should not issue against him; and if the constable neglects to appear within five days from the time of service of said writ, or does not

show proper cause why execution should not issue against him, then the justice shall enter judgment against such constable, for the amount of the damages sustained, together with costs and ten per cent penalty, on which judgment, there shall be no stay of execution, and the justice shall forthwith issue execution for the amount of such judgment and such judgment and execution may be directed to any person, the justice may think proper, who will serve the same, who shall collect the money on such execution, in the same manner as constables by this act are bound to do, together with such costs as constables by this act are bound to do, together with such costs as constables receive in similar cases: **Provided**, That in all cases where execution may issue against a constable as aforesaid, or against any justice of the peace, for failing to pay over any money collected by such justice, under the provisions of this act; and goods and chattels cannot be found whereon to levy such execution, it shall be lawful for the justice to proceed by scire facias against the bail of any such delinquent constable or justice, in the same manner he is authorized by this act to proceed against bail for stay of execution.

Scire facias
may issue
against bail of
constable &c.

Sec. 41. That in all cases where there is no constable in any township in this state, or in the absence, or disability of a constable of the township, or where the constable is a party to the suit, it shall be the duty of any justice of the peace, in case it be necessary that the process should be immediately served, either in criminal or civil cases, to appoint a person willing to serve as a constable for the time being, which appointment shall be in writing under the hand and seal of such justice, and shall specify the cause of such appointment, and the person so appointed as constable, shall have the same authority as any other constable, without giving the security necessary in other cases, and he shall be liable for neglect of duty or illegal proceedings, and shall receive the same fees and compensation, as constables are entitled to by law for similar services, and shall act until the vacancy be again supplied.

Justice may
appoint con-
stables.

Sec. 42. That when any constable, by virtue of execution to him directed, shall levy on property claimed by any person or persons other than the person against whom the execution issued, such claimant or claimants on giving three days notice to the plaintiff or his agent if found within the county or by leaving a written notice at his or her usual place of abode, of the time and place of trial, may prove the property, on oath or affirmation, by one or more credible witnesses, on or before the day appointed for the sale of such property, and on such proof being made before any judge of the court of common pleas of the county, or justice of the peace of the township, to the satisfaction of such judge or justice, the judge or justice (as the case may be)

Constable lev-
ying on prop-
erty claimed by
another, how
to proceed

shall enter judgment against the plaintiff, in execution for the costs and award execution thereon accordingly, and shall cause the constable to restore the property so levied on, to the person or persons claiming the same, and the constable refusing shall be liable for such property; but in case the claimant or claimants shall fail to make such sufficient proof as aforesaid, the constable shall not be liable to such claimant or claimants for such property so taken and sold; and in all cases where the claimant or claimants shall fail to prove the property to belong to him or them, to the satisfaction of the judge or justice, such claimant or claimants shall pay the costs accruing under this section, which costs shall be taxed as other costs for like services, and the judge or justice shall render judgment against such claimant or claimants for costs, and issue execution therefor as in other cases.

Constable to return it. ms of property sold. Sec. 43. That when any constable by virtue of any execution, shall take and sell any property whatever, he shall make out and annex to his return on said execution, a complete inventory of all the property, stating the items and the sum for which each sold and on his failure so to do, he shall be subject to an action in favor of any person interested and be liable in triple damages therein.

To pay money over to justice. Sec. 44. That it shall be the duty of all constables to pay over to the justice from whom execution or executions issued, all monies by them collected, or produce to the justice a receipt from the plaintiff or his agent, for the amount of such execution or executions within six days after collecting the same, and every justice of the peace shall give his receipt for any money by him received in his official capacity, to the person from whom he shall have received the same if required.

Justice to receive and pay over money. Justice liable for money and ten per centum damages. Sec. 45. That it is hereby made the duty of the justices of the peace to receive from the constables all monies by them collected, and pay the same over to the person or persons entitled thereto; also all monies by them collected without execution, or received for the use of any person or persons in their official capacity, and if any justice shall fail to pay over any money by him so collected or received, when thereto demanded, at the office of the said justice, he being present, by the person or persons entitled to the same, or by his, her or their agent, it shall be lawful for such person or persons aforesaid, to complain to some justice of the peace of that township, in which the delinquent justice acts, if any there be, and if no justice resides in the township capable of acting, then to some justice of an adjoining township, whose duty it shall be immediately to issue his summons to the constable of his township, commanding him to summon such delinquent justice forthwith to appear before him and shew cause if any there be, why judgment should not be rendered against him, for the amount of the money by

him so collected and if not paid over, and said delinquent justice shall not shew good cause, the justice issuing the summons, shall render judgment against him for the amount of money so collected and not paid over, together with ten per centum damages thereon, and in which case there shall be no stay of execution.

Sec. 46. That in all cases, where the constable shall make it appear to the satisfaction of the justice, that he has been deprived of an opportunity of levying an execution, within the time prescribed by this act, or otherwise prevented from making the whole of the money therein required to be made, and make return to the justice who issued the same to that effect, such justice is hereby authorized and required to issue execution, for the amount or balance of such execution remaining unsatisfied, which shall be served and returned in all respects as other executions are under this act.

Justice may issue for balance not made

Sec. 47. That when any person or persons shall be subpoenaed to attend and give testimony in any suit instituted before a justice of the peace, such witness failing to attend at the time and place specified in such subpoena, and no reasonable excuse given for his or her non attendance, every such witness shall forfeit and pay a fine not exceeding eight dollars at the discretion of the justice, and moreover be liable to the party injured for such damages as he, she or they may sustain for want of such witness, to be recovered before any court having cognizance of the same, and every justice of the peace, before whom any cause is pending or may be decided, shall enforce the provisions of this section as to any witness by attachment, and shall for that purpose issue an attachment for every witness so failing, on the application of the person who may be injured thereby: *Provided*, That if any person shall order a subpoena for not more than two witnesses to prove any one fact, the person ordering the subpoena shall pay such witness or witnesses, or in case any witness shall be subpoenaed and not called to examination by either party, the party ordering such subpoena, shall pay such witness, except the defendant confess judgment, or where the party was non-sued.

Witnesses disobeying subpoena to be fined may be attached, &c.

Provide

Sec. 48. That all forfeitures or fines assessed under the provisions of this act, shall be collected by execution against the goods chattels and body of the defendant, and where not otherwise disposed of, shall be paid into the township treasury where the offence was committed.

Fines how collected.

Sec. 49. That the forms of recognizance shall be as follows to wit:

Form of recognizance in cases of appeal.

In the suit of A. B. against C. D. I, E. F. do acknowledge myself bail for the appellant in the sum of

Form of recognizance in cases of appeal;

for stay of execution. dollars to be levied on my goods and chattels, lands and tenements in case the said appellant shall fail to pay the debt and costs, and costs that may accrue in the court of common pleas.

Form of recognizance for stay of execution.

In the suit of A. B. against C. D. I, E. F. do acknowledge myself bail for C. D. in the sum of _____ to be levied on my goods and chattels, lands and tenements, in case the said C. D. fails to make payment of the sum for which judgment is entered in said suit.

Signed,

E. F.

Which recognizance for appeal and stay of execution, shall be signed by the party to be bound thereby.

Sec. 50. That the form of scire facias against bail, where execution has been issued against the principal, and the money is not paid, shall be as follows to wit:

The state of Ohio, _____ county, ss.
[L. S.] To _____ constable of _____ township

Form of scire facias against bail; against constable.

Greeting:—

Whereas A. B. recovered against C. D. judgment for the sum of _____ dollars, debt (or damages as the case may be) and costs, on the _____ day of _____ last as appears of record; and whereas E. F. on the _____ day of _____ became surety in behalf of the said C. D. for the payment of the debt (or damages) and costs to the said A. B. as also appears of record, which debt (or damages) and costs are not yet paid, you are therefore commanded to summon the said E. F. forthwith, to appear before me, at _____ on _____ to shew cause, if any there be, why execution should not issue against him for the debt, (or damages) and costs aforesaid; and of this writ make legal service and due return.

Given under my hand and seal this _____ day of _____ A. D.

And a form of scire facias against the constable shall be as above only changing it agreeably to the nature of the case:

Sec. 51. That the following shall be the form of process in civil cases:

Form of Summons.

The state of Ohio, _____ county, ss.

To _____ constable of _____ township greeting:

Form of summons.

[L. S.] You are hereby commanded to summon A. B. to appear before me, _____ a justice of the peace of said township, at _____ on the _____ day of _____ at _____ o'clock on said day, to answer unto C. D. in debt, (or damages as the case may be,) and of this writ make legal service and due return.

Given under my hand and seal, this _____ day of _____ A. D.

Form of Capias.

The state of Ohio, county, ss. Form of capias
 To constable of township, greeting:
 [L. S.] You are hereby commanded to take the body of
 A. B. and him forthwith bring before me, justice
 of the peace for township to answer C. D. in debt
 (or damages) in the sum of and on this writ make
 legal service and due return.
 Given under my hand and seal this day of A. D.

• *Form of execution against the goods and chattels of a defendant.*

The state of Ohio, county, ss. Form of execution against goods and chattels of defendant.
 To constable of township, greeting:
 [L. S.] Whereas A. B. obtained judgment against C. D. before me a justice of the peace of town
 ship, for the sum of debt (or damages) and
 costs, on the day of last; you are there-
 fore commanded that of the goods and chattels of the said
 C D you levy and make the said debt (or damages) and costs
 and costs that may accrue; and of this writ make legal ser-
 vice and due return
 Given under my hand and seal this day of A. D.

Form of execution against the goods, chattels and body of the defendant.

The state of Ohio, county, ss. Form execution against goods &c and body.
 To constable of township, greeting:
 (L. S.) Whereas A B obtained judgment against C D before me, a justice of the peace of said township, for the sum of
 debt (or damages) and costs on the
 day of last; you are therefore commanded that
 of the goods and chattels of the said C D you levy and
 make the said debt (or damages) and costs, and costs that
 may accrue; but for want of such property whereon to levy,
 then take the said C D to the jail of the county, there to be
 detained until the said debt (or damages) and costs, and costs
 that may accrue, shall be paid, or be otherwise legally dis-
 charged; and of this writ make legal service and due return.
 Given under my hand and seal, this day of A. D.

Provided, Where no bail shall be given, and the plaintiff shall fail to direct any particular process, it shall be optional with the justice of the peace, to issue an execution against the goods, chattels and body, or against the goods and chattels only of the defendant, as he may judge best; and no suit shall be quashed for want of form of the writ, in case it contains the substance. S'uit not quashed for want of form.

Sec. 52. That nothing in this act shall be construed or understood to extend to actions of trespass with force and arms, for assault and battery, for malicious prosecutions,

Certain actions not enjoinable by justice.

or actions against justices of the peace for misconduct in office, except in cases provided for in this act, actions of ejectment brought to obtain possession of lands and tenements, actions of replevin, actions of slander, actions on contracts for real estate, or where the title of land is called in question, except for trespass on real estate, as provided for in this act.

Constables to be allowed for keeping animals.

Sec. 53. That when any animal or animals shall be taken on execution, it shall be the duty of the justice who issued the said execution, to make such allowance to the constable for keeping the same to the day of sale, as he may think just and reasonable; and all sales of property to be made by virtue of this act, shall be made between the hours of ten o'clock in the forenoon, and four o'clock in the afternoon, at the house where the property has been levied on, or in one of the most public places in the township; and the justice who issued the execution in such case, or the constable making such sale, shall neither purchase, directly nor indirectly, any of the property so sold; and any justice or constable who shall offend against the provisions of this section, shall forfeit and pay for every such offence, the sum of twenty dollars, to be recovered by action of debt, in any court having competent jurisdiction, for the use of the proper township, and shall moreover be liable to the action of the party aggrieved.

Sales when & where to be made.

Justices and constables not permitted to purchase.

Sec. 54. That where a constable by virtue of an execution may have levied upon any articles of goods or chattels, and which may remain in his hands, unsold, for want of bidders, or any other legal cause, it shall be the duty of the constable to return upon the writ, a fair schedule of such property; in which case the justice may at any time thereafter, when required so to do by the party for whose benefit judgment may have been rendered, issue a writ of execution, directed to the constable holding the property, commanding him to expose the same to sale; and the constable is hereby authorized to take such security from the defendant, for his own indemnity, as he may think proper, to secure the redelivery of such property, in case it may be left in the possession of the defendant as aforesaid; and in all cases where an execution is issued agreeably to the provisions of this section, the following shall be the form thereof, to wit:

Constable may take security from defendant for redelivery of articles not sold and execution may issue.

The state of Ohio, county, ss.

Form of execution.

[L S] To A B constable of township, greeting:
 You are hereby commanded to expose to sale, the following goods and chattels: (here insert the list or schedule of property, as returned by the constable on the former execution,) being the same goods and chattels returned by constable, on an execution bearing date the day of in favor of against for the sum of including costs, and not sold for want of

bidders, (or other legal cause, according to the return, as the case may be,) for the best price that said goods and chattels will bring in money, after giving due notice of the time and place of sale; and of this writ make due return, with your proceedings thereon, and the money by you made with this writ within thirty days.

Given under my hand and seal, this day of 182

J. K. Justice of peace.

Sec. 55. That in all cases where any execution on attachment or other process, shall issue against any landlord or tenant, where lands may have been rented, reserving rents payable in kind; and where the crops or emblements growing thereon, shall be levied upon or attached by virtue of any such process, the interest of either party respectively, against whom process has not issued, shall not be affected by such process, but the same shall and may be sold, subject to the claim and interest of such party against whom process shall not have issued.

When execution issues against tenant, landlord's rights saved, &c.

Sec. 56. That if any person or persons, shall commence or prosecute any suit, for any debt or demand by this act made cognizable, before any justice of the peace, in any other court than is authorized and directed by this act, and shall obtain a verdict therein for debt or damages, which, without costs, shall not amount to one hundred dollars or more, he, she or they so prosecuting shall not recover any costs in such suits, any law to the contrary notwithstanding.

Party prosecuting suit in court and not recovering \$100 shall not recover costs.

Sec. 57. That in all cases where any person shall be convicted by the court of common pleas, of an offence not punishable by imprisonment in the penitentiary, and the person so convicted be unable to pay the costs accruing thereon, the same shall be payable out of the treasury of the proper county on the order of the auditor thereof, the amount of which costs having been previously certified by the clerk of the court of common pleas, of said county.

When costs in criminal cases may be paid by county.

Sec. 58. That no justice of the peace shall take as special bail, or bail for stay of execution, under the provisions of this act, or swear or examine as a witness, any person who (in the opinion of the justice) at the time, shall be intoxicated with spirituous liquors.

Persons intoxicated not to be sworn or taken as bail.

Sec. 59. That whenever the office of coroner shall become vacant in any county, either by death, resignation or otherwise, any justice of the peace within the township shall be bound to perform all the duties, and be vested with all the powers of coroner, during such vacancy, in all cases where the dead body of any person supposed to have come to his or her death, by violence or casualty, is found within his township.

Justices to perform duties of coroner in certain cases.

Sec. 60. That in all cases where judgment shall be entered by a justice of the peace, whose term of service is about to expire, it shall be lawful for said justice of the peace to

Justices may take bail at their term pires.

take bail for stay of execution, or grant an appeal within the time pointed out by this act, in the same manner as though the term of service of said justice had not expired.

Acts repealed. Sec. 61. That the act defining the duties of justices of the peace and constables in criminal and civil cases, passed February sixteenth, eighteen hundred twenty, and the act to amend said act, passed February second, eighteen hundred twenty one, be and the same are hereby repealed.

Effect.

This act to take effect, and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.

ALLEN TRIMBLE.

Speaker of the Senate.

February 25, 1824.



AN ACT providing for the incorporation of townships.

**Townships
made bodies
politic and cor-
porate.**

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That the townships of the several counties within this state, which have been, or that shall hereafter be lawfully laid off and designated, be and they are hereby formed into bodies politic and corporate, for the purpose of exercising and enjoying the rights and privileges hereinafter enumerated, and they shall be capable of suing and being sued, pleading and being impleaded in any court of law or equity in this state: *Provided,* that no township shall be laid off having less contents than twenty-two square miles, unless such township includes a town corporate.

**Commissioners
may erect new
or alter old
townships.**

Sec. 2. That whenever it shall be made appear to the board of commissioners of the proper county, that it is necessary to erect any new township, or to alter the boundaries of any township heretofore laid off, the board may set off or alter the same, and shall cause the boundaries to be recorded in a book, to be provided and kept for that purpose, and give to such township, such appropriate name as the board of commissioners may think proper: *Provided* That no two townships in any one county, shall be set off and incorporated by the same name.

Proviso.

**Names of
townships
changed.**

Sec. 3. That when it shall so happen that there shall be two or more townships of the same name in this state, or where the name of the town at a seat of justice, shall be different from that of the township in which it is situated, it shall be lawful for the county commissioners in such case, upon the petition of the electors of such township, to change the name of such township, and enter the same on their books; and also give notice thereof in a newspaper of general circulation in the county: *Provided,* That such change

Proviso.

shall in no wise affect the right of property, or the internal concerns of such township.

Sec. 4. That whenever any new township shall be set off, the board of commissioners shall forthwith give public notice by advertisement in three public places in such township, at least ten days before the time of holding the election, giving notice to the electors of such township, of the time and place of holding an election for township officers, and the electors of such township, shall at such time and place assemble, and then and there elect township officers, and the officers so elected, shall hold their offices until the next annual township election, and until their successors are elected and qualified.

New townships to elect their officers.

Sec. 5. That on the first Monday of April, annually, the electors in each and every township, shall assemble at such place in their respective townships, as may be appointed by the trustees thereof, (or by the advertisement of the commissioners, in case of newly set off townships,) for the purpose of electing their township officers, and the electors when so assembled to the number of ten or more, between the hours of eight and eleven before noon, shall proceed to choose *viva voce* three persons having the qualifications of electors, judges of the election, and two persons having like qualifications to serve as clerks; but in townships for which township officers had been chosen for the preceding year, the trustees shall serve as judges, and the clerk and such other person as the said judges may appoint, shall serve as clerks of the election, then to be holden, and if either of the trustees or clerk shall fail to attend, the place of such trustee or clerk shall be filled by the electors *viva voce* as aforesaid.

Township elections when to be holden and how conducted.

Sec. 6. That previous to their receiving any votes, the judges and clerks shall severally take an oath or affirmation faithfully to discharge the duties of their respective offices, in form following, *viz.* "You A. B. do solemnly swear (or affirm,) that you will perform the duties of a judge or clerk of this election (as the case may be) according to law, and the best of your abilities; and that you will endeavour to prevent any fraud, deceit or abuse whatever, in conducting the same," which oath or affirmation the judges and clerks are hereby empowered to administer to each other.

Judges and clerks to take an oath.

Form.

Sec. 7. That after judges and clerks have been qualified as aforesaid, the electors shall proceed to the election of one township clerk, three trustees, two overseers of the poor, two fence viewers, two appraisers of property, (one of whom shall be lister of taxable property, which lister shall be designated on each election ballot,) one township treasurer, and such number of constables and supervisors of highways as may be directed by the trustees, which several officers shall continue in office one year, and until their successors

Township officers to be elected.

Officers to take an oath.

Shall be chosen and qualified, the ballots shall be received by the judges, and entered by the clerks, shall be counted out, and in every respect disposed of in the way provided in the act to regulate elections, except that it shall not be necessary to send a copy to the clerk of the court of common pleas, of the proper county; the officers thus chosen, shall within ten days after their respective appointments, take an oath or affirmation, before some person authorized to administer the same, faithfully and impartially to discharge the duties of their respective offices.

Duty of township clerks in notifying officers elected.

Sec. 8. That it shall be the duty of the township clerk, to keep a fair and accurate record of the proceedings of the trustees, at all the township meetings, to make out within two days after the election of township officers, a list of all officers thus elected, stating the offices to which they are respectively chosen, and deliver the same to a constable of the township, requiring him forthwith to summon such officers, to appear before a justice of the peace, of the proper township, or before such clerk, within ten days from the day of election, to take such oaths or affirmations, as may by law be required, which oaths or affirmations, the said township clerk is hereby authorized to administer, and required to make record thereof; and if any of the township officers shall take the oath of office before a justice of the peace, such justice shall return a certificate thereof to the township clerk to be recorded as aforesaid, the township clerk shall likewise record in a book provided by him for that purpose, all such private roads and cart ways, as may be established by the trustees, and also the ear marks of cattle, sheep and hogs, used by the owner or owners, and such other marks and brands, as any person may wish to have recorded in said township book, but he shall not record the same mark to two different persons; the said clerk shall be entitled to receive of the person employing him as aforesaid, the sum of twenty-five cents for every such entry of marks or brands, of which entry he shall if required, deliver a certified copy to the owner; for recording private roads and cart ways, said clerk shall be entitled to receive twelve and a half cents, for every sheet of one hundred words, to be paid by the person at whose request the said record is to be made.

Other duties and fees.

Further duties of township clerks.

Sec. 9. That it shall be the further duty of the township clerk, immediately after the township officers shall have made their annual settlement of accounts, to make out, and enter in the record book of the township, an account of all the receipts and expenditures of the township, for the preceding year, stating for what the money was received, and how expended, a copy of which account, he shall set up at the place of holding the township elections on the first Monday of April annually, for making out his account as above required, and also for keeping a record of their proceedings

at their several township meetings, and attending to such suits as may be instituted in favor of the township, and for any other township business, they may require him to perform, the trustees shall allow said clerk a reasonable compensation to be paid by the township treasurer, out of the funds of the township on the order of said trustees, attested by the clerk, as in other cases.

Sec. 10. That it shall be the duty of the trustees in each township, at their meeting on the first Monday of March, annually to divide their respective townships into road districts, and give notice of the number of supervisors and constables to be chosen at the annual township election, one of which supervisors shall be chosen in each road district; and a majority shall be a quorum to do business at all meetings of the trustees.

Trustees' duties as to roads &c.

Sec. 11. That the trustees shall settle the accounts of the supervisors of highways, the township treasurer and overseers of the poor, and examine and settle all demands and accounts against the township, for which purpose the said trustees, supervisors, treasurer, overseers of the poor, and township clerk, shall meet on the first Monday of March annually, at the place of holding the township meetings; and the township clerk shall make an entry, and true statement of all accounts allowed and adjusted by the trustees, in a book to be provided for that purpose, and for every demand against the township allowed by the trustees, the creditors shall be entitled to receive from the said trustees, an order on the township treasurer for the full amount thereof, payable on demand.

Further duties.

Officers of township shall meet for settlement.

Sec. 12. That the trustees of each and every township, shall have power and authority annually, to lay a tax: *Provided*, That such articles only shall be subject to taxation, as are made liable by the laws, regulating county levies; and the amount of tax laid, shall not exceed one half what might be laid on the same article for county purposes; and the township clerk shall make out an assessment of the tax voted by the trustees, a duplicate whereof he shall deliver within twenty days, to such constable of the township as the trustees shall direct, and the other within the like time to the township treasurer; and it is hereby made the duty of said constable, to receive such duplicate, and forthwith give a bond to the township treasurer, with such security as said treasurer may approve, conditioned to collect and pay over to said treasurer or his successor in office, the whole amount of said duplicate, within four months from and after the date of said bond; and the said constable shall proceed in the collection of the said tax, with the same powers, and subject to the same rules and regulations that now are or that may hereafter be prescribed by law for the collection of the county taxes, and he shall be entitled to receive for the collection

Trustees may lay a tax.

Constable to be collector & give bond.

His compensation. of such tax a sum to be ascertained and fixed by the trustees of the township, at not more than ten, nor less than four per centum on the amount collected and paid over as aforesaid.

Collecting constable liable for negligence. Sec. 13. That in case said constable after having accepted the appointment, shall neglect or refuse to collect and pay over the whole amount of said tax as aforesaid, within the time aforesaid, it shall be the duty of the said treasurer, to institute an action on the bond aforesaid, against the said constable and his surety or sureties therein named, before any court having jurisdiction thereof; and no stay of execution shall be allowed on, or appeal taken from any judgment rendered in such action: *Provided*, That the said trustees shall have the power, to discharge said constable from the collection of any part of said tax, in cases where the collection thereof shall have become impossible, by reason of the insolvency, or removal from the county, of any person or persons charged therewith.

Proviso.

Notice to be given of the annual township meetings. Sec. 14. That at least twenty days before the annual township meeting, the trustees shall issue their warrant, to a constable of the township directing him to notify the electors of such township, to assemble at the time and place appointed for their annual meeting; and said warrant shall enumerate the officers to be chosen at such meeting, and the district in which they are to reside and act; and on application of two or more freeholders of the township, for that purpose, said trustees shall insert in said warrant, such other business, matter or thing, as may be proposed to be submitted to said township meeting; and the constable who shall receive such warrant, shall warn the electors of such township by setting up copies of such warrant, in three public places in the township, at least fifteen days before the meeting of such electors: *Provided however*. That in cases where the office of one or more of the trustees is vacant, the township clerk, together with the trustee or trustees in office, shall issue the warrant aforesaid, to the constable.

Proviso.

Persons elected and refusing to serve, to be fined. Sec. 15. That any person elected or appointed to any office under this act, who shall neglect or refuse to serve therein, shall forfeit and pay to and for the use of the township, wherein he may reside at the time of such election, the sum of two dollars, to be recovered in an action of debt, before any justice of the peace of said township; and the township clerk shall, in the name of said township demand, receive, or sue for such forfeiture, and pay over the same when collected, to the township treasurer: *Provided*, That no person shall be compelled to serve in any township office two years in succession: *Provided also*, That the trustees shall exonerate and discharge every person elected to any township office as aforesaid, from the obligation of serving therein, if such person shall within ten days after his election, shew to their satisfaction, that he ought not to serve in said office.

Proviso.

Sec. 16. That each and every person elected and qualified for the office of township treasurer, shall previous to entering on the duties of his office, give bond with approved security, to the trustees of such township and their successors in office, in such sum as the trustees may deem proper, conditioned for the faithful receiving and paying over all monies, which may come into his hands for the use of the township, which bond shall be lodged with the clerk of the township, and if the said bond shall become forfeited, the township clerk by order of the trustees, is hereby authorized to sue for and collect the same, for the use of the township.

Treasurer to give bond.

Sec. 17. That when by reason of non acceptance, death or removal of any person, chosen to any office, in any township, at the annual meeting as aforesaid, or in any case where there is a vacancy, the trustees shall appoint a person having the qualifications of an elector, to fill such vacancy; and the person thus appointed shall take the same oath, and be liable to the same penalty, as though he had been chosen at the annual meeting; and in case there should not at any annual meeting under this act, be a sufficient number of electors assembled for opening the election, between the hours of eight in the morning and four in the afternoon, so that no township officers can be chosen by the electors, the trustees shall appoint all township officers, in this law enumerated, and the township officers thus appointed, shall take the same oaths, and be liable to the same penalties as though they had been elected at the annual meeting.

Trustees to fill vacancies and appoint all officers, where no election is held.

Sec. 18. That each of the trustees, clerk and supervisors of roads and highways, shall be entitled to receive seventy-five cents for every day he or they may be necessarily employed in the discharge of their respective duties; and the trustees shall allow the constable a reasonable compensation for advertising the time of holding township elections, and notifying the several township officers of their election, to be paid out of the township treasury, on the order of the trustees, attested by the clerk; each township treasurer shall be allowed and may retain three per cent of all monies paid into the township treasury, for receiving, safe keeping and paying over the same to the order of the trustees; and all township officers shall deliver over to their successors in office, all books, papers and obligations, belonging to their respective offices, or deposited with them under this act, as officers of the township; and if any person who has been a township officer, shall refuse to deliver over as aforesaid, any law books, or other papers, the property of the township, he or they so offending, shall on conviction thereof, before any justice of the peace, be fined in any sum not less than five, nor more than fifty dollars, for the use of the township: *Provided*, That supervisors of roads and highways shall not

Officers' fees.

Books, &c. to be delivered to successors.

be allowed any compensation for the two days that they are required by law to labor on the roads.

Trustees to designate place of holding elections; may confine disorderly persons, &c.

Sec. 19. That the trustees of each and every township in this state, shall have power to determine on, and fix the place of holding elections within their township; and they shall give previous public notice, as in the case of township meeting; the trustees at every election or township meeting, shall have power to cause any and every disorderly person to be removed, and if necessary, confined until the close of such election or meeting, and every constable present shall obey their orders and directions, for the purpose of preserving order and regularity at such meeting.

Act repealed.

Sec. 20. That the act providing for the incorporation of townships, passed January twenty fourth eighteen hundred and twenty, be, and the same is hereby repealed.

Effect.

This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the house of representatives.

ALLEN TRIMBLE.

Speaker of the Senate.

February 25, 1824.

AN ACT to incorporate the original surveyed townships.

Trustees and treasurer may be elected in original surveyed townships, &c. who shall be a body corporate.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That so soon as there are twenty electors in any original surveyed townships, of five or six miles square, or fractional township wherein there are either the reserved section, twenty-nine or sixteen, or where said section number sixteen has been disposed of by congress, and any other section granted in lieu thereof, whether such other section be situate within or without said original township, the said electors are hereby authorized to elect three trustees and one treasurer for the purpose of taking into their care the sections above described, and who shall be a body corporate, capable of suing and being sued: *Provided,* That no person residing on, or holding a lease on any of the before described sections, shall be eligible to the office of trustee or treasurer as aforesaid.

Commissioners of county to give notice of election, when and how.

Sec. 2. That when the inhabitants of any surveyed or fractional township, shall make it appear to the satisfaction of the commissioners of the county, that there are twenty electors inhabiting such township, the commissioners shall cause written notice to be set up in three of the most public places in the township, requiring an election to be held therein, for the purpose of electing three trustees and one treasurer, to perform all the duties pointed out by this act,

giving fifteen days notice of the time and place of holding such election, which shall be held as near the centre of the township as circumstances will admit of; and the election shall be conducted conformably to the provisions of the act entitled "An act for the incorporation of townships;" and the trustees and treasurer shall each of them take an oath or affirmation before any justice of the peace, to discharge with fidelity the duties of their respective offices; and when thus organized, the trustees shall appoint a clerk, who may or may not be one of their own body; and said clerk shall, after being duly sworn to discharge with fidelity the duties of his office, keep a fair and accurate record of the proceedings of the board, in a book provided for that purpose.

Trustees to take an oath.

To appoint a clerk.

Sec. 3. That the trustees and treasurer shall hold their offices three years and until their successors are chosen and qualified, and at least fifteen days previous to each triennial election, shall notify the electors of their respective townships of the time and place of holding each succeeding election; but in case the trustees refuse or neglect to give such notice, it shall then become the duty of any elector inhabiting such township at any time thereafter, to advertise an election therein for the purpose aforesaid, which notice shall be given in the same manner, and the election conducted under the same regulations as in the preceding section of this act.

Trustees, &c. to hold their offices three years.

To give notice of election.

Sec. 4. That when any vacancy shall happen in the office of trustee or treasurer, the trustees shall fill such vacancy, and the person thus chosen, shall continue in office until the next triennial election, and until their successors are chosen and qualified.

Trustees to fill vacancies.

Sec. 5. That the trustees (whenever either of the said sections may require to be divided into lots) shall employ a surveyor to assist them, and lay out such section or sections into lots of not less than eighty or more than two hundred acres, and the said trustees shall lease out said section or sections (except such as may be provided for by any special act) after giving at least thirty days notice, by advertisement set up in four of the most public places in the township, and on the court house door, mentioning the time and place where proposals shall be received, and when they will meet to execute the lease, always giving a preference to those who in their opinion make the most advantageous proposals, and which rent may be secured to be paid in either money or grain; nor shall any lease be granted for a longer time than fifteen years.

Trustees to lay out sections into lots.

Notice to be given, &c.

Sec. 6. That the trustees shall not lease more than one lot to any one person; and the lessee shall be bound not to waste or destroy the sugar trees, or other timber, further than is necessary for improving thereon, and to make such improvements as the trustees may think proper; and the

Not more than one lot to be leased to same person, &c.

trustees shall examine the premises and see that they are left in good repair, and that the lease has been practically complied with; and shall then proceed again to give leases on the plan pointed out by the fifth section of this act, always giving a preference to the original lessee: *Provided*, he shall have complied with his former lease.

Rents and profits, how collected and applied.
 Sec. 7. That the trustees of each surveyed township or fractional township aforesaid, shall apply the rents and profits arising from section numbered sixteen, to the special purpose for which it was intended; which rents, if paid in money, shall be collected by the treasurer, who shall not pay out any money so received, but upon the order of the trustees; and the treasurer shall keep a book with fair and accurate entries of all monies received, together with a list of disbursements, and carefully file the vouchers relating thereto; which books and papers shall at all times be subject to the inspection of the trustees; but if the rents or profits arising shall be paid in produce it shall be deposited in such place, or disposed of in such manner, by the trustees, as shall in their opinion be best calculated to promote the interest of the institution.

Town'ps. may be laid off into school districts
Apportionment of monies.
 Sec. 8. That the trustees are hereby authorized as soon as they think it necessary; to lay off their townships into convenient districts, and the same to alter or change from time to time as the interest of the citizens may require, for the purpose of establishing schools therein; and each school thus established in townships, shall be entitled to receive an equitable dividend of the profits arising from their reserved section according to the number of scholars, and in proportion to the time they have been taught, or gone to school, whether such scholars have gone to school within or without said township; and to enable them to make an equal distribution, they shall require a certificate from their respective teachers, stating the time each scholar has been by him taught, together with such other evidence as they shall think necessary to enable him to ascertain the time that each scholar has been taught, during the period for which such dividend or distribution shall be made.

Where county line passes through sec. 16 how proceedings shall be had.
Venue.
 Sec. 9. That every surveyed township or fractional township aforesaid, in this state, that has a county line running through the same, shall be considered, as it respects section number sixteen and twenty-nine, in the same situation as though no such interference had taken place; any suit or action that may take place between the trustees in their corporate capacity, and individuals or bodies corporate, such action or suit shall be tried and determined in the county where the reserved section lies, and the officer appointed to serve process in such case shall have full power to go any where throughout the township, in execution of his official

duty, in the same manner as though no such division line had ever existed.

Sec. 10. That each and every denomination of religious societies, after giving themselves a name, shall appoint an agent, who shall produce to the trustees a certificate containing a list of their names and numbers, specifying that they are citizens of said township; and the agent shall pay over an equal dividend of the rents, within three months after the same shall have been received, to be appropriated to the support of religion at the discretion of each society, or be entitled to a portion of said rents: *Provided*, That all members above the age of fifteen years shall be entitled to have their names enrolled by any society.

Religious societies, who have a name, shall have an equal dividend.

Sec. 11. That whenever number sixteen or twenty-nine shall be in a township where there are not twenty electors, the trustees of the civil township in which surveyed townships may be situate, may lease the said section or sections, receive the rents arising therefrom, for the use of the inhabitants of such surveyed township agreeably to the provisions of this act.

Who shall receive rents, &c. where there is not twenty electors.

Sec. 12. That in such township or fractional townships wherein section tways line is reserved, it shall be the duty of the trustees to meet on the first Mauday of January annually, at the most convenient place, nearest the centre of such township or fractional township, and there make a dividend of the rents to each religious society, agreeably to the tenth section of this act; and in making such dividend, each society shall be entitled to receive a just proportion of the money or grain received by the treasurer in such proportion as each article in the hands of the treasurer shall make necessary.

Dividends upon section 24, when and how made.

JOSEPH RICHARDSON,
Speaker of the house of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 26, 1824.

AN ACT to prevent injury by dogs.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio*, That if any dog or dogs shall kill or injure any sheep or lamb, the owner or harbinger of such dog or dogs, shall be holden liable for all damages, which may be sustained thereby, to be recovered at the suit of the party injured, before any justice or court having cognizance.

Owner liable for damages by dogs.

Sec. 2. That it shall be lawful for any person or persons forthwith to kill, wound, or destroy, any dog or dogs, which may be found worrying or injuring any sheep or lamb.

Dogs injuring sheep may be killed.

Effect..

This act shall take effect and be in force from and after the first day of May next.

JOHN POLLOCK,
Speaker of the House of Representatives.
THOMAS KIRKER,
Speaker of the Senate.

December 24, 1814.

AN ACT, pointing out the manner in which suits may be prosecuted on the bonds of executors, administrators and officers.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That it shall be competent for any person injured by the misconduct of an executor, administrator, or officer with- in this state, to obtain from the person holding the bond executed by such executor, administrator, or officer, a certified copy thereof, on which copy the person so injured, may institute and carry on, in the name of the obligee of such bond, for the use of the person so suing, an action of debt against such executor, administrator, or officer and his securities, in any court having proper jurisdiction, and recover judgment for the amount of the bond, on which judgment, an execution may issue, for such sum as it may be ascertained will be sufficient to indemnify the person so suing: *Provided,* That in no case shall the obligee of the bond be responsible for costs; but in case judgment should be rendered in favor of the defendant, cost shall be taxed and recovered against the person for whose use the suit was commenced.

Sec. 2. That it shall be lawful for any other person injured as aforesaid, to proceed by scire facias, in such judgment, until the amount thereof be exhausted: *Provided,* That the plaintiff shall always set forth the breach or breaches on which he may intend relying, to support his suit: *And Provided also,* That nothing in this act, shall be so construed, as to prohibit such executor, administrator, or officer and his securities, from pleading any matter which may be pertinent to their defence.

MATTHIAS CORWIN,
Speaker of the house of Representatives.
PETER HITCHCOCK,
Speaker of the Senate.

February 23, 1816.

Suits may be sustained on copies in name of obligee for use of party injured.

Proviso.

Any person injured may proceed by scire facias.

Proviso.

Proviso.

AN ACT to provide for the repealing of certain acts and parts of acts therein named.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the act entitled An act to provide for the incorporation of towns, and an act to amend the last named act, passed January twenty-eighth, eighteen hundred and seventeen; An act for the assignment of bail bonds; An act relating to mill dams; An act to provide for the incorporation of schools and library companies; An act for the incorporation of Manufacturing Companies; An act to restrain suttlers; An act to prevent firing woods and prairies; The third section of the act providing for the election of sheriffs and coroners in certain cases; The sixth section of the act for the prevention of frauds and perjuries, be and the same are hereby repealed.

This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives,
ALLEN TRIMBLE,
Speaker of the Senate.

February 26, 1824.

AN ACT providing that the repeal of an act shall not revive a former act.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That whenever a law shall be repealed, which repealed a former law, the former law shall not thereby be revived, unless specially provided for.

ALEXANDER CAMPBELL,
Speaker of the house of representatives.
THOMAS KIRKER,
Speaker of the Senate.

February 14, 1809.

AN ACT levying a tax upon sales at auction, in certain cases.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That a tax of three per cent. upon the nett amount of ^{Sales at auc} the proceeds of sales at auction within this state, of all goods, ^{tion to be tax} wares and merchandize, shall be levied and collected in the manner and for the purposes herein after mentioned.

Sec. 2. That the court of common pleas in any county in ^{C. C. Pleas} this state, may appoint one or more auctioneers, who shall ^{may appoint}

**Auctioneers
who shall give
bond.**

continue in office for one year, and who shall give bond, with two or more sufficient securities, in a sum not exceeding ten thousand dollars, as the court shall direct, payable to the state of Ohio, conditioned that such auctioneer will well and truly do and perform all the duties, and pay over all the monies required of him by this act; and the auctioneer thus appointed, upon the execution of the bond aforesaid, shall pay to the treasurer, any sum the court may direct not exceeding twenty dollars for the use of the county, and shall take his receipt therefor, together with a certificate that bond has been given according to law; and upon producing such receipt and certificate to the clerk of the court of common pleas, the clerk shall give such auctioneer a license, authorizing him to make sales at auction for one year.

**Clerk to give
license.**

Sec. 3. That in case the license of any auctioneer shall expire, during the vacation of the court of common pleas of his proper county, the clerk of such court is hereby authorized to grant him a permit to continue the exercise of his duties, until the end of the second day of the next succeeding term of said court, on the applicants producing to him a certificate from the treasurer of his county, that he has given bond and security as required above, and a receipt for the payment into the county treasury of a sum of money, for the time which must intervene between the granting of the permit and the second day of the succeeding term, which shall be in proportion of the sum directed by the court as aforesaid, to three hundred and sixty-five days.

**Clerk may
grant permit in
certain cases.**

**Allowance of
per cent. to
auctioneer &c.**

Sec. 4. That every auctioneer appointed agreeably to the provisions of this act, shall be allowed for all sales at auction by him made, a sum not exceeding eight per cent. for all sums under one hundred dollars, and for all sums of one hundred dollars and upwards, a sum not exceeding six per cent, and any auctioneer appointed under the provisions of this act, shall in every year on the first Mondays of January, April, July, and October, render to the treasurer of his county, a statement upon oath of the amount of his sales, and at what time and for whom made, within the last three months, and shall at the same time pay to the treasurer three per cent. upon the whole amount of such sales, and take his receipt, which receipt he shall forthwith lodge with the auditor of his county, and take his receipt therefor.

**What shall be
forfeiture of
bond.**

Sec. 5. That if any person appointed auctioneer under this act, shall fail to make the statement and payments, by the fourth section of this act required, such auctioneer shall forfeit the penalty of his bond, and the amount thereof shall be recovered of such auctioneer and his securities, in a suit to be brought in the name of the state of Ohio, and applied to the purposes hereinafter mentioned.

**No person, ex-
cept in certain**

Sec. 6. That if any person within this state shall sell at auction any goods, wares or merchandize, except sales of in-

solvent estates, or sales by executors, or administrators, books, maps, or charts, or sales upon execution, or sales of stock, farming utensils, or sales ordered by any court of law, or equity, and house-hold furniture, without having obtained a license, as this act directs, every person so offending, shall for every such offence, forfeit and pay the sum of five hundred dollars, to be sued for and recovered in action of debt, in the name of the state of Ohio, before the court of common pleas of the proper county, and applied to the purposes hereinafter mentioned: *Pr. vided*, That no penalties shall be inflicted, under the provisions of this section, where the court of any county shall not think proper to appoint an auctioneer. cases to make sales without license.

Sec. 7. That all monies raised by way of tax, or penalties, or otherwise collected, or recovered under the provisions of this act, except as hereinafter excepted, shall be paid over by the treasurers of the respective counties, to the treasurer of state, and shall be set apart as a fund to be applied by the Legislature to literary purposes, under such regulations as may be provided by law. Proviso.

Sec. 8. That one half of all monies raised, collected, or recovered as aforesaid, in the county of Hamilton, shall be paid over by the treasurer of said county, to the treasurer of the township of Cincinnati, for the use of the Commercial Hospital and Lunatic Asylum of Ohio, and the other half of all monies raised and collected, and recovered in said county, shall be by the treasurer aforesaid, paid into the state treasury, and placed to the credit of the literary fund. Revenue arising to be a literary fund.

Sec. 9. That it is hereby made the duty of each and every treasurer, with whom any money may be deposited, or in whose name any penalties may be recovered, in conformity with the provisions of this act, on or before the first day of January in each and every year, to transmit to the auditor of state, a correct statement of all monies by him recovered, and received as aforesaid, under any of the provisions of this act; and it is hereby made his further duty also, on or before the first day of January in each year, to pay to the treasurer of state, the full amount of all monies, so by him recovered and received as aforesaid, for the use of the state, and take from the treasurer duplicate receipts therefor, one of which he shall lodge with the auditor of public accounts. How appropriated in Hamilton county.

Sec. 10. That it is hereby made the duty of the sheriff, or other officer, who shall collect and receive any of the fines and penalties which may be imposed under the provisions of this act, to pay over the same to the treasurer of his county, within ten days after receiving the same, and take from such treasurer a receipt therefor and lodge the same with the auditor of his county. County treasury to pay monies to state treasurer.

Sec. 11. That it shall be the duty of the auditor of each and every county, with whom any auctioneer may have Sheriff, &c. to pay money to county treasurer.

script to state auditor. lodged the receipt of any county treasurer according to the provisions of this act, to transmit such receipt or receipts to the auditor of state, on or before the first day January in each year.

Officers not performing duties, fined. Sec. 12. That on failure of the county auditor, county treasurer, or sheriff, or other officer of any county, to perform the duties required of him by this act, he shall forfeit and pay five hundred dollars, over and above the amount of the loss which it shall be made to appear to the court, the state has sustained, to be recovered in an action on the case, at the suit of the auditor of state, in the court of common pleas of the proper county, and the monies so recovered, shall be applied as herein before directed.

Acts repealed. Sec. 13. That all laws and parts of laws now in force in this state, on the subject of sales at auction, are hereby repealed.

Effect: This act to take effect and be in force from and after the first day of June next.

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,
Speaker of the Senate.

February 18, 1924.

AN ACT for the relief of occupying claimants of land.

Persons in possession and showing title in law or equity; or by deed &c. shall be paid for improvements. Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That in all cases where any occupying claimant, being in quiet possession of any land, for which such person can show a plain and connected title, in law or equity, derived from the records of some public office; or being in quiet possession of, and holding the same by deed, devise, descent, contract, bond or agreement, from and under any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded, or being in quiet possession of, and holding the same under sale on execution, against any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded; and if any person or persons shall set up and prove an adverse and better title to said lands, such occupying claimant holding as aforesaid, shall not be evicted or turned out of possession, until he or she shall be fully paid the value of all lasting and valuable improvements made on said land, by such occupying claimant, or by the person or persons under whom he or she may hold the same, previous to receiving actual notice, by the commencement of suit on such adverse claim, by which such eviction may be effected, unless such occupying claim-

and shall refuse to pay the person so setting up and proving an adverse and better title, the value of the land without the improvements made thereon as aforesaid, upon the demand of such successful claimant, as herein after provided.

Sec. 2. That all and every person or persons being in possession of, and holding any land under any sale for taxes due this state, authorised by the laws of this state, or the laws of the territory north-west of the river Ohio, shall not be evicted or turned out of possession until he, she or they shall be paid the value of all lasting and valuable improvements made on said land, by such occupying claimant or claimants, or the person or persons under whom he, she or they may hold or claim the same, previous to receiving actual notice of the claim by which such eviction may be effected, upon the same terms and conditions specified in the first section of this act; and the claim or title by which the successful claimant succeeds, shall be considered an adverse claim under the provisions of said act, whether it be the title under which the taxes were due, and for which said land was sold or any other title or claim whatever; and any person or persons holding and claiming any land sold for taxes as aforesaid, who shall hold any deed from a collector of taxes, or a certificate of sale of said land from said collector, or claim under the person or persons who hold such deed or certificate shall be considered as having sufficient title to said land, to demand and receive, pay for improvements under the provisions of the first section of this act.

Persons holding under sale for taxes shall not be evicted until paid for improvements.

Sec. 3. That the court rendering judgment in any such case, against such occupying claimant, shall at the request of either party, appoint three judicious disinterested freeholders of the county, where such judgment may be rendered, who shall within twenty days after receiving an order, to be made out by the clerk under the seal of said court for that purpose, assess on oath or affirmation the value of all lasting and valuable improvements made as aforesaid, on the land in question, previous to receiving actual notice as aforesaid, of such adverse claim; and in assessing the value of such improvements, the commissioners shall take into view, all the damages which the land in question may have sustained by waste, and deduct the same from the estimated value of such improvements; and said commissioners shall also assess the value of the land in question, at the time of rendering judgment as aforesaid, without the improvements made thereon, or damages sustained by waste as aforesaid; which assessment or valuation shall be signed and sealed by such commissioners or a majority of them, and deposited with the clerk of the court by whom they were appointed, before the next term thereof; and if either party shall think himself or herself aggrieved by any such assessment or valuation, the court may, upon the application of such person at the next term, for good cause shewn, order a new assessment or

Three freeholders to be appointed by court to value improvements.

Lands to be valued without improvements, or damages by waste.

Court may order new valuation.

valuation, and appoint other commissioners as herein before directed, who shall proceed in the same manner as herein before directed.

Successful claimant may demand the value of the land without improvements & convey the same or pay for improvements.

Sec. 4. That the successful claimant in all such cases, may at his election either demand of the occupying claimant, the value of the land without the improvements, so as aforesaid assessed, and convey the land in question to such occupying claimant, or pay the occupying claimant the value of the improvements so as aforesaid assessed, within such reasonable time as the court shall allow, and if such successful claimant shall pay the occupying claimant the value of the improvements, so as aforesaid assessed, within the time allowed by the court, or if on demand of the value of the land without the improvements, and tender of a deed of the land in question as aforesaid, by the successful claimant; if the occupying claimant shall refuse or neglect to pay the successful claimant, the value of the land without the improvements, so as aforesaid assessed, within such reasonable time as the court shall allow, then a writ of possession shall be issued in favor of the successful claimant; but if such successful claimant shall not demand the value of the land in question, without the improvements, and tender a deed as aforesaid, and shall refuse to pay the occupying claimant the value of the improvements so as aforesaid assessed, within such reasonable time as the court shall allow, such occupying claimant shall not be evicted from such land, but shall be suffered to remain in possession; and in no such case shall the occupying claimant, who may be evicted, be liable to any action or prosecution for, or on account of any rents or profits accrued, or waste or damages done to said lands previous to receiving actual notice as aforesaid, of such adverse claim, unless such waste or damage shall exceed the value of the improvements, so as aforesaid to be assessed, and then only the amount of such excess.

Acts repealed.

Sec. 5. That the act, entitled "An act for the relief of occupying claimants of land," passed January nineteenth eighteen hundred and sixteen, be, and the same is hereby repealed.

Effect,

This act to take effect and be in force from and after the first day of June next,

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the senate.

February 23, 1820.

AN ACT for the relief of occupying claimants of land.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio, That all applications now pending in any court of*

record in this state, for the value of improvements under the acts, for the relief of occupying claimants of land, passed February sixteenth, one thousand eight hundred and ten, and January the nineteenth, eighteen hundred and sixteen, shall be heard, adjudicated and determined, under the above recited acts; and where any applications for pay for improvements, have failed, solely on the ground that the acts aforesaid, under which such application was made, have been and are repealed, it shall be the duty of the court, where such application was made, to redocket such application, and proceed in the same manner as such court would have done if such acts had not been repealed; any thing in the repealing clause of the act, entitled "An act for the relief of occupying claimants of lands," passed the twenty third day of February eighteen hundred and twenty, to the contrary notwithstanding.

Applications for improvements shall be heard under former acts

Court may redocket applications.

Sec. 2. That in all cases where application has been made for the value of improvements, by virtue of the acts mentioned in the first section of this act, and where such application has failed, because the deed or deeds of the occupying claimant had not subscribing witnesses to the same; or for the reasons set forth in the first section of this act, or for either or both of said causes; it shall be the duty of the court, before which judgment of eviction was rendered, on application of such claimant, to enter each application on their docket, and proceed therein as is required by virtue of the aforesaid acts when judgment of eviction had been rendered in such court; and the want of subscribing witnesses or acknowledging such deed or deeds, shall be no objection to the same, if the court shall be satisfied by other proof which such occupying claimant may produce, that the grantor or grantors executed the same: *Provided*, That thirty days' notice in writing, of such intended application be given to the person or persons; or left at his or her usual place of abode, who may have obtained such judgment of eviction.

Want of subscribing witnesses to acknowledgment to deeds not to take away right to improvements.

Proviso.

Sec. 3. That for the purpose of carrying into effect, the provisions of this act, the acts for the relief of occupying claimants, passed February sixteenth, eighteen hundred and ten, and January nineteenth eighteen hundred and sixteen, be, and the same are hereby revived, and declared to be in full force, as if the same had never been repealed. And in all cases where the person holding the paramount title, is in the possession of the land, the court shall cause execution to issue by virtue of this act, in the same manner as executions issue in other cases.

Two acts revived.

JOSEPH RICHARDSON,
Speaker of the house of representatives.
ALLEN TRIMBLE,
Speaker of the senate.

February 1, 1821.

AN ACT creating the office of County Surveyor and defining his duties.

Court to appoint C. Surveyor, who shall hold his office 5 years.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio,* That it shall be the duty of the court of common pleas of each county within this state, at their first session, after the taking effect of this act, and at their first session in each new county, which may be organized, to appoint some person, residing within their county, well calculated to act as county surveyor, who shall hold such appointment five years from the time he may take his oath of office, and give bond, as herein after required, if he so long behave well, and is found to be capable of discharging the several duties required of him by law; and the court shall forthwith certify such appointment under the seal of the court, to the governor of this state, who shall thereupon, grant a commission to the person so appointed: *Provided,* That no person holding the office of associate judge, clerk of any court, sheriff, county treasurer or recorder, shall be appointed to the office of county surveyor: *Provided also,* That each and every county surveyor, who may be in office at the time this act shall take effect, shall continue to do and perform all and singular the duties required of him by this act, until his term of office shall expire, and until his successor may be appointed and qualified.

Proviso.

Proviso.

Court of C. P. to fill vacancies.

Sec. 2. That whenever the office of county surveyor shall become vacant, either by death, resignation, or otherwise, the court of common pleas, next to be holden, for the county where such vacancy may happen, shall appoint a person well qualified to discharge the duties of said office, who shall be commissioned in the same manner, and hold his office for the same term of time, and be subject to the same regulations in every respect, as is directed in and by this act.

To take an oath and give bond.

Sec. 3. That the person appointed surveyor, under the provisions of this act, shall forthwith, after the receipt of his commission, take an oath or affirmation, before the clerk of the court of common pleas, to be certified on the commission, that he will faithfully, impartially, and to the best of his skill and abilities, discharge the duties of county surveyor; and he shall also give bond in the penal sum of two thousand dollars, payable to the treasurer of the county and his successor in office, with at least two such free-hold sureties as the clerk shall deem sufficient for the use of all persons concerned, to whom any damage may accrue, through the negligence or misconduct of such surveyor or his deputies, conditioned for the true and faithful performance of the several duties of a county surveyor, as prescribed by law, which bond the said clerk shall file in his office.

Sec. 4. That each county surveyor, after being duly qualified, as provided in the foregoing section, may appoint such

number of deputy surveyors under him, as he may think proper, being responsible for the correctness of their official acts; which deputies shall, respectively, before they enter on the duties of their office, take a similar oath or affirmation, to that required of the county surveyor; and all official duties performed, and surveys made by a deputy surveyor, shall be signed by him officially, and countersigned by the county surveyor, and shall be as good and valid in law and equity in every respect, as if the same had been done by the county surveyor.

Sec. 5. That any person, who may think himself injured, by the neglect or misconduct of any county surveyor, or any of his deputies, may institute a suit on any certified copy of the bond executed by such county surveyor, and his sureties, in the name of the treasurer of the county, for the use of the person suing: *Provided*, That such treasurer shall not be liable for costs; and in case the party, for whose benefit such suit may be brought, shall obtain a judgment for any damage or loss, by him sustained, he may sue out an execution on said judgment, as in other cases, and the bond aforesaid, shall not become void on the first or any subsequent recovery, but may be subject to be sued in like manner by each and every person, who may think himself aggrieved, by a breach of the conditions of such bond: *Provided also*, The said bond be proceeded upon within five years from the cause of action.

Sec. 6. That when any county surveyor or his deputy, may be called upon to make any survey or surveys, which is or are to be offered in evidence in any court of law or equity [the adverse party having notice of the time of making such survey or surveys,] such county surveyor or deputy, is hereby authorized and required, upon application of either party to administer an oath or affirmation to any witness, who may be brought to prove any corner, or line of such survey or surveys, or of any natural or artificial object or mark, which may be necessary to identify the same, which testimony shall be reduced to writing, and subscribed by the witness or witnesses, and return made thereof to the court, with the return of the survey.

Sec. 7. That all calculations to ascertain the contents of a tract of land by the county surveyor, or other person or persons, who may, at any time be called on by the court, to execute a survey, shall be made by latitude and departure; and on each plat the county surveyor, or the person or persons called on by the court as aforesaid shall lay down the variation of the magnetic needle, from the original course of such survey.

Sec. 8. That when any tract of land may be situated in two or more counties, or if the beginning of the entry or survey, on which such tract of land may depend, shall be in a state in two

May appoint deputies who must take an oath.

Persons injured by surveyor or deputies may sue his bond, &c.

Provide:

Provide.

May administer oaths to witnesses when taking surveys under order of court, &c.

Calculations shall be made by latitude and departure, and the variation of the needle noted.

May survey tracts of land in a state in two

or more coun- different county, from that in which part of such tract of
ties. land may be, it shall be competent for the court in either of
said counties, to take cognizance of any matter of controver-
sy, relative to such land, and issue an order of survey to the
county surveyor, of any one of said counties, who shall survey
such tract of land, and run and lay down any entry or sur-
vey, line or lines, which may be necessary to establish the
same.

May call on sheriff who shall accom-pany him and remove all force, &c. Sec. 9. That if any county surveyor or deputy surveyor, shall be molested or prevented from doing or performing any of his official duties, by means of the threats or improper interference of any person or persons, such surveyor shall call on the sheriff of the county, who shall accompany him and remove all force; and the person or persons thus threatening, or improperly interfering with any surveyor, whilst performing his official duties, shall be subject to prosecution by indictment, and on conviction thereof, shall be fined in a sum, not exceeding one hundred dollars, at the discretion of the court, and moreover be liable for all damages by any person sustained, by the hindrance of the surveyor, and also for all expenses and costs that may accrue, in consequence of the attendance of the sheriff.

Persons molesting, liable to indictment.

To survey lands sold for taxes.

No surveys legal testimony unless made by consent or by surveyor, or his deputy.

Proviso.

Proviso.

Sec. 10. That the county surveyor or his deputies, shall survey all lands which have been, or hereafter may be sold for taxes, which shall lie within his county, on the application of any person, producing to him a certificate from the proper officer, agreeably to law.

Sec. 11. That no re-survey, hereafter made by any person except the county surveyor or his deputy, shall be considered as legal testimony, in any court of law or equity, in this state, except such surveys as are made by mutual consent, reduced to writing, and signed by the parties: *Provided*, That when it shall appear, that the county surveyor is interested in any survey, the title of which is disputed before the court; or if the county surveyor is not commissioned and qualified, the court shall direct the re-survey to be made by some capable person, who is in no wise interested, who shall return the said re-survey to the court, on oath or affirmation: *Provided also*, That no survey, made by the county surveyor or his deputy, shall be considered legal testimony, except such survey has been made by order of the court of common pleas, or of the supreme court, or that it has been made, agreeably to the provisions of the sixth section of this act, or by the consent of parties, as herein provided; and none but such surveys, shall be considered officially made.

To keep a record of surveys made by him. Sec. 12. That the surveyor of each county, shall keep a fair and accurate record of all surveys, and the calculations of the contents of such surveys, made by himself and his de-

puties, in a suitable book or books, to be by him kept for that purpose, he shall number his surveys progressively, and a copy of any survey, shall be furnished by the surveyor, to any person requiring the same, on his paying therefor, the fees hereinafter directed.

Sec. 13. That it shall be the duty of each county surveyor and deputy surveyor to employ disinterested persons, to act as chainmen, and each chainman employed by the county surveyor or his deputies, shall, before he commences the duty assigned him, take an oath or affirmation, faithfully and impartially to execute the duty of chainman, which oath or affirmation, the county surveyor or his deputies, are hereby authorized and required to administer; and that the expense of chain carriers and markers, shall be paid in advance, if required, to the county surveyor or his deputy, by the party on whose application the survey may be made, and the money so advanced, shall be accounted for by the surveyor, and the amount expended, to be taxed in the bill of costs: *Provided*, That there shall not be allowed to any chainman or marker, a greater sum than one dollar, for each day he may be actually employed: *Provided also*, That each surveyor shall have the right to retain the return, of any survey by him made, until he shall be paid the fees allowed by this act; and shall also have the right to collect such fees by suit, if the return of survey is not called for.

Sec. 14. That if it shall be made to appear to the court, that any county surveyor, for the time being, is incapable of performing all and singular, the duties enjoined on him by law, or that he has neglected or refused to do and perform any legal act, he may be required to do, (unless prevented by unavoidable accident,) the court shall dismiss such county surveyor from office, and forthwith appoint a successor, to fill such vacancy.

Sec. 15. That any person wishing to have a county surveyor removed from office shall file in the office of the clerk of the court of common pleas, of the proper county, at least thirty days before the sitting of such court, a petition, setting forth the cause of complaint, whether it relates to incapacity, misconduct in office, or neglect of duty, and the clerk shall forthwith make out a certified copy of such petition, and also a summons, directed to the sheriff, requiring him, within ten days thereafter, to notify such surveyor, (either by reading such summons to him, or leaving a certified copy thereof, at his last place of residence,) to appear at the next court of common pleas, on the first day of the term, to answer said complaint, and the sheriff shall at the same time, leave with such surveyor at his residence aforesaid, a copy of the said petition; and it shall be competent for such court, on the first day of their term, or as soon thereafter as the parties may be ready to hear such complaint, the answer

thereto, the proof in support thereof, and decree as may seem just and proper.

How court shall render costs

Sec. 16. That the court, before whom such complaint may be tried, shall render a judgment for costs against such petitioner, if the respondent shall be acquitted, and against the respondent, if he shall be found guilty.

Surveyor to receive books of predecessor

Sec. 17. That it shall and may be lawful for any surveyor, who shall be appointed under this act, to ask demand and receive of his predecessor, any book or books relating to said office, in which it is by law, made the duty of such surveyor, to record all surveys, and calculations of the contents of surveys, made by himself or deputies; and whenever said office shall become vacant, either by death, resignation or otherwise, it shall be the duty of any person or persons, having the possession of such books or records, to hand the same over on demand, to such person as the court of common pleas of such county, shall appoint to fill such vacancy: *Provided*, That it shall and may be lawful for such surveyor, or his legal representative, whose duty it is hereby made, to hand over the books and records, to ask, demand and receive of the commissioners, of the proper county, an order on their county treasury, for such sum as the commissioners shall believe to be the value of the books and records aforesaid, in their blank state, which have been purchased by such surveyor, at his own expense, which sum shall be paid to such surveyor or his legal representative out of the county treasury of such county; and if the surveyor or his legal representative whose duty it is hereby made, to hand over the books and records aforesaid, shall neglect or refuse to do the same, as required by this act, he shall, for every such offence, forfeit and pay a sum, not exceeding five hundred dollars, to be recovered by action of debt, at the suit of his successor in office, before any court, having jurisdiction thereof, which shall, when collected, be paid into the county treasury, to and for the use of the county.

Persons having books to deliver them over

Proviso

Fees of surveyor

Sec. 18. That the several county surveyors who now are, or hereafter may be appointed to that office, may demand and receive for their services the following fees, viz: for each survey, where the lines do not exceed one mile, the sum of two dollars, and for each mile he may run, in addition thereto, the sum of fifty cents; for making out and certifying an original connected plat, of any number of surveys or entries, twelve and a half cents for each survey or entry, laid down on the same; for every certified copy of a connected plat, six and a fourth cents, for each survey or entry, laid down on the same; for making out a plat and certificate of survey, fifty cents, recording the same, thirty seven and a half cents; for a copy thereof, twenty five cents; for making out a calculation of the contents of a tract of land, where there are not more than four lines to the same, fifty cents,

and when the number of lines exceed four, and do not exceed ten, seventy-five cents, and when the number of lines exceed ten, one dollar; and for every mile he shall travel from his place of residence, in going to and returning from the tract of land, he may be called on to survey, by the customary route, six and a fourth cents: *Provided*, That all expense of chain carriers, markers, &c. shall be paid by the person at whose request the survey is made. Proviso

Sec. 19. That the act entitled, "An act, creating the office of county surveyor and defining his duties," passed February 26, 1816; and the act entitled, "An act, to amend the act, creating the office of county surveyor and defining his duties," passed January 21, 1817; and the act entitled, "An act to amend the act, creating the office of county surveyor and defining his duties," passed February 8, A. D. 1819, be and the same are hereby repealed: *Provided*, That the repeal of the above mentioned acts, shall not in any wise discharge or exonerate any county surveyor, from the liability he may have incurred, by reason of the breach of the condition of the bond or bonds, he may have given, or from any penalty he may be subjected to under and by force of the same. Acts repealed
Proviso

This act to take effect and be in force from and after the first day of June next. Effect

JOSEPH RICHARDSON,
Speaker of the House of Representatives.
ALLEN TRIMBLE,

January 26, 1820.

Speaker of the Senate.

AN ACT for regulating measures.

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio*, That the county commissioners of each county in this state, are hereby required and directed to cause to be made for each county, one half bushel measure, which shall contain one thousand, seventy five and two tenths solid inches which shall be kept in the county seat, and shall be called the standard. County commissioner to cause half bushel to be made & contents.

Sec. 2. That the commissioners of the respective counties shall appoint a person in each county seat to keep the standard measure, and shall procure a seal for the keepers of said standard measures, which keeper shall take an oath or affirmation for the faithful discharge of the trust reposed in him, and all persons desirous of trying their measures may resort to the aforesaid county standard for that purpose; and the person appointed to keep the said standard shall, if he find them true and exactly to correspond, seal them with his County commissioner to appoint a person to keep standard measure and procure a seal
Keeper to seal measures.

His compensation seal, and the person so appointed shall be entitled to receive, for trying and sealing each half bushel as aforesaid, the sum of twenty five cents.

Persons selling by ass or buying by large measure subject to fine.

Sec. 3 That three months after the appointment of a person to keep the said county standard shall have been made known as aforesaid, every person who shall knowingly sell any commodity whatever, by a measure that shall be less than the said county standard, or shall keep any measure larger for the purpose of buying, shall for every such offence forfeit and pay a sum not exceeding five dollars, for the use of the township, to be recovered by action of debt, before any justice of the peace for the township in which the offence shall be committed

Expense how paid.

Sec. 4. That the expense accruing under the provisions of this act, shall be paid out of the respective county treasuries on the order of the commissioners.

Effect.

This act to be in force from and after the first day of July next.

EDWARD TIFFIN,
Speaker of the house of Representatives.
THOMAS KIRKER,
Speaker of the Senate.

January 22, 1811.

AN ACT prescribing the manner of contesting elections for governor.

How contestor shall proceed

Sec. 1. *Be it enacted by the General Assembly of the state of Ohio.* That after the returns for governor from the several counties within this state, are opened and published by the speaker of the senate, agreeably to the second section of the second article of the constitution, any candidate or elector being desirous of contesting the election of the person declared elected shall, within two days, file a notice of such his intention with the clerk of the senate, specifying the particular points on which he means to rely.

Two houses to appoint a day for determining contest

Sec. 2. That upon such notice being filed as aforesaid, the two houses shall, by joint resolution, determine on what day they will meet in the representatives chamber in order to hear and determine the said contest; and thereupon a certified copy of the notice filed by the contestor, shall be served upon the governor elect, or by leaving a copy thereof at his last place of residence, by such person as by resolution shall be appointed, with a notice when he is required to attend in the representatives chamber, in order to answer the contest.

Sec. 3. That on the trial of any contested election for governor, the parties to such contest, may introduce either written or oral testimony, but no depositions shall be read on such trial, unless the opposite party shall have had reasonable notice of the time and place of taking the same.

The evidence may be written or oral.

Sec. 4 That in conducting any contested election for governor the following rules shall be observed, to wit:

Rules to be observed in conducting and determining the contest

1. On the day and at the hour appointed for that purpose, the senate and house of representatives with their clerks, shall attend in the representatives chamber.

2. When the speaker of the senate is not the acting governor, he shall preside; but when he is the acting governor, a candidate or contestor, the speaker of the house of representatives shall preside.

3. The parties to the contest shall then be called by the clerk of the house of representatives; and if they answer, their appearance shall be recorded.

4. The contestor shall first introduce his testimony, and then the governor elect shall introduce his and after the testimony is gone through on both sides, the contestor may by himself or his counsel, open the contest; the governor elect may then proceed, by himself or counsel, to make his defence, and the contestor be heard in reply.

5. After the arguments are thus gone through by the parties any member of either house shall be at liberty to offer the reasons for the vote he intends to give

6. When the speaker of the senate presides, the two houses shall be governed in their debates by the standing rules of the senate; and when the speaker of the house of representatives presides, the two houses shall be governed by the standing rules of the house of representatives.

7. The clerk of each house shall keep a regular journal of the proceedings.

8. The manner of taking the decisions shall be by an alphabetical call of the members by the clerk of each house; first the senate, and then the house of representatives, and a majority of all the votes given, shall decide; the speaker of the senate, when acting as governor, a candidate or contestor, not being permitted to vote.

9. The two houses met as aforesaid, shall have liberty to adjourn, from time to time, as may be thought necessary.

Sec. 5 That any candidate or elector being desirous to contest the election of the present governor elect, shall file with the clerk of the senate, within two days after the passage of this law a specification of the points upon which they intend to rely in the contest, which contest shall be conducted in the same manner as by this act future contests are to be conducted.

This act shall take effect and be in force, from and after the passage thereof.

PHILEMON BEECHER,
Speaker of the House of Representatives.
THOMAS KIRKER,
Speaker of the Senate.

December 23, 1807.

SECRETARY OF STATE'S OFFICE.

COLUMBUS, OHIO, JULY 19, 1824.

I certify the foregoing acts, to be correct copies of the original rolls remaining on file in this office.

JER. McLENE, *Secretary of State.*

AN EXPLANATION OF WORDS AND TERMS;

USED IN THE STATUTES:

*Reported by Joint Committee, and ordered to be printed.**Ab initio* (Latin) from the beginning.*Administrator cum testamento annexo*, (Lat.) administrator with the will annexed.*Alias* (Lat.) otherwise.

A second writ issued when the first has not been served.

Ad quod damnum, (Lat.) to what damage.

A writ to enquire of damages sustained by obstructing ways, water courses, &c.

Bona fide, (Lat.) with good faith.*Capias [corpus] ad respondendum*, (Lat.) that you take (the body) to answer—A writ commanding that the body of the defendant be taken to answer the plea of the plaintiff.*Capias ad satisfaciendum (viz. corpus)* (Lat.) that you take the body to satisfy the judgment.—A writ commanding that the body of the defendant be taken to satisfy the judgment.*Capi corpus*, (Lat.) I have taken the body.

A return to a writ of capias.

Cestui que trust, (French) he for whom the trust is.

The person for whose benefit a trustee holds an estate.

Choses in action, (Fr.) things in action, as notes, bonds &c.*Certiorari*, (Lat.) to be certified.

A writ commanding an inferior, to certify the proceedings in a cause to a superior, court.

De bene esse, (Lat.) this phrase cannot be literally translated.A declaration filed *de bene esse*, avoids the implication that special bail is waived. (See the statute allowing and regulating writs of attachment.)*Dehors*, (Fr.) without.—Out of the subject.*De novo*, (Lat.) anew.*Distringas juratores*, (Lat.) that you distrain the jurors.

A writ to compel the attendance of jurors by distraining their estate.

Dedimus potestatem, (Lat.) We have given power.

A commission from a court to some individual.—It usually authorises him to take and transmit testimony.

De bonis testatoris, (Lat.) against the goods of the testator.*Demur,* } (Fr.) to delay.
Demurrer, }It is an issue upon matter of law to be determined by the court and the proceedings are *delayed* until the matter of law be determined.*Ex post facto* (Lat.) after the perpetration of the act.*Ex parte* (Lat.) on the part of one only.*Ex officio*, (Lat.) by virtue of the office.*Feme covert*, (Fr.) a married woman.

Fieri facias, (Lat.) that you cause to be made.

A writ of execution commanding that the judgment be made of the goods and chattels, lands or tenements of the person against whom it is issued.

Guardian ad litem, (Lat.) guardian during suit.

Habeas corpus, (Lat.) that you have the body.

A writ commanding him who holds the person of another in custody, to bring him before the court or judge.

Habere facias possessionem, (Lat.) That you cause him to have possession.

A writ commanding the sheriff to give possession of lands to him who has recovered in ejectment.

In perpetuam rei memoriam, (Lat.) in perpetual remembrance of the affair.

Instantly, [Lat.] immediately.

Levari facias, [Lat.] that you cause to be levied.

A writ of execution—by which land is ordered to be levied.

Misne process, [Fr.] is the writ by which the defendant is brought in to court and is contradistinguished from final process by which judgment is carried into execution.

Mandamus, [Lat.] we command

A writ issuing from a superior court to some individual, corporation or tribunal; commanding them to perform some act.

Ne exeat, [Lat.] that he go not away.

A writ to restrain an individual from departing the state.

Nihil, [Lat.] nothing.

A return upon a writ of scire facias.

Nihil dicit } [Lat.] he says nothing.

Nil dicit, }

A name of a form of Judgment when no defence is pleaded.

Nihil, [or nil] debet, [Lat.] he owes nothing.

The name of a plea to an action of debts.

Non compos mentis, [Lat.] not of sane mind.

Nulla bona, [Lat.] no goods.

A return upon a writ of execution.

Non est inventus, [Lat.] He is not found.

A return upon a writ of capias.

Non est factum, [Lat.] It is not the deed.

A plea to an action of debt, or specialty.

Non assumpsit, [Lat.] he did not promise.

A plea of the general issue in the action of assumpsit.

Nudum pactum, } (Lat.) naked agreement.

Nude pact, }

An agreement without consideration.

Nisi, [Lat.] Unless.

A rule, or judgment *nisi* is not absolute in the first instance, but is to be considered so unless within a certain time reasons be shewn to the contrary.

Non cul. }

Non culpabilis. } [Lat.] not guilty.

Oyer, [Fr.] to hear,

To *crave oyer* is to demand the reading of the bond or other writing. In such cases a copy is usually given.

Oyez! Oyez! [Fr.] hear ye! hear ye!

Ouster [Fr.] to turn out, to expel.

Prima Facie, [Lat.] on the first appearance.

Evidence *prima facie* is that which is conclusive until its effect is obviated by other evidence from the opposite party.

Per capita. [Lat.] by heads.

Succession *per capita*, is when claimants stand related to the ancestor in equal degree and each claims by his own right.

Per sti pes. [Lat.] by families.

In succession *per stirpes*, the claimants all of one family succeed to the share only of the person through whom they claim.

Plene administravit. [Lat.] he hath fully administered.

A plea by an administrator.

Pluries. [Lat.] often time.

It is a third writ, when a first and second have been issued without effect.

Parole. [Fr.] speech.

Parole Evidence.

Evidence by word of mouth.

Parol demurrer. [Fr.] a plea to delay.

The *parol* shall demur, that is, the plea shall be delayed,—Originally all proceedings were made by *parol*, at the bar; hence *parol* came to signify a plea or the pleadings.—The *parol demurrer* operates to stay proceeding against an infant until he come of full age.

Procedendo. [Lat.] to proceed.

A writ issuing from a superior to an inferior court, commanding them to *proceed* in a cause which has been previously removed into the superior court by *habeas corpus*, or otherwise.

Profert in curia. [Lat.] He produces in court.

When a party in a declaration or plea, relies upon a deed, he must do it with a *profert*, that the opposite party may have a copy, and when *profert* is alledged by the pleadings, and until it be actually made, the other party is not bound to answer.

Qui tam. [Lat.] who as well.

The name of an action in which the plaintiff sues as well for himself as for the overseers of the poor, or other body who may be entitled to a share of the sum recovered.

Quo warranto, [Lat.] by what warrant.

A writ requiring the person to whom it is directed to shew by what warrant or authority he claims to perform a particular function.

Quare clausum fregit [Lat.]

Wherefore he hath broken the close.—This phrase is applicable to an action of trespass upon land.

Subpoena [Lat.] under a penalty.

The name of a writ in which a penalty is threatened for disobedience to its requisitions.

Supersedeas [Lat.] That you supersede.

A writ to stay proceedings at law.

Scire facias (Lat.) That you cause him to know.

The name of a judicial writ, calling the defendant to shew cause why execution should not issue upon, &c.

Scire feci (Lat.) I have caused him to know.

A return upon a writ of *scire facias*.

Tales (Lat.) such

Talesmen such men.

Tales de circumstantibus (Lat.)

Such men from those standing around.—Men who are proper jurors taken from the bystanders to complete the panel of the jury.

Testatum, (Lat.) it is testified.

When a *capias* or *fieri facias* cannot be served in the county in which it is first issued, a similar writ is sent to some other county, in which writ there is a suggestion that it is testified, that the person does not reside or has no property in the first county, and such writ is called a

Testatum copias, or

Testatum fieri facias.

Tort. (Fr.) wrong.

Venire facias (Lat.) That you cause to come.

A writ commanding the proper officer to summon a jury.

Venue. (Fr.) vicinage, neighborhood.

The county in which the action is laid.

Vi et armis (Lat.) with force and arms.

This phrase is applicable to trespass.

Viva voce [Lat.] with the living voice.

By words of mouth.

Venditioni exponas [Lat.] That you expose to sale.

A writ commanding the officer to offer to sale property previously levied by virtue of a former writ of execution.

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ERRATA.

Page,	Sec.	line	instead of	read	every
'	12	4	'	'	miles read <i>miles</i>
33	8	6			as read <i>as a</i>
38	26	5			was held read <i>is held</i>
53	12	6			all actions read all <i>said</i> actions
54	17	12			such county or counties read such <i>other county &c.</i>
55	22	3			committur read <i>committitur</i>
55	25	9			eight said days, read <i>said</i> eight d.
55	26	4			copy served thereo; read <i>copy thereof &c.</i>
56	30	6			named, read <i>named</i>
58	44	9			property, read <i>property</i>
59	48	4			or contract, read or <i>other</i> contract
60	49	6			contractee, read <i>contractor</i>
'	'	7			contractor, read <i>contractee</i>
'	'	9			article agreement r. article of ag.
64	69	26			writ of action; read writ or action
69	90	4			nor power, read or power
70	92	2			judges for, read judges <i>thereof</i> for
72	101	1			That the plaintiff, read that <i>if</i> the
74	108	7			from day, read from day <i>to day</i>
75	2	2			cognizable, r. <i>properly</i> cognizable
75	3	1			applicants, read <i>applications</i>
77	10	13			indebted or, read indebted <i>to</i>
79	15	5			divisee, read <i>devisee</i>
'	'	8			do. r. do.
81	33	1			in read <i>on</i>
109	4	7			all executions, read all <i>such &c.</i>
109	5	5			executions, read <i>execution</i>
'	6	28			execution thereof, read <i>execution thereon</i>
115	22	12			machine, read <i>mechanic</i>
117	25	11 (from bottom)			sheriff or officer, read sheriff or <i>other</i> officer
169	16	9			charge of venue, r. <i>change</i> of venue
'	17	1			do. do.
176	14	2			auditors, read <i>auditor</i>
180	27	18			site, read <i>state</i>

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