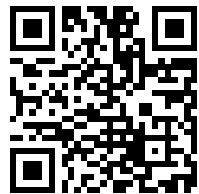

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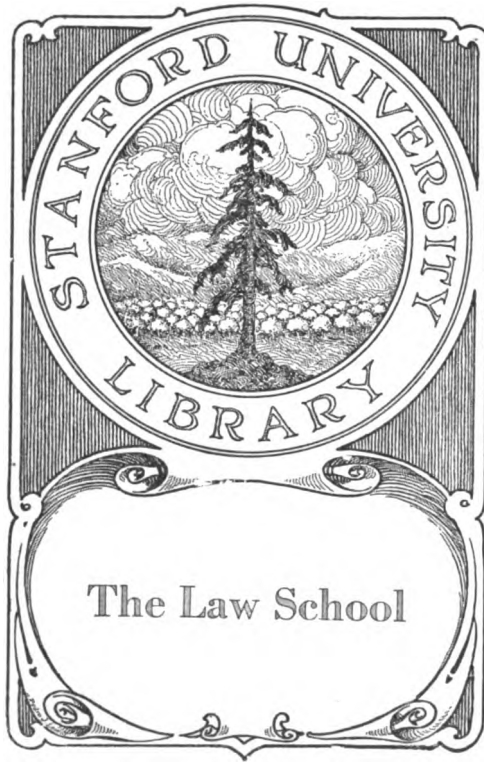
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ACTS
OF THE
STATE OF OHIO
SECOND SESSION
OF THE
GENERAL ASSEMBLY

Held under the Constitution of the State, A. D. One Thousand Eight Hundred and Three, and of the Independence of the United States the Twenty-eighth.

Also, an Appendix, containing a Report of the Auditor and Treasurer.

VOL II.

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ACTS

Of the General Assembly of the State of Ohio.

Second session, begun and held at Chillicothe, in the county of Ross, on Monday the fifth day of December, A. D. 1803, being the second session of the general assembly, held under the constitution of the said state.

LAWS, ETC.

CHAPTER I.

*An act to provide for organizing and disciplining
the militia.*

Section 1. *Be it enacted by the general assembly of the state of Ohio,* That each and every free, able-bodied white male citizen of the state, who is or shall be of the age of eighteen and under the age of forty-five years, except as hereinafter excepted, shall severally and respectively be enrolled in the militia, by the captain or commanding officer of the company within whose bounds such citizen shall reside, within twenty days next after such residence; and it shall at all times hereafter, be the duty of such captain or commanding officer of such company to enroll every such citizen as aforesaid, and also those

Persons liable to do militia duty, to be enrolled by the commanding officers of companies.

who may, from time to time, arrive at the age of eighteen years, or being of the age of eighteen years and under the age of forty-five years (except as is hereinafter excepted) shall come to reside within his bounds, and shall, without delay, notify such citizen of the said enrollment, by a proper non-commissioned officer of the company, by whom such notice may be proved; and every citizen so enrolled and notified, shall, within twelve months thereafter, provide himself with a good musket or fusee, a sufficient bayonet and belt, a knapsack and two spare flints, a pouch with a box therein, to contain not less than twenty-four cartridges suited to the bore of his musket or fusee, each cartridge to contain a proper quantity of powder and ball, or a good rifle, knapsack, pouch and powder-horn, with twenty balls suited to the bore of his rifle, and a quarter of a pound of powder; and every enrolled person shall so appear armed, accoutred and provided, when called into actual service, except when called out to exercise only, he may appear without a knapsack; the commissioned officers shall severally be armed with a sword or hanger and espartoon, and every citizen so enrolled and providing himself with arms, ammunition and accoutrements, required as aforesaid, shall hold the same exempted from all suits, dis-

Militia, how to be armed.

Commissioned officers, how to be armed.

Arms, etc., exempt from all seizures.

tresses, executions or sale for debt, damages, or the payment of taxes.

Sec. 2. *And be it further enacted,* That all ministers of the gospel, licensed to preach according to the rules of their sect, all keepers of jails, and such other persons as are exempted by the laws of the United States shall be and are hereby exempted from militia duty.

What persons are exempted from militia duty.

Sec. 3. *And be it further enacted,* That the state shall be divided into four divisions, in the following manner, viz: The counties of Hamilton, Clermont, Warren, Green, Montgomery and Butler, shall compose one division, and be called the first division. The counties of Adams, Scioto, Ross and Franklin, shall compose one division, and be called the second division. The counties of Fairfield, Gallia, Washington and Belmont, shall compose one division, and be called the third division. And the counties of Jefferson, Columbiana and Trumbull, shall compose one division, and be called the fourth division. Each division shall be divided into brigades, in the following manner, to-wit: The counties of Hamilton and Clermont shall form one brigade. The counties of Butler and Warren shall form one brigade. The counties of Green and Montgomery shall form

The state divided into four divisions.

The first.

the second.

the third.

the fourth.

Each division into brigades.

one brigade. The counties of Adams and Scioto shall form one brigade. The counties of Ross and Franklin shall form one brigade. The counties of Fairfield and Gallia shall form one brigade. The counties of Washington and Belmont shall form one brigade. The counties of Jefferson and Columbia shall form one brigade; and the county of Trumbull shall form one brigade.

Each division, brigade and regiment to be numbered, and to rank accordingly.

Each division, brigade and regiment, shall be numbered, and a record of such numbers made in the adjutant general's office, and when in the field or in service in the state, each division, brigade or regiment, shall respectively take rank according to their numbers, reckoning the first or lowest number highest in rank. Each division shall consist of not less than two nor more than four brigades; each brigade of not less than two nor more than four regiments; each regiment of two battalions; each battalion of four companies, and each company shall consist of sixty-four privates: *Provided always*, That if local circumstances should require it, a company may be formed of forty, or extend to eighty, rank and file.

Division brigade, etc., what to consist of.

Proviso.

Sec. 4. *And be it further enacted*, That the militia of the state shall be officered as follows, viz: To each division there shall be one major general, who shall be allowed two

The militia, how officered.

aids-de-camp, with the rank of major; to each brigade one brigadier general, with one brigade inspector, to serve as brigade major, with the rank of major, to be appointed by the brigadier general; to each regiment one lieutenant colonel commandant; to each battalion one major, and to each company one captain, one lieutenant, one ensign, four sergeants, four corporals, one drummer and one fifer; the regimental staff shall consist of one adjutant, one clerk, one quartermaster, one paymaster, one surgeon, one surgeon's mate, one sergeant major, one quartermaster sergeant, one drum major and one fife major.

Sec. 5. *And be it further enacted,* That the majors general of the respective divisions, so soon as they are commissioned and qualified agreeable to law, shall proceed to lay out the several counties within their respective divisions, into regimental, battalion and company districts, and shall cause notice of the lines of such districts to be given in two of the most public places therein, which notices shall state, that on a certain day, at the hour of eleven o'clock, and at a certain place within the company district, an election will commence and be held for the purpose of electing one captain, one lieutenant and one ensign, for such district, and the election shall be held and conducted in the following manner,

The majors general to lay out their divisions into districts.

To give notice of the time and place of holding elections.

The manner
of conduct-
ing the same.

to-wit: The qualified electors within such company district, shall meet at the time and place pointed out in such notice, and shall proceed, *viva voce*, to elect three judges and one clerk, by a plurality of the voters present; any one of the persons elected judges shall administer to the other two judges and clerk, and either of the other judges to him, the following oath or affirmation: "I, ————, do solemnly swear, (or affirm, as the case may be) that I will faithfully and impartially receive, count and make return, of the votes legally given for a captain, lieutenant and ensign, in militia, for the district in which I am appointed judge." And the judges shall proceed to receive the ballots from the qualified electors of such district until three o'clock of the same day, and no longer. The clerk shall write down the name of each elector in a book prepared for that purpose, and at the close of the election the judges and clerk shall compare the ballots with the poll-book, and declare to the people present, who is duly elected, and shall certify under their hands and seals, to the major general forthwith, the names of the persons elected officers, to each their proper title of captain, lieutenant or ensign.

Sec. 6. *And be it further enacted*, That the majors general respectively, shall forth-

with after receiving the returns as aforesaid, make out and return a fair list of all the persons thus elected, stating the rank, and the county and brigade, within which any such person is elected, and transmit the same to the governor of the state, who is hereby authorized and required to issue commissions to the persons thus elected and returned accordingly, and transmit the same to the majors general respectively, whose duty it shall be to forward, as soon as the nature of the case will admit, to each officer his commission.

The majors general to make out a list of the persons elected.

To be commissioned by the governor.

Sec. 7. *And be it further enacted,* That the majors general respectively be, and they are hereby authorized and required, to cause to be held in each battalion district, a meeting of the captains and subalterns thereof, as soon as they shall be qualified according to law, in such manner as they may think most proper, for the purpose of electing one major to each battalion; and shall in the same manner as before directed, make return to the governor of the persons duly elected, for the purpose of receiving and transmitting to them their commissions in manner aforesaid. And the majors general respectively, are in like manner authorized and required, to cause a meeting of the majors, captains and subalterns of each regimental district, for the purpose of electing one lieutenant colonel com-

The majors general to cause a meeting, etc., to be held for the purpose of electing one major to each battalion.

One lieutenant colonel commandant to each regimental district.

mandant within the same, and shall make the like return to the governor of the persons elected within each district, and on receiving their commissions, forthwith transmit them in manner directed in the preceding section: *Provided always*, That no election for a major or lieutenant colonel shall take place, unless at least two-thirds of all the officers having a right to vote at such election, be present.

Proviso.

Sec. 8. *And be it further enacted*, That the majors general respectively, so soon as the officers of their brigades have been commissioned and qualified according to law, shall cause to be held a meeting of the officers of each brigade, either by regiments or brigades, as shall appear most convenient, at which meeting or meetings they shall attend in person, for the purpose of electing one brigadier general to each brigade, agreeably to the fourth section of the fifth article of the constitution, and shall, as before directed, return to the governor the names of the persons thus elected, receive and transmit to them their commissions.

One brigadier general to each brigade.

Rank of officers, how determined.

Sec. 9. *And be it further enacted*, That the governor shall, before he issues any commission, determine by lot the rank of the officers elected, agreeably to the provisions of this

act, and express the same in every commission accordingly.

Sec. 10. *And be it further enacted,* That whenever it shall become necessary, from an increase of population or other circumstances, to create new or alter old regimental, battalion or company districts, the officers of the regiment or regiments (or at least two-thirds of them) the bounds of which are to be altered, shall meet under the direction of the brigadier general, who shall attend such meeting and shall make such alterations, or create such new districts as shall be thought necessary. In like manner the commissioned officers of any regiment shall have power to alter the old or create new battalion or company districts within the regimental districts, and shall meet under the direction of the lieutenant colonel for that purpose, who shall attend such meeting in person. The regimental, battalion and company districts, as established by the majors general and from time to time altered, shall be recorded by the clerks of the regiments respectively.

When necessary to create new or alter old districts.

Manner thereof.

Districts established and from time to time altered to be recorded.

Sec. 11. *And be it further enacted,* That vacancies in the militia shall be filled in the following manner, that is to say, when any office below the rank of general of brigade is vacant, the lieutenant colonel or commanding

Vacancies in the militia, below the rank of general of brigade, how filled.

officer of the regiment (as the case may be), shall report the same to his brigadier general or commanding officer of brigade, who shall cause an election to be held for the purpose of filling such vacancy, agreeable to the constitution and provisions of this act. When a major is to be elected, the lieutenant colonel or commanding officer of the regiment shall attend such election in person, and when a lieutenant colonel is to be elected, the brigadier general or commanding officer of brigade shall attend such election in person, and in all cases where elections are made agreeably to the provisions of this section, the returns of such elections shall be made to the brigadier general or commanding officer of brigade, in the same manner as before directed to be made to the major general, whose duty in such cases shall be the same as those assigned to the majors general in the first elections.

Vacancy in the office of general of brigade, how filled.

Officers guilty of malconduct or neglect of duty, how punished.

Sec. 12. *And be it further enacted,* That in case of the vacancy of the office of general of brigade, the major general shall cause an election to be held to fill such vacancy, agreeably to the provisions of the eighth section of this act; and if any officer required to perform any duty by the preceding sections of this act, shall fail to perform the same, or if he be guilty of any malconduct in the performance thereof, such officer shall be subject to arrest

and trial by court-martial, and be cashiered or fined in any sum not exceeding one hundred dollars, at the discretion of the court.

Sec. 13. *And be it further enacted,* That when any election for two persons of the same grade in any division, brigade or regiment takes place on the same day, the governor shall determine their rank by lot; in all other cases after the first elections, the persons shall take rank from the date of their commissions.

Rank of officers, how determined.

Sec. 14. *And be it further enacted,* That the captains and subalterns of artillery and cavalry, shall be elected by the persons enrolled in their respective corps, under the direction of the commanding officer to whose brigade they may be attached.

The manner of electing officers of artillery and cavalry.

Sec. 15. *And be it further enacted,* That there shall be attached to each brigade one company of artillery and one troop of horse, when in the opinion of the brigadier general the said companies or either of them, can with convenience be raised and equipped within his brigade. To every company of artillery there shall be one captain, two lieutenants, four sergeants, four corporals, six gunners, six bombardiers, one drummer and one fifer, and not less than twenty nor more than thirty matrosses; the non-commissioned officers shall be armed with a sword or hanger, and each private or mat-

A company of artillery and a troop of horses to be attached to each brigade.

How officered and armed.

ross shall be furnished with a fusee, bayonet and belt, with a cartridge box to contain twelve cartridges; and to each troop of horse there shall be one captain, two lieutenants, one cornet four sergeants, four corporals, one saddler, one farrier, one trumpeter, and not less than thirty nor more than sixty privates; the commissioned officers shall furnish themselves with good horses, saddles and holsters, and be armed with a sword and pair of pistols, and each dragoon shall provide himself with a serviceable horse, a good saddle and holsters, a bridle, mail-pillion and valise, a breast-plate and crupper, a pair of boots and spurs, and be armed with a saber, a pair of pistols, and cartridge box to contain twelve cartridges for pistols. Each company of artillery and troop of horse shall be formed of volunteers from the brigade, and to be enrolled by three persons nominated for that purpose by the brigadier general, and whenever there shall be thirty-five enrolled they shall meet at a time and place designated by the brigadier general, which shall by him be advertised in at least six of the most public places within his brigade, at which time and place he shall attend, and the persons enrolled shall then and there proceed to elect, according to the provisions of the fifth section of this act, their captain and subalterns from the number enrolled, and shall be uniformly clothed in regimentals; the

To be formed of volunteers, and enrolled by three persons nominated by the brigadier general.

color and fashion to be determined by the persons enrolled; the officers when commissioned and qualified, shall appoint their non-commissioned officers.

Sec. 16. *And be it further enacted,* That there shall be annexed to each battalion one company of grenadiers, light infantry or riflemen, to be raised by voluntary enrollment in manner as shall be directed by the lieutenant colonel or commanding officer of the regiment, when in the opinion of the lieutenant colonel or commanding officer of the regiment such company can be raised with convenience, without reducing the companies below the number of forty-five privates (to be composed of young men between the age of sixteen and forty years) to be raised and officered in such manner as shall be directed by the lieutenant colonel or commanding officer of the regiment, who shall direct an election to be held, at which he shall attend himself, and cause the same to be conducted agreeably to the constitution, and shall return the names of the officers so elected forthwith to the governor, who shall commission them accordingly. And the said companies when raised shall wear while on parade, such uniform as may be agreed on by a majority of the company and approved of by the commanding officer of the regiment; the

One company of grenadiers, or riflemen to be raised by voluntary enlistment.

To be composed of young men between the age of 16 and 40.

How officered.

The uniform to be agreed on by a majority of the company.

The manner
of filling va-
cancies.

officers when commissioned and qualified, shall proceed to appoint their non-commissioned officers, and from time to time may fill any vacancies which may happen in their respective companies, providing it shall not reduce the companies in battalion below the number aforesaid, and when any captain of grenadiers, light infantry or riflemen, shall enroll any person out of any company in his battalion, he shall forthwith notify in writing the commanding officer of the company from which such person was enrolled, and if it should be made to appear that such company was reduced below the number aforesaid, he may be ordered back to join the company from which he enrolled, and as the men of such light companies shall from time to time arrive at the age of forty years, the captain shall make report thereof to the commanding officer of the battalion, who shall order them to be enrolled in the district company they may respectively live in, and the deficiency shall be supplied by a new enrollment; the said companies shall in all respects be subject to the same regulations and orders as the rest of the militia, except as hereinafter excepted.

At the age
of 40, to be
enrolled in
the district
companies.

Qualifica-
tions neces-
sary to a
command.

Sec. 17. *And be it further enacted,* That no person shall be eligible to a command in the militia, who is not a citizen of the United States, and has not resided in the proper coun-

ty the time prescribed by the twenty-seventh section of the first article of the constitution of this state.

Sec. 18. *And be it further enacted,* That every officer commissioned by virtue of this act, shall, previous to his entering on the execution of his respective office, take the oath to support the constitution of the United States and of this state, viz: "I, ———, do solemnly swear (or affirm, as the case may be) that I will faithfully and justly execute the duties of a ——— in the militia of this state, according to the best of my abilities. So help me God." Which oath or affirmation shall be endorsed on the back of the commission, by the person administering the same.

Commissioned officers to take the oath to support the constitution of the U. S. and of this state.

To be endorsed on the back of the commission.

Sec. 19. *And be it further enacted,* That each battalion and regiment shall be provided with regimental standards, with the number of the regiment inscribed on the same, by the field officers, and each company with the regimental colors, with the number of the company in such regiment endorsed thereon, a drum and fife, by the commissioned officers of the company, in such manner as shall hereinafter be directed.

Regimental standards and colors to be provided.

Sec. 20. *And be it further enacted,* That there shall be an adjutant general appointed in this state, whose duty it shall be to distri-

Adjutant general's duty.

bute all orders from the commander in chief to the several corps; to attend all public reviews when the commander in chief shall review the militia or any part thereof; to obey any orders from him relative to carrying into execution and perfecting the system of military discipline established by this act; to furnish blank forms of the different returns that may be required, and to explain the principles on which they should be made to corps, throughout the state; all which the several officers of the divisions, brigades, regiments and battalions, are hereby required to make, in the usual manner, so that the said adjutant general may be duly furnished therewith; from all of which returns he shall make proper abstracts and lay the same, annually, before the commander in chief of the state: *Provided always,* That the adjutant general shall be inspector general.

Quartermas-
ter general
and of bri-
gade, how
appointed.

Sec. 21. *And be it further enacted,* That there shall be appointed, agreeably to the fifth section of the fifth article of the constitution, one quartermaster general in each division in the state, and in each brigade there shall be one quartermaster of brigade, to be appointed by the brigadier general.

Sec. 22. *And be it further enacted,* That it shall be the duty of the brigade inspector to attend

all musters of officers within his brigade, to exercise and examine them, to note delinquencies and return the same forthwith to the lieutenant colonel or commanding officer of the regiment to which they belong, to attend the regimental and battalion meetings of the militia composing his brigade, during the time of their being under arms, to inspect their arms, ammunition and accoutrements, superintend their exercise and manœuvres, and introduce the system of military discipline pointed out in the twenty-fifth article for the government of the militia, agreeable to law, and such orders as he shall, from time to time, receive from the commander in chief of the state, or the commander of the brigade, for the time being, to make return to the adjutant general of the state twice in every year, the first on or before the first day of July, and the second on or before the first day of December, of all the militia of the brigade to which he belongs, reporting therein the actual situation of the arms, accoutrements and ammunition of the several corps, and every other thing which in his judgment may relate to their government and the general advancement of good order and military discipline.

Brigade inspector's duty.

Sec. 23. *And be it further enacted*, That the commissioned and non-commissioned officers of

Officers to
meet and ex-
ercise, etc.

each battalion or regiment, at the discretion of the brigadier general, shall meet at some convenient place, as near as may be in the centre of each battalion or regiment, to be pointed out by the brigadier general, as often as he may think expedient, not exceeding four days in every year, for the purpose of being trained and instructed by the brigade inspector, for the space of four hours each day.

Captains to
appoint ser-
geants, etc.

Sec. 24. *And be it further enacted*, That it shall be the duty of each captain, after having enrolled his company as directed by this law, to appoint four persons of his company, as sergeants, giving to each his rank of first, second, third and fourth sergeant, and also four persons as corporals, giving to each his rank of first, second, third and fourth corporal, giving his company notice thereof, and to report the said appointments to the commandant of the regiment, who shall thereupon make out his warrants to such non-commissioned officers accordingly, and they are to be obeyed and respected as such.

Captains to
make divi-
sions of their
companies,
etc.

Sec. 25. *And be it further enacted*, That it shall be the duty of the commanding officer of each and every company so enrolled, forthwith to divide his company into divisions, by lot, from one to eight, for the purpose of a regular

routine of duty, when called into actual service, and shall return a roster of such division with the rotative number attached to each class, within fifteen days, to the commanding officer of his battalion, who shall forthwith transmit the same to the commandant of the regiment, who shall order the same to be recorded by the clerk thereof.

Sec. 26. *And be it further enacted,* That every militia man removing out of the bounds of one company to another, shall apply to the commanding officer of the company he is removing from, who shall give him a discharge, certifying the class to which he belongs, which certificate the said militia man shall produce to the captain or commanding officer of the company in the district in which he shall next settle, within twenty days after his settlement, and the said captain or commanding officer is hereby required to enroll him in the class specified in said certificate, and on failure of any militia man obtaining a certificate in manner aforesaid, and presenting the same as before directed, the captain or commanding officer of the company to which he shall remove, is hereby required to enroll such delinquent, the foremost in the first class for duty, notifying him thereof and that he must hold himself in readiness to perform any duty by this act required.

Militia men
removing
from one
company
to another
to take a
certificate
etc.

**Company
musters,
how often
holden.**

Sec. 27. *And be it further enacted,* That there shall be private musters of each company of cavalry, artillery, grenadiers, light infantry and riflemen, at least once in every two months, at such time and place as the commandant thereof shall appoint, except in the months of December, January, February and March, in every year; and every other company formed by virtue of this act, at least once in every three months, except as before excepted, to be appointed by the commanding officer thereof, at, or as near as may be, the center of the company district. There shall be a muster of each battalion in the month of April or May in every year, which shall be appointed by the commanding officers of the respective regiments, who shall fix on the most suitable place as near as may be to the center of the battalion district, and shall superintend the exercise and direct the evolutions that shall be performed—and there shall be a muster of each regiment in the month of October, in every year, which shall be appointed by the brigadier general or commanding officer of the brigade to which such regiment belongs, at or as near as may be to the center of the regimental district, and shall be under the superintendence and direction of the brigadier general or commander of the regiment, which company, battalion and regimental musters, shall continue one day each and no longer: *Pro-*

**Battalion
muster.**

**Regimental
musters.**

vided, That when in the opinion of the commanding officer of any brigade, a regimental muster cannot be called without great inconvenience to such regiment, such commanding officer may dispense with such muster.

Sec. 28. *And be it further enacted*, That whenever any person of the Society of Friends, Mennonists or Tunkers, who may be conscientiously scrupulous of bearing arms, reside within the boundaries of any regimental or company district, and are desirous to be excused from attending and bearing arms in any muster of the militia, they may be entitled to receive a certificate, excusing such person from militia duty, in time of peace, for the term of one year, from the commanding officer of the regiment: *Provided*, That the person or persons applying for such certificate, shall produce to such commanding officer a receipt from the paymaster of the regiment, purporting that the applicant hath paid, for the use of the regiment, the sum of three dollars: *And provided further*, That such applicant produced sufficient evidence to the said commanding officer, that he is a member of such Society of Friends, Mennonists or Tunkers.

Quakers,
Mennonists,
etc., excused
from bearing
arms.

Proviso.

Sec. 29. *And be it further enacted*, That the

Notice of
musters,
when and
how often.

brigadier generals or commanding officers of brigades, shall cause notices, in writing, of the times and places of said musters to be given to the commanding officers of regiments, at least twenty-five days; the commanding officers of regiments shall give notice of the regimental and battalion musters to the commanding officers of battalions, at least twenty days--the commanding officers of battalions shall give notice of the regimental and battalion musters to the commanding officers of companies, at least fifteen days; and the captains and commanding officers of companies shall give notice of the regimental, battalion and private musters, to the individuals of their respective companies, by themselves or sergeants, at least five days before such regimental, battalion or company muster (as the case may be), shall be holden. The notices to be given by the commanding officers of brigades, regiments and battalions, shall be in writing and delivered to the person or persons, or left at the usual place of his or their abode, by such commanding officers themselves, or such other officer or officers as they may think fit to order; and the commanding officers of companies shall have power to assign to each sergeant of their respective companies his due proportion thereof, whose duty it shall be to give the notice before directed, to that portion of the company to him assigned, which

may be done by personal summons, or by leaving notices, in writing, at the usual places of abode of the persons to be notified.

Sec. 30. *And be it further enacted,* That every officer and soldier shall appear at his respective muster field, on the day appointed, by ten o'clock, ante-meridian, and at every muster, each captain or commanding officer of a company shall direct the first sergeant of his company, in his presence, to call the roll at half-past ten o'clock, ante-meridian, examine every person belonging thereto, and note down all delinquencies occurring therein and make return thereof, as well as of the strength of the company, number of rifles, muskets, bayonets, fusees, etc., on parade, to the commanding officer of his battalion, within ten days after such regimental, battalion or company muster; and every commanding officer of a battalion shall, at his regimental or battalion muster (as the case may be), at the hour on which the battalion is to be formed, in like manner proceed to call the names of the commissioned officers of his battalion, examine and note down all delinquencies and make return thereof, together with those reported by the commanding officers of companies, to the commanding officer of the regiment to which he belongs, within thirty days next succeeding

Hour of muster.

Of roll call.

Delinquents noted and returned.

Names of commissioned officers, when called.

Delinquencies noted.

Form of certificates to accompany returns.

such battalion or regimental muster (as the case may be) who shall lay the whole before the court hereafter appointed, to take cognizance and determine thereon; and to each of the said returns, shall be annexed the following certificate, to-wit: "I, ——, do certify, that the returns hereunto annexed, contain all the delinquencies which have occurred in my company or battalion (as the case may be) since my last return; and to the battalion returns shall be added, and that the reports which accompany them are all which have been made by the commanding officers of companies within my battalion.

Adjutants to make returns, etc.

Sec. 31. *And be it further enacted*, That the commanding officer of each regiment, within twenty days next after the muster of his regiment, or of a battalion of the same, shall cause the adjutant of his regiment to make out a complete return of the same, agreeably to such forms as shall be furnished by the adjutant general, noting particularly its strength and number of arms, to the inspector of the brigade.

Sec. 32. *And be it further enacted*, That the commissioned officers of the first battalion in each regiment, shall meet on the second Tuesday, and the commissioned officers of the second

battalion of each regiment shall meet on the second Thursday next after each regimental or battalion muster, as near as may be the center of the battalion, to be pointed out by the commanding officer of the regiment, at the battalion or regimental muster, and public notice thereof given to the battalion or battalions whilst on parade, a majority of whom shall form a court of enquiry and assessment of fines; and it shall be the duty of the lieutenant colonel commandant to preside at such board, and in case of his absence by sickness or otherwise, the next officer in rank shall preside. The said court shall take the following oath, to be administered by the senior officer present, and afterwards by any other officer of the said board to him, to-wit: "I, — — —, do solemnly swear, or affirm (as the case may be) that I will truly and faithfully enquire into all delinquencies which appear on the returns to be laid before me, and will assess the fines thereon as shall seem just, without partiality, favor or affection. So help me God." The lieutenant colonel or commanding officer of the said regiment, shall then lay before the court all delinquencies as directed by this act, whereupon they shall proceed to hear and determine thereon.

Court of inquiry and assessment of fines, how formed.

Form of the oath.

Commanding officer of the regiment to lay delinquencies before the court.

Sec. 33. *And be it further enacted,* That the

Forfeitures
and penal-
ties for neg-
lect of duty,
by a colonel,

Major,

Captain,

following forfeitures and penalties shall be incurred for delinquencies, to-wit: By a lieutenant colonel or commanding officer of a regiment, for failing to take any oath, to direct his adjutant to summons any court or board, to deliver any commission or commissions, to appoint any regimental or battalion muster, to give information of the places of holding courts of enquiries, to attend the same, to report delinquencies, to attend a battalion or regimental muster, or a muster of officers, to appoint the staff officers to his regiment, not less than ten nor more than one hundred dollars; by a major or commanding officer of a battalion, for failing to take an oath, to attend any court or board, to give notice of any regimental or battalion muster, to examine and train his battalion, to report delinquencies, to make return or to attend a muster of officers, any sum not less than eight nor more than eighty dollars; by a captain or commanding officer of a company (as the case may be) for failing to take an oath, to attend any court or board, to enroll his company, to appoint private musters, or give notice of a regimental or battalion muster, to attend any muster armed, to examine and exercise his company as is by the twenty-fifth article directed for the government of the militia, to call his roll and report delinquencies, to make any return or appoint non-commissioned officers

as directed by this act, any sum not exceeding fifty nor less than five dollars, for every such offense; by a subaltern officer failing to take an oath, to attend any court or board, to attend any muster armed, as is by this act directed, for every such offense or neglect, any sum not exceeding forty nor less than four dollars; by a non-commissioned officer, for failing or neglecting to attend any muster of officers, to attend any muster of his company, to take charge of any part of his company or them march as directed, for every such offense or neglect, any sum not exceeding twenty nor less than two dollars; by a private man, for failing or neglecting to attend a regimental or battalion muster, armed and equipped as directed by this act, one dollar and fifty cents; to attend a muster of his company at the time and place appointed in manner aforesaid, during the whole time the same is on parade, the sum of one dollar; and that the delinquencies in company musters shall be enquired into and assessed by the officers of their company, subject to an appeal to the field officers.

Subaltern,

Non-commissioned officer.

Private.

Delinquencies in company musters, by whom enquired into.

Sec. 34. *And be it further enacted,* That the fathers shall be bound for the payment of fines incurred by their sons, under the age of twenty-one; guardians for the payment of fines incurred

Fines on persons under 21, by whom enquired into.

by their wards, and masters for the payment of fines incurred by their apprentices, and be charged therewith by the collectors of fines accordingly.

How fines may be remitted.

Sec. 35. *And be it further enacted*, That any court of enquiry, for good cause shown, may remit fines assessed by the court preceding the same; and in such case, it shall be the duty of the clerk to certify the same to the collector of fines, who shall thereupon not collect such fine or fines, or refund the same if collected.

By whom and in what manner collected from non-commissioned officers, musicians, etc.

Sec. 36. *And be it further enacted*, That all fines and penalties incurred by non-commissioned officers, musicians and privates, to be assessed by virtue of this act, shall be collected by one of the sergeants of the company in which the delinquents are enrolled; and it shall be the duty of the clerk of each regiment to make out a warrant and direct the same to one of the sergeants of each company, mentioning the names and amount of the fines assessed on each delinquent, commanding him forthwith to collect the same, which warrant shall be signed by the president of the court of enquiry and countersigned by the clerk. And it shall be the further duty of the clerk to deliver to the paymaster of the regiment a certified list of the warrants issued, taking his receipt for the same, a duplicate of which he shall deliver to the com-

manding officer of his regiment within twenty days; each sergeant shall be accountable for the fines put into his hands to collect, and shall make distress for the same if not paid within twenty days after receiving such warrant, in the same manner as is prescribed by law for regulating the duty of constables on a writ of *feri facias*, each sergeant shall pay into the hands of the paymaster all monies he may have collected, on or before the first day of September in every year, whose duty it shall be to attend every court of enquiry and make a statement of all the money he may have on hand; the sergeant serving the warrant shall be entitled to demand twenty-five cents from each delinquent, in addition to the fine for every warrant he may serve; any sergeant who shall be guilty of a neglect of the duties enjoined on him by this section, shall be ordered to the ranks, and shall moreover be liable for all the fines put into his hands to collect.

Sec. 37. *And be it further enacted*, That all fines and penalties incurred by commissioned officers, by virtue of this act, shall be collected by the clerk of the regiment in which such delinquent shall reside, in the same manner as is provided by the thirty-sixth section of this act, for collecting fines from non-commissioned

By whom
and in what
manner col-
lected from
commis-
sioned om-
cers.

officers and privates, and the same, when collected, shall be paid over to the paymaster of the regiment; if any clerk shall neglect to perform his duty agreeably to this act, he shall be subject, at the discretion of the court of enquiry, to be sentenced to pay the whole or any part of the fines put into his hands for collection, together with six per cent. interest, and if the whole amount shall not be paid within twenty days of the sentence, the president of the court of enquiry shall cause the sergeant major to make the same of the goods and chattels of such delinquent clerk.

How fines shall be appropriated.

Sec. 38. *And be it further enacted*, That all monies paid to the paymaster as aforesaid, shall be appropriated, first, to the purpose of procuring the necessary number of drums, fifes and colors; and secondly, the remainder, if any, shall be disposed of as the court of enquiry shall direct.

Adjutant general and brigade inspector's salary.

Sec. 39. *And be it further enacted*, That the adjutant general shall be allowed the sum of one hundred dollars, and each brigade inspector the sum of fifty dollars, yearly, for their services and stationery, respectively; and the state treasurer is hereby authorized and directed to pay the same, on the certificate of the auditor of public accounts. The adjutant, clerks, provost marshals, the fife and drum majors, and other

fifers and drummers of each regiment, shall receive such compensation for their services as the court of enquiry shall think proper.

The adjutant, clerk, etc., to be compensated.

Sec. 40. *And be it further enacted,* That if any militia man shall make it appear to the satisfaction of the officers of the company to which he belongs, that he is unable to furnish or equip himself as by this law is directed, and the officers satisfying the succeeding court of enquiry thereof, it shall be in the power of such court to restrict any fine that may have been imposed by virtue of this law, and to grant such militia man exemption from all such fines, until he shall be enabled, in the opinion of the officers of his company, to furnish and equip himself, agreeably to this law.

Persons unable to equip agreeable to law, exempt from fines.

Sec. 41. *And be it further enacted,* That if any bystander, at a regimental, battalion or company muster, shall insult or otherwise molest any officer or soldier, whilst on parade, the commanding officer of the regiment, battalion, troop or company (as the case may be) may order such person or persons to be put under guard for any time not exceeding six hours, and to pay a fine not exceeding four dollars, which shall be collected as other militia fines are.

Bystanders molesting officers or soldiers on parade, how punished.

Clerk of the
regiment, his
duty.

Sec. 42. *And be it further enacted.* That it shall be the duty of the clerk of the regiment to attend the courts of enquiry therein, to take the minutes of the proceedings, receive all returns from the commandants of battalions and companies, and record the same in a proper book prepared for that purpose; he shall also record the class-rolls of each company in his regiment, and shall furnish the person appointed to collect the fines with a list of the delinquents in his regiment, stating the number of fines due from each delinquent and the muster at which they were delinquents; and on failure or neglect of any clerk to perform any of the duties imposed on him by this law, he shall be fined by any court of enquiry, in any sum not exceeding twenty-five dollars.

Penalty for
neglect
thereof.

Governor
empowered
to call forth
the militia.

Sec. 43. *And be it further enacted,* That whenever it may be necessary to call into actual service any part of the militia, on an actual or threatened invasion of this state or of any of the neighboring states or territories of the United States, that it shall and may be lawful for the governor to order into actual service such part of the militia, by classes, as the exigency may require: *Provided,* That the part so called doth not exceed four classes of the militia of the brigade or brigades so called out: *And provided also,* That such brigade or brigades shall not be again called into actual service until an equal number

Proviso.

of classes of the militia of the other brigade or brigades, respectively, be first called unless the danger of an invasion from the Indians or others, should make it necessary to keep in reserve the militia of such brigade or brigades for their immediate defense.

Sec. 44. *And be it further enacted*, That all orders for the militia to be called forth as aforesaid, shall be sent to the commanding officers of the brigades with the notification of the place or places of rendezvous, who shall immediately take measures for detaching the same with the necessary number and rank of officers; and if any brigadier general shall fail or neglect to comply with any of the duties required of him by virtue of this act, he shall forfeit and pay any sum not exceeding one thousand dollars, to be assessed by a general court-martial, collected by the brigade major, in the mode pointed by the thirty-seventh section of this act and disposed of as the said court-martial shall direct.

Orders to be sent to the commanding officers of brigades.

Brigadier generals for neglect of duty.

Penalty, how collected.

Sec. 45. *And be it further enacted*, That each battalion or regiment of the state shall be divided into eight classes, preserving to each man his original class; all troops of horse and flank companies, whether grenadiers, light infantry or riflemen, shall be called into service by companies or detachments, and not by classes, the

Militia, how to be classed.

first flank company making part of the first call, and the second flank company shall make part of the fifth call of the militia, and be commanded by their own proper officers.

The order of classing commissioned officers.

Sec. 46. *And be it further enacted*, That for the purpose of having the militia when called by classes, properly officered, the following order is hereby directed and enjoined, that is to say:

For the first draft, 1st capt., 2d lieut., 4th ensign:

2nd, do.	2d, do.	1st, do.	3d, do.
3d, do.	3d, do.	4th, do.	2d, do.
4th, do.	4th, do.	3d, do.	1st, do.
5th, do.	5th, do.	6th, do.	8th, do.
6th, do.	6th, do.	5th, do.	7th, do.
7th, do.	7th, do.	8th, do.	6th, do.
8th, do.	8th, do.	7th, do.	5th, do.

Field officers' routine of command.

Non-commissioned officers to take tour of duty with the commissioned officers, and the routine of the field officers shall be according to the date of their respective commissions; the first lieutenant colonel of the brigade shall command the first detachment, if it amounts to a lieutenant colonel's command, if it does not, the command shall devolve on the first major, liable to serve three months and no longer, and to be relieved by the class next in numerical order, the relief to arrive at least two days before the

Term of service and how relieved.

expiration of the term of the class to be relieved; but nothing herein contained shall prevent the governor or any commanding officer of a county from employing or calling out a part or the whole of any class, or any companies or regiments, without respect to this rule, whenever the exigency is too sudden to allow the assembling of the militia which compose the particular classes, and the service of the persons so called out shall be accounted as a part of their tour of duty.

When the militia may be called in to service other than by classes.

Sec. 47. *And be it further enacted,* That when any detachment of the militia shall be called in to service, the captain of each company shall take care that his proportion of men are assembled and marched to the proper place of parade or rendezvous, under the care of a commissioned officer or sergeant, with a list of the men, which list shall be delivered to the adjutant of the regiment, whose duty it shall be to attend at the place appointed to receive the detachment from the several companies of his regiment, and he shall make out a roll of the whole, mentioning the rank of the officers and names of the non-commissioned officers and privates, and when the detachment shall be completed and placed under the proper officer, he shall attend them to the place appointed for the meeting at the detachment of the brigade, when the several adjutants shall deliver to the brigade major or

Captains, their duty, when the militia are called into service.

Adjutant's duty.

Officer commanding a detachment, his duty.

inspector, or officer appointed to command the whole detachment, a complete roll, containing the names of the commissioned and non-commissioned officers and privates, composing the detachment from each regiment or battalion, noting such remarks as circumstances may require; and it shall be the duty of the officer appointed to the command of said detachment, to cause two complete rolls to be made out and certified under his hand, one of which rolls he shall forthwith transmit to the adjutant general, and the other to the brigade inspector.

Persons called out may serve by substitutes.

Proviso.

Sec. 48. *And be it further enacted*, That it shall and may be lawful for any person called to do a tour of duty, to send a sufficient substitute, such substitute being approved of by the captain or commanding officer of the company, which he shall be offered to serve in: *Provided always*, That any person serving by substitute as aforesaid, if said substitute be called in his own turn into actual service before the time expires which he was to serve for his employer, the person procuring such substitute shall march or find a person to march in his substitute's turn, to be accepted as aforesaid, or be liable to pay his fine for neglect, which fine is to be recovered in the same manner as is directed in the case of any militia man neglecting or re-

fusing to do a tour of duty, and that sons of the age of sixteen years or upwards, who are not subject to the militia law, may be admitted as substitutes for their fathers, to be accepted as aforesaid.

Sec. 49. *And be it further enacted,* That the lieutenant colonel, or commanding officer of each regiment, from which detachments are drawn, shall, if not otherwise to be obtained, cause to be procured by impressment for each company, a wagon, team and driver, or a sufficient number of pack-horses, six axes and six camp kettles or pots of convenient size, all which shall be delivered to the commanding officer of the company, who shall be accountable for returning the same, when his tour is over; and the articles aforesaid shall be returned to the owner, who shall be allowed for the use, damage or detention of the same, whatever shall be adjudged by a court of enquiry of the regiment, and the lieutenant colonel or commanding officer, shall cause all property by him impressed by virtue of this act, to be valued by three householders, on oath before the same shall be sent away, and shall give such owner a receipt for the same, stating the quantity, quality and value of the property impressed, together with a certificate of the appraisers, and on proof being made of any

Lieutenant colonel or commanding officer, may impress for each company, a wagon team, etc.

Impressed articles to be valued.

When lost
the owner
to be indem-
nified.

article being lost, the valuation thereof shall be allowed, and the said allowance shall be certified to the auditor of public accounts—the said court shall make enquiry into the cause of such loss, and if it shall appear that such loss was occasioned by the misconduct or inattention of any officer, the brigade inspector is hereby authorized and required to prosecute a suit against such officer, to recover damages for the use of the state.

Command-
ing officer
of a county,
upon an act-
ual or
threatened
invasion
thereof,
how to pro-
ceed.

Sec. 50. *And be it further enacted,* That if any sudden invasion shall be made or intended to be made, of any county or district within this state, by Indians or any other power, the commanding officer of the militia of such county or district, is hereby authorized and required, to order out the whole or such part of the militia of his county or district as he may think necessary, in such manner as he may think best, for the repelling such invasion, and shall call on the commanding officers of the adjacent counties or districts. for such aid as he may conceive necessary, who shall forthwith in like manner furnish the same; and for assembling the militia required upon such occasions, or by order of the executive, the same measures shall be taken to summon them as is directed in the case of musters; and it shall be the duty of every commanding officer of a county

or district, on receiving information of the intended invasion of his or any neighboring county or district, forthwith to convey information of the same by special message or otherwise, to the governor of the state, that he may make the necessary arrangements to repel the same.

Sec. 51. *And be it further enacted,* That if any suit or suits shall be brought or commenced against any person or persons, for any thing done in pursuance of this act, the action shall be laid in the county where the cause of such action did arise, and not elsewhere, and the defendant or defendants in such action or actions to be brought, may plead the general issue and give this act and the special matter in evidence.

Persons prosecuted under this act, may plead the general issue, etc.

Sec. 52. *And be it further enacted,* That all fines heretofore duly assessed by any court of enquiry under the former law, and which have not been paid, shall be collected in the manner prescribed by this act, and the sheriffs and collectors of the several counties, shall make returns to the court of enquiry, at their first meeting, of the fines assessed on delinquents, in their several battalions, which have not been collected, together with the money they have collected, or the treasurer's receipt therefor, and all such fines not paid, shall be subject to

Fines due under the former law, how collected.

Sheriffs and collectors, their duty.

the order of the court of enquiry, and collected in the same manner as other fines are collected by this law.

Sec. 53. *And be it further enacted*, That the following articles, rules and regulations, shall govern the militia of this state, to-wit:

Commis-
sioned off-
cers misbe-
having, how
punished.

Art. 1st. If any field or other commissioned officer, at any regimental review, or on any other occasion when the regiment, battalion or company to which he may belong, or in which he may hold a command, is paraded in arms, shall misbehave or demean himself in an unofficer-like manner, he shall for such offense be cashiered or punished by fine, at the discretion of a general court-martial, as the case may require, in any sum not exceeding sixty dollars; and if any non-commissioned officer, musician or private shall, on any parade of the company to which he belongs, misbehave, or disobey orders, or use any reproachful or abusive language to his officers, or any of them, or shall quarrel or promote any quarrel among his fellow soldiers, he shall be disarmed and put under guard, by the commanding officer or officers present, until the company is dismissed, and shall be, by a regimental court-martial fined in any sum not exceeding twenty dollars nor less than one dollar.

Non-com-
missioned
officers, mu-
sicians or
privates mis-
behaving,
etc.

Art. 2d. If the lieutenant-colonel or commanding officer of any regiment or battalion, shall neglect or refuse to give orders for assembling his regiment or battalion, at the direction of the commander of the brigade to which he belongs, or in case of an invasion of the county or district to which such regiment or battalion belongs, he shall be cashiered or punished by fine, not exceeding six hundred dollars, at the discretion of a general court-martial; and if a commissioned officer of any company, shall, on any occasion, neglect or refuse to give orders for assembling the company to which he belongs, or any part thereof, at the direction of the lieutenant colonel or commanding officer of the regiment to which such company belongs, he shall be cashiered and punished by fine, not exceeding two hundred dollars, at the discretion of a regimental or general court-martial; and a non-commissioned officer offending in such case, shall be fined at the discretion of a regimental court-martial, in any sum not exceeding twenty dollars.

Lieutenant colonel refusing to give orders, etc.

How punished.

Commissioned officers of a company refusing, etc.

Non-commissioned officers, offending, how punished.

Art. 3rd. If any commanding officer of a company shall refuse or neglect to make out a list of the persons noticed to perform any tour of duty, and send or convey the same to the lieutenant colonel or commanding officer of the regiment to which such company may belong, or if he shall

Penalty on captains failing to make out a list of persons noticed for a tour of duty, etc.

fail to call forth such officers and men as shall from time to time be legally called from his company, upon any call from the governor, or on invasion or insurrection in the county or district, or requisition from an adjacent county or district, or failing on any such occasion to repair to the place of rendezvous, for such neglect or refusal he shall be cashiered or fined at the discretion of a general court-martial, in any sum not exceeding one hundred dollars, nor less than five dollars.

**Desertion,
how to be
punished.**

Art. 4th. If any militia man shall desert while he is on a tour of duty, he shall be fined not exceeding one hundred dollars, and be obliged to march on the next tour of duty, under the same penalties as the first; if a non-commissioned officer shall so desert, he shall be degraded and placed in the ranks, and shall pay a fine not exceeding two hundred dollars, and be obliged to serve another tour as a private.

**General
court-mar-
tial.**

Art. 5th. Every general court-martial shall consist of thirteen members, exclusive of the judge advocate, all of whom shall be commissioned officers, not under the rank of captain, and the officer highest in rank shall preside.

Art. 6th. Every regimental court-martial shall

be composed of five members, all commissioned officers, one of their members president, not under the rank of captain.

Regimental court-martial.

Art. 7th. All members of a court-martial are to behave with decency and calmness, and in giving their votes are to begin with the youngest in commission.

Members, how to vote.

Art. 8th. No commissioned officer shall be tried but by a general court-martial, nor by officers of an inferior rank, if it can be avoided, nor shall any proceedings or trials be carried on, except between the hours of eight o'clock in the morning and three o'clock in the afternoon, but courts-martial may adjourn from day to day, excepting in cases where the militia shall be in actual service in time of war, and when in the opinion of the officer appointing the court, an immediate example is required.

Commissioned officers to be tried by a general court-martial.

May adjourn from day to day.

Art. 9th. The judge advocate shall prosecute in the name of the state, but shall so far consider himself as counsel for the prisoner as to object to any leading question to any witnesses, or any question to the prisoner, the answer to which might lead to criminate himself.

Judge advocate, how to prosecute, etc.

Art. 10th. When a non-commissioned officer, musician or private, is confined under guard, his crime shall be lodged with the officer of the

Proceedings when persons are under guard.

guard within twelve hours after the prisoner's confinement, otherwise the prisoner shall be set at liberty.

Court-martial, two-thirds must agree, etc.

Art. 11th. In every court-martial, not less than two-thirds of the members must agree in every sentence for inflicting any punishment, otherwise the person charged shall be acquitted.

Witness to give testimony on oath, etc.

Art. 12th. The president of each and every court-martial, whether general or regimental, shall require all witnesses, in order to the trial of offenders, to declare on oath or affirmation, that the evidence they shall give is truth, the whole truth and nothing but the truth. And the members of all such courts shall take an oath or affirmation as follows, to-wit: "I — —, do solemnly swear (or affirm as the case may be) that I will hear and determine according to evidence, to the best of my understanding and the custom of war in such like cases, between the state of Ohio and —————, now to be tried; that I will not disclose the opinion of this court, until approved or disapproved by the commanding officer or commander in chief (as the case may be) and that I will not at any time, discover or disclose the opinion of any particular member, unless called upon to give evidence thereof by a court of justice, in due course of law." Which

Members of a court-martial to take an oath, etc.

Form thereof.

oath shall be administered by the judge advocate to the president and members.

By whom administered.

Art. 13th. The judge advocate shall be appointed by the officer ordering the court-martial, and shall take the following oath or affirmation, which shall be administered by the president, to-wit: "I, ———, do swear (or affirm as the case may be) that I will faithfully execute the office of judge advocate to this court, now met for the trial of ——— to the best of my liabilities and understanding and the custom of war in like cases, and that I will not disclose nor discover the opinion of this court-martial, until approved or disapproved of by the commanding officer, and that I will not at any time disclose or discover the vote or opinion of any member, unless called upon by a court of justice to give evidence thereof in due course of law." It shall be the duty of the judge advocate to keep a record of the whole proceedings of the court, taking into view the depositions of all witnesses that may be introduced.

Judge advocate, how appointed.

To take an oath.

Form thereof

His duty.

Art. 14th. Courts-martial shall appoint a provost marshal, whose duty it shall be to summon all witnesses, having received process for that purpose from the president of the court, to execute the orders of the court and keep bystanders

Provost-marshal's duty.

Witnesses
refusing to
attend, how
punished.

from interrupting the court whilst sitting; and all persons called as witnesses in any case before a court-martial, who shall refuse to attend and give evidence, shall be censured or fined at the discretion of the court, in any sum not exceeding fifty dollars.

Officers, etc.
transgress-
ing not suf-
fered to do
duty until
tried.

Art. 15th. No officer or private being charged with transgressing these rules, shall be suffered to do duty in the regiment, company or troop to which he belongs, until he has had his trial by a court-martial, and every person so charged shall be tried as soon as a court-martial can conveniently be assembled.

Proceedings
had when a
non commis-
sioned offi-
cer or pri-
vate is in-
jured by his
colonel.

Art. 16th. If any non-commissioned officer or private shall think himself injured by his lieutenant colonel or commanding officer of the regiment, and shall upon due application made to him, be refused redress, he may complain to the brigadier, who shall direct three commissioned officers to enquire into the nature of the complaint, and if they report that the person complaining, in their opinion, has been injured, the brigadier general shall then direct the brigade inspector, at a certain time and place, to summon a general court-martial, for the purpose of doing justice to the person complaining, and

shall also direct the brigade inspector to give the person complained of, at least eight days previous notice of the time and place of the meeting of any such court-martial, together with a copy of the charges exhibited against him.

Art. 17th. If any non-commissioned officer or private shall think himself injured by his captain or other superior in the battalion, troop or company, to which he belongs, he may complain to the commanding officer of the regiment, who shall cause his adjutant to summon a regimental court-martial, for doing justice according to the nature of the case.

If injured by a captain, etc., how to proceed

Art. 18th. The party tried by a general court-martial, shall be entitled to a copy of the sentence and proceedings of such court-martial, after the decision on the sentence, upon demand thereof made by himself or any person or persons in his behalf, whether such sentence be approved or not.

The person tried, entitled to a copy of the sentence.

Art. 19th. No penalty shall be inflicted at the discretion of a court-martial, other than degrading, cashiering or fining.

Court-martial, its power.

Art. 20th. The commanding officer for the time being, shall have full power of pardoning or mitigating any censures or penalties so ordered to be inflicted on any private or non-

Of pardons and mitigation of fines, etc.

commissioned officer, for the breach of any of these articles, by a general court-martial, and every offender convicted as aforesaid, by any regimental court-martial, may be pardoned or have the penalty mitigated by the lieutenant colonel or commanding officer of the regiment, excepting only where such censures or penalties are directed as satisfaction for injuries received by an officer or private from another; but in case of officers, such sentence to be approved of by the commander in chief of the militia, who is empowered to pardon or mitigate such sentence, or disapprove of the same.

Commis-
sioned offi-
cers misbe-
having, etc.,
how pro-
ceeded
against.

Art. 21st. If any commissioned officer shall, at any time or upon any occasion, behave in an unofficer-like or ungentlemanly manner, the commander in chief, if the person accused be a major general; the general of division, if a brigadier general; the brigadier general, if a field officer, or the lieutenant colonel or commanding officer of a regiment, if an inferior officer, as the case may be, upon the application of a commissioned officer, may appoint a board of the officers to enquire into the matter of complaint, and if upon their report it shall appear to him deserving of trial, then and in such case, he shall direct a court-martial, whose proceedings here-

in shall have the same effect as if the offense had been committed when on actual duty.

Art. 22d. The militia on the days of training, may be detained under arms, on duty in the field, any time not exceeding six hours: *Provided*, they are not kept above three hours under arms at any one time, without being allowed to refresh themselves.

Hours of parade, etc.

Art. 23d. All fines that shall be incurred by any breach of these rules, shall be paid to the paymaster of the regiment in which the offender resides (whose receipt shall be a discharge for the same) within sixty days after they become due, but in case of neglect or refusal to pay any of the said fines, they shall be levied and collected in manner hereinbefore directed.

Fines paid to the paymaster of the regiment, etc.

Art. 24th. The militia of this state, whilst in actual service, shall be subject to the same rules and regulations as the federal army, and shall receive the same pay and rations as is allowed by the United States to the militia, when in actual service: *Provided*, That upon any transgression or offense of a militia man, whether officer or private, against the rules and regulations of the federal army, the cause shall be tried

Militia in actual service subject to the rules, etc. of the federal army.

Proviso.

and determined by a court-martial of the militia of this state, if the same can be convened.

Rules of discipline established by congress, 29th March, 1779, to be observed.

Art. 25th. The rules of discipline approved and established by congress, in their resolution of the twenty-ninth of March, one thousand seven hundred and seventy-nine, shall be observed by the militia throughout this state, except such deviations from said rules as may be rendered necessary, by the requisitions of the acts of congress, or some other unavoidable circumstances, it shall be the duty of the commanding officer, at every training, whether by regimental, battalion or single company, to cause the militia to be exercised and trained, agreeably to the said rules of discipline and the instructions laid down by the baron Steuben, and annexed to the said rules of discipline, pointing out the respective duties of the officers, non-commissioned officers and privates, are recommended and enjoined upon the militia of this state, as particularly and fully as if the said instructions were repeated and expressed in this act at length; and it shall be the duty of every captain to instruct his non-commissioned officers accordingly.

and baron Steuben's instructions, etc.

On a call for a tour of duty, what notice, etc.

Art. 26th. If any militia man, on receiving three days previous notice thereof, shall neglect or refuse to be in readiness to march on any tour of duty, armed and equipped as required

by this act, he shall forfeit and pay a sum not more than one hundred dollars nor less than eight dollars, for every month he is required by law to serve on such tour, to be assessed, (on proper proof thereof made) by a regimental court-martial: *Provided always*, That if any militia man shall be sick or make any other just or satisfactory excuse to the court-martial, such fine shall not be assessed, but such militia man shall be obliged to perform a tour of duty on the next call of the militia.

Penalty for neglect.

Proviso.

Sec. 54. *And be it further enacted*, That all laws and parts of laws, heretofore made for the regulation of the militia, shall be and the same are hereby repealed.

Repealing clause.

ELIAS LANGHAM,
Speaker of the house of representatives.

DANIEL SYMMES,
Speaker pro tem. of the senate.

CHAPTER II.

An act, declaring the assent of the general assembly of the state of Ohio, to an amendment proposed by the congress of the United States, in lieu of the third paragraph of the first section of the second article of the constitution of the United States.

Preamble. Sec. 1. *Be it enacted by the general assembly of the State of Ohio,* That whereas it is provided by the fifth article of the constitution of the United States of America, that congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to the said 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 the same 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 congress. And whereas, at a session of the congress of the United States, begun and held at the city of Washington, in the territory of Co-

lumbia, on Monday the seventeenth of October, one thousand eight hundred and three, it was resolved by the senate and house of representatives of the United States of America, in congress assembled, two-thirds of both houses concurring, that in lieu of the third paragraph of the first section of the second article of the constitution of the United States, the following be proposed as an amendment to the constitution of the United States, which when ratified by three-fourths of the legislatures of the several states, shall be valid to all intents and purposes, as part of the said constitution, to-wit: 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 the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of repre-

Amendment
proposed by
the congress
of the Unit-
ed States.

Amendment
proposed,
continued.

sentatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed, and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president; but in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice; and if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day 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.

Sec. 2. *Be it further enacted*, That the aforesaid amendment to the constitution of the United States, be and is hereby assented to, confirmed and ratified.

Assented to,
confirmed
and ratified.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

December 30th, 1803.

CHAPTER III.

An act, for the limitation of actions.

The times
limited for
bringing cer-
tain actions.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That all actions hereinafter mentioned, shall be sued or brought within the times hereinafter limited; all actions of trespass for assault, menace, battery and wounding, actions of slander for words spoken or libel, and for false imprisonment, within one year next after the cause of such actions or suits; and all action upon book accounts, or for forcible entry and detainer or forcible detainer, within four years next after the cause of such actions or suits, and all actions of trespass upon real property, trespass, detinue, trover and conversion and replevin; all actions upon the case and all actions of debt for rent, shall be sued or brought within six years, next after the cause of such actions or suits, and all actions of covenant or debt founded upon a specialty under hand and seal, shall be sued or brought within fifteen years next after the cause of such actions or suits: *Provided,* That no part of the principal or interest be paid or demand be made within that time.

Proviso.

Sec. 2. *Be it further enacted,* That no person or persons shall hereafter sue, have or maintain

any writ of ejectment, or other action for the recovery of the possession, title or claim of, to or for any lands, tenements or other hereditaments, but within twenty years next after the right of such actions or suits shall have accrued.

Limitation for the recovery of lauds by ejectment, etc.

Sec. 3. *Provided always, and be it further enacted,* That if any person or persons is or shall be entitled to have, sue or bring any such action or actions as aforesaid, shall be within the age of twenty-one years, insane, *feme covert*, imprisoned or beyond sea, at the time when any such action or actions, may, or shall have accrued, then every such person or persons shall have a right to have, sue or bring any of the action or actions aforesaid within the times hereby before limited in this act, after such disability shall have been removed.

Proviso.

Sec. 4. *And be it further enacted,* That all actions or prosecutions, which at any time hereafter shall be commenced for any forfeiture upon any penal statute made or to be made, shall be commenced within two years next after the offense committed against such penal statute: *Provided always,* That when any action, information, indictment or other suit, is or shall be limited by any statute to be had, sued, commenced or exhibited within a shorter time than

Prosecutions for forfeitures or penal statutes to be commenced within two years.

Proviso.

is hereby limited, then and in every such case, the action, information, indictment or other suit, shall be brought within the time limited by such statute.

Causes of actions already accrued, when barred.

Sec. 5. *And be it further enacted*, That all causes of action enumerated in this act, which have already accrued, shall only be barred by counting the time of limitation given to those actions respectively, from the passage of this law.

Commencement of this act.

Sec. 6. *And be it further enacted*, That this act shall be in force from and after the first day of May next, and that all acts and parts of acts, coming within the purview of this act, be and the same are hereby repealed.

Repealing clause.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

January 4th, 1804.

CHAPTER IV.

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.

Black or mulatto persons not permitted to reside in this state, without producing a certificate.

Sec. 2. *And be it further enacted*, 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 an half cents: *Provided*

Residents prior to 1st June, 1804, to enter their names with the clerk of the county.

The clerk's certificate evidence of freedom.

Proviso. *nevertheless,* That nothing in this act contained shall bar the lawful claim to any black or mulatto person.

Residents prohibited from hiring black or mulatto persons not having a certificate. Sec. 3. *And be it further enacted,* 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 person shall have one of the certificates as aforesaid, under pain of forfeiting and paying

Penalty. any sum not less than ten nor more than fifty dollars, at the discretion of the court, for every such offense, one-half thereof for the use of the

One-half to the informer, the other to the state. informer and the other half for the use of the state; and shall moreover pay to the owner, if

An additional sum to the owner, if any. 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.

Penalty on persons harboring or secreting negro or mulatto persons. Sec. 4. *And be it further enacted,* 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 retaking and possessing his or her black or mulatto

How recovered. 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.

Penalty on persons harboring or secreting negro or mulatto persons.

Sec. 5. *And be it further enacted*, 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 an half cents, and the clerk shall give him or her a certificate of such record.

Black or mulatto persons, coming to reside in this state with a legal certificate, to record the same.

Sec. 6. *And be it further enacted*, 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 or 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

Proceedings when person or their agents claim any negro or mulatto.

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.

Penalty on persons removing or assisting to remove any black or mulatto person, etc.

How disposed of.

How recovered.

Sec. 7. *And be it further enacted*, 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.

NATH. MASSIE,

Speaker of the senate.

January 5th, 1804.

CHAPTER V.

An act, for the relief of Hannah Willis.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the marriage contract now existing between Isaac Willis and Hannah Willis, of Cincinnati, in the county of Hamilton, shall be and the same is hereby dissolved, and the said Hannah divorced and forever released from the said contract of marriage with the said Isaac Willis, and from all the obligations and incapacities of the same.

Marriage
contract dis-
solved.

Sec. 2. *And be it further enacted,* That the said Hannah Willis shall be and she is hereby restored, to all the privileges, abilities and capacities of a *feme sole*, as fully and completely as though the same marriage had never existed, any thing in the said contract to the contrary notwithstanding.

Restored to
the privileg-
es of a *feme
sole*.

Sec. 3. *And be it further enacted,* That the said Hannah Willis shall be and she is hereby constituted, the lawful guardian of her children which she bore to the said Isaac Willis, until they arrive at the age of fourteen years.

Constituted
the guardian
of her chil-
dren.

Commence-
ment of this
act.

This act shall commence and be in force, from
and after the passing thereof.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

January 6th, 1804.

CHAPTER VI.

An act, to establish the county of Muskingum.

Boundaries
of the coun-
ty of Muskin-
gum.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That so much of the counties of Washington and Fairfield, as comes within the following boundaries, be and the same is hereby erected into a separate and distinct county, which shall be known by the name of Muskingum, to-wit: Beginning at the north-west corner of the ninth township, in the ninth range of the United States military lands, thence with the western boundary line of said range south, to the southern boundary line of said military lands, thence with the same, west, to

the western boundary line of the fifteenth range of public lands, thence with the said line, south, to the southwest corner of the sixteenth township of the fifteenth range, thence eastwardly with the south boundary of the sixteenth township, till it intersects the west boundary of the twelfth range, thence with the sectional lines, east, to the western boundary line of the seventh range, thence with the same, north, to the northeast corner of the military tract, thence with the north boundary line of the tenth township in the first and second ranges of said military lands, west, until intersected by the Indian boundary line, thence with the same, westwardly, to the place of beginning.

Sec. 2. *And be it further enacted*, That from and after the first day of March next, the said county of Muskingum shall be vested with all the powers, privileges and immunities of a separate and distinct county: *Provided always*, That all actions and suits which may be pending on the said first day of March next, shall be prosecuted and carried into final judgment and execution, and all taxes, fees, fines and forfeitures, which shall be then due, shall be collected in the same manner as if this act had never been passed.

Proviso, as
to actions,
etc., depend-
ing.

Temporary seat of justice. Sec. 3. *And be it further enacted,* That the temporary seat of justice for said county, shall be at the town of Zanesville, until the permanent seat shall be fixed according to law.

Commencement. Sec. 4. *And be it further enacted,* That this act shall commence and be in force, from and after the first day of March next.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

January 7th, 1804.

CHAPTER VII.

An act, allowing additional compensation to the officers of the present general assembly.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That there shall be allowed to the clerk of the senate and to the clerk of the house of representatives, in addition to the sums allowed them by the act, entitled, "An act allowing compensation to the officers of the general assembly," the sum of one dollar and fifty cents per day, for clerk hire and incidental expenses.

One dollar
and fifty
cents in ad-
dition for
clerk hire,
etc.

ELIAS LANGHAM,
Speaker of the house of representatives.

DANIEL SYMMES,
Speaker pro tem. of the senate.

January 13th, 1804.

CHAPTER VIII.

An act, making a temporary appropriation of money, for certain purposes.

4,000 dollars appropriated for the members and officers of the general assembly.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio*, That four thousand dollars of the revenue of this state, be and the same is hereby appropriated, for the payment of the members and officers of the general assembly, in part of their wages for the present session.

A sum not exceeding 500 dollars to the clerks of the several counties.

Sec. 2. *And be it further enacted*, That a sum not exceeding five hundred dollars, be and is hereby appropriated, for the purpose of paying the clerks of the several counties in this state, for making out the duplicates for the year one thousand eight hundred and three, and two hundred dollars for the printer; for the payment of which, the auditor of public accounts is hereby required to issue bills, redeemable at the treasury of this state. This act shall commence and be in force from and after the passage thereof.

200 dollars for the printer.

Auditor to issue bills.

Commencement.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

January 16th, 1804.

CHAPTER IX.

An act, to provide for filling vacancies in the office of justices of the peace

Sec. 1. *Be it enacted by the general assembly of the state of Ohio*, That whenever there shall be a vacancy in the office of justice of the peace, in any township in this state, it shall be the duty of the trustees of such township to warn a meeting of the electors therein, to elect a suitable person to fill such vacancy, and whenever hereafter any township shall be divided or set off, it shall be the duty of the court of common pleas of the proper county, to determine and fix on a suitable number of justices of the peace for such township, and it shall be the duty of the trustees of such township to warn a meeting of the electors therein to elect the number of justices so determined on, and the justices of the peace so elected shall continue in office three years from the date of their commissions.

Trustees of the township to warn a meeting, etc.

When a new town is erected, the court of common pleas to fix the number of justices.

To continue in office for three years.

Sec. 2. *And be it further enacted*, That in case the election of any justice of the peace, under this act, shall be contested, the same proceedings shall be had as are prescribed in the act, entitled, "An act to regulate the election of

Manner of
conducting
contested
elections.

justices of the peace, and for other purposes:"

Provided, That after the freeholders who may be summoned to try any such contested election shall have made a report, in writing, to the clerk of the proper county, according to the directions of said act, it shall be the duty of the said clerk to send, within ten days thereafter, a certificate of the determination of such freeholders to the trustees of the proper township, that in case there should be a vacancy in the office of justice of the peace, by reason of such determination, the said trustees shall call a township meeting, by giving like notice as is required in the act, entitled, "An act to provide for the incorporation of townships," for the purposes of electing a suitable person to fill such vacancy; and all elections under this act shall be held and conducted in the manner prescribed in the act, entitled, "An act to regulate elections."

Manner of
conducting
elections un-
der this act.

ELIAS LANGHAM,

Speaker of the house of representatives.

DANIEL SYMMES,

Speaker of the senate, *pro tempore*.

January 24th, 1804.

CHAPTER X.

An act, to provide for the election of a representative in congress.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That on the second Tuesday of October, in the year of our Lord one thousand eight hundred and four, the electors within the several election districts in this state, shall give in their votes for a suitable person to represent the state of Ohio in the congress of the United States, for the term of two years, to commence on the fourth day of March, in the year of our Lord one thousand eight hundred and five.

A representative to be elected on the second Tuesday of October, 1804.

Sec. 2. *And be it further enacted,* That at every period of two years from the said second Tuesday of October, the electors of each election district in this state, shall in like manner give in their votes for a suitable person to represent this state in the congress of the United States, for the term of two years, to commence on the fourth day of March next thereafter.

and every two years thereafter.

Sec. 3. *And be it further enacted,* That all elections under this act shall be held and conducted in all respects in conformity to the provisions of the act, entitled, "An act to regulate elections."

The manner of conducting elections under this act.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

January 26th, 1804.

CHAPTER XI.

An act, allowing compensation to the commissioners for appraising the college lands in the county of Washington.

Commissioners entitled to receive thirty dollars each.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the commissioners appointed to appraise the two college townships in the county of Washington, by a resolution of the first legislature of the state, viz: Samuel Carpenter, James Wells and Henry Abrams, for eighteen days service each, in accomplishing said business, be and they are hereby entitled to receive each, for said service, the sum of thirty dollars, to be paid out of the contingent fund, to be audited by the auditor and paid out of any monies in the treasury of the state.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

January 27th, 1804.

CHAPTER XII.

An act, for establishing the permanent seat of justice in the county of Adams.

WHEREAS it is represented to this general assembly, by the report of the commissioners, pursuant to an act, entitled, "An act, providing for the permanent establishment of the seat of justice in the county of Adams," that the land of Robert McClenahan, in said county, lying about half a mile south of the road leading from Chilli-cothe to Limestone, and a small distance west of the central line of said county, drawn north from the Ohio river, is the most eligible place for the purpose aforesaid: Therefore,

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the associate judges of the court of common pleas of said county, or any two of them, are authorized and required, to purchase or receive of the said Robert McClenahan, and the owners of land adjoining the tract of said Robert McClenahan, for the use of said county, any quantity of land, not more than one hundred and fifty acres: *Provided,* the lands purchased as aforesaid, shall not cost the said

Preamble

Associate judges authorized to purchase land, etc., for the use of the county.

Not to exceed 150 acres.

Proviso. not to exceed eight dollars per acre.

To be laid out marked, etc.

Purchase money to be paid out of county treasury.

To be vested in a board of trustees.

The trustees.

Five to constitute a board and

county more than eight dollars per acre, exclusive of five acres promised as a donation by the aforesaid McClenahan, that in the opinion of the said associate judges will be to the interest and benefit of said county; the land thus purchased or received, to be laid out and marked with sufficient boundaries, under the direction of the said associate judges, and the amount of the purchase money shall be paid out of the county treasury, upon the orders or certificates of the associate judges aforesaid.

Sec. 2. *And be it further enacted,* That the land purchased or received by the associate judges, for the use of the county, shall be vested in a board of trustees and their successors in office, by legal deed or deeds from the owner or owners of said land, for the sole use and benefit of said county.

Sec. 3. *And be it further enacted,* That Nathaniel Beasley, William Marshall, Salathiel Sparks, Aaron Moore, Benjamin Wood, William Collins and John Briggs, be and they are hereby constituted and appointed, trustees for the purposes aforesaid, any five of whom shall constitute a board to do business, whose duty it shall be, so soon as they are furnished by the said asso-

ciate judges with a plat of the tract or tracts of land purchased or received by them as aforesaid at their first meeting to appoint a clerk, who may or may not be one of their own body; the said clerk shall record the proceedings of said board, in a book to be provided by the board for that purpose, which shall be subject to the inspection of any person concerned therein; and the said board shall also appoint a town surveyor, who shall lay off the tract of land aforesaid in town lots, with convenient streets, according to the directions of the board of trustees, to be known by the name of West Union, and moreover make out a correct plat and deliver to the clerk of the board of trustees, whereupon the said board of trustees shall proceed to number each lot, and cause the plat to be recorded in the recorder's office of the county, agreeably to law, and also to cause the same to be recorded in the books of proceedings of the trustees.

to appoint a clerk.

His duty.

To appoint a town surveyor.

His duty.

Town called West Union.

Trustees to number the lots.

Sec. 4. *And be it further enacted,* That the board of trustees shall proceed to sell the town lots aforesaid, within sixty days after delivering the town plat to the recorder of the county (having given thirty days notice thereof in the Scioto Gazette) at public sale, within said town, under

Trustees to sell lots, etc.

Under the direction of the associate judges.

the direction of the associate judges, or any two of them, in said county, reserving for erections of public buildings such lots as the said associate judges may think proper; and the said board may adjourn the sale of said lots from time to time, as they may judge to the interest of the county, giving notice thereof, as before required by this section; all monies received by virtue of the sale of lots aforesaid, by the board of trustees, shall be paid into the county treasury within ten days after receiving the same. and all bonds and notes to be taken by the said board of trustees, on account of the sale of lots, shall be taken payable to the county treasurer and his successors in office, for the use and benefit of said county.

Proceeds of sales to be paid into the county treasury.

Bonds, etc., taken, payable to the county treasurer.

Trustees, how long to continue in office.

Sec. 5. *And be it further enacted,* That the trustees appointed by this act, shall continue in their office until the number of inhabitants of said town shall amount unto thirty lot-holders, and they shall moreover fill all vacancies that may happen in their body until the number before mentioned is completed: The said board of trustees are hereby authorized to convey unto the purchaser or purchasers of all lots sold in said town, by sufficient deed, upon the purchaser or purchasers producing unto the said board of trustees, a certificate from the treasurer of the

To make conveyances.

county that the full amount of the purchase money hath been paid; and when the inhabitants in said town shall amount unto thirty as aforesaid, they shall meet at the court house in said town, and proceed to elect five trustees and a town clerk, to supply the place of the aforesaid trustees and clerk, whose time shall then expire; the officers thus elected and qualified, shall be vested with the same powers and be liable to the same duties as their predecessors, and shall continue in office one year and until their successors are chosen and qualified as aforesaid, and annually thereafter, the said inhabitants shall meet at the court house and elect the officers aforesaid.

Inhabitants of the town amounting to thirty, to elect five householders and a town clerk.

To continue in office one year.

Sec. 6. *And be it further enacted*, That the trustees and clerk, before they enter upon the duties of their offices, shall take an oath or affirmation, faithfully to discharge the duties of their respective offices, agreeably to law.

Trustees and clerk to take an oath.

Sec. 7. *And be it further enacted*, That it shall be the duty of the board of commissioners of the county aforesaid, so soon as the conveyance or conveyances of the tract or tracts of land aforesaid, is made to the said associate judges for the use and benefit of said county, to remove or dispose of to the best advantage, for the use

The board of commissioners to remove or dispose of the public property at the mouth of Brush creek.

of the said county, the public property belonging to the said county, in the town of Washington, at the mouth of Brush creek, in the said county, and the money arising from such disposition, to pay into the county treasury for the use of the said county.

The court of common pleas to cause the records to be removed, etc., and the courts to be held at West Union.

Sec. 8. *And be it further enacted,* That the court of common pleas for the aforesaid county, are hereby authorized and required, so soon as they may think it convenient and necessary, to cause the records and papers of the said county to be removed from the town of Washington in the said county, to the place fixed upon by the aforesaid commissioners for the permanent establishment of the seat of justice in the said county, and the court in the said county to be held thereat; and all public officers are hereby required and enjoined to govern themselves accordingly.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

January 16th, 1804.

CHAPTER XIII.

An act, to establish the seat of justice in the county of Belmont.

WHEREAS John Matthews, James Brown and Robert Spear, commissioners for Belmont county, in pursuance of the powers delegated to them by an act, entitled, "An act to provide for a permanent seat of justice in the county of Belmont," passed at Chillicothe, the first day of April, one thousand eight hundred and three, have reported to this general assembly, that on examination they do find, that St. Clairsville is the most proper place for the seat of justice in the county of Belmont. Therefore,

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That St. Clairsville, in the county of Belmont, be and the same is hereby declared, the seat of justice in and for the said county of Belmont; and that all courts hereafter to be holden in and for said county, shall be held in the said town of St. Clairsville, and all officers are required to conduct themselves accordingly.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

January 19th, 1804.

CHAPTER XIV.

An act, regulating the right of dower.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the widow shall be entitled during her life, to the use of one-third part of all the real property that her husband was seized of during coverture, unless she shall have joined with her husband in the conveyance, the widow shall tarry in the chief house of her husband and have a reasonable support out of the estate of her husband, until her dower be assigned her, and shall be entitled to one-third part of the remainder of the personal property after the debts are paid.

Widow entitled during her life to the one-third part of the real property, etc.

When and in what case right of dower shall be debarred, etc.

Sec. 2. *And be it further enacted,* That if any estate shall be conveyed to a woman for a jointure instead 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.

Sec. 3. *And be it further enacted,* That the judges of the court of common pleas, on application of the widow, shall appoint three appraisers to appraise the property of the deceased, any two of whom shall assign to the widow her dower therein.

The manner of assigning to widow her dower.

Sec. 4. *And be it further enacted,* That whenever any person shall leave any part of his property to his wife by will, she shall, within six months after the death of her husband, make her election, whether she will hold by the will or by her right of dower, unless the husband shall specially set forth in his will, that such provision was made and given in addition to the widow's right of dower; and in case all the heirs to the estate are of age, and the widow and the heirs can agree on a division and on settlement of the estate, they shall make return of such their agreement to the court of common pleas, which settlement and agreement shall be valid and binding on the widow and the heirs.

The widow to make her election within six months if willed any thing by her husband, etc.

When a division, etc., can be agreed on, to return the same to the court of common pleas.

Sec. 5. *And be it further enacted,* 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 the husband, of any right which she had or might have to

When the contract of the husband shall not deprive the wife after his death of her right, etc.

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.

A wife leaving her husband, forfeits her right of dower, etc.

Sec. 6. *And be it further enacted,* 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.

When lands, etc., are lost by frauds, etc., the widow entitled to her dower.

Sec. 7. *And be it further enacted,* That in case a person 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 or tenements, she shall be entitled to and recover her dower therein.

When the widow is awarded her dower in prejudice to the heir.

Sec. 8. *And be it further enacted,* That whenever a widow having no right to dower and the heir being under age, if the widow bring her writ of dower against the guardian and she shall make default, or by collusion defend the plea faintly, whereby the widow is awarded her

dower, in prejudice to the heir or heirs, in all such cases, he, she or they, coming of age, shall have right to demand the seisin of his or her ancestor against such woman, in like manner as he, she or they, should have against any other person.

to be proceeded against as in other cases.

Sec. 9. *And be it further enacted,* That the widow shall have no part of the personal property, her wearing apparel excepted, until all the debts against the estate are paid, except such part of the household furniture as shall be assigned her by the court of common pleas.

Widow to have no part of the personal property until the debts are paid, etc.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

January 19th, 1804.

CHAPTER XV.

An act, to provide for the election of electors of the president and vice-president.

Electors for president, etc., to be chosen on the first Saturday of November next.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That all persons having the requisite qualifications of electors of senators and representatives to the general assembly of this state, shall, on the first Saturday of November next, assemble in their respective townships within this state, at the places designated in each township for the holding elections, for the purpose of electing three electors of president and vice-president of the United States.

Three electors to be chosen.

Sec. 2. *And be it further enacted,* That when the electors are so assembled, they shall proceed to elect, by ballot, three electors of president and vice-president of the United States, who shall have the qualifications requisite for members of the house of representatives of this state, which elections shall commence and close at the same hour, and be conducted in the same manner as is directed by a law of this state for electing senators and representatives to the general assembly, entitled, "An act to regulate elections," except so much thereof as shall be contrary to this act.

Their qualifications.

Elections, how conducted.

Sec. 3. *And be it further enacted,* That it shall be the duty of the judges of elections in each township, forthwith after the close of the election, to seal up one of the poll books of the election, which aforesaid sealed poll book shall be carried within two days after the day of election to the clerk of the court of common pleas of the proper county, and if the judges of the election shall fail so to carry the poll book aforesaid, they shall forfeit and pay to the state the sum of one hundred dollars, to be recovered by action of debt, before any court having cognizance thereof.

Judges to carry poll books to the clerk, etc.

Penalty for neglect.

Sec. 4. *And be it further enacted,* That the clerks upon receiving the poll books aforesaid, shall administer an oath or affirmation to each judge who shall carry any poll book, that he was a judge of the said election, and shall endorse a certificate of having administered such oath; and the clerks of the courts aforesaid, shall, within three days after the day of election, deliver all poll books to the sheriff of their respective counties, taking his receipt therefor, and it shall be the duty of the sheriffs to attend at the clerk's office of their respective counties, for the purpose of receiving the same; and the said sheriff, upon the receipt thereof, shall have said

Clerks on receiving the poll books to administer an oath to the judges.

and in five days afterwards, deliver the same to the sheriff.

His duty.

poll books delivered at the secretary of state's office, on or before the sixteenth day of November, under the penalty of forfeiting to the state the sum of one thousand dollars, to be recovered as aforesaid.

Penalty for neglect.

Poll books to be opened on the 17th November by the secretary of state.

Sec. 5. *And be it further enacted,* That the said poll books shall, on the seventeenth day of November next, 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 three persons having the greatest number of votes, certificates of their having been duly elected as 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 the electors so made, to be published in the Scioto Gazette; but if more than three persons having the greatest number of votes, or if any two or more of them have such equal number, then the election shall be determined by lot, to be drawn by the secretary of state, in

Governor to make out certificates, etc., and transmit the same by messenger.

When more than three persons have the greatest number of votes, etc., to be determined by lot.

the presence of the governor and sheriffs, as aforesaid, and 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.

Poll books to be lodged in the secretary's office.

Sec. 6. *And be it further enacted,* That the persons so elected as electors of president and vice-president of the United States, shall, on Wednesday the fifth day of December next, assemble at the court house in Chillicothe, at ten o'clock in the forenoon, and proceed to give their votes for president and vice-president of the United States, and transmit the votes to the president of the senate in congress assembled, in the manner and form prescribed and required by the constitution and laws of the United States.

Electors, etc., to meet 5th December in Chillicothe to vote for president, etc..

and transmit the same to the president of the senate.

Sec. 7. *And be it further enacted,* That the several persons who shall be appointed to conduct the elections of electors of president and vice-president of the United States, shall, for neglect of duty or improper conduct, be liable to the same penalties and forfeitures as is provided by the act regulating elections in this state.

Judges of elections. penalty for neglect of duty, etc.

Judges,
clerks, etc.,
to be paid
out of the
county
treasuries.

Sheriffs,
electors,
etc., out of
the state
treasury.

Sec. 8. *And be it further enacted,* That the judges and clerks of the township elections, and clerks of the different counties, shall be paid out of their respective county treasuries, such compensation as the board of commissioners of their respective counties may direct. The sheriffs of the several counties of the state, and electors of president and vice-president, together with the expenses of publication and transmission of the certificates aforesaid, shall be paid out of the state treasury, such compensation as the general assembly shall, at their next session, provide by law.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

January 20th, 1804.

CHAPTER XVI.

An act, to provide for the incorporation of townships.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the townships of the several counties in this state, as they are or hereafter may be laid out and designated, be and they are hereby formed into bodies politic and corporate, for the purposes of exercising and enjoying the rights and privileges hereinafter enumerated.

Townships incorporated.

Sec. 2. *And be it further enacted,* 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 is hereinafter directed, at the hour of ten o'clock in the morning, and when so assembled, to the number of fifteen or upwards, they shall proceed to elect a chairman, who shall preside at the said meeting, and it shall be his duty to preserve order, and he shall have power to cause any and every disorderly person to be removed, and if necessary, confined, until the close of such meeting; and it shall be the duty of each and every constable present, to obey the orders and direc-

Electors in each township to meet the first Monday of April, annually, etc.

To elect a chairman. His duty.

tions of the said chairman, for the purpose of preserving order and regularity in such meeting; and at the same time the electors shall elect two persons, having the qualifications of electors, as judges of the election, who shall take an oath or affirmation faithfully to discharge the duties of their office.

Two judges elected, to take an oath.

First meeting, where held.

Subsequent meetings to be fixed by the trustees, etc., in new townships by the commissioners.

Sec. 3. *And be it further enacted,* That the first meeting of the electors under this act, shall be holden at the places appointed by the associate judges, for holding the last annual election, and ever after, the elections shall be held in such place, in the respective townships, as shall be ordered and directed by the trustees at each preceding meeting, and when any new township is laid off, the board of commissioners shall appoint the place for holding the first meeting, and the place of holding their annual meetings shall be determined as in this section directed.

Officers to be chosen.

Sec. 4. *And be it further enacted,* That after the election of a chairman and judges in manner 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 houses, one of whom shall be lister of taxable property, which lister shall be designated on each election ballot, a sufficient number of supervisors of highways, one or more con

stables and one township treasurer, which several officers shall continue in office until their successors shall be chosen and qualified, and shall, on their respective appointments, take an oath or affirmation, faithfully and impartially to discharge the duties of their respective offices.

Shall take
an oath.

Sec. 5. *And be it further enacted*, that it shall be the duty of the township clerk, to keep fair and accurate records of all the public transactions of the township meetings, to make out within two days after the election of township officers, a list of all those of whom, by law, oaths are required, stating the offices to which they are respectfully chosen, and the same deliver to a constable of the township, requiring such constable forthwith to summon such officers to appear before a justice of the peace, or before such clerk, within ten days, to take such oaths or affirmations as may be by law required, which oaths or affirmations the said clerk is authorized to administer, and of which he shall make a record; and in case any township officer shall take the oath of office before any justice of the peace, such justice shall file a certificate thereof with the clerk of the township, who shall make a record of the same.

Duty and
authority of
the clerk.

Further duty
of the clerk.

Sec. 6. *And be it further enacted*, That it shall be the further duty of the township clerk, to record in a book to be provided by him for that purpose, all private roads, and cart-ways, by the trustees established, together with the ear-marks of all cattle, sheep and hogs, and such other marks and brands as any person may wish to have recorded in the said township, but he shall not record the same mark to two different persons; and the said clerk shall be entitled to receive of the person employing him as aforesaid, for such entry of marks or brands, the sum of twenty-five cents, and shall deliver a certified copy of such entry to the owner, if required, and he shall be entitled to receive for recording private roads and cart-ways, for every sheet of one hundred words, nine cents, payable by the person at whose request the said record is to be made.

His compen-
sation.

Duty of trus-
tees.

Sec. 7. *And be it further enacted*, That it shall be the duty of the trustees, within twenty days after each annual township meeting, to divide their respective townships into districts, allotting to each supervisor one, and it shall be the further duty of the said trustees, to settle the accounts of the supervisors of highways and overseers of the poor, and to examine and settle all accounts and demands against the township,

for which purpose the said trustees, supervisors, 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 it shall be the duty of the township clerk to 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 creditor shall be entitled to receive from the said trustees, an order on the township treasurer for the full amount thereof, payable on demand.

and of clerk.

Demands against the township paid out of township treasury.

Sec. 8. *And be it further enacted*, that each and every township, whenever and so often as the major part of the whole number of electors in said township shall deem it expedient, shall have power and authority to lay a tax: *Provided*, That such articles only shall be subject to taxation as are made liable by the laws regulating county rates and levies, and that the amount of the tax so laid, shall not exceed what might be laid on the same article for county purposes; and it shall be the duty of the township clerk to make out an assessment of the tax voted by the township, a duplicate whereof he shall deliver, within twenty days, to such constable

Majority of electors empowered to lay a tax.

Provide

Duty of the clerk.

Duty of constable to give bond, etc.

Duty of treasurer.

The constable, his compensation.

of the township as the trustees shall direct, and the other within the like time, to the township treasurer; and the constable receiving such tax to collect, shall, before he commences the collection thereof, give bond with two sufficient sureties, to the township treasurer, conditioned to collect and pay over to the said treasurer or his successor in office, the amount of said tax within four months; and in case the said constable shall neglect and refuse to collect and pay over the whole amount of such tax, within the time specified in said bond, it shall be the duty of the township treasurer, after giving twenty days notice, to issue an execution, directed to the other constable of the township, commanding him forthwith to levy the amount of said bond, with the costs, on the goods, chattels, lands or tenements, of the obligors; and it shall be the duty of such constable receiving such execution, to levy, collect and pay over the same to the township treasurer, within sixty days from the date of said execution, and the constable collecting the township tax, shall be entitled to the same compensation as the county collector is entitled to receive for the like services, and the constable levying such execution, shall be entitled to demand and receive the same fees as are allowed, by law, to sheriffs in like cases.

Sec. 9. *And be it further enacted,* 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 warrants shall enumerate the officers to be chosen at such meeting; and on the 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 no tax shall be voted at such township meeting, unless notice thereof shall have been given in the said warrant, and the constable who shall receive such warrant, shall warn the electors of such township by setting up copies of said warrant in three of the most public places in each township, at least fifteen days before the meeting of such electors.

Trustees to issue the warrant to constable etc.

Their further duty, on application of two or more freeholders.

Sec. 10. *And be it further enacted,* That any person chosen to any office under this act and not exempted by law, who shall neglect or refuse to serve in such office, shall forfeit and pay to and for the use of the township, the sum of two dollars, to be recovered before any justice of the peace; and it is hereby made the duty of

Penalty on officer chosen and refusing to serve.

the township treasurer to sue for the same, and for all fines and forfeitures accruing under this act, for neglect or misconduct in office of any township officer: *Provided*, That no person chosen to any office by this law created, shall be obliged to serve in such office two years successively.

Proviso.

Sec. 11. *And be it further enacted*, That all forfeitures under this law, shall be expended and laid out on the highways within the township, and it shall be the duty of the trustees to apportion the same among the supervisors of the highways of the said townships, and the township treasurer may retain three per cent. of all monies paid into the township treasury, for collecting or receiving and paying over the same to the order of the trustees.

Appropriation of forfeitures.

Duty of trustees therein.

Treasurer, his compensation.

Sec. 12. *And be it further enacted*, That when by reason of non-acceptance, death or removal, of any person chosen to an office, in any township, at the annual meeting as aforesaid, or in any case where there is a vacancy, the trustees shall fill such vacancy, and the person thus chosen shall take the same oaths and be liable to the same penalties as though he had been chosen at the annual meetings; and in case there should not, at any annual meeting under this

Trustees to fill vacant offices, etc.

act, be a sufficient number of electors assembled for the choice of a chairman, as is hereinbefore provided, between the hours of ten o'clock in the morning and four in the afternoon, so that no township officers can be chosen by the electors, it shall then be the duty of the trustees to 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.

Sec. 13. *And be it further enacted,* That it shall be the duty of all township officers, to deliver over to their successors in office under this act, all books and papers relating to their respective offices.

Township officers to deliver over books, etc., to their successors.

Sec. 14. *And be it further enacted,* That whenever and so often as the board of commissioners of any county, may deem it conducive to the public convenience, to divide or alter the boundaries of any township, they shall be and they are hereby authorized to alter the boundary lines, or to divide the township in the most convenient manner: *Provided,* That nothing herein shall be construed to empower the boards of commissioners to divide any township in such manner, as to reduce the same below the size hereinafter prescribed; and that the trustees of each

Commissioners authorized to alter the boundaries of townships

Proviso.

and every township in this state, shall have power to determine on the place of holding elections within the township, and shall give public notice thereof, as is provided in case of township meetings.

Eighty electors inhabiting five or six miles square entitled to be set off as a township

Sec. 15. *And be it further enacted,* That whenever and so often as there shall be eighty electors inhabiting in any tract of five miles square, where, by the original survey of the county or district, the same was located into townships of that size, and whenever there shall be the same number of electors inhabiting in any tract of six miles square, where, by the original survey of the county or district, the same was located into townships of that size, the inhabitants of said tract or township of five or six miles square. shall be entitled to be set off as a township by themselves, entitled to all the rights, privileges and immunities, by law given to and vested in any township in this state: *Provided,* That townships in the Virginia military district, shall not be of less contents than seven miles square.

Proviso.

Commissioners on application, to set off a township, etc.

Sec. 16. *And be it further enacted,* That any township, desirous of being set off as aforesaid, shall, for that purpose, apply to the board of commissioners of the proper county, and on satisfying the board that they are entitled by

law to be set off, it shall be the duty of the board to direct their clerk to record the boundaries of said township in a book to be provided for that purpose, and give said township such name as the board of commissioners shall think proper:

Provided, That no two townships in any one county in this state, shall be set off and incorporated by the same name; and whenever, by the original survey of any county or district in this state, there shall be any gore or tract of land of less area than four and a half miles square, the same shall be, by the board of commissioners, annexed to and shall be a part of some township of five or six miles square, which may be contiguous to and most convenient for, the inhabitants of said gore or tract.

Proviso.

Sec. 17. *And be it further enacted,* That this act shall commence and be in force from and after the passing thereof, and that all powers now vested in the several township officers, shall be and remain, until superseded by the several officers chosen under this act.

Commencement of this act.

Sec. 18. *And be it further enacted,* That the act, entitled, "An act to establish and regulate township meetings," and all other laws and

Repealing clause.

parts of laws, coming within the purview of this act, be and they are hereby repealed.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

January 21st, 1804.

CHAPTER XVII.

An act, regulating the public salt works.

Agent appointed for three years from and after the first day of May next.

To give security.

To reside at the salt works.

Prohibited from making salt during his agency.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio*, That an agent be appointed, by joint ballot of both houses of the general assembly, for three years, to commence from and after the first day of May next, who shall, previous to entering on the duties of his office, enter into a bond with good freehold security to the governor and his successors, for the use of the state, in the penal sum of four thousand dollars, conditioned for the faithful performance of the duties required by this act, and shall reside at the said works during his continuance in office; and the said agent shall not carry on the

making of salt, either directly or indirectly, by himself or in partnership with others, during such agency.

Sec. 2. *And be it further enacted,* That it shall be the duty of the present agent, prior to the first day of March next, to lay off by actual survey, the land at the Scioto salt-works, along the creek where salt water may be had, in convenient lots and in such manner, that those who may hereafter obtain a license to erect furnaces and sink wells, or occupy those already erected or sunk at the said works, may have a sufficient quantity of salt water for their respective furnaces; also to lay off, by actual survey, eight hundred acres of land, adjoining the works, including all the lands that may be enclosed and under cultivation, in lots of twenty acres each, leaving a space along said creek as far as the surveys of lots may extend, of at least four poles wide, on the most eligible ground for a road, and leaving at suitable distances from each other, fronting the works, spaces of at least thirty feet wide, for the purpose of convenient roads and pass-ways, into said works, for which service the said agent shall receive such compensation as shall be allowed by the legislature; and the said agent is hereby authorized to permit any

The present agent to do certain surveying at the salt works prior to the first of March next.

For which shall receive such compensation as the legislature shall allow.

Authorized to permit persons privileged to enter lots and give certificate etc.

person to whom such privilege is allowed by the eleventh section of this act, as also the agent under this act to be appointed, to enter into the possession of one or two of the said lots, and give such person a certificate of such permission; and every person having such certificate, producing the same to the agent appointed by this act, and entering his or her furnaces, shall receive from said agent a lease for the said lot or lots he or she shall be in possession of, as aforesaid.

To open an office at the works.

Sec. 3. *And be it further enacted,* That it shall be the duty of the agent under this act to be appointed, to provide a book or books and open an office at the Scioto salt-works, on the first day of May next, and keep said office open to all persons having business to transact therein.

and to grant a license for a period not exceeding four nor less than one year.

Sec. 4. *And be it further enacted,* That if any of the occupiers of the furnaces or wells, which may be erected or sunk before the first day of June next, shall choose to continue in the occupancy thereof, they shall, on the day last mentioned, make application to the agent for a license for that purpose, who is hereby required to grant the same, for any period not exceeding four years nor less than one year, such applicant first producing a written list, signed by the former agent, containing a true account of the fur-

Applicant to produce a written list of furnaces, etc., signed by the former agent.

naces and wells he may then be in possession of, together with the number and capacity of the kettles he intends to use in making salt at the said works, which list shall be carefully filed in said office and a fair entry thereof made by the said agent in a book to be provided as aforesaid, for that purpose; but if any of the occupiers aforesaid shall refuse or neglect to make application on the day above-mentioned, or in one week thereafter, then it shall be the duty of the said agent to rent such furnaces or wells to any person who may apply therefor, such person producing a written list of the wells and furnaces he applies for, with his signature thereto, whereupon the agent shall grant a license to such applicant, in the same manner as is required in case of those who may be in occupancy of wells and furnaces when this act shall take effect, but no lease so given, shall extend beyond the first day of June, in the year one thousand eight hundred and eight: *Provided always*, That the occupiers under a law of the last session, shall have a reasonable time to remove their kettles and other movable property from said furnaces and wells.

Sec. 5. *And be it further enacted*, That on application made to the said agent, by any person, for privilege to erect furnaces or sink wells at

Agent to file the same.

When application is not made by the occupier, agent to rent.

Leases not to be entered beyond the first day of June, 1808.

Proviso.

On application the agent to assign lots, etc.

the said salt-works, the agent is hereby required to assign to such applicant, a convenient lot or lots for that purpose, taking care that the erection of such new furnaces or sinking such wells shall not injure those already erected or sunk, and such new furnaces and wells shall be under the same regulations, and the kettles therein subject to the same rent, as is provided in case of those already erected or sunk: *Provided always*, That no person or company shall, under any pretense whatsoever, be permitted to use at any time, a greater number of kettles or vessels than will contain four thousand gallons, nor a less number in any one furnace than six hundred gallons.

Proviso.

Persons licensed to pay the agent quarter yearly.

Kettles bound for the rent.

Sec. 6. *And be it further enacted*, That each and every person obtaining a license as aforesaid, shall pay or cause to be paid to the said agent, quarter yearly, the sum of four cents per gallon on the capacity of the kettles or other vessels used in boiling salt water, in their respective furnaces; and for securing the said rent, the kettles of each person so renting, shall be considered to stand pledged to the state, until all arrears of rent are satisfied and paid, and any private sale thereof, made while such rent remains due and unpaid, shall be deemed void and of none effect.

Sec. 7. *And be it further enacted,* That when any person or company, who may occupy any furnace or furnaces, agreeable to the provisions of this act, shall fail to pay the sum or sums due to the state, agreeable to law, the agent shall be and he is hereby authorized and required, to make distress on and sale of, the property of any such person or company, so failing to make payment: *Provided always,* That the said agent shall, in all cases of distress, give fifteen days previous notice, in writing, at five of the most public places within the township where the works lie, of any such sale.

In case of failure the agent to make distress and sale.

Proviso.

Sec. 8. *And be it further enacted,* That if any person shall, after the said first day of June, make or cause to be made any salt at the said works, without first obtaining a license therefor, agreeable to the regulations of this act, such person shall, on conviction thereof, before any court having cognizance of the same, forfeit and pay the sum of five dollars for every such offense, with costs of suit, to be paid to the said agent, for the use of the state, for each kettle or other vessel, he, she or they, may use in boiling salt water, contrary to the intent and meaning of this act.

Penalty for making salt without license.

Sec. 9. *And be it further enacted,* That the agent of the salt works shall inspect all salt

Agent to inspect all salt put up in barrels and brand the same.

Penalty on persons selling salt put up in barrels not inspected.

How disposed of.

Salt objected to as not being merchantable. Agent to inspect and determine.

Agent to pay all monies received for rent to the state treasurer.

Agent to give leases.

which shall be put up in barrels, and shall brand the barrels with the words, "inspected," and if any person shall offer for sale or sell any salt in barrels which shall not be inspected, such person shall forfeit to the state, the sum of fifty dollars, which shall, by the agent, be recovered before any court having cognizance thereof; and the said agent shall pay in the treasury of this state, all such fines collected, and if any person working the said salt works shall become obligated to any person for salt and the person to whom the salt is due, shall object that the salt offered to him in payment is not merchantable, it shall be inspected and determined by the agent, whether the salt so offered, is merchantable or not.

Sec. 10. *And be it further enacted,* That the said agent shall pay quarter yearly to the treasurer of this state, all monies which he shall receive for rent on kettles, by virtue of this act, and yearly, all monies he shall receive arising from the rent on land, and the treasurer is hereby required to give his receipt for the same, which shall be countersigned by the auditor.

Sec. 11. *And be it further enacted,* That it shall be the duty of the said agent to give each occupier of wells and furnaces, under the regu-

lations of this act, also useful mechanics and other laborers employed about said works, on application to him made, a lease for one or two of the twenty acre out-lots, as is described in the second section of this act, for the purpose of cultivation; the lessee to have the use of the lot or lots three years, for enclosing the same with a good and lawful fence, and after the expiration of three years, the lessee shall pay to the said agent one dollar and fifty cents per acre, yearly; and the said agent shall rent out any land found fenced and in order for cultivation at the said works, at the rate of one dollar and fifty cents per acre, for each year such person shall lease the same, all which rents arising from said lands, shall be paid unto the said agent of the public salt works, for the use of the state, on the first day of June, yearly and every year: *Provided always*, That no lease shall be given for any of the aforesaid lots, which shall extend beyond the first day of June, in the year one thousand eight hundred and eight.

Condition.

Proviso.

Sec. 12. *And be it further enacted*, That it shall be the duty of the said agent, at the same time when he shall give a license to those who may apply for the occupancy of wells and furnaces, agreeably to the regulations of this act, to assign to such person a lot of timbered land,

Agent's duty as to giving license.

taking care that each occupier of furnaces, and other persons engaged or employed in manufacturing of salt, shall have a sufficient quantity of timbered land for their respective use, and as convenient as the situation of the place will admit of.

Agent to make an annual report to the legislature.

Sec. 13. *And be it further enacted*, that the agent shall, on or before the sixth day of every annual session of the legislature, lay before the general assembly an accurate statement of the entries made in his office, together with a fair statement of all monies paid thereon, also a statement of all lands under rent in said township, with a true account of the situation of said works; and he shall likewise hold his books of entries subject to the inspection and examination of the legislature.

Compensation.

Sec. 14. *And be it further enacted*, That the agent aforesaid, shall receive as a compensation for the duties required of him by this act, the sum of three hundred dollars for each year, and in that proportion of the time he shall continue in office, which compensation shall be audited by the auditor of public accounts, and paid by the treasurer of the state, quarter yearly, to the said agent, out of any public monies in the treasury not otherwise appropriated.

Sec. 15. *And be it further enacted,* That an agent be appointed, in the mode pointed out by the first section of this act, whose duty it shall be to make a careful examination of the salt springs, commonly known by the name of the Muskingum salt springs, of the strength and quantity of the salt water, and of the extent of the space within which it may be found, of the quality and situation of the lands belonging to the same, of the quantity and quality of the timber or other fuel, of the number of wells, furnaces and kettles, there in use in manufacturing salt, of the state of cultivation and of the number of the buildings erected on said lands, to lease out at his discretion, for the term of one year, from the first day of June next, said lands and the right of manufacturing salt at said springs, to such person or persons as may apply for the same, to prohibit any unnecessary waste of timber, to bring suit or suits in behalf of the state, against any person or persons who may trespass hereafter on the aforesaid premises, and to make an accurate statement of his discoveries and proceedings, to the general assembly at its next session.

Agent appointed for the Muskingum salt springs.

His duty.

To report to the next general assembly.

Sec. 16. *And be it further enacted,* That this act shall commence and take effect, and be in force from and after the passing thereof.

Commencement of this act.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

January 27th, 1804.

CHAPTER XVIII.

An act, to provide for the partition of real estates.

Coparceners, etc., holding estates compelled to make partition under certain resolutions.

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

Courts before whom proceedings to be had.

had before the court of common pleas of such county.

Sec. 2. *And be it further enacted,* That any person being a joint tenant, coparcener or tenant in common of any such estate or estates, or the executor, administrator, guardian or agent of any such person, may file his or 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 and title to any part or proportion of such estate or estates, then the court shall proceed, at 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: *Provided,* It shall appear that the notice required by this act hath been sufficiently and legally given, and no sufficient reason shall appear why the prayer of the petitioner should not be granted, other-

Coparceners, etc., to prefer petition to court.

To state the nature of the claim, etc.

When the party has a legal title, the court to order partition.

Proviso.

In case notice hath been given.

Notice :
how to be
given when
parties re-
side out of
the state.

Forty days
notice to
residents
and non-
residents,
agents, etc.,
sufficient.

When due
notice hath
been given,
duty of the
court.

wise the court shall order and direct notice of such demand of such partition to be given, either by publication in one or more newspapers printed in this state, where the parties concerned reside out of this state, or by personal notice to be served at least forty days before the ensuing term, if the party or parties concerned reside within this state: *Provided always*, That where the person or persons, of whom partition is demanded, reside out of this state and have an agent or attorney residing within this state, such personal notice of such demand of partition shall be given to such agent or attorney, as is required in the case of resident proprietors.

Sec. 3. *And be it further enacted*, That if at the first or any succeeding term (in case a continuance hath been granted) after the filing of 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, com-

manding 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 he 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.

To appoint
commiss-
sioners.

Their duty.

Sec. 4. *And be it further enacted,* 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

Parties
agreeing to
make parti-
tion after a
petition,
etc., to pay
costs.

costs which have accrued on such petition, and shall consent to a partition of such estate or estates, then partition shall be made 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 hereinbefore provided.

When the estate cannot be divided, etc., to return the appraised value.

Sec. 5. *And be it further enacted*, 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 appraisement 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 con-

Duty of the court when one of the parties shall elect to take the estate, etc.

Sheriff to execute conveyances.

veyances to the party or parties electing to take the same, subject nevertheless to a lien thereon, in favor of the others of the 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 partition, 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 advertisements published and set up in the several counties where the lands lie, and also such public newspapers 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 ordered, to execute deeds to the purchasers of the lands and tenements so as 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,

Parties not agreeing, court to order lands, etc., to be sold.

Notice to be given.

Sheriff to execute deeds to purchasers, etc., on receiving money or security.

Courts to
make dis-
tributions.

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 the said lands and tenements, according to their just rights and proportions.

When per-
sons are
appointed or
agreed on to
make parti-
tion, their
duty.

Sec. 6. *And be it further enacted,* That where any writ of partition shall issue, or where the parties interested shall agree on some person or persons to make partition, it shall be the duty of the inquest or persons so agreed on, to make a true and accurate plan or map and field book of such lands as may be so divided, and to describe particularly, the metes and bounds of all tenements so divided and aperted, which plan or map, field book and description, the persons or inquest shall sign and send, under seal, to the next court having cognizance of the same, and after division and return thereof shall be made to the court, it shall be examined by the court, and if found justly and accurately made, the clerk shall record such return, which record shall be deemed as valid and effectual in law for the partition of such lands, tenements or hereditaments, and thereupon the party or parties

shall have and hold the shares or parcels to them respectively allotted, in severalty.

Sec. 7. *And be it further enacted,* That the court before whom any partition shall be had, shall tax the costs and expenses which may accrue on such proceedings, and shall issue execution thereupon, against such person or persons, their goods, chattels, lands, tenements and hereditaments, of whom partition is demanded, as shall not have paid their proportion of the costs and expenses so taxed: *Provided, however,* That where the parties concerned shall appear and agree upon a person or persons to make partition for them as is hereinbefore provided, then and in that case, the costs and expenses thereafter accruing, shall be taxed in due and just proportion against all the parties.

Court to tax costs and issue execution.

Proviso, where parties agree on persons, etc., costs to be taxed.

Sec. 8. *And be it further enacted,* 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 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.

Power of guardians and minors.

Repealing
clause.

Sec. 9. *And be it further enacted,* That all laws and parts of laws, for the partition of real estate, in force at the time of the passing of this act, be and the same are hereby repealed.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 1st, 1804.

CHAPTER XIX.

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 United States or this state can do, subject to the same laws and regulations, and not otherwise.

Aliens authorized to hold lands, etc.

Sec. 2. That this act shall be in force from and after the passage thereof.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 3d, 1804.

CHAPTER XX.

An act, to regulate the admission and practice of attorneys and counsellors at law.

Persons not admitted to practice, etc., until examined, etc.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio*, That from and after the passing 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, in any court of record within this state, 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.

Persons applying for admission, how to be examined, etc.

Sec. 2. *And be it further enacted*, That whenever any person shall apply to any two of the judges of the supreme court to be admitted as an attorney or counsellor, it shall be the duty of the judges of said court, either by themselves or some persons learned in the law, by them appointed and in their presence, to examine such applicant, and if on such examination had, the said judges shall be of the opinion that the applicant is qualified and is of a good moral character, they shall direct their clerk to ad-

minister an oath of office to, and to record the admission of, such applicant.

Clerk to administer oath of office.

Sec. 3. *And be it further enacted,* That no person shall be admitted to such examination unless he shall produce, from some attorney or counsellor at law, a certificate, setting forth, that such application is of a good moral character, and that he hath regularly and attentively studied law, 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: *Provided, however,* That any person residing within this state, producing satisfactory evidence to the court, that he hath been regularly admitted as an attorney or counsellor at law, in any court of record within the United States, may be admitted to an examination at any time.

Certificate of a practicing attorney at law necessary.

Proviso.

Sec. 4. *And be it further enacted,* That the supreme court shall have power to suspend any attorney or counsellor at law from practicing in any court in this state for misconduct in office: *Provided always,* That every attorney or counsellor, before he is suspended, shall receive a written notice from the clerk of the court, stating distinctly the grounds of complaint, or the charges exhibited against him; and he shall,

Supreme court may suspend attorney or counsellor from practicing, etc.

Proviso.

after such notice, be heard in his defense, and shall be allowed reasonable time to collect and prepare testimony in his justification.

Persons prohibited from practicing the law.

Sec. 5. *And be it further enacted,* That no person shall be permitted to practice as an attorney or counsellor at law in any court in this state, who is not a citizen of the United States, or who holds a commission as judge of the Supreme Court or of a court of common pleas, or who is clerk of the Supreme Court or a court of common pleas, or who is a sheriff, coroner, deputy sheriff, jailer or constable.

Penalty on attorneys for neglect of duty.

Sec. 6. *And be it further enacted,* That if any suit shall be dismissed for the non-attendance of an attorney, practicing in any court of record within this state, said attorney not having a just and reasonable excuse, it shall be at his costs, and he shall moreover 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 notice before any court of record, in the same manner as

How proceeded against for withholding their client's money.

sheriffs and coroners are liable to be proceeded against, for money received on execution.

Sec. 7. *And be it further enacted*, That all laws heretofore in force, regulating the admission and practice of attorneys and counsellors at law, be and the same are hereby repealed. Repealing clause.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 4th, 1804.

CHAPTER XXI.

An act, regulating estrays.

Persons authorized to take up estrays.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That it shall be lawful for any person to take up any estray, found running at large within any settlement in this state, if he shall have a freehold, be a tenant for three years, have a title bond for the land on which he resides.

Proceedings to be had.

Sec. 2. *And be it further enacted,* That every person who shall hereafter take up any estray, shall, within six days thereafter, advertise the same in three of the most public places within the township, wherein such estray shall have been taken up, giving an exact description, in writing, of the marks, brands, color and supposed age of such estray or estrays, and if no person shall claim and prove his right, to such estray or estrays, within thirty days after such advertisement, the taker up shall cause the same to be viewed by two disinterested householders of the township, and shall go immediately with such house-holders, before a justice of the peace of the township and make oath or affirmation before him, that the marks or brands have not been altered since the taking up, and then said justice shall take from the said house-

Duty of the justice.

holders, upon oath or affirmation, an exact description of the marks, brands, stature, color, supposed age and valuation of every such estray or estrays, and said justice shall enter the same in his estray book, and shall, within twenty days, transmit a certified copy thereof, under his hand, to the clerk of the court of common pleas of the county, who shall enter the same in his estray book and file the said transcript in his office, and the taker up shall pay unto the said justice twenty-five cents, and further, deposit in the hands of said justice twenty-five cents, to be paid unto the clerk, which sum of twenty-five cents shall be transmitted at the same time with the transcript aforesaid, and the said clerk shall cause a copy of such transcript to be publicly affixed at the court house door of his county, within five days after the receipt of the same, and during the succeeding term: *Provided*, That if two or more estrays of the same species are taken up by the same person at the same time, they shall be included in one entry, and in such case the said justice and clerk shall receive no more than for one of such species: *Provided also*, That no person shall be allowed hereafter to take up and advertise any head of neat cattle, sheep, hog or goat, between the first

Fees to justice and clerk, how paid.

Duty of the clerk.

Neat cattle, etc., not to be

taken up between the 1st of May and 15th of November except, etc.

day of May and the fifteenth day of November, unless the same shall be found within the enclosure of the taker up, having broken into the same.

Persons taking up boats, etc., adrift, to proceed as in case of estrays,

Sec. 3. *And be it further enacted*, That it shall be lawful for any person whatsoever, to take up any boat or other vessel adrift, and that if any person shall take up any boat or other craft adrift, he shall proceed in like manner as is required to be done in case of estrays, and be subject to the same penalties, fines, and forfeitures, to be recovered and appropriated in the same manner as herein directed and appointed with respect to estrays, except flat-bottomed, Kentucky or Orlean boats, in which case it shall be lawful for the constable of the township in which the taker up lives, in thirty days after said boat or boats have been taken up, to proceed to make sale of said boat or boats, in the same manner as is directed in case of estrays or other water crafts, and the money arising from such sale to be appropriated as is by this act provided for in other cases.

except flat-bottomed, Kentucky or Orleans boats.

The manner of proceeding.

Reward.

Sec. 4. *And be it further enacted*, That as a reward for taking up, there shall be paid to the taker up, for every horse kind, one dollar; for every head of neat cattle, fifty cents; for every sheep or goat, twenty-five cents; for every hog above six months, old, twenty-five

cents; for every boat or flat, one dollar, and for every other smaller craft, fifty cents, together with the fees paid by the taker up, and reasonable charges for keeping said estray or estrays, to be assessed by two disinterested persons upon oath or affirmation, appointed by a justice of the peace of the township, and they shall proceed to make the assessment and return the same to said justice in writing, under their hands, and on failure of the claimant to satisfy such fees and charges, within thirty days, the estray or estrays shall be, by the constable, after giving ten days notice, sold to the highest bidder, to satisfy such fees and charges of keeping, and the constable, after paying such fees and charges, and deducting one dollar for his fees of sale, shall pay the remainder to the claimant: *Provided always*, That if the taker up shall use or suffer to be used, any horse, mare or gelding so taken up, such use shall go towards the keeping of the same.

Charges for keeping.

How to be paid.

Proviso.

Sec. 5. *And be it further enacted*, That if no owner shall appear and prove his or her property, within one year after any estray or estrays shall have been taken up, and when the valuation does not exceed five dollars, the right to such estray or estrays shall be vested in the taker up, but when the valuation shall exceed five dollars, and no owner appears within the

When no owner appears within one year, how to proceed.

time aforesaid, the constable of the township, after giving ten days notice, shall sell the said estray or estrays to the highest bidder, at the most public place in the township where such estray or estrays are posted, and the money arising from the sale thereof, after paying the fees that have accrued and charges for keeping the same, which expenses shall be assessed in manner and form as directed by this act, shall be paid into the township treasury:

Former owner making proof, etc., to get an order on township treasury.

Nevertheless, The former owner may at any time thereafter, by proving his or her property before any two justices of the township where such estray or estrays was taken up, and obtaining a certificate from said justices on the township treasurer for the sum so paid as aforesaid.

Persons taking up horses, etc., without the settlement, how to proceed.

Sec. 6. *And be it further enacted,* That any person finding any estray horse, mare, gelding, colt, mule or ass, running at large without any settlement of this state, he or they may take up the same, and shall immediately take such estray or estrays before the nearest justice of the peace, where such estray or estrays was found running, and make oath where and at what distance from such justice said estray or estrays was taken up, after which he shall advertise the same, but if not a freeholder, he shall produce to

If not a freeholder, to give security, etc.

the justice aforesaid, approved security for the safe keeping of such estray or estrays, and in either case he or they shall advertise and post the same, in the manner and form as hereinbefore directed, but in case approved security is not tendered as aforesaid, then and in that case, he or they shall take the oath as before directed and deliver up such estray or estrays to the said justice, who shall cause the same to be dealt with as before directed by this act, and if no owner appears in one year, such justice shall deliver such estray or estrays unto the constable of the township, to be disposed of in the manner before directed; and after paying the taker up all reasonable charges and deducting the expenses of keeping, if any have accrued, together with the expenses of posting and advertising such estray or estrays, then such constable shall, within twenty days, pay the balance into the township treasury.

If security is not given, estray to be delivered to the justices, etc.

Justice, how to proceed.

Sec. 7. *And be it further enacted,* That if any estray or water-craft, taken up as aforesaid, shall die or get away before the owner shall claim his or her right, the taker up shall not be answerable for the same, unless it be proved that such estray or water-craft died or got away through the neglect or inattention of the taker up, then and in case any taker up shall refuse

When any estrays die or water-crafts get away, taker up not liable except for neglect.

Refusing to deliver the estray, etc., to the owner.

or neglect to deliver to any person claiming such estray or water-craft, upon the claimant's proving his or her right to the same, and offering payment of all fees and charges to the taker up, (provided such claim be made within one year after said estray or water-craft had been taken up) every such person shall forfeit and pay double the appraised value of such estray or water-craft, with costs, to the claimant, to be recovered by an action of debt, in any court where the same may be cognizable.

Penalty.

Penalty on persons trading, selling or taking away estrays.

Sec. 8. *And be it further enacted,* That if any person shall trade, sell or take away any such estray or water-craft out of the county, more than two days at any one time, before he is vested with the right of property, agreeably to this act, he or she so offending, shall forfeit and pay double the value thereof, and that if any person shall act contrary to the duties enjoined by this act, for which no penalty is hereinbefore pointed out, the person so offending shall forfeit and pay for every such offense, not more than fifty dollars nor less than two dollars, with costs, to be recovered by an action of debt, by any person suing for the same, in any court of record within this state, the one-half to the informer, the other half to the county, and moreover be liable to the action of the party injured.

Sec. 9. *And be it further enacted,* That all acts or parts of acts, that come within the purview of this act, are hereby repealed; and that this law shall take effect and be in force, from and after the first day of March next.

Repealing
clause.

Commence-
ment.

ELIAS LANGHAM,
Speaker of the house of representatives.

DANIEL SYMMES,
Speaker pro tem. of the senate.

February 7th, 1804.

CHAPTER XXII.

An act, appropriating part of the three per cent. granted for laying out, opening and making roads within this state.

Preamble.

WHEREAS, by virtue of the act of congress, entitled, "An act, in addition to and in modification of, the propositions contained in the act, entitled, 'An act to enable the people of the eastern division of the territory, 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,' this state is entitled to receive three per cent. of the net proceeds of the lands of the United States, lying within the state of Ohio, which, since the thirtieth day of June, one thousand eight hundred and two, have been, or hereafter may be, sold by the United States, to be applied to the laying out, opening and making roads within the said state, and to no other purpose whatever. And whereas also, the general assembly of the state of Ohio did, on the fifteenth day of April, one thousand eight hundred and three, pass "An act, empowering the treasurer of the state, to receive from the secretary of the treas-

ury of the United States, monies granted for the opening roads within the state:” Therefore:

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That seventeen thousand dollars, of the monies which have been and hereafter may be, received by the treasurer of the state, agreeably to the provisions of the before recited acts, be and the same is hereby appropriated, for the purpose of laying out, opening and making roads within this state, in the places and manner hereinafter prescribed.

17,000 dollars
appropriat-
ed for laying
out and
opening
roads.

Sec. 2. *And be it further enacted,* That of the said seventeen thousand dollars, the sum of nine hundred and seventy-five dollars be appropriated, for the purpose of opening and making a road from Steubenville, in the county of Jefferson, to the bridge over Wills’ creek, in the county of Muskingum; and the sum of two hundred dollars, for the purpose of laying out, opening and making a road from the mouth of Short creek, to intersect the road at Duncan Morrison’s, leading from Wheeling to Wills’ creek; and the sum of five hundred dollars, for the purpose of opening and making a road from said bridge, over Wills’ creek to Zanesville, in the county of Muskingum; and the sum of six

Special ap-
propriations
out of the
17,000 dol-
lars.

hundred and seventy-five dollars, for the purpose of opening and making a road from said Zanesville to Franklinton, in the county of Franklin; and the sum of fifteen hundred and eighty-five dollars, for the purpose of opening and making a road from Chillicothe, in the county of Ross, by the court house in the county of Warren, to the center of the college township, west of the Great Miami; and the sum of five hundred and twenty-five dollars, for the purpose of opening and making a road from Lancaster in the county of Fairfield, to Chillicothe, in the county of Ross; and the sum of five hundred and seventy dollars, for the purpose of opening and making a road from Zanesville aforesaid, to Lancaster aforesaid; and the sum of twelve hundred dollars, for the purpose of opening and making a road from said Chillicothe, by West Union, in the county of Adams, to the river Ohio, where it may intersect the same in the most convenient and proper route to Limestone, in the state of Kentucky; and the sum of fifteen hundred dollars, for the purpose of opening and making a road from Marietta, in the county of Washington, to Chillicothe aforesaid; and the sum of two hundred and fifty dollars, to be laid out in opening a road from, at or near the mouth of Little Beaver creek, in the county of Columbiana, to New

Continued.

Lisbon, in said county; and fourteen hundred dollars, to be laid out in the county of Trumbull, on a road leading from Warren court house, in the county of Trumbull, in the best direction towards Pittsburgh, in Pennsylvania, and from the said court house in Warren, on a road leading to the Lake; and the sum of nine hundred and seventy-five dollars, for the purpose of opening and making a road from the river Ohio, opposite to Wheeling in Virginia, to the aforesaid bridge, over Wills' creek; and the sum of one hundred and fifty dollars, to be laid out in repairing the road laid out by the United States, from New Lisbon, in the county of Columbiana, to the south line of the county of Trumbull; and the sum of sixteen hundred and fifty dollars, for the purpose of opening and making a road from Chillicothe aforesaid, by Cincinnati, in the county of Hamilton, to the west line of the state, at or near a place called the double Lick; and the sum of five hundred and thirty dollars, for the purpose of opening and making a road from Cincinnati aforesaid, to Dayton, in the county of Montgomery; and the sum of six hundred and fifty dollars, for the purpose of opening and making a road from Dayton aforesaid, to Franklinton in the county of Franklin; and the sum of eight hundred dollars, for the purpose of opening and making a road from

Continued.

Gallipolis, in the county of Gallia, to Chillicothe aforesaid; and the sum of five hundred dollars, for the purpose of opening and making a road from Chillicothe, in the county of Ross, to an intersection with the road leading from Dayton, in the county of Montgomery, to Franklinton, in the county of Franklin, at or near Springfield, in the county of Green; which said several sums shall be laid out on said several roads in manner as is hereinafter directed.

Sixteen
road com-
missioners
appointed
by resolu-
tion, etc.

Sec. 3. *And be it further enacted,* That there shall be sixteen road commissioners appointed by joint resolution of both houses of the general assembly, viz: One for the road from Steubenville to the bridge at Wills' creek; one for the road from the mouth of Short creek to Duncan Morrison's; one for the road from the said bridge by Zanesville to Lancaster; one for the road from Zanesville to Franklinton; one for the road from Chillicothe, by Warren court house, to the center of the college township, west of the Great Miami; one for the road from Lancaster to Chillicothe; one for the road from Chillicothe, by West Union, to Limestone; one for the road from Marietta to Chillicothe; one for the road from the mouth of Little Beaver, by New Lisbon, to the south line of the county of Trumbull; one for the road from Wheeling to

the bridge at Wills' creek; one for the road from Chillicothe, by Cincinnati, to the west line of the state; one for the road from Cincinnati to Dayton; one for the road from Dayton to Franklin; one for the road from Chillicothe to Springfield, and one for the road from Gallipolis to Chillicothe; and said commissioners shall severally, before they enter on the duties of their office, give bond with good security to the treasurer of the state, in double the sum appropriated, to the laying out, opening and making the road for which he is appointed commissioner, for the faithful discharge of their duty under this act, to be approved of by a judge of the court of common pleas where such commissioner reside, and each commissioner giving bond as aforesaid, shall deliver the same to the sheriff of the county in which he may reside, and it shall be the duty of the sheriffs, receiving such bonds, to forward them to the treasurer of the state, before the first day of June next, and whenever any commissioner shall deliver such bond to the sheriff of the proper county, it shall be the duty of such sheriff to endorse on the commissioner's commission, that he hath received the same.

To give
bond.

To deliver
the same to
the sheriff of
the county.

His duty.

Sec. 4. *And be it further enacted,* That it shall be the duty of each road commissioner, to cause

Road com-
missioners.
their duty.

the road for which he is appointed to be carefully surveyed and plainly marked, on or as near a direct line as the nature of the ground and situation of the country over which the same is to pass, will admit; and all roads laid out under this act, shall be sixty-six feet in width, and shall be and remain public highways: *Provided however,* That the commissioners under this act, shall not be bound to cause said roads to be opened, otherwise than is in this act provided, and each commissioner shall be entitled to receive three dollars per mile, for surveying, marking, examining and making return of his road, and for all other services done and performed under this act.

Compensation.

Commissioners to lay out their roads into lots, etc.

To give notice and receive proposals.

Sec. 5. *And be it further enacted,* That each of the aforesaid commissioners, immediately after he shall have ascertained the ground over which his part of a road is to pass, shall lay out the same into convenient lots, of not less than five miles, nor to exceed thirty miles, and shall divide the whole sum of money allowed to his part of the road, amongst the several lots thereof, in proportion to the labor that is necessary to be done on each lot, and shall set up notice in writing at the court house or court houses of the county or counties, where the road is to pass, and in two of the

most public places in the vicinity of said road, that he will receive proposals until a day to be mentioned in his advertisement, not less than twenty days after setting up such notice for opening each lot of said road, and the said commissioner shall contract with the person making the most advantageous proposal: *Provided*, That the said person shall at the same time, enter into bond to said commissioner, in double the amount of the money that shall be allowed for his lot of road, with such security as may be approved of by the said commissioner, conditioned for the faithful performance of his contract: *And provided also*, That the said contract shall require at least the labor hereinafter mentioned, to be expended on every part of said road, viz: All timber and brush shall be cut and cleared off, at least twenty feet wide, leaving the stumps not more than one foot in height; wet and miry places shall be made passable by a causeway sixteen feet wide, to be made of timber covered with earth; small streams that are difficult to be passed shall be bridged; where the road passes on sidling ground, it shall be dug horizontally into the hill, so that the road shall measure crosswise at least eight feet in the solid ground; in ascending hills that are to be dug, the road shall not have a greater elevation,

The persons
contracted
with to give
bonds, etc.

The labor
to be ex-
pended,
etc.

from a horizontal line, than fifteen degrees; and it shall be the duty of the commissioner to examine every part of the road so made: *And provided also*, That all the roads mentioned in this act, for which there is less than ten dollars per mile appropriated to the opening thereof, the commissioners of such roads are allowed to use their own discretion as to the width and bridging, so that the money may be laid out to the best advantage, in making as good a road as the nature of the case will admit.

Proviso,
when less
than ten dol-
lars per mile
is appropri-
ated.

Sec. 6. *And be it further enacted*, That when any person, who shall have made a contract, for opening any lot of road as aforesaid, shall have completed the same agreeable to his contract the commissioner appointed to superintend that part of the road within which said lot is situated, shall give to the said person an order on the treasurer for the amount of the money due to him upon his contract: *Provided*, That said order shall not be payable until after the first day of November next; and it shall be the duty of each of the said commissioners, to forward to the treasurer, before the first day of November next, a list of all orders by him drawn upon the treasurer, stating the amount of each order, and if there shall not be in the hands of the

When a lot
of road is
completed,
the person
who made
the contract
to receive
an order on
the treas-
urer.

Proviso.

Commission-
ers to for-
ward to the
treasurer a
list of or-
ders, etc.

treasurer as much of the money appropriated under this act, as will be sufficient to pay off the whole of such orders, the treasurer is hereby directed to make a distribution of the money in his hands between the several persons holding said orders, in such manner that each person may receive such part thereof as shall be proportioned to the amount of his order; and the said treasurer is further directed, at the end of every three months after the said first day of November next, in like manner to make distribution of the money between the several persons holding orders on him, until the whole are paid off.

When the treasurer has not money to pay persons holding orders, etc., to make distribution, etc.

Sec. 7. *And be it further enacted,* That it shall be the duty of each of the commissioners aforesaid, to return to the clerk of the court of common pleas of the proper county, an accurate map and field notes of the survey of such part of his road as is laid out in such county, and it shall be the duty of such clerk to record the same at the expense of the county; and it shall also be the duty of such commissioner, to make a report to the next general assembly of his transactions under this act, accompanied by a fair list of all such orders as he may have drawn upon the treasurer; and it shall be the duty of

Commissioners to return map, etc., to the clerk of court, common pleas, etc.

To report to the next general assembly.

Treasurer
to make a
statement
to the next
general as-
sembly.

the treasurer, to make a statement to the next general assembly, of all monies by him paid out pursuant to the directions of this act, together with the receipts and vouchers therefor.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

CHAPTER XXIII.

An act, fixing the ratio of representation throughout the state.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the representation of this state shall be so fixed and apportioned, that the several counties shall be entitled to send representatives to the general assembly, as hereinafter directed, viz: The county of Trumbull, two; the county of Columbiana, one; the county of Jefferson, three; the county of Belmont, two; the counties of Wasington, Gallia and Muskingum, three; the county of Fairfield, two; the counties of Ross and Franklin, four; the counties of Adams and Scioto, three; the county of Clermont, one, the county of Warren, two; the county of Hamilton, three; the county of Butler, two; the county of Montgomery, one; the county of Green, one.

Representatives appointed among the several counties.

Sec. 2. *And be it further enacted,* That the county of Trumbull shall be entitled to send one senator; the counties of Jefferson and Columbiana, two senators; the county of Belmont, one senator; the counties of Washington, Gallia and Muskingum, two senators; the county of Fairfield, one senator; the counties of Ross and

Senators.

Franklin, two senators; the counties of Adams and Scioto, one senator; the county of Clermont, one senator; the county of Hamilton, two senators; the counties of Warren, Butler, Montgomery and Green, two senators, to the general assembly of this state.

When a new county is classed with the original county, the votes for senator are to be sent to the clerk of the original county.

Sec. 3. *And be it further enacted,* That when a newly erected county is, by the foregoing section, classed with the original county, for the purpose of electing a senator or senators, the clerk and judges of the court of common pleas or justices of the peace (as the case may be) of such newly erected county, so soon as they make out the abstract of votes for senator or senators in said county, shall convey a certified copy of the same, under seal, to the clerk of the original county at his office, within ten days next after the close of the election, and the votes contained in the abstract thus returned, shall be considered as proper in every respect to be incorporated with the abstract of votes of said original county, for such senator or senators, as those counties are authorized to elect in common.

The clerk, etc., of Butler, Green and Montgomery to send an abstract of

Sec. 4. *And be it further enacted,* That the clerks and judges of the courts of common pleas or justices of the peace (as the case may be) in the counties of Butler, Green and Montgomery, so soon as they make out the ab-

stracts of votes for senator or senators in their counties respectively, shall convey a certified copy of the same, under seal, to the clerk of the county of Warren, at his office, within ten days next after the close of the election, and the votes contained in the abstract thus returned, shall be considered proper in every respect to be incorporated with the abstract of votes of Warren county, for such senator or senators as those counties are authorized to elect in common.

votes for senator, etc., to the clerk of Warren, etc.

Sec. 5. *And be it further enacted,* That on the next day after receiving the returns directed to be made in the two foregoing sections, the clerks of the counties of Jefferson, Washington, Ross, Adams and Warren, shall each make out for the senator or senators who appear to be duly elected in their county, and the county or counties classed therewith, a certificate of the same and deliver it to the person entitled thereto, on demand.

Clerks of certain counties, to make out certificates for the senators elected.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 11th, 1804.

CHAPTER XXIV.

An act, establishing boards of commissioners.

Three com-
missioners
to be elect-
ed.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That there shall be elected three commissioners in each county in this state, and them and their successors in office, or any two of whom, shall have authority to do and perform any act or duty required and enjoined by law.

Election to
be held first
Monday of
April.

Sec. 2. *And be it further enacted,* That the first election for commissioners shall be held on the first Monday of April next, at the places of holding the township meetings in the several townships in each county, which election shall be conducted and returned in every respect as elections are to be conducted and returned under an act, entitled, "An act to regulate elections;" and all sheriffs, judges of elections and clerks, are hereby required to conduct themselves accordingly.

How to be
conducted.

Commis-
sioners
elected to
determine,
by lot, how
long they
shall con-
tinue in of-
fice.

Sec. 3. *And be it further enacted.* That the commissioners thus elected, shall, at their first meeting, determine, by lot, for what time they shall severally continue in office, one whereof shall continue until the first October annual

election, one until the annual October election next succeeding, and one until the annual October election next succeeding.

Sec. 4. *And be it further enacted*, That at the next October annual election, and at such and every subsequent October annual election, there shall be elected one commissioner, who shall continue in office for the term of three years, and until his or their successors shall be elected and qualified.

One commissioner to be elected at the October annual election, etc.

Continuance in office.

Sec. 5. *And be it further enacted*, 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 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, who shall continue in office until the triennial election; and it shall be the duty of the clerks of the courts of common pleas in their respective counties, to make out for each of the persons elected as

Associate judges to fill vacancies occasioned by death, etc., of the commissioners.

To continue in office until the succeeding October election, etc.

Clerks of common pleas to make out certificates for commissioners.

commissioners, a certificate of such his election, and shall deliver the same to the person entitled, upon demand.

Manner of conducting contested elections.

Sec. 6. *And be it further enacted,* 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 case of sheriffs or coroners in the before recited act.

Commissioners to take an oath.

Sec. 7. *And be it further enacted,* That before any commissioner shall enter upon the duties of his office, he shall take an oath or affirmation, before some judge of the court of common pleas or justice of the peace, faithfully and impartially to discharge the duties of a commissioner for the county of ———, and the judge of the court of common pleas, or justice, administering such oath or affirmation, shall give a certificate that the same hath been done to the clerk of the court of common pleas, and the same shall be filed with the returns of the persons elected.

Certificate thereof to be filed with the clerk of common pleas.

To meet annually on the second Monday of June, etc.

Sec. 8. *And be it further enacted,* That the commissioners shall meet annually, on the second Monday of June, at the place where the court of common pleas is usually held in the respective counties, and then, or at such other times as the commissioners may then appoint,

shall examine and allow all just debts and demands which now are or hereafter shall be chargeable upon the respective counties, and shall, from time to time, adjust and settle the demands and sums of money which necessary public expenditures require should be raised yearly, to defray the charges of building and repairing court houses, prisons, bridges, and for such other uses as may be for the benefit of said counties respectively.

Sec. 9. *And be it further enacted,* That the commissioners shall have a just and accurate record kept of all their corporate proceedings, and for that purpose they are hereby empowered to appoint a clerk, who may or may not be of their own body, as they may deem expedient, whose duty it shall be to keep their records as aforesaid, and preserve all papers and documents they may direct, and attest all orders and warrants issued by them, and perform every other service that may appertain to his office, as clerk; and he may be removed, at any time, by the commissioners, for neglect or misconduct in office; and he shall receive as a compensation, such sum as the commissioners may think reasonable.

Sec. 10. *And be it further enacted,* That the

Commissioners to assess county taxes and erect public buildings, etc.

commissioners shall assess county taxes and erect public buildings, in such manner as is directed by law; and they may cause any bridge to be built over any creek or water course, when they think such bridge of public utility and too expensive to be borne by the township in which it may be wanted.

Demands, etc., against the county to be allowed by the commissioners.

Sec. 11. *And be it further enacted,* That all accounts, debts and demands, justly chargeable upon the said respective counties, shall be allowed by the commissioners, who shall issue orders upon the treasurer in favor of all creditors, for the sum or sums so allowed; which orders shall be received in payment for county taxes; all which orders, so granted, shall be numbered in their order and entered in a book, which the commissioners shall procure for that purpose, at the expense of the said counties respectively.

To issue orders on treasurer.

To be numbered.

County treasurer appointed by the associate judges to continue in office one year from the second Monday of June next.

Sec. 12. *And be it further enacted,* That the county treasurers appointed by the associate judges, under the provisions of the seventh section of "An act to amend an act," entitled, "An act to regulate county levies," passed the sixteenth day of April, one thousand eight hundred and three, shall continue in office one year, if they so long behave well, from and after the

second Monday of June next; and the treasurers of every county that now is or that may be hereafter erected and established, shall be appointed by the commissioners, and all vacancies that may happen by death, removal or otherwise, shall be filled by the commissioners of their respective counties; and the persons so appointed by the commissioners, shall continue in office for one year; but before they enter upon the duties of their offices respectively, they shall give bond to the commissioners and their successors, with one or more sufficient freehold sureties, in the sum of three thousand dollars conditioned for the punctual execution of their duty; and the said treasurers shall keep a fair and accurate account of all monies received and when, and also all disbursements and payments made by order of the commissioners; and the county treasurer shall be subject to be removed from office for neglect or misconduct in office, by the commissioners of the respective counties.

To be appointed by the commissioners.

To continue in office for one year.

To give bond.

His duty.

Sec. 13. *And be it further enacted,* That the county treasurer shall, yearly, settle his accounts with the commissioners, at their annual meetings, and be entitled to receive for his services, a sum not exceeding four per centum on all monies by him received and accounted for; and when any county treasurer shall be re-

Treasurer to settle with the commissioners at their annual meeting entitled to four per cent.

Treasurer removed from office, etc., to deliver money, papers, etc., to successors.

moved from office, 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 where he acted, whole and undefaced; and when any treasurer shall die, his executors or administrators shall deliver, in like manner, all the money, books and papers relating to the said public accounts, that may have come to his or their possession.

Commissioners, when to lay before the associate judges a statement of receipts, etc.

Sec. 14. *And be it further enacted,* That the commissioners of the several counties, shall, at the first session of the associate judges next succeeding their annual meeting, yearly, exhibit and lay before said judges, a general statement of the receipts and expenditures of the respective counties, and a particular account of all the monies by them assessed and collected, as also an account to whom and for what use or uses the same money, and every part and parcel thereof, was paid out again, with the proper vouchers, if required by said judges; which exhibit shall be filed and kept among the records of the said associate judges, and a copy of which shall be published in a newspaper, printed in the county, or by affixing the same on the court house door, during the next succeeding term of the court of common pleas.

Exhibits to be filed among the records, etc.

To be published.

Sec. 15. *And be it further enacted,* That each commissioner shall be allowed one dollar and seventy-five cents for each and every day's attendance, in the discharge of the duties of his office, an account of which shall be rendered quarter-yearly, and audited by the associate judges in their respective counties.

Compensation.

Sec. 16. *And be it further enacted,* That if any commissioner shall be guilty of malconduct in the discharge of the duties of his office, he, so offending, on conviction thereof, before the court of common pleas of the proper county, shall be fined at the discretion of the court, in any sum not exceeding four hundred dollars, with costs.

Penalty on commissioners for malconduct in office.

Sec. 17. *And be it further enacted,* That it shall be the duty of the associate judges of the several courts of common pleas, to deliver over to the commissioners under this act, all books and papers, or copies of the same, as the case may require, in their possession, concerning the powers and duties severally given and prescribed to the commissioners, by this act.

Associate judges to deliver to commissioners books, papers, etc.

Sec. 18. *And be it further enacted,* That this act shall be in force from and after the first day of March next, and that all laws and parts of

Commencement.

Repealing clause.

laws, coming within the purview of this act be, and they are hereby repealed.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 13th, 1804.

CHAPTER XXV.

An act, to amend an act, entitled, "An act organizing the judicial courts."

Mesne process, when to be executed and returned.

Defendant to put in bail.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That all mesne process, issuing out of the supreme court or courts of common pleas, to compel an appearance, shall be executed by the sheriff or coroner (as the case may be) five days at least before the sitting of the court to which they are returnable, and the same shall be returned in the clerk's office or open court, on the first day of the term; if the action is entitled to special bail, or the court shall order it, bail shall be put in on the second day of the term, and the plaintiff shall

file his declaration the first day of the term and furnish the defendant with a copy, who shall plead to the same before the end of the term, unless otherwise ordered by the court, and furnish the clerk with a copy of the plea, for the use of the plaintiff. The defendant may, in all cases, plead the general issue and give the special matter in evidence: *Provided*, he, at the same time, leaves written notice with the clerk, of the points of evidence on which he means to rely; and all issues shall be made up and the causes noticed in the clerk's office for trial, ten days previous to the succeeding term, at which time the cause shall be tried, nevertheless the court may, on good cause shown, dispense with any of the foregoing rules and regulations, on payment of costs.

May plead the general issue, etc.

Proviso.

Sec. 2. *And be it further enacted*, That for the future there shall be sixty grand jurors elected in each county, annually, in the manner prescribed in the eighteenth section of the act, entitled, "An act organizing the judicial courts."

Sixty grand jurors to be annually elected.

Sec. 3. *And be it further enacted*, That writs of error, and *supersedeas*, *certiorari*, *habeas corpus*, *cum causa*, are writs of right and shall be

Writs of error, *supersedeas*, etc., writs of right.

issued as writs of course, by the proper clerk of any court having cognizance of the same:

Proviso.

Provided, The party applying for either of the said writs, shall, before the same is issued, put in sufficient bail, before some clerk or commissioner (except in those cases where bail is not required by law) that he, she or they will prosecute the same to effect and abide the judgment of the court thereupon had.

Clerks and recorders to keep their offices at the seats of justice.

Sec. 4. *And be it further enacted*, That all clerks of courts and recorders of deeds, shall keep their respective offices at the seat of justice in each county: *Provided*, That the clerks and recorders of new counties shall not be compelled to reside at the seats of justice in less than one year after the seat of justice in such county is permanently established.

Associate judges authorized to hold special sessions.

Sec. 5. *And be it further enacted*, That the associate judges of the courts of common pleas, shall have power and they are hereby authorized, to hold special sessions of the court, at the seat of justice in any county, whenever two of the said judges shall deem it necessary, for the purpose of transacting the business of the quarter sessions or other ordinary business

appertaining to the county of which they may have cognizance.

Sec. 6. *And be it further enacted,* That all appointments made by the associate judges or courts of common pleas, in pursuance of the powers to the said judges and court, delegated by the general assembly at their last session, (although such appointment or appointments should not have been made in the time prescribed) shall be considered good and valid, and the same is hereby ratified and confirmed to all intents and purposes.

Appoint-
ments by
the asso-
ciate
judges con-
firmed.

Sec. 7. *And be it further enacted,* That when a party is desirous to appeal a cause from the court of common pleas to the supreme court, he shall enter a notice on the record, of his intention, in term time, whereupon the court shall cause execution to be stayed thirty days, and if good bail is not put in for the prosecution of the appeal, within that time, the plaintiff shall be at liberty to take out his execution and proceed as in other judgments.

Party desir-
ous to ap-
peal from
common
pleas, to en-
ter notice,
etc.

Sec. 8. *And be it further enacted,* That the judges of the courts of common pleas, may and they are hereby authorized, to appoint a clerk,

Judges of
common
pleas may
appoint
clerks pro-
tem in cer-
tain cases

pro tem whenever it may be necessary, in any county, by reason of the office being vacant.

Any person requiring a writ, to file precipe.

Sec. 9. *And be it further enacted*, That every person requiring a writ, shall file a precipe with the clerk, who shall make out and deliver such writ or process as he is directed; and in all cases of mesne process, where the plaintiff doth not reside in the county, or possess any land therein, the writ shall be endorsed by some freeholder, resident in the county, as security for costs, before the sheriff shall serve the same, and the clerk shall endorse on the writ for what it was brought, and also the amount appearing to be due or sworn to.

When writ to be endorsed by a free-holder.

Sheriff to take bail.

Sec. 10. *And be it further enacted*, That the sheriff shall, in all cases where he serves a *capias ad respondendum*, take a bail bond, with one good surety at least, in double the sum which appears to be due by the writ, conditioned for the appearance of the defendant at the return of the writ, and that he will abide the order of the court and not depart without leave.

In what cases plaintiffs are entitled to special bail.

Sec. 11. *And be it further enacted*, That the plaintiff shall be entitled to special bail in all actions brought on covenants, bonds, sealed bills, bills of exchange, notes, proven accounts, or where a sum is sworn to be due, as a matter

of course, and in all cases where the court, from the particular circumstances of the case, may direct and order bail to be filed.

Sec. 12. *And be it further enacted,* That no associate judge, while he continues in office, shall accept of (or perform the duties) of any other office of trust or profit, under the authority of this state (except such office shall be in the militia).

Associate judges ineligible to offices of trust or profit, except, etc.

Sec. 13. *And be it further enacted,* That the terms of the supreme court for the several counties, shall be held as follows, to-wit: Spring circuit, for the county of Trumbull, on the twenty-sixth of March; Columbiara, second of April; Jefferson, ninth of April; Belmont, sixteenth of April; Muskingum, twenty-fifth of April; Fairfield, thirtieth of April; Franklin, seventh of May; Ross, fourteenth of May. The fall circuit, for the county of Washington, sixth of August; Gallia, fourteenth of August; Scioto, twentieth of August; Adams, twenty-fourth of August; Clermont, thirtieth of August; Hamilton, fourth of September; Butler, eighteenth of September; Warren twenty fourth of September; Montgomery, twenty-eighth of September; Green, third of October; and that if any of the aforesaid days should happen on Sunday, then the court shall be holden on the next day.

Times of holding the supreme court.

Spring session.

Fall session.

County of
Muskingum
attached to
the second
circuit com-
mon pleas

Sec. 14. *And be it further enacted,* That the county of Muskingum shall be, and the same is hereby attached to and made a part of, the second circuit of the court of common pleas, and all officers are enjoined and required to govern themselves accordingly.

Times of
holding
courts of
common
pleas in the
first circuit.

Sec. 15. *And be it further enacted,* That the courts of common pleas for the three circuits, shall be held as follows, to-wit: For the first circuit, in the county of Hamilton, first Tuesdays of May, October and January; Butler, third Tuesdays of May, October and January; Warren, fourth Tuesdays of May, October and January; Montgomery, the first Tuesdays of June, November and February; Green, the second Tuesdays of June, November and February; Clermont, the third Tuesdays of June, November and February.

Second cir-
cuit.

Second circuit. Franklin, second Wednesdays of June, October and March; Ross, third Mondays of June, October and March; Adams, the fourth Tuesdays of June, October and March; Scioto, the first Mondays of July, November and April; Gallia, the first Thursdays after the first Monday of July, November and April; Fairfield, the second Tuesdays after the first

Mondays of July, November and April; Muskingum, the third Mondays of July, November and April.

Third circuit. County of Trumbull, second Tuesdays March, June and November; Columbiana, third Tuesdays of March, June and November; Jefferson, first Tuesdays April, August and December; Belmont, second Tuesdays April, August and December; Washington, third Tuesdays April, August and December.

Sec. 16. *And be it further enacted*, That the twentieth section of the act, entitled, "An act organizing the judicial courts," and all that part of the fifth section of said act, which empowers the supreme court to prescribe the forms of writs throughout the state, and to direct the general rules of practice for the courts of common pleas, and all other parts of said act which are inconsistent with, or contrary to, the provisions of this act, be, and they are hereby repealed; and such forms of writs as have been by said supreme court prescribed, and such rules of practice as have been directed, shall be of no force hereafter.

Third circuit.

Certain parts of "An act organizing the judicial courts." repealed.

Form of writs and rules of proceedings repealed.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

CHAPTER XXVI.

An act, levying a state tax.

Lands taxed for state expenses. Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That all lands, the property of individuals, within this state, shall be chargeable for the state expenses, to be levied and collected in such manner and proportion as hereinafter directed.

How rated and classed. Sec. 2. *And be it further enacted,* That lands shall be rated and classed in the manner following, that is to say, first, second and third rates, and the rule to be observed in classing of land shall be as follows: When a greater part of a tract shall be superior in quality to second rate land, it shall be denominated first rate; when a greater part of a tract shall be inferior to first rate and superior to third rate, it shall be denominated second rate; and when a greater part of a tract shall be inferior to second rate, it shall be denominated third rate land, taking into view the situation and surface of the earth as well as the quality of the soil. First rate

land shall be taxed at seventy cents, second rate at fifty cents and third rate at twenty-six cents; and it is hereby made the duty of every resident proprietor, owning land chargeable as aforesaid, on the fifteenth day of April, annually, when thereto required by the listers of the respective townships, to give an accurate list of such land, in writing; and such resident proprietor or proprietors shall list all and every tract of land, he, she or they claim within this state, specifying the quality, quantity, range, township, section and county, if known, and whether holden either by patent, deed, entry or other evidence of claim.

Rate of taxation.

Resident proprietors to enter their lands with the listers of townships.

Sec. 3. *And be it further enacted,* That it shall be the duty of the lister of each township, annually, between the fifteenth day of April and the twenty-fifth day of May, to demand of every resident proprietor within their respective townships, a list as aforesaid, and if any person shall refuse to render his list, such lister shall make out a list of such person or persons' land so refusing, according to the best information he may have or can obtain; which land so listed, shall be double taxed, and the person so refusing shall be bound thereby; and if any person shall request any lister to make out his list,

Lister of each township, his duty.

such lister shall make out the same as directed by such person, which list such person shall sign.

Lister to make out two alphabetical lists of lands.

How to be disposed of.

Sec. 4. *And be it further enacted,* That each lister shall, after collecting the lists within his township, make out two alphabetical copies therefrom, of all land by him listed, one whereof he shall deliver to the clerk of the commissioners, on or before the first Monday of June, annually; the other copy, together with the original lists, by him collected, shall be returned to the clerk of the court of common pleas by the first Monday of June; which lists, so returned, shall be kept and filed by said clerks, in their respective offices.

Non-residents holding lands in this state, except in the Virginia military tract, to enter the same for taxation with the clerk of the court of common pleas where the land lies.

Clerk's duty.

Sec. 5. *And be it further enacted,* That all persons not residing within this state, and holding lands within the same, except lands lying between the Scioto and Little Miami rivers, called the Virginia military lands, shall have the same entered for taxation, either by themselves or their agents in the form aforesaid, with the clerks of the court of common pleas in and for the county within which the same shall be situate, on or before the first Monday of June next; and it shall be the duty of each clerk of the court of common pleas, to make out two alphabetical lists

of all lands so entered with him; one whereof he shall retain in his own possession, together with the original entry; the other shall be, by him, delivered, with a general alphabetical list of all returns to him made by the several township listers within the county, to the commissioners of the county, by the second Monday in June, annually.

Sec. 6. *And be it further enacted,* That the clerks of the several courts of common pleas, shall, on or before the first Monday in August, on which day the tax shall become due, annually, make out a general alphabetical list of taxation, according to the form hereunto annexed, in the manner following: First, a list of non-residents' lands; second, a list of residents' lands; from which general list, they shall make out two duplicates, one to be delivered to the collector, the other to be transmitted to the state auditor both whereof shall be certified by the clerks respectively, under the county seal, to be accurate copies of the general list in his office.

The clerks
of the courts
of common
pleas to
make out
annually a
list of lands.
for taxation

Form thereof.

Proprietor.	Quantity and Rates.			Range.	Township.	Section.	County.	Title.	Amount of Tax.	
	1st.	2d.	3d.						D.	C.
A. B.										

Sec. 7. *And be it further enacted,* That the sheriff of each county shall be the collector thereof, and before he receives the duplicate above directed, he shall enter into bond, with at least two sufficient freehold securities, in double the amount of the tax by him so to be collected, payable to the auditor of public accounts, for the use of the state, conditioned for the due and faithful paying and accounting for all taxes that is made his duty to have collected; which bond shall be filed with the clerk of the court of common pleas; and if the sheriff of any county shall neglect or refuse to give such bond as aforesaid, on or before the first Monday of August, annually, a collector of the tax shall be appointed by the commissioners, or any two of them, who shall continue in office for one year, and such collector shall, before he enters upon the duties of his office, enter into bond as aforesaid.

The sheriff of each county the collector thereof.

To give bond.

In case of refusal or neglect to give bond, commissioners to appoint a collector.

Sec. 8. *And be it further enacted,* That the collectors of each county shall, from and after the first Monday of August, annually, collect and receive from every person, all taxes where-with they may be chargeable upon his duplicate; and in case payment be not made by the first Monday of October next after such tax shall

Taxes due first Monday of August, annually.

If not paid by the first Monday of October, collector to

make distress, etc.

have become due, it shall be the duty of the collector to proceed forthwith to distrain the goods or chattels of such delinquent or delinquents; and if the owner thereof shall not pay the taxes within ten days after such distress made, the collector shall sell the same, or so much thereof as will be sufficient to discharge said taxes and the charges of such distress and sale, and the overplus, if any, he shall return to the owners; but if goods or chattels cannot be found whereon to distrain, and the taxes so due shall not be paid by the first Monday of December next after the tax shall have become due, the collector is hereby required to charge all delinquents with a penalty of twenty-five per cent. on the tax of such delinquent or delinquents; and it shall be the duty of the collectors, within ten days thereafter, to make out and transmit to the auditor, a schedule from their duplicates, of all the taxes which shall not have been paid by the time aforesaid; and the auditor, on receiving the said schedules, shall charge the collectors respectively, with the said penalty on the amount of all the taxes contained in their respective schedules.

When distress cannot be made, and tax not paid by the first Monday of December after it is due, collector to charge delinquent with twenty-five per cent.

Each collector to pay into the state treasury, annually, all taxes, etc.

Sec. 9. *And be it further enacted*, That it shall be the duty of each collector, by the third Tuesday of December, annually, to pay into the treasury of this state, the full amount of all

taxes contained in his duplicate and not transmitted to the auditor in their schedules, of which payment, or such part thereof as may be made, the treasurer shall give his receipt, which receipt the collectors shall deliver to the auditor, upon the delivery whereof he shall give his receipt for the same to the collector, which shall be a voucher of the payment so made; and if any collector shall not have paid, or shall have not delivered the treasurer's receipt as aforesaid, the auditor is hereby required, within fifteen days, to make out an account of the sum due from each delinquent collector, and transmit said account to the clerk of the court of common pleas of the proper county, whose duty it shall be to issue a summons to the coroner, commanding him to notify the collector and his securities, to appear at the succeeding term of the court and show cause, if any, why judgment should not be rendered against him, at the suit of the auditor; and the court of common pleas are hereby required to enter judgment against such, collector and his securities, on the return of the said summons, the same having been served by leaving a copy thereof at the usual place of abode of such collector and his securities, for the amount of the account, by the auditor transmitted, and ten per centum damages on

Treasurer to give his receipt to the collector, who shall deliver it to the auditor.

Proceedings to be had by auditor against delinquent collectors.

Duty of the
coroner.

such sum, unless such collector or his securities shall produce the auditor's receipt of the payment of the account aforesaid, then, in such case, the court shall dismiss the suit, upon the collector or his securities paying reasonable costs; and in case judgment shall be rendered, the clerk shall issue execution thereon in due form of law, directed to the coroner, returnable in thirty days; and the coroner, when he shall have collected the amount of execution, or such part thereof as may be, he shall, within twenty days, pay the sum so collected into the treasury of this state, of which payment the treasurer shall give his receipt, which receipt the coroner shall deliver to the auditor and take his receipt; and the payment so made shall be, by the auditor, carried to the credit of such delinquent collector; and the coroner shall be allowed lawful fees and twelve cents for each mile's travel to the treasury from the seat of justice in his county, to be levied and collected by him from such delinquent collector or his securities.

Sec. 10. *And be it further enacted,* That if the proprietor or proprietors of any tract of land charged with taxes, shall have neglected to pay to the collector, or the collector shall not have collected the same, by distress, on or be-

fore the said first Monday of December, annually, after the tax shall have become due, and thereafter shall have neglected to pay the said tax so due, together with the penalty of twenty-five per cent. on or before the first Monday of April next after such tax shall have become due, then the collector, in such case, is hereby required to proceed and sell, at public sale, at the court house in his county, so much of each tract of land charged with taxes, as will satisfy the amount of the tax and penalty as aforesaid; and the collector, before any sale, shall advertise the time and place of such sale, thirty days, at the door of the court house, and also at five other public places in the county; and the collector shall deliver to the purchaser, a certificate of the quantity of land sold, describing therein the tract that was charged with the tax; which part so sold, shall be taken, as nearly as may be, in a square, and bound on one or other of the lines of the original survey, having regard to such lands, if any, as may have been sold out of said tract for taxes, and a designation of the part so sold, shall be made at the time of sale.

Lands, when and how to be sold for the payment of taxes.

Certificate to be made to the purchaser, of the quantity sold.

Sec. 11. *And be it further enacted,* That when any tract of land, or part thereof, shall

not sell upon being offered for sale, for want of bidders, and the tax on the same not being paid, it shall be the duty of the collector to deliver to the auditor a transcript of such land, not sold as aforesaid, within thirty days after such sale, under the penalty of fifty dollars, to be recovered at the suit of the auditor, in any court having jurisdiction thereof, within this state, for the use of the state; and no collector shall directly or indirectly purchase, nor be in any wise concerned in the purchase of any lands sold for the payment of taxes.

Collector prohibited from purchasing lands sold for taxes, etc.

Collectors to make payment into the state treasury within thirty days after the day of sale.

Compensation for collection and travel.

Sec. 12. *And be it further enacted,* That it shall be the duty of every collector, within thirty days after the day of sale of lands for the payment of taxes, as directed by this act, to pay into the state treasury the full amount of all taxes that he may be charged with, after deducting the amount of the taxes and the penalty due on land not sold for want of bidders, and five per cent. as his commission, on the amount of all taxes, and on the twenty-five per cent. penalty by him collected, and six cents per mile for going to and returning from the office of the state treasurer, reckoning from the court house in his county, by the nearest road, of which payment the treasurer shall pass his receipt, whereupon the collector shall proceed

as before directed; and if any collector shall fail or neglect to settle with the auditor within the thirty days last aforesaid, and shall be indebted to the treasury, the auditor is required to proceed with such delinquent collector in the same manner as directed by the tenth section of this act; and the clerk of the court of common pleas and other officers, are hereby required to conduct themselves accordingly.

Penalty for neglect.

Sec. 13. *And be it further enacted,* That the surveyor of the county, upon the receipt of the collector's certificate, shall, by himself or his deputy, proceed to survey the quantity of land agreeable to the said certificate, and charge the expense of making such survey and plat to the purchaser, or his assigns; and upon the plat and certificate of survey being presented to the collector, it shall be his duty to convey the same to the purchaser or his assigns, by deed, in due form of law executed; which conveyance shall vest in the purchaser or his assigns, all the right, title and interest of the late proprietor, and in consideration of law shall also vest the possession of the land so deeded, in the purchaser or his assigns; but any collector may convey any lot or tract of land sold for taxes,

How land sold for taxes shall be surveyed.

How to be conveyed.

Proviso
Where the
whole tract
is sold.

equity of re-
demption al-
lowed in
certain
cases.

Duty of col-
lectors in
the sale of
lands.

Penalty.

without having the same surveyed, when the whole lot is sold: *Provided*, That nothing herein contained shall extend to bar the right or equity of redemption, which any infant person, *non compos mentis*, or in captivity, may have in the land so sold: *Provided*, the taxes and charges thereon, with interest, and an equitable compensation for improvements thereon made, taking into view the rent that might arise therefrom, be tendered within one year after such disability be removed.

Sec. 14. And be it further enacted, That it shall be the duty of the collectors of the several counties, when they make sale of any land for the payment of taxes, to make a fair record of the purchaser's name, the quantity sold, with a description thereof, the name of the person the tax stood charged, with the amount of the tax and costs, and the day and year of the sale, and the year for which the tax was levied; which record he shall subscribe and lodge in the office of the clerk of the court of common pleas, within fifteen days after any sale made, under the penalty of one hundred dollars, to be recovered by indictment, in any court of record in this state; and it shall be the duty of the clerk to receive and preserve such record, and to trans-

fer said land to the purchaser, for the purpose of taxation.

Sec. 15. *And be it further enacted,* That no tract of land that is listed agreeable to this act, shall be again listed, but shall stand charged to the person for whom it was listed, unless the person so charged shall sell or dispose of the whole or any part of the land so listed, then if he or the person or persons purchasing or obtaining such land, shall have a transfer made with the clerk of the court of common pleas in the proper county, the clerks respectively are hereby authorized to list the land in the name of the person or persons to whom sold, and such person shall be chargeable with the tax of such land or lands thereafter: *Provided,* That no transfer shall take place, so as to exempt any person from paying the whole amount of taxes due upon all or any lands listed, after the tax bill shall have been made out for that year.

Lands when listed, how to stand charged.

When sold, the purchaser to have a transfer made with the clerk, etc.

Sec. 16. *And be it further enacted,* That any person failing to give in his or her list, agreeably to the provisions of this act, or giving in a false list, or who shall, in such list, class his or her lands as being of a quality inferior to their real quality, such person shall be subject to a tax equal to double the amount of the tax

Penalty on persons failing to give in a list, or giving a false list.

for that year, on lands of like quality, which tax shall be annexed to his or her list, by the commissioners of the county in which such lands are or ought to have been entered for taxation, or by the auditor, if the lands lie within the Virginia military tract, and a copy of the same forwarded by the auditor to the collector of the tax on the said Virginia military lands, or by the commissioners to the auditor and the collector of the proper county, as the case may require; which collectors respectively shall be charged on the auditor's books with the amount of such tax; and in all cases where satisfactory proof of the fact shall have been made by the listers of the town where the lands lie, to the commissioners, or by the commissioners of the county within which the lands lie, (provided they are situated within the Virginia military tract) to the auditor, one moiety of such tax shall be paid over to such listers or to such commissioners, whose receipt for the same, certified by the clerk of the commissioners of the county, shall entitle the collector, on settlement with the auditor, to a credit equal to the sum paid; and it shall be the duty of the auditor to transmit to the county commissioners, as soon as his tax bill shall have been made out, a transcript of all entries of lands within the said

Commissioners, their duty.

Auditor, his duty.

Continued.

Virginia military district, which lie within their respective counties, that have been entered for taxation in his office; and it shall be the duty of the commissioners of every county, to transmit, in like manner, to the commissioners of any other county in which lands may lie that have been entered in their own, a list of such lands; and it shall be the further duty of the commissioners of every county, to transmit to one of the listers of each township within their respective counties, a list of all lands (other than those contained within the Virginia military district) in his township, which according to the returns made to them from their own or other counties, have been entered for taxation in any county in the state; which last mentioned lists shall be made out and transmitted, between the tenth of August and the first of September, annually; in all which before-mentioned transcripts or lists, the section, township and range shall be specified, in which the lands lie, as also the person to whom they belong. And it shall be the duty of the commissioners and of the listers, on receiving such transcripts or lists, to make diligent enquiry after all such lands as may not have been entered, or have been entered improperly; and if any such shall be found, to transmit a list of the same, with their proofs, to

Continued.

the auditor, or the commissioners, as the case may require.

Lands, listed, etc., for 1804, not taxed for the four preceding years, to be charged with the taxes and twenty-five per cent. yearly.

Sec. 17. *And be it further enacted,* That in all cases where lands shall be listed for taxation for the year one thousand eight hundred and four, which have not been entered nor taxed for the four preceding years, and were liable and subject thereto, it shall be the duty of the auditor, when he makes out the duplicates for the Virginia military district, and clerks when they make out the general alphabetical lists for the year one thousand eight hundred and four, to add to the tax, a sum equal to the taxes due on each respective tract, for the four years, or such part thereof as such land shall have been subject to taxation, and twenty-five per cent. damages, yearly, on the taxes so in arrears.

Land bound for payment of taxes, etc.

Sec. 18. *And be it further enacted,* That the state shall have a perpetual lien on every tract of land, and every part thereof, for the full amount of all taxes, penalties and interest, that have become due, and all that may hereafter become due thereon; and no alienation of lands, or neglect in entering or listing, shall in any wise destroy the claim or lien of the state; and the land shall be liable to be sold, at any time,

for the taxes, penalties and interest due thereon, in whomsoever the title of the same shall be found.

Sec. 19. *And be it further enacted,* That when any person thinks any tract or tracts of land, belonging to him or her, are improperly classed or the land twice listed, it shall be lawful for such person, upon application to the commissioners of the county where such land may be situate and making due proof of the same, to have the same rectified, and the proper class of such tract or tracts ascertained or error corrected, and such alterations as shall be made by the commissioners, shall be certified by the clerk of the commissioners to the clerks of the courts of common pleas in the respective counties, and to the collectors and the auditor, and they shall be governed accordingly.

Land im-
properly
listed, owner
to apply
to the county
commissioners.

Their duty.

Sec. 20. *And be it further enacted,* That the clerks of the courts of common pleas or listers, shall not list any lands for taxation which have been purchased from the United States, from and after the thirtieth day of June, one thousand eight hundred and two, until the same shall have been purchased five years, when they shall be subject to taxation; all other lands

United
States land
sold after
the thirtieth
June, 1802,
not listed
until the ex-
piration of
five years
from the day
of sale.

purchased from the United States, prior to that period, shall be subject to taxation and listed accordingly.

Listers and clerks of the courts of common pleas, how compensated.

Sec. 21. *And be it further enacted*, That the commissioners in each county shall make such allowance to the listers and the clerks of the courts of common pleas, for their respective services under this act, as they shall deem just and reasonable, and shall grant to each of them an order on the county treasurer for the sum so allowed.

Collectors to make deeds to purchasers or their assigns, etc.

Sec. 22. *And be it further enacted*, That the collector of taxes in the Virginia military district, and the collectors of the several counties shall, and it is hereby made their duty respectively, to make deeds to the purchaser or his assigns, of all lands heretofore sold for taxes (that have not been already deeded) and in case of the death of any purchaser, to his or their legal representative, in the same manner as their predecessors were authorized to do upon receiving the certificate and plat from the county surveyor; and every collector shall be entitled to receive seventy-five cents for every deed that he may grant under this act, from the person requiring the same, upon the delivery thereof.

Deeds seventy-five cents each.

Sec. 23. *And be it further enacted*, That all

non-residents' lands, lying between the Scioto and little Miami rivers, called the Virginia military lands, shall be one district, and shall be under the direction of the auditor of public accounts; and all entries and transfers shall be made with the auditor, specifying the number of entry, number of warrant, rates, to whom entered, for whom surveyed, when entered, to whom transferred, water course and county, if within their knowledge; and the auditor shall make out two alphabetical duplicates in the following manner:

Non-resident proprietors of the Virginia military lands to make entries and transfers with the auditor.

Auditor to make two alphabetical lists.

Form there-
of.

Amount of tax.	Dollars.	
	Cents.	
	Mills.	
County.		
Water course.		
When transferred.		
To whom transferred.		
When entered.		
For whom surveyed.		
To whom entered.		
Rates.	1st.	
	2d.	
	3d.	
Number of warrant.		
Number of entry.		
Owners' names.		

one of which he shall deliver to the collector of the taxes for said district, on or before the first Monday of August, and the other he shall retain in his office.

To deliver one to the collector the first Monday of August.

Sec. 24. *And be it further enacted*, That the rule to be observed in entering or listing the lands commonly called the Virginia army lands, for taxation, shall be to enter or list all lands held by patent, deed, survey or entry, and if by entry only, the lands shall not be sold until the same shall be surveyed and a return thereof be made. The state shall nevertheless hold a lien on all such lands; and if the same shall be removed from the lands so entered on, when listed for taxation, whenever the same shall be removed, the lien of the state shall follow the warrant; and after the survey and return as aforesaid, so much thereof shall be sold as will satisfy all arrears of taxes, interest, costs and damages which shall have accrued thereon, prior to such survey.

Rule to be observed in listing the Virginia army lands.

Bound for the payment of taxes. etc.

Sec. 25. *And be it further enacted*, That it shall be the duty of all non-resident proprietors of land in said district, by themselves or their agent, to enter their lands with the auditor, on or before the first Monday of July, agreeable to the provisions of the preceding section of this act; and if any person or persons shall neg-

Non-resident proprietors in the Virginia military district to enter their lands with the auditor on or before the first Monday of July.

lect to enter his, her or their land, it shall be the duty of the auditor to enter as first rate, all lands so neglected to be entered, in said district, which may come to his knowledge.

A collector to be appointed by the governor.

To give bond.

To receive four per cent. commission for collection.

To advertise six weeks prior to the sale, etc.

The sale to be in Chillicothe on the first Monday of April, yearly.

Sec. 26. *And be it further enacted,* That a collector of the taxes on the lands of non-resident proprietors, in the Virginia military tract, shall be appointed by the governor, to continue in office for one year, and shall reside in the town of Chillicothe, who shall give bond in double the sum by him to be collected, in the manner as required of county collectors, and shall be subject to the same penalties and duties as other collectors, and shall be proceeded against in the same manner, if he shall be delinquent in the payment of the taxes by him to be collected, and shall conduct himself in his office in every respect as other collectors are by this act directed to conduct themselves, except as hereafter directed; and the said collector shall receive on all monies by him collected, four per cent. as his commission for such collection.

Sec. 27. *And be it further enacted,* That the collector for the Virginia military district shall, before he proceeds to sell any lands for taxes, advertise the day and place of sale, which shall be in the town of Chillicothe, on the first Mon-

day of April, yearly, after the taxes shall have become due, at least six weeks, successively, in the Scioto Gazette; and all collectors of taxes shall have power to continue the sales from day to day, by adjournment, until they shall have alphabetically exposed to sale all lands in their duplicates, that may be liable to be sold; and no collector shall expose to sale any lands but between the hours of nine in the forenoon and four in the afternoon. And the collector shall, within thirty days thereafter, make out and transmit to the auditor of public accounts, a list of all lands by him so sold, stating the quantity and particular part sold out of each tract, together with the names of the purchasers and person to whom the tax stood charged: *Provided*, That the collector of the Virginia military district for the year one thousand eight hundred and three, shall make out and transmit to the auditor, by the first day of April next, in the manner and form herein described, a list of all lands by him sold for the taxes, for the year one thousand eight hundred and two.

May be continued from day to day

Hours of sale.

Collector within thirty days thereafter to transmit to the auditor a list of lands sold, etc.

Collector for 1803 his duty.

Sec. 28. *And be it further enacted*, That the collector for the Virginia military district, shall, from and after the first Monday of August, annually, collect and receive all taxes of non-residents, charged with taxes upon his dupli-

Collectors of the Virginia military district after the first Monday of August, annually, to collect taxes, etc.

If not paid by the first Monday of December charged with twenty-five per cent., etc.

cate; and in case payment be not made by the first Monday of December, said collector shall charge all delinquents with a penalty of twenty-five per cent. on the taxes of all delinquents; and it shall be his duty, within ten days thereafter, to make out and deliver to the auditor, a schedule from his duplicate of all the taxes that shall not have been paid by the time aforesaid; and the auditor, on receiving the schedule, shall charge the collector with the said penalty on the amount of all the taxes contained in his schedule.

County collectors to keep open an office, etc.

Sec. 29. *And be it further enacted*, That the collector of each county shall, at least fifteen days before the first Monday of December, yearly, keep open an office for the receiving of taxes, at the seat of justice in the several counties, either by himself or his deputy, who shall, without fail, attend each and every day, from the hours of six in the morning until eight in the evening.

County collector to pay into the county treasury one-third of the taxes collected for county purposes, etc.

Sec. 30. *And be it further enacted*, That it shall be the duty of the sheriff or collector in each county, to pay into the treasury of his county, one-third of the sum of the taxes collected by him for the use of the county, and the receipt of the county treasurer shall be received by the state treasurer, and the sheriff or col-

lector shall be credited with the amount thereof, in the settlement of his account with the treasurer: *Provided*, That the collector of the taxes in the Virginia military district, shall pay over the aforesaid one-third part of the tax arising from the lands of non-resident proprietors within the district, to the treasurer of the state, who is hereby directed to pay the same to the several county treasurers, in such proportion as may be just and equitable, and which proportion shall be adjusted according to the quantity and quality of the aforesaid lands that shall be found to lie in each of the said counties respectively, as nearly as can be ascertained, and the receipt of the said county treasurer shall be received by the state treasurer, in settlement of the account of said collector.

Proviso. in case of the collector of the Virginia military district.

Sec. 31. *And be it further enacted*, That if any officer required to do and perform any service or duty by this act, shall refuse or neglect to do and execute such services and duties, according to the true intent and meaning of this act, he shall forfeit and pay a fine not exceeding one thousand dollars, at the discretion of the court, to be recovered by action of debt or indictment, in any court of record in the county where the offense shall have been committed, the one-half

Officers under this act refusing or neglecting to do their duty.

Penalty.

to the person suing, or the informer, and the other half shall be paid into the state treasury.

Auditor to have certain sections published.

Sec. 32. *And be it further enacted,* That it shall be the duty of the auditor, to have published the first, second, fifth, ninth, twenty-eight and twenty-ninth sections of this act, in the Virginia Argus, National Intelligencer and American Mercury, for the term of three weeks, to commence on the first week in April next, and the expenses thereof shall be paid out of the state treasury.

To proceed against delinquent collectors.

Sec. 33. *And be it further enacted,* That it shall be the duty of the auditor, forthwith to proceed against all the now delinquent collectors, in the same manner as he is directed to do by this act, against the collectors that may be hereafter delinquent; and all officers are hereby directed to conduct themselves accordingly.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

February 18th, 1804.

CHAPTER XXVII.

An act, establishing an University in the town of Athens.

WHEREAS, institutions for the liberal education of youth, are essential to the progress of arts and sciences, important to morality, virtue and religion, friendly to the peace, order and prosperity of society, and honorable to the government that encourages and patronizes them: Therefore,

Preamble.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That there shall be an university instituted and established in the town of Athens, in the ninth township of the fourteenth range of townships, within the limits of the tract of land purchased by the Ohio Company of Associates, by the name and style of the "Ohio University," for the instruction of youth in all the various branches of liberal arts and sciences, for the promotion of good education, virtue, religion and morality, and for conferring all the degrees and literary honors granted in similar institutions.

University established.

Name and style

Sec. 2. *And be it further enacted,* That there shall be and forever remain in the said university, a body politic and corporate, by the

Body politic and corporate established.

Name and style.	name and style of "The President and Trustees of the Ohio University;" which body politic and corporate shall consist of the governor of the
To consist of certain officers.	state, (for the time being) the president, and not more than fifteen nor less than ten trustees, to be appointed as hereinafter is provided.
Persons chosen.	<p>Sec. 3. <i>And be it further enacted</i>, That Elijah Backus, Rufus Putnam, Dudley Woodbridge, Benjamin Tappan, Bazaleel Wells, Nathaniel Massie, Daniel Symmes, Daniel Story, Samuel Carpenter, the Reverend James Kilbourn, Griffin Green, Senior, and Joseph Darlinton, Esquires, together with the governor as aforesaid, and the president of the said university (for the time being) to be chosen as hereinafter</p>
Their style.	<p>directed, be and they are hereby created, a body politic and corporate, by the name of "The President and Trustees of the Ohio University," and that they and their successors, and such others as shall be duly elected members of the said corporation, shall be and remain a body politic and corporate in law, by that name forever.</p>
Power of the trustees.	<p>Sec. 4. <i>And be it further enacted</i>, That the said trustees shall have power and authority to elect a president, who shall preside in the university, and also to appoint a secretary, treas-</p>

urer, professors, tutors, instructors, and all such officers and servants in the university as they shall deem necessary for the carrying into effect the designs of the institution, and shall have authority, from time to time, to determine and establish the name, numbers and duties of all the officers and servants to be employed in the university, except wherein provision is otherwise made by this act, and may empower the president or some other member of the corporation, to administer such oaths as they shall appoint and determine, for the well ordering and good government of the university: *Provided nevertheless*, That no corporation business shall be transacted at any meeting, unless seven of the trustees, at least, shall be present.

Sec. 5. *And be it further enacted*, That the said corporation shall have power and authority, from time to time, to make and ordain reasonable rules, orders and by-laws for the government of the corporation, not incompatible with the constitution, laws and ordinances of the United States or this state, and the same to repeal as occasion may require, and also to determine the salaries, emoluments and tenures of their several officers.

Sec. 6. *And be it further enacted*, That the

Members or
officers may
be removed.

said corporation shall have power and authority to suspend or remove the president or any member of the said corporation, who shall, by his misconduct, render himself unworthy of the office, station or place he sustains, or who, from age or other infirmity, is rendered incapable to perform the duties of his office; and the said corporation shall have power and authority to suspend or remove from the university, any professor, instructor or resident student, or servant, whenever the corporation shall deem it expedient for the interest and honor of the university.

Corporation
may fill va-
cancies un-
til next ses-
sion of the
legislature.

Sec. 7. *And be it further enacted,* That whenever the president or any member of the corporation shall be removed, by death, resignation or otherwise, during the recess of the legislature, the corporation shall hold a meeting (due notice of the design of which meeting shall be given to the several members) for the supplying such vacancy; and the person elected shall continue in office until the end of the next session of the legislature, and no longer, by virtue of such appointment; and in order to choose a president or member of the corporation, there shall be, at least, two-thirds of the whole number of said trustees present, and the said election shall be by ballot.

Sec. 8. *And be it further enacted,* That when any member of the corporation shall be removed by death, resignation or otherwise, such vacancy shall be supplied at the next meeting of the legislature of the state.

Such vacancy to be then supplied.

Sec. 9. *And be it further enacted,* That the president and such professors, tutors and instructors, as the corporation shall appoint for that purpose, shall be styled, "The Faculty of the University," and shall have power and authority, from time to time, to ordain, regulate and establish, the mode and course of education and instruction to be pursued in the university, and also to make, publish and execute, such code of rules, regulations and by-laws as they shall deem necessary for the well ordering and good government of the university, and to repeal or amend any part thereof; which rules, regulations and by-laws shall continue in force until altered or disapproved of by the corporation; and it shall be the duty of the faculty, to lay before the corporation, from time to time, accurate statements of all their proceedings; and the faculty shall direct and cause to be holden in the said university, quarterly, in every year, a public examination, at which time the faculty shall attend, when each class of the

Style of the president and professors.

Their power and authority.

Duty of the faculty.



students shall be examined relative to the proficiency they shall have made in the particular arts and sciences, or branches of education in which they shall have been instructed.

Seal of the corporation.

Sec. 10. *And be it further enacted,* That the said corporation may have and keep one common seal, which they may change or renew at pleasure; and that all deeds or instruments of writing, signed and delivered by the treasurer and sealed with the corporation seal, by order of the president and trustees, shall, when made in their corporate name, be considered in law as the deed and act of the corporation; and the said corporation shall be capable of suing and being sued, pleading and being impleaded, in any action, real, personal or mixed, and the same to prosecute and defend to final judgment and execution, by the name of "The President and Trustees of the Ohio University:" *Provided,* That when any suit shall be commenced against the said corporation, the process shall be by summons, and the service made by the officer leaving an attested copy of such process with the treasurer of the said corporation, at least twenty days before the return day of such process; and the said corporation shall be capable of having, holding and taking, in fee simple, or

Corporation may sue and be sued.

Proviso.

any less estate, by gift, grant, devise or otherwise, any lands or other estate, real or personal.

Sec. 11. *And be it further enacted,* That the two townships numbered eight and nine, in the fourteenth range of townships, within the grant of land made by congress to the Ohio company of associates, be and they are hereby vested in the corporation, by this act created, in trust, for the sole use, benefit and support of the said university, forever.

Townships numbers eight and nine vested in the corporation, for the use of the university.

Sec. 12. *And be it further enacted,* That one or more of the aforesaid trustees (to be appointed by the board for this purpose) shall, within six months from the passage of this act, proceed (by the oath of three disinterested and judicious freeholders) to lay off the lands in said townships (those included in the town of Athens excepted) or such part thereof as they may deem expedient, into tracts of not less than eighty nor more than two hundred and forty acres, and to estimate and value the same as in their original and unimproved state (for which service such compensation shall be allowed as the trustees shall think reasonable, to be paid out of the funds of the university) and having thus laid off and estimated said lands, the trustees, after giving four weeks notice, in the

Lands in the two townships, when and by whom to be laid off and valued.

Compensation.

Trustees to give notice.

newspaper printed at Marietta, shall proceed to make out leases of the said tracts to such of the present occupants as shall apply for the same, within three months after such notice given, and to all persons that shall apply hereafter, for the term of ninety years, renewable forever, on a yearly rent of six per centum on the amount of the valuation so made by the said free-holders; and the land so leased shall be subject to a revaluation, at the expiration of thirty-five years, and to another revaluation at the expiration of sixty years, from the commencement of the term of each lease; which revaluation shall be conducted and made on the principles of the first, and the lessee shall pay a yearly rent of six per centum on the amount of the revaluation so to be made, and forever thereafter on a yearly rent equal to and not exceeding six per centum on the amount of a valuation to be made as aforesaid, at the expiration of the term of ninety years aforesaid (which valuation the trustees and their successors are hereby authorized and directed to make): *Provided however*, That such last mentioned rent shall be subject to the following regulations, to-wit: at the expiration of the aforesaid period of ninety years, three referees shall be appointed, the first by the corporation of the university;

To execute leases for ninety years, etc., on application.

On a yearly rent of six per cent. on the valuation.

Revalued at the expiration of thirty-five and sixty years, etc.

Also at the expiration of ninety years.

Proviso.

the second, by the lessees, under the provisions of this section, of this act, and the third, by the two referees thus chosen, (or in case either or both of the parties shall neglect to choose such referee or referees, or said referees shall neglect to choose an umpire,) the general assembly, at its next session, shall appoint such number of referees, not exceeding three, as the case may require; which referees shall meet within a reasonable time, to be agreed on between them, at the town of Athens, and then and there determine on and declare the medium price per bushel of the article of wheat; which determination shall be grounded on a calculation of the average price of said article at the town of Marietta, for the five preceding years; which declaration shall be made in writing; and entered of record on the books of the corporation; and at the commencement of each and every succeeding period of twenty years thereafter, the amount of rent for such period shall be fixed on and determined by referees, to be chosen upon the principles hereinbefore directed, from a comparison of the aforesaid recorded price of wheat, with its average price at Marietta, for the five years, which shall have been then last past; in which leases shall be reserved

Three referees to be appointed.

Their duty.

Continued.

Right of distress etc., to be reserved in the leases.

Proviso.

a right of distress and of re-entry for non-payment of rent, at any time after it shall have been due two months: *Provided always*, That the said corporation shall have power to demand a further yearly rent on the said lands and tenements, not exceeding the amount of the tax imposed on property of like description by the state, which rents shall be paid at such time and place to such person and collected in such manner as the corporation shall direct.

Trustees to lay off the town of Athens, etc

And have the plat recorded.

To give notice and sell lots at public auction.

Sec. 13. *And be it further enacted*, That the trustees shall lay off the aforesaid town of Athens, conformably to a plan made out by Rufus Putnam and others, in pursuance of a resolution of the territorial legislature of the eighteenth of December, one thousand seven hundred and ninety-nine, with such variations, however, as they may find it expedient to make; and the same being thus laid off and a plat of the same, with a designation of the uses of the several parts recorded, in the office of the recorder of the proper county, and six weeks previous notice given, in at least two of the newspapers of this state, may proceed to sell, from time to time, at public auction, such of the house and out-lots as they may think proper, for which lots, on payment being made or satisfactory security given according to the conditions of

such sale, they shall execute to the purchasers respectively, leases for the term of ninety years, renewable forever on an annual rent, equal to and not exceeding, six per centum of the amount of the purchase money, which lots, with the improvements which may be made on the same, shall be subject to such further yearly rent as may be equal to the tax imposed from time to time, on property of like value and description by the state; and they are likewise authorized, to deliver a reasonable compensation for the improvements which have been made on lands within the town of Athens, to be paid out of the funds of the university.

On payment, etc. to execute leases for ninety years etc., on an annual rent of six per cent.

Subject to a further yearly rent, etc.

Sec. 14. *And be it further enacted*, That the clear annual rents, issues and profits, of all the estate, real and personal, of which the said corporation shall be seized or possessed, in their corporate capacity, shall be appropriated to the endowments of the said university, in such manner as shall most effectually promote the end of the institution: *Provided nevertheless*, That any donation which shall hereafter be made and received for particular purposes, relative to the design of this institution, shall be applied in conformity to the intention of the donor or donors.

Appropriation of rent and profits.

Provide.

Treasurer to
give bond to
corporation.

Sec. 15. *And be it further enacted,* That the treasurer of the said corporation shall, before he enters upon the duties of his office, give bonds to the said corporation, in such sum and with such sureties as they shall approve, conditioned for the faithful discharge of the duties of the said office, and for the rendering a just and true account of his doings therein, when required; and also, for the delivering over to his successor in office, all monies, securities and other property, that shall belong to the president and trustees of the said university, together with all the books and papers in which his proceedings, as treasurer, shall be entered and kept, that shall be in his hands at the expiration of his office; and all money that shall be recovered by virtue of any suit of law upon such bond, shall be paid over to the president and trustees aforesaid, and be subject to the appropriations above directed in this act.

Corporation
power to
contract for
the erec-
tion of
buildings,
etc.

Sec. 16. *And be it further enacted,* That the said corporation shall have full power from time to time, to contract for and cause to be erected, such building or buildings as they shall deem necessary, for the accommodation of the president, professors, tutors, pupils and servants, of said university; as also, to procure the neces-

sary books and apparatus, for the use of said university, and shall cause payment therefor to be made out of the funds of the university, and shall reserve such lot or lots in said town of Athens, as they may deem necessary for the purposes aforesaid, and for the erection of buildings for the use of the town and county.

Sec. 17. *And be it further enacted,* That the lands in the two townships, appropriated and vested as aforesaid, with the buildings which are or may be erected thereon, shall forever be exempted from all state taxes.

Land and buildings in the two townships exempt from state taxes.

Sec. 18. *And be it further enacted,* That until a president of the said university shall be elected, and shall have entered upon the duties of his office, and also, in all cases of a vacancy or the absence of the president, the said trustees shall appoint one of their members to preside in their meetings, and all the doings and acts of the trustees, while acting under such circumstances, shall be considered in law as the doings and acts of the corporation, as fully and completely as when the president of the university shall be in office and preside.

A member of the trustees to preside in certain cases.

Proceedings valid.

Sec. 19. *And be it further enacted,* That it shall be the duty of the governor to fix the time for holding the first meeting of the said corpora-

Governor to fix the time for holding the first meeting.

tion, which shall be in the town of Athens, of which he shall give notice in writing, to each member, at least twenty days previous to such meeting, and all subsequent meetings of the said corporation, shall be in the said town of Athens.

Repealing
clause

Sec. 20. *And be it further enacted,* That all acts and parts of acts, containing any thing within the purview of this act, shall be and they are hereby repealed.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

CHAPTER XXVIII.

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 or highways, established by law, shall be opened, amended and kept in repair, or vacated, agreeable to the provisions of this act; and the commissioners, or any two of them in their respective counties, shall have authority, upon application, to make and enforce all orders necessary therefor, for which purpose they shall assemble themselves at the place for holding courts in the several counties, on the second Monday of June, and first Monday in November, annually, and shall continue by adjournment, from day to day, until the business before them be finished.

Public roads to be opened and kept in repair.

Commissioners to enforce orders, etc., to meet on the second Monday of June and first Monday November annually.

Sec. 2. *And be it further enacted*, That every application for any road, shall be by petition, specifying particularly where such road begins, the remarkable places by which such road is intended to pass, if any, and where the same shall end, signed by at least twelve landholders of the county, who shall be liable for the costs arising on such petition, survey and view, unless the road so petitioned for, shall appear to said com-

Application for any road to be by petition, etc.

Costs, how paid.

missioners, from the report of the viewers, to be of public and general utility to the citizens of the county at large, then the costs attending the same, shall be paid out of the county treasury.

Previous to
an order for
a new road,
etc.

Sec. 3. *And be it further enacted,* That previous to any application being made, for an order to lay out any new road, or to alter an established road, such intended application shall be advertised in three public places in each township, through which such proposed road may be designed to run for thirty days prior to the meetings of the said commissioners.

To be ad-
vertised
thirty days.

Sec. 4. *And be it further enacted,* That upon the presenting of a petition in the form as aforesaid, and the commissioners being satisfied, that the petitioners have given the notice required by this act, the commissioners shall order such petition to be audibly read in open meeting, and thereupon shall appoint three disinterested landholders, who, or any two of whom, after having been duly sworn by any judge or justice of the peace, having had six days previous notice from some one of the petitioners shall proceed at the time directed by said commissioners, to view the ground along which said road is proposed to be conducted, and shall

Commission-
ers to ap-
point three
viewers

to be sworn.

truly and impartially, take into consideration the utility and inutility, conveniences and inconveniences which will result, as well to individuals as to the public, if such road should be opened; and if a majority of said landholders shall be of opinion, that such proposed road, if established, would not be useful nor of public convenience, they shall report accordingly; but if they shall be of opinion, that such proposed road will be useful and of public convenience, they shall repair to the place where such proposed road begins, and the said viewers shall, with diligence and attention, examine the ground and view out said road, as nearly to the prayer of the petitioners, as a good road can be obtained at a reasonable expense, having a special regard to continue the road, in the same direction, as far as circumstances will admit; and the commissioners shall appoint a surveyor, whose duty it shall be, to take to his assistance two persons as chain carriers and one marker, and he shall attend said viewers and survey such road, according to the view of said landholders, conspicuously marking the same throughout, and truly noting the courses and distances thereof, and at every mile's end, shall erect a monument, expressing the number

Their duty.

Commissioners to appoint a surveyor.

To take to his assistance two chain men and a marker.

Commissioners on receiving the return, how to proceed.

thereof, and shall protract a survey of said road; which, together with the proceedings of the said viewers, shall be certified respectively and returned to said commissioners at their next session, to be held for said county, and the commissioners, on receiving such return, shall cause the same to be publicly read in open meeting, on two different days of the same meeting, and if no objections are made to such proposed road, on the second reading, it shall be the duty of said commissioners, to order the said road to be opened a necessary width, not exceeding sixty-six feet, and made in other respects convenient for the passage of travelers, and cause a record thereof to be made, which thenceforth shall be deemed a public road.

By whom and in what manner objections may be made to a proposed public road.

Sec. 5. *And be it further enacted,* That objections to any proposed public roads may be made by twelve landholders of that part of the county through which the same runs, if such objections are stated to the commissioners in writing, with their names thereto subscribed, at any time before such road is recorded and not afterwards, on account of the same being likely to be useless, prejudicial and burthensome to the inhabitants, and where such objections are made, the commissioners shall appoint five dis-

interested landholders of the county as aforesaid, who shall not be related to any of the parties interested in opening or objecting against such proposed road, and shall assign a day for such landholders to meet where such proposed road begins; it shall be the duty of such landholders respectively, having had six days previous notice from either party, to meet on the day and at the place assigned by the commissioners, and then having first taken an oath or affirmation, before some judge or justice of the peace, impartially to review such proposed road, and report whether such road, if opened and kept in repair by the public, will be useless, inconvenient and burthensome, or otherwise, and if the landholders, who reviewed the same, or any three of them, agree that the said proposed road is likely to be useless, inconvenient and burthensome, if it be opened and kept in repair by the public, then unless the petitioners will agree to open and keep in repair such proposed road at their own private expense, all the proceedings shall be stayed, and the petitioners shall, in either case, pay the costs and charges which may have accrued, but if three of the said reviewers do not report against such road as likely to be useless, inconvenient and burthensome, then the objectors shall pay the costs and charges which shall have accrued on

Continued.

such review, and the said road shall be ordered to be recorded and opened as aforesaid, and shall thenceforth be deemed a public road.

Persons objecting to a road passing over their lands, how to proceed.

Commissioners to appoint five freeholders, etc.

To take an oath, etc.

Their duty.

Sec. 6. *And be it further enacted,* That if any person through whose land any proposed road may run, feels aggrieved thereby, such person may, at any time before such road is recorded, set forth his or her grievance, in writing, to the commissioners, whereupon the commissioners shall appoint five disinterested landholders as aforesaid, and shall assign a day for such landholders to meet on the objector's land, where such road crosses, the same (having first taken an oath or affirmation before some judge or justice of the peace) truly and impartially to assess the damage or several damages which any such objector or objectors will sustain by reason of such road, in case the same should be opened and continued through his land, having had six days previous notice by either of the parties, said landholders shall proceed to review said road, through the land of such objector or objectors, and take into their consideration how much less valuable the property of such objector or objectors will be rendered by reason of such roads being established, and shall assess the damage or damages, if any, report the same

to the commissioners at their next meeting, and if a majority of such landholders agree in assessing damages to the amount of the costs accruing on such review, the commissioners may, if they consider it expedient, order the damages to be defrayed out of the county treasury, or if that may be considered inexpedient and that petitioners will defray the same, then, in either case, such roads shall be ordered to be opened and a record made thereof, and the costs and charges having accrued in virtue of such review, shall be defrayed out of the county treasury; but if a majority of such landholders do not agree in assessing damages to the amount of the costs as aforesaid, then such objector or objectors shall pay the costs, and such road shall be ordered to be opened and recorded in like manner as though no such objections had been made.

To assess the damages.

Costs, how to be paid.

Sec. 7. *And be it further enacted,* That if any person through whose land any road shall run, shall be desirous of cultivating such tract of his land, such person or persons may petition said commissioners to permit him, her or them, at his, her or their own expense, to turn such road through any part of his, her or their land, on as good ground and without increasing the distance to the injury of the public; and upon such

Any person desirous to change the road running through his land, how to proceed.

Commissioners to appoint three viewers, etc.

Their duty.

When and how to report.

petition, the said commissioners shall appoint three disinterested landholders, who shall proceed to view the ground on which the said road is designed to be turned, and measure the respective distances of that part of the road already established and of the proposed way, until it shall intersect the road established, and at the next meeting of the commissioners shall report the several distances, with their opinion, respecting the ground on which said proposed road is to run, and if it shall appear to the satisfaction of said commissioners, that the ground on which such new part of the road is designed to be run, is equally situated and that the difference in the distance will not injure the public, such commissioners shall permit him, her or them, to turn such road, and on receiving satisfactory assurances that such petitioner or petitioners have opened such proposed road equally convenient for travelers, shall vacate so much of the former road as shall lie between the different points of intersection, and record such alteration, which afterwards shall be a public road or highway.

Public roads becoming useless, etc., how to be discontinued.

Sec. 8. *And be it further enacted,* That when any public road shall be considered useless and the repairing thereof an unreasonable burthen, any twelve landholders may make application in

writing, subscribed by themselves, setting forth their reasons wherefore they wish such road vacated, which shall during the meeting to which it is presented, be publicly read in open meeting, and no further or other proceedings shall be then had thereon, but the same shall be continued to the next meeting, where the same shall again be read as aforesaid, when, if objections are not made thereto in writing, signed by twelve landholders, said commissioners shall, on any day in the same meeting, other than the first, proceed to vacate such public road, and the cost and charges shall be paid by the county; but if objections are made in form aforesaid, the commissioners shall proceed in like manner, by appointing viewers thereof, as they are authorized to do in laying out roads: *Provided*, That nothing in this section contained, shall be understood to give authority to said commissioners to vacate any street or highway, in any town which hath been or may be laid out by the proprietors thereof, or by any other person or persons, and given for public use, nor to vacate any road laid out by law, which is not repairable at public charge, nor any road or passage claimed by private right.

Costs, how to be paid.

If objections are made, commissioners to appoint viewers, etc.

Proviso.

Streets or highways, etc., in town not to be vacated.

Sec. 9. *And be it further enacted*, That an ap-

Appeal to
the court of
common
pleas al-
lowed.

peal from the proceedings of the commissioners, under this act, shall lie and be allowed to the courts of common pleas: *Provided*, such appeal be entered with the clerk of the commissioners within ten days after the proceedings were had before said commissioners, by the appellant or appellants entering into bonds, with freehold security, for the payment of the costs and charges of such appeal, and the courts of common pleas are hereby required and empowered, on every such appeal, to order and appoint another view of such road and proceed thereon in like manner as the commissioners are enabled by this act to proceed.

Private
cartways,
how to be
laid out and
opened.

Sec. 10. *And be it further enacted*, That if any person or persons shall, for the convenience of themselves or neighbors, wish to have a private cartway laid out, 'from or to the plantation or dwelling place of any person or persons, or to any public road, or from one to intersect another, the person or persons applying for the same, shall advertise their intentions as by this law is required in case of public roads, and shall petition the trustees of the proper township, who shall proceed in every respect in like manner, as is by this act provided in case of public roads:

Proviso.

Provided, That no private cartway laid out in pursuance of this act shall exceed thirty-three

feet in breadth, and that the petitioner or petitioners shall defray every expense and charge of laying out the same, and said private cartway shall be opened and kept in repair by the person or persons petitioning therefor.

Not to exceed thirty-three feet in breadth.

Sec. 11. *And be it further enacted,* That all male persons of the age of eighteen years and not exceeding fifty, who have resided thirty days in any township within this state, who are not a town charge, shall be liable yearly and every year, to do and perform three days work on the public roads, under the direction of the supervisor, within whose limits they shall be respectively resident; and it shall be the duty of every supervisor to call out every such resident as aforesaid, when it may, in his opinion, be expedient to work on the public road within his district; and if any such resident, having had three days notice thereof from the supervisor, shall neglect or refuse to attend by himself or substitute, to the acceptance of the supervisor, on the day and at the place for working on the public road, with such necessary and common articles of husbandry as the said supervisor shall have directed him to bring wherewith to labor, or having attended, shall refuse to obey the directions of the supervisor or shall spend the day in idleness or inattention

Male persons of the age of eighteen and not exceeding fifty to work yearly three days on the highways.

Supervisor to give three days notice.

Penalty on persons failing, etc.

to the duty assigned him, every such delinquent shall forfeit, for every such neglect or refusal, the sum of one dollar; if not paid when demanded by the respective supervisors, to be recovered at the suit of the supervisors respectively, before any justice of the peace, to be appropriated towards repairing the public roads within such supervisor's district: *Provided*, That in case any person removing from one district into another, who shall, prior to such removal, have performed the whole or any part of the labor required by this act, and shall produce a certificate from the supervisor of such district, such certificate shall be a complete discharge for the like requirement for that year.

Proviso.

Supervisors to call out or hire hands to work on the roads when necessary, etc.

Sec. 12. *And be it further enacted*, That the supervisors of the public roads in their respective districts, are hereby required and enjoined, as often as the said several roads within their districts may be out of repair, or as often as any new road shall be laid out and ordered to be opened by law, to call out or to hire with the fines he may have collected, a sufficient number of hands to work upon, clear and amend the same, in the most effectual manner, and to oversee the said laborers, keep them close to their business and take care that the said roads be effectually cleared and repaired, according to

the intent and meaning of this act; and the supervisors respectively, shall have full authority to enter upon any unimproved lands, near or adjoining the public roads, to dig or cause to be dug, any gravel, sand or stone, or to gather any loose stones, or to cut down and carry away any timber that he or they may think necessary for the purpose aforesaid: *Provided*, The same be done with as little damage as may be to the owner of such land.

Empowered to dig gravel, etc., cut timber, etc., on unimproved lands.

Sec. 13. *And be it further enacted*, That it shall be lawful for the supervisors or any other person or persons, by his or their order, to enter upon any lands adjoining or lying near to the public roads within their respective districts, to make such drains or ditches through the same as he or they may conceive necessary to draw the water from such roads: *Provided*, The same be done with as little injury and damage as may be to the owner of such lands; which drains and ditches so made, shall be kept open by such supervisors, if necessary, and shall not be stopped up by the owners of such lands or any other person or persons, under the penalty of ten dollars for every such offense, to be recovered and appropriated in manner aforesaid.

Supervisors, when to enter private property and open ditches, etc.

Penalty for filling up ditches, etc.

Sec. 14. *And be it further enacted*, That it

Posts to be erected at the forks of public roads.

shall be the duty of each supervisor, in his district, to erect and keep up a post at the forks of every leading public road, containing an inscription in legible characters, directing the way to the next town or known places on each road; and if any person or persons shall demolish any such post, deface or alter any such inscription thereon, with an intention to destroy the utility of such design, he, she or they, so offending, shall, for every such offense, forfeit and pay to the supervisor of such road, twenty dollars, to be recovered and appropriated as before directed.

Penalty for destroying the same.

Compensation to be allowed supervisors for their services.

Sec. 15. *And be it further enacted,* That every supervisor shall receive, for every day he shall be necessarily engaged in superintending the hands, not less than ten on each day on the roads, over and above three days, the sum of seventy-five cents, and such further compensation as the trustees shall think reasonable.

Trustees to meet the first Monday of March annually to settle with the supervisors.

Sec. 16. *And be it further enacted,* That it shall be the duty of the trustees of the respective townships, to meet at the place of holding the annual township elections, on the first Monday of March, annually, at which time and place the supervisors of the townships shall attend and produce an accurate account of all fines col-

lected, as well such as are due, and all sums by him or them expended on the roads, and shall be attested, on oath or affirmation, by such supervisor or supervisors, and the trustees are empowered to adjust and settle accounts so produced to them as aforesaid, and to allow such charges and sums as they or a majority of them shall think just and reasonable; and if there shall appear to be any money remaining, after deducting such sum or sums as shall be allowed to such supervisor or supervisors, then the trustees shall, by an order, direct the same to be paid to the succeeding supervisor or supervisors; but in case any supervisor shall be found to be in advance for labor or money expended, and shall have carefully collected the fines assessed by this act, then the trustees or any two of them, shall, in like manner, order the succeeding supervisor or supervisors to repay the same as soon as a sufficient sum shall have come to his or their hands; and if any supervisor or supervisors shall neglect to make up and produce his accounts aforesaid, or having produced such accounts, shall neglect, forthwith, to pay the monies which he or they shall be ordered as aforesaid, or shall not deliver up such accounts to their successors, it shall be the duty of any court having cognizance thereof, on application made to them by the trustees or a majority of them, upon satisfactory

Account to be exhibited on oath

When monies remain in the hands of supervisors, etc.

When in advance how reimbursed.

Penalty on supervisors neglecting to settle their accounts.

When ag-
grieved may
appeal.

proof of such neglect being made, to fine such delinquent in any sum not exceeding forty dollars, and if any supervisor shall think himself aggrieved by the settlement of his accounts as aforesaid, or by any judgment of any justice as aforesaid, he may appeal to the next meeting of the commissioners of said county, who shall take such order therein and give such relief as to them shall appear just and reasonable, and the same shall conclude and bind all parties.

Penalty on
supervisors
who refuse
or neglect
to do their
duty.

Sec. 17. *And be it further enacted,* That all and every supervisor of the public roads, who shall refuse or neglect to do and perform his or their duty, as directed by this act, may be fined in any sum not exceeding ten dollars for every such offense, to be recovered by any person or persons prosecuting for the same, before any justice of the peace within the county, the one-half to be applied towards repairing the roads within the district where such fines were incurred, the other half to the person prosecuting: *Provided,* That if any supervisor or supervisors, shall conceive himself or themselves injured by the judgment of such justice, he or they may appeal, on giving sufficient security for the payment of the costs, to the next court of common pleas, who shall make such order therein as to the said court may appear just and reasonable.

How recov-
ered and dis-
posed of

When ag-
grieved may
appeal.

Sec. 18. *And be it further enacted,* That if any person or persons shall obstruct any public road or highway, laid out or that hereafter may be laid out, or to be kept in repair by law, and shall suffer such obstruction to remain to the hindrance of travelers, every person or persons so offending, shall, for every such offense, forfeit and pay a sum not exceeding twenty dollars, nor less than two dollars, to be recovered by an action of debt, at the suit of any person, before any court having cognizance thereof, in the county in which the offense shall have been committed, the one-half to the person prosecuting and the other half to be appropriated in manner aforesaid.

Penalty on persons obstructing highways.

How recovered and disposed of.

Sec. 19. *And be it further enacted,* That if any person shall take down, obliterate or destroy, any advertisement or written notice necessary to be put up under this act, he, she or they, so offending, shall, for every such offense, forfeit and pay ten dollars, to be recovered in an action of debt, at the suit of any person prosecuting, before any court having cognizance thereof, to be held in the county where such offense was committed, the one-half to the person prosecuting and the other half to be appropriated in manner aforesaid.

Penalty for taking down or destroying advertisements.

Sec. 20. *And be it further enacted,* That if

Persons
prosecuted,
how to
plead.

any person or persons shall be sued under the provisions of this act, he, she or they, may plead the general issue, and give this act and the special matter in evidence, and no such suit or action shall be brought or maintained, unless it shall have been commenced within three months after cause given.

Surveyors,
etc., how
compensated.

Sec. 21. *And be it further enacted,* That all persons hereafter mentioned, appointed to render services under this act, shall receive as a compensation for each day allowed by the commissioners, the following sums: viewers, one dollar; chain carriers and markers, seventy-five cents, and surveyors, one dollar and fifty cents, to be charged as costs and expenses, and to be paid according to the provisions of this act.

Repealing
clause.

Sec. 22. *And be it further enacted,* That all acts and parts of acts, coming within the purview of this act, be and they are hereby repealed, and that this act shall commence and be in force from and after the tenth day of March next.

When to
take effect.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

February 17th, 1804.

CHAPTER XXIX.

An act, to incorporate the town of Chillicothe, in the county of Ross.

Sec. 1. *Be it enacted by the general assembly* **Boundaries.** *of the state of Ohio,* That such part of the township of Scioto, in the county of Ross, as is included within the following limits and boundaries, that is to say: beginning at the north-east corner of the outlot number forty-seven, as numbered on the plat of the out-lots of Chillicothe; thence south seventy-five degrees west, one hundred and five poles and three-tenth parts of a pole, to the northwest corner of the outlot number fifty-six; thence south, fifteen degrees east, three hundred fifty-five and seven-tenths parts of a pole, to the southwest corner of outlot number one hundred sixty-seven; thence north seventy-five degrees, east seventy-seven and five-tenth parts of a pole, to the northwest corner of out-lot number one hundred thirty-one; thence south fifteen degrees east, twenty-six poles and one-tenth part of a pole, to the southwest corner of out-lot number one hundred thirty-one; thence north seventy-five degrees east, one hundred sixty-one poles to the north-

west corner of the out-lot number thirty-four; thence south fifteen degrees east, twenty-six poles and one-tenth part of a pole, to the southwest corner of the out-lot number thirty-four; thence north seventy-five degrees east, forty-nine poles to the southeast corner of the out-lot number thirty-three; thence north fifteen degrees west, one hundred seventy-eight poles and seven-tenth parts of a pole; thence north seventy-five degrees east, one hundred sixty-nine poles and nine-tenth parts of a pole, to the southeast corner of the out-lot number ninety-eight; thence north fifteen degrees west, two hundred forty-one poles, to the Scioto river; thence up the said river, with its meanders, to the place of beginning, shall be and the same is hereby erected into a town corporate, which shall henceforth be known and distinguished by the name of the town of Chillicothe.

Officers to
be chosen.

Sec. 2. *And be it further enacted,* That for the better regulating, ordering and governing the said town of Chillicothe, and for promoting the interest, comfort and safety of the inhabitants thereof, there shall henceforth be in the said town seven trustees and a treasurer, who shall be chosen from the freeholders thereof an assessor, a collector, a supervisor and a town mar-

shal, who shall be elected by the freeholders and householders, who may have resided six months within the boundaries of said town; the trustees thus elected shall, within two days after their election, assemble at the court house in said town and there elect, by ballot, from among themselves, a president and a recorder, after which they shall, in like manner, elect a treasurer, who may or may not be of their own number, which president, recorder and trustees, shall be one body corporate and politic, with perpetual succession, to be known and distinguished by the name of "the president, recorder and trustees of the town of Chillicothe."

Qualification
of electors.

Style.

Sec. 3. *And be it further enacted*, That the said president, recorder and trustees, and their successors in office, shall be capable and able to receive, acquire, hold and convey, any estate real and personal, for the use of said town, and shall also be capable in law, by the name aforesaid, of suing and being sued, of pleading and being impleaded, in any action or suit, in any court whatsoever; and they are hereby authorized to have one common seal for the use and purpose of the said corporation, and the same to alter or break, and to renew at their pleasure.

Power of
the president,
recorder and
trustees.

Capable of
suing and
being sued,

and to have
one common
seal.

Sec. 4. *And be it further enacted*, That the

Inhabitants to meet the first Monday of March to elect seven trustees.

First Monday of March, 1805, to elect three trustees.

First Monday of March, 1806, to elect four trustees, etc.

Trustees to meet within two days after every annual election.

Other officers to be elected.

inhabitants of the said town as aforesaid, shall and may assemble at the court house in said town, on the first Monday of March next, and elect, by ballot, seven trustees from the freeholders aforesaid, who shall serve for one year; and on the first Monday of March, which will be in the year 1805, the inhabitants aforesaid, shall, at the time and place, and in manner aforesaid, elect three trustees, who shall supply the place of a like number, who shall be removed by lot from the trustees of the preceding year; and on the first Monday of March, in the year 1806, the said inhabitants shall, in like manner, elect four trustees, who shall supply the place of the original remaining trustees, whose times shall have terminated with the end of the year; and shall so continue yearly and every year, alternately removing and supplying in manner aforesaid, first three and then four trustees every other year, by which there will always be a sufficient number of experienced persons in office; the trustees shall, within two days after every annual election, meet together as aforesaid, and choose their president, recorder and treasurer; the inhabitants aforesaid, shall, at the same time and place, yearly and every year, elect as aforesaid, an assessor, a collector, a supervisor and a marshal, who shall be freeholders in the said town, and shall hold their

offices respectively, one year, and until their successors shall be elected and sworn into office:

Provided always, That whenever the business of the corporation shall interfere with the county business, the president, or in his absence the recorder, shall direct where their meeting shall be held; the president, recorder, every trustee and other officer thus elected, shall, within ten days after notice of their appointment, which shall be in two days after the election, take the oath to support the constitution of the United States, of this state, and that he will faithfully discharge the duties of his office, under penalty, in case of refusal or neglect, of not more than thirty nor less than ten dollars: *Provided,* That no person shall be compelled to serve for two successive terms. Proviso.

Sec. 5. *And be it further enacted,* That the first election shall be held the first Monday of March next, for the purpose of choosing the several officers hereinbefore enumerated, and it shall be the duty of one of the justices of the peace of said town, to attend at the court house therein, and receive and count the ballots, and declare to the persons present, the names of those who appear to be duly elected; that all elections thereafter, shall be superintended by Election to be held the first Monday of March.
Justice of the peace to superintend the first election.

**Recorder
and one of
the trustees,
subsequent
elections,
etc.**

the recorder and one of the trustees; shall be opened at two o'clock on the day and at the place aforesaid, and shall be kept open until six o'clock of the same day, when the poll shall be closed, the votes counted and the person highest in votes for the respective offices, declared by the recorder to be duly elected.

Style.

Sec. 6. *And be it further enacted,* That the said president, recorder and trustees, when convened for business, shall be called, "the select council of the town of Chillicothe," and they or any five of them, whereof the president or recorder shall always be one, shall have full power and authority, from time to time, and at any time, to hold a select council in the said town, at the court house aforesaid, and to make and publish such laws and ordinances in writing, and the same, from time to time, to alter or repeal, as to them shall seem necessary and proper, for the interest, comfort, safety and convenience of the said town of Chillicothe, and the inhabitants thereof; to administer all necessary oaths, to impose reasonable fines upon all persons who shall offend against the laws and ordinances made as aforesaid; to levy and cause to be collected all such fines by warrant, under the hand of the president, or in his absence, of the recorder, and the seal of the council, directed to

**Their
power.**

the marshal, who is hereby empowered and authorized to collect the same, by distress and sale of the goods and chattels of the delinquent, and the same to pay to the treasurer of the select council; and where goods and chattels cannot be found, whereon to levy, to commit the body of the offender to prison, there to remain until such fine be paid, or such offender discharged by order of the select council: *Provided*, That no person shall be imprisoned, under the authority of this section, for a longer term than twenty-four hours, for any one offense; they shall have power to regulate markets, and when thought necessary, to appoint a clerk of the market: *Provided always*, That the laws and ordinances so to be made, shall be consistent with the laws and ordinances of the state.

Duty of the marshal.

Proviso.

Sec. 7. *And be it further enacted*, That the freeholders and householders aforesaid, shall, at their annual meeting, vote such sum or sums of money as they may think proper to be raised for the use of the town, for the ensuing year, which shall be assessed by the assessor, upon such objects of taxation in the said town, as shall be yearly subjects of taxation for county purposes, and on such other objects as the said meeting shall direct, and be collected by the

Freeholders, etc., authorized to vote money.

How levied.

collector, at such times and be paid and disposed of in such manner as the select council shall direct.

Money collected paid to the treasurer.

Who is to give bond.

Duty of assessor.

Day of appeal to be held.

Select council have power of filling vacancies.

Sec. 8. *And be it further enacted,* That all monies arising from fines or collections, shall be paid to the treasurer, who shall enter into bond, with sufficient surety to the recorder, for the faithful discharge of the trust committed to him, and shall, when required, submit his books to the inspection of the council; the assessor shall return his estimate of town property and a copy of his assessment to the recorder, who shall, with the advice of the president or two of the trustees, publish a day of appeal, to be held by the council, for the benefit of such as may think themselves aggrieved; the collector shall pay all monies he may receive, to the treasurer, whose receipts shall be his vouchers, upon his settlement with the council, which shall be at the expiration of every three months from the time of his appointment.

Sec. 9. *And be it further enacted,* That the select council shall have the power of filling all vacancies that may happen in any of the offices that are herein established and made elective; and the appointment so made, shall continue valid until the next annual meeting and no

longer, and to fix and establish, from time to time, such fees to the assessor, collector, supervisor, marshal and clerk of the market, and to impose such fines for refusing to accept such offices and for neglect and misconduct in the same, as to them shall seem necessary and proper; and it shall be lawful for the president, or in his absence, the recorder, with the advice of the trustees, or any four of them, at any time, to call a meeting of the inhabitants of the town, for the purpose of obtaining a vote for the raising any sum or sums of money that may be deemed necessary for the use of the said town; and such sum or sums of money, so granted, shall be held subject to the order of the said select council, for the use of the said town: *Provided*, That three days previous notice be given to the said inhabitants, by advertisement, set up in at least three of the most public places in the said town.

Proviso.

Sec. 10. *And be it further enacted*, That if any person shall feel himself or herself aggrieved by an officer or individual of the council, it shall be lawful for such person to appeal to the court of common pleas; and it shall be the duty of the said court to hear such complaint, and to grant such relief as to them shall appear necessary and proper.

Appeal may be had to the court of common pleas.

Corpora-
tion to have
the use of
the county
jail.

Commence-
ment.

Sec. 11. *And be it further enacted,* That the said corporation shall be allowed the use of the county jail, for the confinement of all such persons as shall be liable to imprisonment under the sixth section of this act; and all persons so imprisoned shall be under the charge of the keeper of said jail. This act shall be in force from and after the passage thereof.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

CHAPTER XXX.

An act, regulating 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 coextensive with the counties where they may be respectively chosen and reside, and they shall be conservators of the peace throughout the same, and they are hereby authorized 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 in such sum as the nature of the offense may require, conditioned that such witness shall attend on the first day of the court next to be holden, before whom the offender is to be tried, to give testimony against such criminal.

Justices' jurisdiction in criminal cases.

Their duty on view or complaint.

Sec. 2. *And be it further enacted,* That the following forms shall be pursued and adopted

Forms to be
pursued in
criminal
cases.

by all the justices of the peace, as nearly as the nature of the case will admit of, in all criminal proceedings before any of them had, to-wit:

Form of an 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 the township of _____ in the county aforesaid, personally came C D, who, being duly sworn, according to law, deposeth and saith, that on the _____ day of _____ in the year _____ at the township of _____ in the county aforesaid (here described the crime or offense) was perpetrated on the body (or goods as the case may be) of E F, of _____ by a certain G H, late of the township of _____ and county 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.

Sworn and subscribed before me, at the _____ day of _____, 180—.

A. B.

Warrant for an assault.

Continued. The state of Ohio, }
_____ county, } ss.

To any of the constables of _____, greeting:

(L. S.) Whereas complaint hath been laid before me, A B, Esq., one of the justices of the peace in and for the township of ——— in the county aforesaid, upon the oath of C. D, of ——— township, in said county, that E F, of ——— aforesaid, did, on the ——— day of ——— violently assault and beat him the said C. D, at ——— township aforesaid, in the county aforesaid: These are therefore, in the name of the people of said state, to command you, that you take the said E F, if he may be found in your county, and him safely keep, so that you have his body forthwith before me, at ——— to answer unto the said complaint, and to be further dealt with according to law. Continued.

Given under my hand and seal, this ——— day of ——— in the year of ———.

A. B.

A general warrant.

The state of Ohio, }
 ——— county, } ss.

To any constable in the township of ———, greeting:

(L. S.) Whereas complaint hath been made before me, by A B, that C D, did assault and beat him: These are therefore, in the name of the people of this state, to require you to arrest and bring the said C D (of whom you shall have notice) forthwith before me or some

other justice of the peace, to be examined and dealt with according to law. Hereof you are in no wise to fail.

Given under my hand and seal, this _____ day of _____ in the year of our lord _____.
G. H.

Form of a search warrant.

The state of Ohio, }
_____ county, } ss.

To any constable in the township of _____:

Continued.

(L. S.) Whereas it appears to me, A B, Esq., one of the justices of the peace in and for the township of _____ in the county aforesaid, 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 of the said C D, at the township and county aforesaid, and that the said C D doth verily believe that the said goods, or a part thereof, are concealed in the dwelling house of E F, at _____ in said county: These are therefore, in the name of the people of this state, to authorize and require you, with the necessary and proper assistance, to enter, in the day time, into the said house of the said E F, at _____ aforesaid, in the county aforesaid, and there diligently to search for the said goods and chattels, and

if the same, or any part thereof, shall be found, upon such search, that you bring the goods so found, and also the body of the said E F, forthwith before me or some other justice of the peace for said county, to be disposed of and dealt with according to law.

Given under my hand and seal, the —— day of ——.

A. B.

Form of a warrant for the peace or good behavior.

The state of Ohio, }
 _____ county, } ss.

To any constable of, etc., and to the keeper of the prison, etc.

(L. S.) Whereas A K, of, etc., hath this day made oath, before me, that he hath been grievously threatened by C D, of, etc., 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 people of this state, to command you to apprehend the said C D, and bring him forthwith before 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, to be holden in and for the county aforesaid, then and

Continued.

there to abide and do what shall be enjoined by the said court, and also, in the meantime, to keep the peace, and also especially towards the said A K; and if the said C D shall refuse or neglect so to do, then you are hereby required to convey him to the goal of the county aforesaid, and to deliver him safely to the keeper thereof, commanding also that you the said keeper take the said C D into your custody and him in prison safely keep, until he shall find surety for the peace as aforesaid.

Given under my hand and seal, etc.

Form of a recognizance.

The state of Ohio, }
 _____ county, } ss.

Continued.

(L. S.) Be it remembered that on the _____ day of _____ in the year _____, A B, C D and E F, personally came before me, O T, Esquire, one of the justices of the peace for said county, and severally acknowledge to owe to the people of this state _____ dollars each, to be levied on their goods and chattels, lands and tenements, to the use of said state, if default shall be made in the condition following, to-wit: The condition of this recognizance is such, that if the above-bounden A B, shall personally appear at the next court of common

pleas, to be holden in and for said county, then Continued.
 and there to answer what shall at that time be
 objected against him, and abide the judgment of
 the court, and not depart without leave, then
 this recognizance shall be void and of none
 effect, or else to remain in full force and virtue
 in law.

Taken and acknowledged before me, at, etc. (or
 if the recognizance should be to compel the
 attendance of witnesses in behalf of the state,
 the condition should run thus:) The condition
 of this recognizance is such, that if the afore-
 said A B, C D and E F, shall personally appear
 at the next court of common pleas, 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 them, and
 not depart the court without leave.

Taken and acknowledged, etc.

Form of a summons.

The state of Ohio, }
 _____ county, } ss.

To any constable of, etc.:

(L. S.) You are hereby commanded to summon
 A B and C D, that they be and appear before
 me at _____ forthwith, then and there to give
 testimony and the truth to say, of and concern-

Continued. ing a complaint made on behalf of the state, against G H, who is charged with having (here describe the offense.) Hereof they are in no wise to fail, under the penalty of one hundred dollars; and have you then there this writ. Witness, etc.

Voluntary examination of a woman with child of a bastard.

The state of Ohio, }
 _____ county, } ss.

(L. S.) The voluntary examination of A M, of _____, in the county aforesaid, a single woman, taken on oath before me, one of the justices of the peace for the township of _____ in said county, this _____ day of _____ in the year _____ who saith, that she is now with child, and that the said child is likely to be born a bastard and be chargeable to the township of _____, in the county aforesaid, and that A F, of _____, in the said county, is the father of said child.

Taken and acknowledged before me, at _____ the date above.

G. H.

Warrant to apprehend the reputed father before the birth.

The state of Ohio, }
 _____ county, } ss.

To any constable, of, etc.:

Whereas A M, of _____, in said county, a

single woman, hath, by her voluntary examination, taken in writing, upon her oath before me, one of the justices of the peace for the township of _____ in the county aforesaid, this day, declared herself to be with child, and that the said child is likely to be born a bastard and to be chargeable to the township of _____ in the said county, and that A F, of _____, in the county aforesaid, is the father of said child; and whereas O P, of the overseers of the poor, of the township of _____ in the said county, in order to indemnify the said township in the premises, hath applied to me to issue my warrant for apprehending the said A F. I do therefore hereby command you, immediately to take the said A F, and him forthwith bring before me, or some other justice of the peace for said _____ in said county, to find sufficient surety for his appearance at the next court of common pleas, to be holden in and for the county aforesaid, then and there to abide such order or orders as shall be made by the court, in the premises, and to be dealt with according to law.

Given under my hand and seal, etc.

Form of a mittimus or commitment.

The state of Ohio, }
 _____ county, } ss.

(L. S.) The state of Ohio, to the keeper of the

Continued. gaol of the said county, or his deputy there, and to each of them, greeting:

Whereas A O, late of _____ in the said county, hath been arrested by the constable of _____ in said county, for a felony by him, as it is said, committed, in stealing (here insert the property) of the value of _____ dollars, the property of A P, of _____, in the said county, or give such other description of the crime or offense, as will best suit the nature of the case and agree with the facts. Therefore, on behalf of the people of this state, I command you and each of you, that you receive the said A O into your custody, in the said gaol of the county aforesaid, there to remain until he be delivered from your custody by due course of law.

Given under my hand and seal, at _____ in the said county, the _____ day of _____ in the year _____.

G. H.

Penalty for challenging to fight or box, etc.

Cognizable by justice of the peace.

Sec. 3. *And be it further enacted*, That if any person or persons, shall challenge another to fight or box at fisticuffs, or shall endeavor to provoke any other person or persons to commit an affray, every person so offending, on conviction thereof, shall forfeit and pay every such offense, a sum not exceeding five dollars, nor less than one dollar, and every justice of the peace of the county, where the offense shall

have been committed, shall have cognizance thereof: *Provided however*, That such prosecution be commenced within four days from the time the offense was committed; and all fines and penalties set or imposed and paid, by virtue of the provisions of this act, shall be paid into the treasury of the township, in which such fine or penalty shall be set or imposed, for the use of said township.

Proviso.

Fines, etc., under this act paid into township treasury.

Sec. 4. *And be it further enacted*, That constables shall be the ministerial officers of the courts held by justices of the peace, in their respective townships, and it shall be the duty of the constables to apprehend and bring to justice, felons and disturbers of the peace, to suppress riots, and give information of such persons as they may know to sell liquors, contrary to law, and to keep and preserve the peace in their respective townships; and the duties of constables in the service of process in criminal cases, and subpoenas for witnesses, shall be coextensive with the county in which they were elected and reside, and they shall serve such legal process in civil cases, as may be by the justice of the peace to them directed, and govern themselves therein, agreeably to the provisions of this act, and do and perform such other service as may be directed by law; and every

Constables, ministerial officers of justices' courts.

Their duty.

To enter
bail with
the clerk
of the
township.

constable within ten days after his election, and before he enters on the duties of his office, shall come before the clerk of the township and enter bail, for the sum of four hundred dollars, conditioned for the faithful discharge of the duties of his office, payable to the township treasurer or his successor in office, with two securities, resident in the same township, who shall be approved by the clerk of the township, and he shall make an entry of such bond and file the same in his office.

Jurisdiction
of justices
in civil
cases.

Sec. 5. *And be it further enacted,* That the powers of justices of the peace in this state, shall, in civil cases, be coextensive with the township, in which they may respectively be elected and reside, and their jurisdiction in such cases, shall extend under the restrictions and limitations hereinafter provided, to any sum not exceeding thirty-five dollars; and it shall be the duty of the constables of the several townships, to serve such process as may by the authority of this act, be issued by justices of the peace: *Provided always,* That 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: *Provided always,* That the power of justices of the peace to subpoena witnesses,

Not to ex-
ceed thirty-
five dollars.

To grant
subpoenas.

shall be coextensive with the county: *Provided also*, That in case any person 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 fifty dollars.

Proviso, when persons voluntarily appear and confess judgment.

Sec. 6. *And be it further enacted*, That every justice of the peace shall keep a docket, in which he shall make fair and accurate entries of all actions or suits made before him, with his proceedings thereon, and if either of the parties require a copy of the proceedings thereon, the justice shall furnish him with the same.

Justice to keep a docket, etc.

Sec. 7. *And be it further enacted*, That the first process under this act, in civil cases, shall be by *capias*, which shall be returnable at a time not exceeding fifteen, nor less than six days, from the date thereof, in form following, to-wit:

First process to be *capias*.

The state of Ohio, }
 ----- county, } ss.

(Seal.) To -----, constable of ----- township, greeting:

Form thereof

You are hereby commanded to take the body of ----- if he may be found within your township, and him bring or cause to appear before me, at ----- on the ----- day of ----- to answer to the complainant, of -----, of ----- township, ----- county, in a plea of

———— to his damage ——— dollars, and of this
make legal service and due return to me.

Dated this ——— day of ——— *An. Dom.* ———.

When plain-
tiff does not
appear, how
to proceed.

Sec. 8. *And be it further enacted,* That if the plaintiff does not appear by himself or agent, and it being made appear that he was informed of the day of trial, the justice shall enter judgment against him for the costs: *Provided always,* That the plaintiff shall not thereby be barred from renewing the action, but if it be made appear that his non-attendance was owing to the default of the constable, in not giving him notice, the justice shall postpone the trial to a day certain, and the constable shall be liable for the attendance of the defendant, and also, give notice to the plaintiff or his agent to attend.

Proviso.

Constables
to execute
capias. etc.

Sec. 9. *And be it further enacted,* That the constable shall execute the *capias* by personal service, or by reading the same within the hearing of the defendant, and shall deliver a copy thereof, if required, at least three days before the return thereof, and making return of the *capias* on or before the return day, with the time and manner of service endorsed thereon, with his name thereto subscribed, and the con-

stable failing to make the service and return, when the same might have been reasonably done, shall be liable to the action of the plaintiff for damages.

Sec. 10. *And be it further enacted*, That the constable is hereby required, to demand and take security, of any person on whom he makes personal service, for his or her appearance before the justice on the day of trial; and if the defendant does not appear by himself or agent, on the day appointed, and he is within the county, and no just cause be shown for his non-attendance, the justice may, at the request of the plaintiff, proceed to determine the cause, and enter judgment against the defendant: *Provided always*, That at the request of either party for want of evidence or other good cause shown, the justice may postpone the trial to a day certain, allowing to the party requesting, a reasonable time to procure his or her testimony: *Provided also*, That no security shall be demanded of any person who shall be a resident of the township and a landholder within the county: *And provided also*, That persons required to give bail for their appearance by this act, fail or neglect to comply with the requisition of the

Constable making service to take security, etc.

Defendant failing to appear, justice to proceed in his absence.

On good cause shown, trial may be postponed.

Proviso.

Resident of the township and a landholder within the county not to give security.

Persons
liable to
give bail
failing, how
dealt with.

constable in giving such bail, then the said constable shall bring the said defendant forthwith before the justice, to be dealt with in all cases agreeable to this act.

Justice may
open his
judgment
in certain
cases.

Sec. 11. *And be it further enacted,* That when judgment has been entered against the defendant in his absence, if he appears before execution is issued and pays the costs, and requests the judgment to be opened, the justice may grant a new trial and appoint a day therefor, of which the defendant shall notify the plaintiff at least three days prior to the day appointed: *Provided always,* That stay of execution shall only be prolonged from the date of the former judgment.

Proviso.

When no
justice
lives in
the township,
etc., how to
proceed.

Sec. 12. *And be it further enacted,* That where there is no justice of the peace, resident in the same township with the defendant, or such justice shall be a father or brother to either the plaintiff or defendant, then the justice who is nearest and most convenient in the adjoining township, shall have full and complete jurisdiction throughout such vacant township, until a justice of the peace is elected therein, and then shall deliver up to the justice elected a certified copy of all the business carried before him from said vacant township, which re-

mains unfinished; and said justice shall proceed to act thereon in the same manner as if such business, actions or suits, had been instituted before him.

Sec. 13. *And be it further enacted,* That any time before judgment is entered for any sum, the plaintiff and defendant agreeing thereto, may have the cause submitted to the arbitration of three disinterested men of the township, who shall not be of kin to either party, one of whom shall be chosen by the plaintiff and one by the defendant, and the arbitrators chosen shall choose a third, and if the arbitrators chosen be present, they shall proceed to hear and determine the cause, on oath or affirmation, which shall be administered by the justice, but if the arbitrators chosen shall not be present, the justice shall issue subpoenas for them to attend on the day, time and place fixed upon, which shall be served by the constable or the parties, as they may agree on; and when the arbitrators are met and qualified as aforesaid, they shall hear and determine the cause, make out their award, sign the same and make return thereof to the justice, who shall make entry of the same on his docket as his judgment, which shall be

The parties may submit their causes to arbitration.

How selected.

When absent to be subpoenaed.

The award to be entered on the justice's docket as his judgment.

final and conclusive to plaintiff and the defendant, unless corruption appear in the award.

Parties may come before a justice by consent.

If the person indebted confess judgment the justice to enter the same on his docket.

When served with a *capias*, may confess judgment, etc.

Appeals granted

Ten days allowed.

Sec. 14. *And be it further enacted*, That parties may come before a justice of the peace by mutual consent, to have their demands settled, and if the person indebted shall acknowledge the debt and confess judgment, the justice shall enter the same on his docket, subject to the same proceedings in future, as if suit had been instituted by legal process, except otherwise agreed on by the parties, and the right of an appeal; and if any person served with a *capias*, shall come forward before the justice, within the limited time and confess judgment for the whole demand against him of debt and costs, the justice shall enter the same on his docket, subject to the same future proceedings as if trial was had, except the right of an appeal.

Sec. 15. *And be it further enacted*, That if any person or persons shall conceive him or themselves injured by any judgment rendered by 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 next after the rendering of such judgment, by entering into recognizance, with at least one

sufficient security, in a sum in double the amount of said judgment, and sufficient to answer all costs, to prosecute the said appeal with effect, and to abide the order which the court may make therein; whereupon, the justice who gave such judgment shall send a transcript thereof 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 further proceedings before the said justice shall be stayed, from the time of entering such appeal: *Provided*, That no debt * shall be allowed an appeal from any judgment rendered against him or her, unless the same shall amount to five dollars or upwards, without costs, nor shall any plaintiff be allowed an appeal from any judgment rendered against him or her, unless his or her demand against the debt † amounted to five dollars, or from any judgment given for him or her, unless the sum demanded by him or her from the defendant shall exceed the sum recovered at least five dollars; that at the term to which any appeal shall be made, the person or persons so appealing, shall cause an entry of the appeal to be made with the clerk of the

Justice to certify his proceedings.

Cases in which no appeal lies from a justice's judgment.

Persons appealing to enter the same with clerk.

* This should be *defendant*, but an error took place in copying from the engrossed to the enrolled bill.

† This should also be *defendant*.

Proceeding
thereon.

court, and the plaintiff in the court below, whether the 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: *Provided*, That if the appellant shall fail or neglect to enter the appeal as aforesaid, the appellee may have the same entered, and the judgment of the court below shall be confirmed and judgment entered against the appellant for the same, with interest and costs.

Party after
judgment
entering
bail. execu-
tion to be
stayed for
three
months,
over five and
not exceed-
ing ten dol-
lars,

Sec. 16. *And be it further enacted*, That if any person against whom judgment is entered, for any sum exceeding five dollars, shall forward such bail as shall be deemed sufficient security for double the amount of said judgment, and the same have entered on record by the justice, on his docket, which, if well and truly done, within ten days from the day of entering judgment, in such case execution shall be stayed for three months, on any sum not exceeding ten dollars, and for any sum above ten and not exceeding twenty dollars, execution

over ten
and not ex-
ceeding
twenty dol-
lars, six
months;

shall be stayed for six months, and for any sum exceeding twenty dollars, execution shall be stayed for nine months and no longer; and if the defendant, or his bail, shall not have paid to the plaintiff, or his agent, the full amount of the judgment, with the interest due thereon, and a receipt thereof be forwarded to the justice of the peace, on or before the expiration of the time herein limited for the stay of execution, the justice of the peace shall issue execution against the defendant in form following, to-wit:

over twenty
dollars, nine
months.

The state of Ohio, }
_____ county, } ss.

To the constable of _____ township, _____
county, greeting:

(Seal.) Whereas A B hath obtained judgment before me, in said township, against C D for a debt of _____ with _____ costs: You are therefore commanded to levy the said debt and costs of the goods and chattels of the said C D, by distress and sale thereof, returning the overplus, if any, to the said C D; but for want of such effects, then take the said C D and convey him to the jail of the said county, there to be detained until the debt and costs aforesaid shall be paid or satisfied, or he shall be otherwise legally discharged, and of this writ make legal service and due return.

Form of ex-
ecution.

Dated this _____ day of _____ *An. Dom.*

Form of recognizance of bail. Sec. 17. *And be it further enacted,* That the forms of recognizance of bail, shall be as follows, to-wit:

In case of appeals.

In case of appeals, In the suit of A B against C D, I, E F do acknowledge myself bail for ——— appellant, for the sum of ——— dollars, to be levied on my goods and chattels, lands and tenements, in case of failure in the said appellant.

for stay of execution. And the form of a recognizance of bail for stay of execution, as follows:

to be entered on justice's docket and signed by the bail. In the suit of A B against C D, I, E F do acknowledge myself bail for C D, in the sum of ——— dollars, 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. And the recognizances taken as aforesaid shall, by the justice, be entered on his docket and signed by the bail.

Constable's duty in levying execution, advertising, etc. Sec. 18. *And be it further enacted,* That the constable to whom execution is delivered, shall, within ten days from the date thereof, serve the same by levying on the goods and chattels of the debtor, and for want of such effects, by taking the body; and all goods and chattels sold by execution, shall be advertised by the constable at three of the most public places in the

township, at least fifteen days before the day of sale, and the constable shall make return of said execution within thirty days from the date thereof, endorsing his service and proceedings thereon.

Sec. 19. *And be it further enacted,* That the justice of the peace, on delivering the execution to the constable, shall state, on his docket, an account of the principal, interest and fees due, from which the constable shall not be discharged but by producing to the justice, on or before the return day of the execution, a receipt of the plaintiff or his or her agent for the same, or such other return as may be sufficient in law; and in case of a false return, or in case he does not, on the return day, produce a receipt from the plaintiff, his or her agent, for the same, or make such other return as may be sufficient in law, the justice aforesaid shall, on application of the plaintiff aforesaid, issue a *scire facias*, directed to any person he may think proper, commanding said constable forthwith to appear before him, to show cause why execution should not issue against him; and if the constable either neglects to appear within five days, or does not show proper cause why execution should not issue against him, then the justice

Justice's duty on delivering execution to the constable.

Constable falling in his duty, how to be proceeded against.

shall enter judgment against such constable for the amount of said execution, together with costs, for which judgment there shall be no stay of execution; and upon application of the plaintiff aforesaid, the said justice shall issue an execution against the constable for the amount of such judgment, and such execution may be directed to such person as the justice may think fit, who shall execute the same as constables are by this act bound to do.

Sec. 20. *And be it further enacted,* That the form of a *scire facias*, against bail, where the money is not paid before the time limited for stay of execution is out, shall be as follows, to-wit:

The state of Ohio, }
 _____ county, } ss.

To _____ constable of _____ township,
 greeting:

Form of a
scire facias
 against bail.

(Seal.) Whereas A B, recovered by judgment against C D, the sum of _____ dollars debt, and _____ costs, on the _____ day of _____ last, as appears of record; and whereas E F, on the _____ day of _____ became security in behalf of the said C D, for the payment of the said debt and costs, to the said A B, as also appears of record, which debt and costs are not yet paid; you are therefore commanded, to sum-

mon the said E F, forthwith, to appear before me, at ———, to show cause, if any there be, why execution should not issue against him for the debt and costs aforesaid, and of this make legal service and due return, within eight days.

Dated this — day of ——— *An. Dom.*

Sec. 21. *And be it further enacted,* That if any landlord shall distrain the goods of his tenant, and the tenant shall have a just account to set off against the same, it shall be the duty of any justice, to whom application for that purpose shall be made, to issue process against the landlord, to compel him to appear and show cause, if any he has, why the demand of the tenant should not be allowed, and upon the appearance of the landlord or his agent, or on refusal or neglect to appear, the said justice, if he shall be satisfied of the justice of the tenant's account, the same shall be deducted from his arrears of rent, and the distress shall proceed for no more than the balance which shall remain due.

Tenants on application to a justice, may set off against landlords distress for rent.

Sec. 22. *And be it further enacted,* That nothing in this act shall be construed or understood to extend to actions of ejection, brought to obtain possession of lands and tenements, actions of replevin in case of actual distress, ac-

Certain actions not extended to by this act.

tions of detinue, actions of slander, actions on real contracts for the sale or conveyance of lands or tenements, or where the title of land is called in question.

Actions commenced in court of common pleas, cognizable before a justice, not to carry costs,

unless affidavit be made, etc.

Repealing clause.

Sec. 23. *And be it further enacted*, That if any person or persons, shall commence or prosecute any suit or suits, for any debt or demand, by this act made cognizable before a justice of the peace, in any other manner than is authorized and directed by this act, and shall obtain a verdict or judgment therein, for debt or damages, which without costs of suit shall not amount to thirty-five dollars or more, not having caused an oath or affirmation to be made, before the suing out of the *capias* or summons, and filed in the office of the clerk of the court from whence such process issued; that he, she, or they, so making oath, did truly believe the debt due, or damages sustained, amounted to thirty-five dollars or more, he, she or they, so prosecuting, shall not recover any costs in such suit, any law to the contrary notwithstanding.

Sec. 24. *And be it further enacted*, That the act entitled, "An act for the trial of small causes," and all other acts and parts of acts, contrary to the provisions of this act, are here-

by repealed. This act shall take effect and be in force, from and after the first day of June next. Commencement of this act.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

CHAPTER XXXI.

An act, directing the mode of proceeding in the courts of chancery.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the courts of common pleas in their respective counties, shall have original jurisdiction in all cases cognizable by a court of chancery, where the demand doth not exceed five hundred dollars, subject however to an appeal from their decision to the supreme court, in all cases where the title of land was in question, or where the sum or matter in dispute was more than one hundred dollars: *Provided,* That the appellant within thirty days Jurisdiction of the courts of common pleas, original and final.

Party ap-
pealing
to give
bond, etc.

after such appeal, do give bond with sufficient surety for prosecuting his appeal to effect. which bond shall be filed with the clerk of said court.

Jurisdiction
of the su-
preme court,
original and
appellate.

Sec. 2. *And be it further enacted,* That the supreme court shall have original jurisdiction in all cases properly cognizable by a court of chancery where the demand exceeds five hundred dollars, and appellate jurisdiction in all cases regularly brought before them from the chancery decisions of the courts of common pleas.

Application
to the courts
of chancery
to be by peti-
tion, when
to be filed
etc.

Sec. 3. *And be it further enacted,* That all applications to the courts of chancery shall be by petition, stating the nature and grounds of the demandant's claim; which petition shall be filed in the clerk's office of the proper court, on the first day of the term, and if it shall appear to the court, that the demandant hath not complete and adequate remedy at law, they shall order a subpoena or subpoenas to issue, requiring the defendant or defendants to appear at the next term, to answer to the matters and things contained in such petition; and in cases where any or all of the defendants reside out of this state, the court shall direct notice to be given of the filing of such petition, either by personal service, to be returned on oath, or by publica-

Subpoena,
when to is-
sue, etc.

When de-
fendant or
defendants
reside out of
the state,
notice to be
given.

tion in such newspapers as will be most likely to convey information to all persons concerned, except such defendant or defendants have an attorney in fact, or an agent, residing in this state, in which case notice shall be given to such attorney or agent; and in all cases where the defendant or defendants reside in this state, such subpoena shall be served by leaving a true and attested copy thereof with such defendant or defendants, at his, her or their last usual place of abode, at least thirty days previous to the term to which it is returnable, and on such subpoena being returned executed, or on proof being made that such notice hath been given, if the defendant or defendants do not appear and file their plea or answer to such petition, by the second day of the term, the court shall proceed to hear and examine the evidence produced by the demandant, and shall decree as justice and equity may require.

Subpoena,
how to be
executed.

Where plea
or answer
not filed,
court may
proceed
to hear, ex-
amine and
decree

Sec. 4. *And be it further enacted,* That the rules of evidence to be observed in courts of chancery, shall be the same as those in courts of law, excepting that the parties to and others interested in, any proceeding in a court of chancery, may be examined on oath, touching any matter or thing before such court depend-

Rule to be
observed in
the plead-
ings.

ing, after answer filed and no plea in abatement to the jurisdiction of the court; no exception for want of jurisdiction, shall ever afterwards be made, nor shall the supreme court or any court of common pleas ever thereafter delay or refuse justice or reverse the proceedings for want of jurisdiction, except in cases of controversy respecting lands lying without the jurisdiction of such court, and also of infants and *femes covert*, when a cross-petition shall be exhibited, the defendant or defendants to the first petition shall answer thereto, before the defendant or defendants to the cross-petition shall be compelled to answer to such cross-petition; the complainant shall reply or file his exceptions within two calendar months after the answer shall have been put in, if he fails so to do, the defendant may give a rule to reply, with the clerk of the court, which being expired and no replication or exceptions filed, the suit shall be dismissed, with costs. If the complainant shall except against any answer as insufficient, he may file his exceptions and give a rule with the clerk, to make a better answer, within two months, and if within that time the defendant shall put in a sufficient answer, the same shall be received without costs, but if any defendant insists on the sufficiency of his answer, or neglects or refuses to put in a sufficient answer, or

The rule of
pleadings.
continued.

shall put in another insufficient answer, the plaintiff may set down his exceptions to be argued the next term in court; and if upon argument, the complainant's exceptions shall be overruled, or the defendant's answer adjudged insufficient, the complainant shall pay to the defendant or the defendant to the complainant, such costs as shall be allowed by the court; and in case the defendant's answer shall be adjudged insufficient, he or she may be examined upon interrogatories, and if the defendant shall neglect or refuse to answer such interrogatories within the time ordered by the court, the matter of the complainant's petition, shall be considered as confessed and shall be decreed accordingly.

Sec. 5. *And be it further enacted,* That if the complainant conceives any plea or demurrer to be bad, either for the matter or manner of it, he may set it down with the clerk to be argued, or if he thinks the plea good but not true, he may take issue upon it and proceed to trial by jury, and if thereupon the plea shall be found false, the complainant shall have the same advantages as if it had been so found by verdict on trial at law, and if a plea or demurrer be overruled by the court, no other plea or demur-

Where plea or demurrer is defective, how to proceed.

rer shall be thereafter received, but the defendant shall answer the allegations of the petition, and if the complainant shall not proceed to apply to, or set for hearing, any plea or demurrer before the second day of the term next after filing the same, the petition shall be dismissed of course, with costs; upon a plea or demurrer argued and overruled, costs shall be paid, and the defendant shall answer within two months after, but if adjudged good, the defendant shall have his costs, and if any defendant after a plea or demurrer shall have been overruled, shall refuse to answer, the petition shall be taken as confessed and the matter thereof decreed.

Petition
when taken
as con-
fessed.

Writs of ne
exeat and
injunction,
by whom
and when
to be al-
lowed, etc.

Sec. 6. *And be it further enacted,* That the supreme court, or any court of common pleas in session, or any judge of the supreme court, or presiding judge of the courts of common pleas in vacation, may grant writs of *ne exeat* to prevent the departure of any defendant out of the state, until security be given for performing the decree, and writs of injunction to stay execution of judgments obtained in any of the courts of law: *Provided,* That writs of *ne exeat* shall not be granted but upon a petition filed and affidavits made to the truth of its allegations, which being produced to the court in

term time, or the judge in vacation, such writ may be granted or refused as shall seem just, and if granted, he shall direct to be endorsed thereon in what penalty bond and security shall be required of the defendant, and 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: *And provided also*, That no injunction shall be granted to stay proceedings in any suit at law, unless the court, in term time, or the judge in vacation, shall be satisfied of the plaintiff's equity, either by affidavit that the allegations in the petition are true, or by other means; and where any injunction shall be granted, the clerk shall endorse on the subpoena that the effect thereof is to be suspended until the party obtaining the same shall give bond, with sufficient security, in the office of the clerk of the court in which the judgment to be enjoined shall have been obtained; and the party obtaining the injunction shall then enter into bond, with sufficient security, and file the same in the clerk's office of that court in which the proceedings at law were had, for paying all money and costs due, or to become due to the other party in the action at law, and also all such costs as

Proviso.

shall be awarded against him or her, in case the injunction shall be dissolved, and the clerk shall endorse on the subpoena that the bond is filed.

Petition for review and the proceedings thereon.

Sec. 7. *And be it further enacted,* That whenever a petition is filed for a review of the proceedings in which a decree shall have been made, if the court think it reasonable under the circumstances of the case, to stay proceedings on the 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 the said court, and the court shall direct such security to be given as is usual in cases of appeal or injunction.

Decrees in courts of chancery, how enforced.

Sec. 8. *And be it further enacted,* That all decrees in courts of chancery shall be enforced by sequestration of the property of the party against whom the decree is made, until such decree is complied with, or by execution against the goods, chattels, lands and tenements, of such party as the court may direct, and as the case may require; and in all cases where costs are given, the party entitled thereto may take out an execution for the same, in like manner as executions are awarded in courts of law.

Party entitled to costs, may take out execution.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 17th, 1804.

CHAPTER XXXII.

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 established in each and every county, not having the same already established therein, whenever the commissioners may deem it necessary, a good and convenient court house and a strong and sufficient jail or prison, for the reception and confinement of debtors and criminals, well secured by timber, iron bars, grates, bolts and locks, and also a pillory, whipping post, and so many stocks as may be necessary for the punishment of offenders; and every jail so to be erected, shall consist of not less than two apartments, one of which shall be appropriated to the reception of the debtors, and the other

Court
houses,
jail, etc.,
to be erect-
ed by the
commis-
sioners.

shall be used for the safe keeping of persons charged with or convicted of crimes.

Materials, dimensions and plans to be directed by the commissioners.

Sec. 2. *And be it further enacted,* That every court house and jail so to be erected as aforesaid, shall be formed of such materials and of such dimensions, and on such plans as shall be directed by the commissioners of said county, who are hereby authorized to plan and project the same, and to accept as a gift, or to purchase for the use of the county, so much ground as they may judge convenient and necessary whereon to build, all or any of the structures aforesaid, which purchase money shall be defrayed by the county.

To give notice of sale, etc.

Sec. 3. *And be it further enacted,* That when the said commissioners shall deem it expedient to proceed to erect any of the buildings aforesaid, they shall advertise the same at least thirty days, in three of the most public places in said county, stating in such advertisements the day they will attend at the places of holding courts in said county, at which time and place the said commissioners shall proceed to set up the aforesaid buildings at public auction, the lowest bidder shall be the purchaser, who shall enter into bond, with approved security, to the commissioners and their successors in office,

Lowest bidder to be the purchaser, to give bond.

for the performance of said buildings; and on default in the undertaker or undertakers, for want of attention or competent knowledge to carry on the work with propriety, the said commissioners shall have power to displace him or them, and shall proceed again as in this section directed.

Sec. 4. *And be it further enacted,* That whenever said commissioners shall proceed to erect any of the aforesaid public buildings, they shall have power to appropriate any money which may be in the county treasury, not otherwise appropriated, for the erection and completion of said buildings; and said commissioners shall, in behalf of the county, enter into bond for the faithful discharge of said contract or contracts.

Commissioners' power to appropriate money, etc.

And enter into bond.

Sec. 5. *And be it further enacted,* That the act directing the building and establishing of court houses and county jails, pillories, whipping posts and stocks, in every county, be, and the same is hereby repealed, and this act shall take effect and be in force, from and after the passage thereof.

Repealing clause.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

February 17th, 1804.

CHAPTER XXXIII.

An act, allowing compensation to James Denny.

Compensa-
tion.

Be it enacted by the general assembly of the state of Ohio, That the auditor is hereby authorized and required, to pay unto James Denny, a sum equal to the fees allowed by the United States, in auditors' warrants, for surveying eight hundred acres in the Scioto salt lick township, into twenty acre lots and water lots, as required by an act, entitled, "An act regulating the public salt-works," upon a return of such survey being made, to be paid out of the contingent fund.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

CHAPTER XXXIV.

An act, to provide for fixing the permanent seat of justice in the county of Clermont.

WHEREAS it has been represented to this general assembly, that the present seat of justice in the county of Clermont, is in a situation that renders it very inconvenient to a large proportion of the citizens of said county. Therefore,

Preamble.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That William Patton, Isaac Davis and Nathan Reeves, of the county of Ross, be and they are hereby appointed and constituted commissioners, to view and examine the several parts of the aforesaid county, or so much thereof as will, in their opinion, enable them to determine whether a removal of the seat of justice in said county be necessary, for the convenience and accommodation of the citizens thereof; in determining of which, the said commissioners shall take into view the present and probable future population of the said county, the outlines that are likely to remain permanent as well as those that may be altered by future

William Patton, Isaac Davis and Nathan Reeves, commissioners.

Their duty.

Proviso, in case one of the commissioners fail to attend.

divisions, the proportion of the present inhabitants that will be incommoded by a removal of the present seat, and all other circumstances relative to the subject: *Provided*, That in case any one of the said commissioners should be prevented, by accident or otherwise, from attending on the duties hereby required of them, the other two being met, shall agree upon a third person, and the person thus agreed upon, shall be sworn and perform all the duties required of the original commissioner.

To view Obanion township, make report, etc.

Sec. 2. *And be it further enacted*, That said commissioners shall take a particular view of that part of Miami or Obanion township, which prayed to be attached to Warren county, and shall report their opinion to the next general assembly.

To make report to the clerk of the county and to the speaker of the senate.

Sec. 3. *And be it further enacted*, That it shall be the duty of the said commissioners, after having made view and examination, agreeable to the provisions of this act, to certify their opinion thereon, under their hands and seals, and make out duplicates of such certificate, one copy of which shall be left with the clerk of the county court, for the inspection of the citizens, and the other copy they shall inclose in a letter, addressed to the speaker of the senate.

Sec. 4. *And be it further enacted,* That the aforesaid commissioners, previous to their entering on the duties of their office, shall each take the following oath or affirmation. I ———, Oath. do solemnly swear (or affirm) that I will faithfully and truly execute the duties of a commissioner for establishing the seat of justice in the county of Clermont, and that I will make a just report thereof, according to the best of my abilities; a copy of which oath, signed by the justice before whom it was taken, shall accompany the report made to the general assembly.

Sec. 5. *And be it further enacted,* That each commissioner shall be entitled to receive two dollars, for every day they may be necessarily employed in the business required by this act, and going to and returning from the said county, which shall be paid out of the county treasury, upon the certificate of any justice of the peace within the said county. Compensation.

Sec. 6. *And be it further enacted,* That the court or commissioners shall be, and they are hereby prohibited from making any further appropriation of money, for the erection or completion of public buildings in said county, until Appropriations prohibited for a certain time.

the expiration of the next session of the general assembly.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

CHAPTER XXXV.

An act, allowing compensation to the associate judges, and for other purposes.

Compensa-
tion.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That the associate judges of the courts of common pleas for the several counties, shall be entitled to receive two dollars for each and every day they shall be necessarily employed in holding, going to and returning from any court, by them to be holden, which shall be paid out of the treasury of the proper county, upon the order of the commissioners.

Sec. 2. *And be it further enacted,* That it shall be the duty of each of the associate judges, at

the end of each term, to obtain from the clerk of said court, a certificate of the number of the days each judge attended during said term, which, when presented to the commissioners, shall be a sufficient evidence of such claim; and the commissioners are hereby required to issue an order upon the treasurer for the sum so due, and such other sum in addition, as they shall be of opinion each associate judge is entitled to, for going to and returning from court.

Associate judges to obtain from clerk a certificate, etc.

Commissioners to issue an order on treasurer, etc.

Sec. 3. *And be it further enacted,* That the associate judges shall not receive any other fees of office as a compensation for holding court, other than as above directed; and it shall be the duty of the respective clerks of the courts of common pleas, to make out and charge, as costs, the fees allowed to the justices of the court of common pleas and general quarter session, by the act, entitled, "An act regulating the fees of civil officers, and for other purposes," in every case by the respective courts adjudicated; and it shall be his duty, within ten days after each term, to pay into the treasury of the county, all sums taxed as above, when collected and paid to him by the sheriff; and the treasurer is re-

Associate judges not entitled to fees.

Clerks, their duty.

Treasurer, his duty.

quired to give his receipt to the clerk, for all money so by him paid.

Attorney and counsellors in common pleas.

Sec. 4. *And be it further enacted,* That attorneys or counsellors at law, shall be entitled to receive, for every suit instituted and prosecuted or defended by them in the court of common pleas, the sum of four dollars, to be taxed as costs, which the party obtaining judgment shall recover of the party against whom judgment shall be given, and in the supreme court, eight dollars as aforesaid, and no more.

In the supreme court.

Commissioners to allow associate judges compensation in certain cases.

Sec. 5. *And be it further enacted,* That as a compensation to the associate judges for services heretofore rendered in the counties where they have not received the fees allowed by the law aforesaid, they shall be entitled to have such sum as the commissioners of the county shall deem reasonable for such services, to be paid out of the county treasury.

Repealing clause.

Sec. 6. *And be it further enacted,* That so much of the act, entitled, "An act regulating the fees of civil officers, and for other purposes," as relates to the judges of the court of common pleas, and attorneys and counsellors at law, be and the same is hereby repealed.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

CHAPTER XXXVI.

An act, defining the duties of administrators on wills and intestate estates.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio,* That when any person in this state dies intestate, leaving personal property (whether in goods, chattels or debts) to the amount of fifty dollars, the judges of the court of common pleas, or any two of them, shall grant letters of administration to the person or persons nearest of kin to the deceased; and if the nearest of kin will not accept, then to the next nearest of kin who will accept; and if no person of kin will accept, the court shall appoint an administrator who will serve; but if no application be made to the court, and the judges be well informed that the estate of the

Judges of the common pleas to grant letters of administration in certain cases and to whom.

deceased, exceeds the value of fifty dollars, the court shall cause the person of kin (if any there be within the county) to come before them and show cause, if any there be, why letters of administration should not be granted, and if they do not appear at the next term of the court of common pleas of the proper county, and show cause or agree to administrate, then the court shall appoint a person and grant to him letters of administration.

**Administra-
tors, etc.,
their power
and duty.**

Sec. 2. *And be it further enacted,* That letters of administration shall empower and direct the administrator or administrators, administratrix or administratrices, under oath or affirmation, to have all the goods and chattels of the deceased, so far forth as they have come within his or her knowledge, appraised by three freeholders of the township, who shall be appointed by the judges of said court, and named in said letters, which freeholders, on oath or affirmation, having well and truly appraised all the goods and chattels of the deceased, which shall be presented to them, a true and accurate inventory thereof, signed by the appraisers, and also a true and accurate statement of the debts due and owing to the estate, so far as known to the administrator or administrators, adminis-

tratrix or administratrices, shall be by him or her return to the clerk's office of said court within three months; and he shall moreover adjust and settle up the account within twelve months from the date of such letters; and the executor or executrix of any last will or codicil, shall be governed by the provisions of this section, so far as it relates to the goods and chattels of the deceased, not otherwise disposed of in said will or codicil; and the executor or executors, executrix or executrices, administrator or administrators, administratrix or administratrices, on receiving such letters, shall, by advertisement inserted and continued for 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.

Executors,
etc., gov-
erned by this
section.

Executors
or adminis-
trators, etc.,
to give no-
tice to cred-
itors to ex-
hibit their
accounts,
etc.

Sec. 3. *And be it further enacted,* That the said judges, when they grant letters of administration, shall cause the administrator or administrators, administratrix or administratrices, to give bond to the court, with two or more sufficient sureties (respect being had to the value of the estate) with the condition in manner and form following, viz: The condition of this obligation is such, that if the within bounden — — do make or cause to be made, a true inventory of

Administra-
tors, etc., to
give bond.

Form of the
condition.

Continued.

all and singular the goods, chattels and credits of the said deceased, which have or shall come into his possession or knowledge, or the possession of any other person for him, and make return thereof to the clerk of said court, in his office, within three months from the date thereof; and the same goods, chattels and credits, and all other the goods chattels and credits of the said deceased, at the time of his death, which at any time after shall come into his possession or the possession of any other person for him, do well and truly administer, according to law; and further do make a true and full account of his administration within twelve months, and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon the said administrator's account, the same being first examined and approved of by the court, he shall deliver and pay to such person or persons respectively, as the said court, pursuant to the true intent and meaning of this act shall direct; and if it shall hereafter appear, that any last will and testament was made by the said deceased, and the executor or executors, executrix or executrices therein named shall prove the same, agreeable to law, and request letters testamentary thereon, if the within bounden ----- on being by the court required to deliver up the said letters of admin-

istration, then this obligation to be void and of none effect, otherwise to remain in full force and virtue.

Sec. 4. *And be it further enacted,* That the executor or executors, executrix or executrices, administrator or administrators, administratrix or administratrices, shall in all cases sell the personal property not devised or bequeathed, at public vendue, unless otherwise agreed on by the creditors and heirs: *Provided always,* That the widow may keep such part of the household furniture as she may think proper, at the valuation of the appraisers aforesaid, she securing the payment thereof to the executor or executors, administrator or administrators, or receipting therefor as part of her legacy or dower, as the case may be.

Executors, administrators, etc., to sell personal property.

Proviso, in favor of the widow.

Sec. 5. *And be it further enacted,* That the executor or executrices, administrator or administratrices, shall in all cases of sales of the property of the deceased, return a true and accurate statement of the same to the court or clerk's office as aforesaid; and the court shall allow the executors or executrices, administrators or administratrices, six per cent. on the amount of the estate by them settled, and such

In case of sales, to make a return to the clerk's office.

Compensation.

other charges thereon, as they may deem just and reasonable, to be paid out of the estate.

Courts of common pleas, power to call executors, administrators, etc., to account, etc.

Sec. 6. *And be it further enacted,* That the courts of common pleas in the respective counties, are hereby authorized to call executors or executrices, administrators or administratrices to account for, and touching the property of, the deceased, and upon hearing and due consideration thereof, to order and make just and equal distribution of what remaineth clear (after first allowing and deducting all just funeral and other charges or expenses, and what said court may deem sufficient for one year's support to the widow and children under full age, which may remain with her, as also all just debts) among the legal heirs of the deceased, according to law, and to compel such executor or executors, administrator or administrators, to observe and pay the same, by due course of law, saving to every person or persons supposing him or themselves aggrieved, their right of appeal.

Right of appeal saved to persons aggrieved.

Repealing clause.

Sec. 7. *And be it further enacted,* That all laws and parts of laws, contrary to the provisions of this act, are hereby repealed. This act shall take effect and be in force, from and after the first day of May next.

Commencement.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

CHAPTER XXXVII.

An act, making appropriations for the year one thousand eight hundred and four.

Be it enacted by the general assembly of the state of Ohio, That one thousand dollars shall be appropriated as a contingent fund, subject to the order of the governor, who shall make report of the disbursements thereof, to the next session of the legislature.

Contingent fund, subject to order of governor.

That there shall be paid out of the state treasury, on the order or warrant of the auditor of public accounts, to discharge the debts of the state and for the expenditure of the state, for the year one thousand eight hundred and four, not more than the following sums, viz:

Payments to be made out of state treasury.

To the governor, judges of the supreme court, presidents of the courts of common pleas, secretary, treasurer and auditor of public accounts, a sum not exceeding seven thousand three hundred and fifty dollars.

To Nathaniel Willis, for printing the laws and journals, and other printing done for the present general assembly of the state of Ohio, the amount of his account, agreeable to contract, to be settled by the auditor.

Continued. To the members and officers of the present general assembly, in addition to a sum already appropriated, a sum not exceeding five thousand dollars.

To George Renix, for stationery furnished the present general assembly, a sum not exceeding one hundred and twelve dollars ninety-two and one-half cents.

To the secretary of state, for distributing the laws and journals of the present general assembly throughout the different counties in this state, a sum not exceeding two hundred and fifty dollars.

To Adam Betz, for fire wood and candles, furnished the present general assembly, three dollars and twenty-five cents.

To the secretary of state, seven dollars, for stretching the map of the state.

To the auditor of public accounts, for postage, fourteen dollars and eighty-seven cents.

To the secretary of state, for the amount of his account for transporting books which belong to the state, from Cincinnati to Chillicothe, and also for receiving and transporting a box of books from the mouth of the Scioto river to Chillicothe, as directed by resolution, and also for two seals to be furnished the county of Muskingum, as directed by law.

Continued.

To James Wells, Samuel Carpenter and Henry Abrams, for appraising the college townships, the sum of thirty dollars each.

To the agent of the salt-works, the amount of his salary, as it shall become due.

To Robert Parish, fifty-seven dollars for fire wood furnished the present general assembly.

To John Carlisle, one dollar seventeen cents, for stationery furnished the present general assembly.

To David Abbot, seven dollars sixty cents, for postage paid on the duplicate of the tax bill for the county of Trumbull, for the year one thousand eight hundred and three, transmitted to the auditor by the mail.

To James Denny, for exploring the salt-lick township and for other purposes, forty-one dollars.

To the adjutant-general and brigade majors of the militia of this state, the amount of their yearly salaries, a sum not exceeding six hundred dollars.

Continued.

To the secretary of state, a sum not exceeding forty dollars, for stationery.

To the auditor of public accounts, a sum not exceeding twenty dollars, for stationery.

To Arthur St. Clair, late attorney-general, the sum of eighteen dollars and thirty-four cents.

To Nathaniel Willis, the sum of forty-one dollars, a balance due to him for printing a list of non-residents' lands for taxation, for the year one thousand eight hundred and three.

To William Ludlow, the sum of twenty-two

dollars, for services rendered in locating the Miami college township.

To Edward Sherlock, door-keeper, for six pounds of candles furnished for the use of the senate, one dollar and fifty cents.

To the auditor of public accounts, a sum not exceeding one hundred dollars, to defray the expenses of prosecuting delinquent collectors of taxes.

To the auditor of public accounts, a sum not exceeding one hundred and fifty dollars, to defray the expenses of procuring certified lists of the lands entered in the United States military district, and those entered in the refugee tract; as also, a list of all lands in this state, sold by the United States, prior to the thirtieth day of June, in the year one thousand eight hundred and two. The auditor is hereby required to issue warrants on the treasurer to the several persons herein named, to the amount specified; and where the sum is not mentioned, to the amount of their several accounts, on their producing satisfactory vouchers in support of the same, which vouchers, together with their respective accounts and receipts, the auditor shall lay before the next general assembly.

Auditor's
duty.

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ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

RESOLUTIONS.

Resolved, By the general assembly of the state of Ohio: That the governor be requested to forward to the speaker of the house of representatives of the United States, in congress assembled, a certified copy of the act, entitled, "An act declaring the assent of the general assembly of the state of Ohio, to an amendment proposed by the congress of the United States, in lieu of the third paragraph of the first section of the second article of the constitution of the United States."

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

December 30th, 1803.

Attest:

G. HOFFMAN,
Clerk to the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

Resolved, By the general assembly of the state of Ohio: That the measures taken by the government of the United States, to secure to the citizens the free and uncontrolled navigation of the Mississippi river, and to obtain the right to and the possession of the province of Louisiana, merit the approbation of this assembly.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

December 31st, 1803.

Attest:

G. HOFFMAN,
Clerk to the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

Resolved, By the general assembly of the state of Ohio: That the clerk of the senate and the clerk of the house of representatives, be and they are hereby directed to deposit in the office of state, all enrolled bills, as soon as they shall have passed both houses and shall have been signed by the speakers.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

January 17th, 1804.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk to the senate.

Resolved, By the senate and house of representatives: That the committee of ways and means, be instructed to contract with Nathaniel Willis, for such printing as may be directed upon the terms included in his proposals to said committee.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

January 17th, 1804.

Attest:

G. HOFFMAN,

Clerk of the house of representatives

THOMAS SCOTT,

Clerk of the senate.

Resolved, By the general assembly: That the joint committee of revisal and unfinished business, be instructed to report as soon as may be, what laws of a general nature are necessary to be enacted or revised at the present session; and that after such report being made, the two houses will, by joint resolution, determine what laws so reported as necessary, shall be taken up.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

January 17th, 1804.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

Resolved, By the senate and house of representatives: That fifty copies of every reported bill be printed for the use of the members, before the same shall be committed, unless the house in which a bill may originate, shall deem it unnecessary to print the same.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

January 17th, 1804.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

WHEREAS, the act of congress, entitled, "An act in addition to and in modification of, the propositions contained in the act, entitled, "An act to enable the people of the eastern division of the territory, 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," provides, that so much of that tract commonly called the Virginia military reservation, as will amount to one thirty-sixth part of the whole tract, shall be appropriated for the use of schools within the same, and to be selected by the legislature of the state of Ohio, out of the unlocated land in that tract, after the warrants issued from the state of Virginia, shall have been satisfied. And whereas there is no limitation of time for such warrants to be satisfied. Therefore,

Resolved, By the general assembly of the state of Ohio: That the senators of this state, in the congress of the United States, be instructed, and the representative from this state, in the congress of the United States, be requested to use their influence and endeavor to procure the passage of a law of the United States, limiting

the time for satisfying the warrants issued from the state of Virginia, as aforesaid, to a time not more than three years from the first day of January, one thousand eight hundred and four.

Resolved, That his excellency the governor, be requested to forward a copy of the above resolution to each of the senators and to the representative of this state, in the congress of the United States.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 1st, 1804.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

Resolved, By the general assembly of the state of Ohio: That the auditor of public accounts be directed to state forthwith to the legislature, whether any, and if any, what measures have been pursued by him, to enforce the payment of the several sums due to the state, from delinquent collectors.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 14th, 1804.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

Resolved, By the general assembly of the state of Ohio: That the auditor of this state is hereby authorized and required, to procure from the office of the treasury of the United States, a transcript of all entries or locations made since the fifth day of March, one thousand eight hundred, in the United States military district, and a list of all grants made to the Canadian refugees, their representatives or assigns, and also from the registers of the land officers in this state, lists of all lands disposed of by the United States, prior to the thirtieth day of June, one thousand eight hundred and two, which lies in the bounds or districts within this state, and the same to forward to the clerks of the different counties where said lands may lie, and the expense accruing in procuring the same, shall be paid by this state.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk to the senate.

Resolved, By the general assembly of the state of Ohio: That Nathaniel Willis, printer, be directed to publish and attach to each copy of the laws of the present general assembly, so much of the auditor's report of the seventh of December, one thousand eight hundred and three, as relates to the receipts and expenditures of public money.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

Resolved, By the general assembly of the state of Ohio: That the following persons be and they are hereby appointed commissioners, to lay out the following roads agreeably to the provisions of the act, appropriating part of the three per cent. granted for laying out, opening and making roads within this state, viz:

From Steubenville to Will's creek, Benjamin Hough, Esq

From Will's creek to Lancaster, David Reece, Esq.

From Zanesville to Franklinton, John Matthews, Esq.

From Chillicothe to the college township west of the Great Miami, James M'Clure, Esq.

From Lancaster to Chillicothe, James Denny, Esq.

From Chillicothe to Limestone, Israel Donaldson, Esq.

From Marietta to Chillicothe, Jehiel Gregory, Esq.

For the road in Trumbull county, Homer Hine, Esq.

From Chillicothe, by Cincinnati, to the west line of the state, Isaac Anderson, Esq.

From Cincinnati to Dayton, John Clark, Esq.

From Dayton to Franklin, Daniel C. Cooper, Esq.

From Gallipolis to Chillicothe, Samuel S. Spencer, Esq.

From Short creek to Dulcan Morrison's, Robert Caruthers, Esq.

From Chillicothe to Springfield, Simon Kenton, Esq.

For the road in Columbiana county, Lewis Kenney, Esq.

From Wheelen to Will's creek, Jeremiah Martin, Esq.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

February 18th, 1804.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

Resolved, By the general assembly of the state of Ohio: That the printer be and he is hereby directed, to print thirteen hundred copies of the laws of the present session, also three hundred and seventy-five copies of the journals of both houses, to be distributed as the legislature shall direct; and that he be directed to print five hundred copies of the militia law, by the tenth day of May next, and the same when printed, shall be distributed in the following manner, to-wit: The first division shall have one hundred and sixty-five copies; the second division shall have one hundred and ten copies; the third division shall have one hundred and ten copies, and the fourth division shall have one hundred and ten copies, which shall be sent to the majors general of the several divisions, and be by them distributed among the officers of each division. *Resolved also*, that when the said laws shall be printed, the secretary of state shall immediately transmit to the clerks of the courts of common pleas of the respective counties, the number of copies following, viz: To the clerk of the county of Trumbull, eighty copies; to the clerk of the county of Columbiana, forty copies; to the clerk of the county of Jefferson, one hundred and twenty copies; to

the clerk of the county of Belmont, eighty copies; to the clerk of the county of Washington, seventy-five copies; to the clerk of the county of Muskingum thirty copies; to the clerk of the county of Gallia, thirty copies; to the clerk of the county of Scioto, thirty copies; to the clerk of the county of Adams, one hundred copies; to the clerk of the county of Clermont, sixty-five copies; to the clerk of the county of Hamilton, one hundred and twenty-five copies; to the clerk of the county of Warren, seventy-five copies; to the clerk of the county of Green, forty copies; to the clerk of the county of Franklin, thirty copies; to the clerk of the county of Ross, one hundred and thirty-five copies; to the clerk of the county of Fairfield, eighty copies; to the clerk of the county of Butler, sixty-five copies; to the clerk of the county of Montgomery, forty copies; and also, such number of the journals of both houses, as will be in proportion to the number of the laws, one copy of each to be given to each member of the senate and house of representatives, and the balance to be distributed among the officers within the respective counties, agreeably to the directions of the associate judges of the court of common pleas. *Resolved also*, that the secretary of state be required to furnish the

following persons with the laws and journals of the present session: To the secretary of the United States, one copy of the laws only; to the governor, one copy; to the judges of the supreme court, the presidents of the court of common pleas, auditor of public accounts, state treasurer, secretary of state, and to the clerks of the general assembly, each one copy, to be conveyed to the clerk of the common pleas of the county in which they respectively reside, and shall also retain for himself, one copy: *Provided always*, that where there shall be no clerks appointed in any counties, the laws and journals as aforesaid, shall be left with one of the associate judges of the courts of common pleas. *And resolved also*, that the governor of this state be authorized to transmit to the executives of the several states, one copy of the laws of the present session.

ELIAS LANGHAM,

Speaker of the house of representatives.

NATH. MASSIE,

Speaker of the senate.

February 18th, 1804.

Attest:

G. HOFFMAN,

Clerk of the house of representatives.

THOMAS SCOTT,

Clerk of the senate.

Resolved, By the general assembly of the state of Ohio: That the secretary of state be authorized and required, as soon as may be, to send and receive from Daniel Symmes, Esq., and also from James Findlay, Esq., the receiver of public monies at Cincinnati, the copies of the laws of the United States, for the use of this state, now in their possession; also, to send for and receive a box of the laws of the United States, at the mouth of Scioto river; and also, that he request Arthur St. Clair, Esq., late governor of the territory, or such other person as may be in possession of them, to deliver to him two copies of the laws of the state of South Carolina, which by a resolution of the territorial legislature, were appropriated to their use, and that the expenses of procuring said laws shall be defrayed by the state.

ELIAS LANGHAM,
Speaker of the house of representatives.

DANIEL SYMMES,
Speaker pro tem. of the senate.

January 24th, 1804.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

Resolved, By the general assembly of the state of Ohio: That the persons hereinafter named, be and they are hereby appointed commissioners, agreeable to the provisions of an act, entitled, "An act establishing seats of justice," viz: For the county of Muskingum, John Guthrie, Sen., James Grubb and William M'Farland, which commissioners are authorized and empowered, to proceed to examine and select the most proper place for the seat of justice in said county, agreeably to the act before mentioned.

ELIAS LANGHAM,
Speaker of the house of representatives.

NATH. MASSIE,
Speaker of the senate.

January 27th, 1804.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

Resolved, By the general assembly of the state of Ohio: That the election of the major general and quartermaster general of the several divisions of the militia in this state, shall be conducted in the following manner: The senate will attend in the representatives' chamber, at three o'clock, this day, and being seated and a teller from each house being nominated by their respective speaker, the persons voted for as majors general and quartersmaster general shall be included in one ballot, with a designation of the several divisions for which they are designed; then the tellers shall collect and canvass the votes, beginning with the first division and proceeding in rotation as the divisions are numbered, and that if it shall appear that two or more persons have an equal number of votes, either for major general or quartermaster general, in any one division, then the legislature shall go into a second election, and the person having a majority shall be elected.

ELIAS LANGHAM,
Speaker of the house of representatives.

DANIEL SYMMES,
Speaker pro tem. of the senate.

Attest:

G. HOFFMAN,
Clerk of the house of representatives.

THOMAS SCOTT,
Clerk of the senate.

SECRETARY OF STATE'S OFFICE.

Chillicothe, Ohio.

I hereby certify, that the foregoing laws and resolutions of the general assembly of the state of Ohio, are correct copies of the rolls in my office.

Given under my hand, the nineteenth day of June, one thousand eight hundred and four and of the independence of this state the second.

WILLIAM CREIGHTON, JUN.,
Secretary of State.

*To the legislature }
of the state of Ohio. }*

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