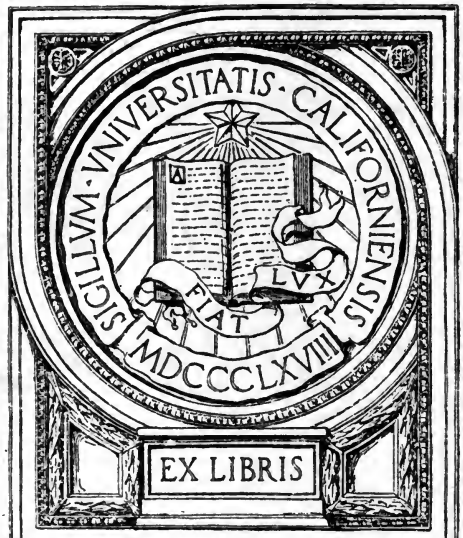

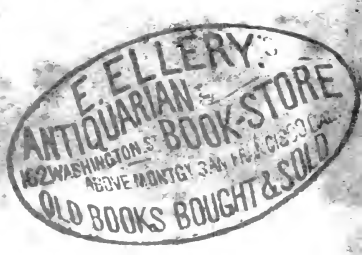

THE

LAND OWNER'S MANUAL.

CONTAINING

A SUMMARY OF

STATUTE REGULATIONS,

IN

NEW-YORK, OHIO, INDIANA, ILLINOIS, MICHIGAN, IOWA AND WISCONSIN,

CONCERNING

LAND TITLES, DEEDS, MORTGAGES, WILLS OF REAL ESTATE, DESCENTS, LAND TAXES, TAX SALES, REDEMPTIONS, LIMITATIONS, EXEMPTIONS, INTEREST OF MONEY AND USURY,

WITH

AN APPENDIX,

CONTAINING

THE CONSTITUTIONS OF THE SAID STATES.

BY BENJAMIN F. HALL,
COUNSELLOR AT LAW.

AUBURN, N.Y.:
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TESTIMONIALS.

The Publishers beg leave to submit the following extracts from communications relating to the Land Owner's Manual, and its adaptation to the exigencies of the times and the wants of the public:

FROM EX. GOV. WILLIAM H. SEWARD.

"I believe your work will be extensively useful, and think I cannot be mistaken in advising its publication under an expectation that it will be of much service to land owners and to the public."

FROM THE HON. ALFRED CONKLING, U. S. D. C.

"I cannot doubt that an accurate summary of the Statute regulations in the States northwest of the Ohio, concerning the execution, attestation, acknowledgment and recording of deeds, wills of real estate, descents, land taxes and redemptions, is a desideratum, and would be found highly convenient and useful to the profession, as well as to non-resident land owners."

FROM THE HON. MILLARD FILLMORE.

"Such a work is wanted not only by the legal profession of this State, but by many business men having commerce or dealings in the States noticed. Such a manual would furnish just the information which persons interested in western lands desire. It would also be valuable in each of the several States, from the Statutes of which the compilation is made, by furnishing to citizens of each a knowledge of the laws in the other States."

FROM THE HON. FREEBORN G. JEWETT, N. Y. S. C.

"I do not hesitate to express my opinion that a publication containing an accurate summary of the Statute regulations in Ohio, Indiana, Illinois, Michigan and Wisconsin, concerning conveyances, wills, land taxes and redemptions, cannot fail to be highly convenient and valuable, as well to the legal profession as to men having property or dealing in the said States."

FROM THE HON. JOSEPH L. RICHARDSON, FIRST JUDGE OF CAYUGA COUNTY.

"I am of opinion that the Land Owner's Manual will be found to be a work of prime necessity. I have through a long life of judicial experience felt the want of such a digest; and I think you will lay the community at large under great obligations by its publication."

FROM S. A. GOODWIN, ESQ., COUNSELLOR, &c.

"Your work evinces industry, research and ability, and will be convenient in the hands of professional gentlemen and others, as it furnishes a ready solution to many questions continually arising with those interested in land titles. It has moreover many points of interest to the antiquarian tastes of the general reader."

FROM THE HON. ABRAHAM GRIDLEY, N. Y. SENATE.

"I am satisfied that the Land Owner's Manual cannot fail to be of vast utility not only to emigrants but to every person interested in western lands. The documentary history of each State will be interesting to the public generally. I hope the manuscript may be put to press, and doubt not that its sale will be rapid and general. I recall many instances of perplexity and embarrassment whilst acting as County Clerk some twenty years ago, concerning the execution, attestation, and recording of foreign conveyances which such a book would have obviated. I would advise that it be condensed in size as far as practicable, so that it may not be so voluminous or expensive as to be beyond the command of every one who needs it."

FROM THE HON. JOHN PORTER.

"From a cursory examination of the sheets of your work I find evidence of your assiduity in collecting the necessary materials for such a publication; and of your judgment and skill in arranging them in a form convenient and useful for reference. Those seeking historical information upon subjects of which you treat, and others interested in the municipal regulations of New-York and the Western States, so far as relate to land titles, must feel under obligations to you for the ready means your book will afford of ascertaining those rules by which they must be governed in various transactions of business, as well as for the appropriate remarks with which you accompany elucidate and apply them."

FROM NELSON BEARDSLEY, ESQ., COUNSELLOR, &c.

"Having heretofore experienced inconvenience from the want of information now so readily obtained from your "Land Owner's Manual," I can more fully appreciate the value of your labors. The work is evidently the fruit of much re-

search, and cannot fail to commend itself to all who have business relations with the people of the States, of whose laws and statute regulations you treat in so lucid and practical a manner."

FROM THE HON. GEORGE RATHBUN.

"Your work I have no doubt will be found a convenient, useful and valuable book, not only to non-resident land owners, but to our citizens generally, comprising as it does much useful information upon a great variety of subjects."

FROM MICHAEL S. MYERS, ESQ., COUNSELLOR, &c.

"I concur in the opinions expressed in favor of your Land Owner's Manual. The scope and matter of the work must render it useful to the profession, and instructive to the general reader.

FROM GEO. W. FITCH, M. D, (IOWA.)

"If you can present the subject of land taxes in five or six States in a condensed work, so that it can be readily procured by the people at large, I think you will confer a favor upon the immense number of persons who are yearly purchasing lands at the west."

FROM JAMES H. BOSTWICK, ESQ., MAGISTRATE AND SURVEYOR.

"A guide to conveyancing for record in the western States is much wanted by magistrates in New-York. A reliable work of that kind, and which shall contain the regulations concerning taxes and the redemption of forfeited lands would supply a hiatus in the book market, and be of much service to the public. If you have the materials from which you can prepare a work of that kind, you will oblige me, as no doubt you will all Justices of the Peace, Commissioners, and Clerks of counties, by so doing.

FROM EBENEZER B. COBB, ESQ., CLERK OF CAYUGA COUNTY.

"I know of no book so much wanted by Clerks of Counties, as one which shall contain exact information concerning the signing, sealing, attestation, proof and acknowledgment and certificate of authentication of deeds and mortgages, executed in New-York, but designed for record in other States. The number of such conveyances annually executed and brought to Commissioners and Clerks of Counties to be certified, is immense, and the importance of a work containing the statute regulations of the State where they are to be read in evidence, or recorded, is commensurate with the number. I was, therefore, much gratified to learn that you were engaged in preparing a book containing the information so generally wanted. As such a work can hardly fail to be appreciated and purchased by a large proportion of the owners of western lands, residing in the middle and eastern States, I hope you will hasten its publication."

FROM THE HON. ERASTUS D. CULVER, M. C.

"The work you propose to publish will have great value to non-resident land-owners and tax-payers, as well as to the profession. If executed with fidelity, as no doubt it will be, it cannot fail of a favorable consideration by the public generally."

FROM THE HON. THOMAS CORWIN, U. S. SENATOR, AND THE HON. R. C. WINTHROP, M. C.

"The importance of a Statute Manual, that shall embrace precisely that kind of information which the immense number of non-resident land-owners and tax-payers in the north-western States desire, respecting their titles and taxes, cannot be questioned. We therefore concur in the views expressed by Mr. Culver, in his communication above."

PREFACE.

The want of a convenient summary of such of the statute regulations in the States northwest of the Ohio as relate to the execution, attestation, acknowledgment and recording of conveyances, the execution, attestation, probate and recording of wills of real estate, descents, land taxes, redemptions, limitations, exemptions, and the interest of money, together with the suggestions of friends owning land at the west, induced the preparation of the following work. In consideration of the growing importance of this fertile country, and its eligibility for agriculture and commerce, immense numbers of the inhabitants of the old States have, within the last ten years, become land owners and tax payers in the new, and being non-residents of the States in which their possessions were situated, have experienced much difficulty and embarrassment in the payment of their taxes, and in re-obtaining their title, in case the same had been forfeited by accident or neglect. As the Statutes at large of the new States have not been conveniently accessible to the majority of non-resident land owners, and as the legal profession in the eastern and middle States, who are often suspected of being au fait in such matters, have not generally supplied their libraries with books enabling them to advise in this behalf, a majority of such non-resident land owners have been left to acquire their information by an expensive journey to the west, or to rely upon the letter of a friend, little better informed, perhaps, than themselves. In view of these and other constantly recurring difficulties, the author had for some time anxiously looked for the appearance of a book from some quarter, containing the information so generally wanted; but discerning nothing indicative of such a result, he was induced to undertake the execution of one himself, in the hope that if it did not fully answer the public want, it would nevertheless be of some service, as well to the profession and conveyancers, as to such of his fellow citizens as have lands in, or commerce with the inhabitants of the States from whose statutes the material for the following pages was collected.

The mention of a foreign State or Territory naturally suggests an inquiry concerning so much of its history as relates to the title which may be acquired to its lands; and although it has not been the purpose of the author to spread upon these pages much historical incident, he has taken occasion to open each chapter with some interesting documentary matter, with incidental remarks, for the purpose of indicating generally the source whence the existing land titles in the several States were derived, in the hope of rendering the book more acceptable to the general reader. As they precede the political organization of the States, it was believed that they would be in place as an introduction to the organic and statute regulations concerning lands, and the tenures by which the same are now held.

As the early history of the country was long since written, it is unnecessary to observe that most of the facts embraced in the remarks which accompany the documents, are given on the authority of the eminent gentlemen referred to in the notes appended. Indeed, very little of originality is claimed for any portion of the work, as it professes to be for the most part only an epitome and arrangement of pre-existing matter, prepared with the hope and desire of placing it within the reach of those to whom it was not before conveniently accessible.

That embraced within the first chapter of this work was not within the compass of the original design, but was subsequently prepared at the suggestion of a gentleman of high judicial standing, to the end that persons residing at the west, and having commerce or dealing with the inhabitants of New-York, or owning lands therein, might, from this volume, derive the same information concerning the statutes of the latter State, as the remaining chapters profess to give of those in the States northwest of the Ohio. Many of the recent emigrants thereto from New-York yet retain their original possessions here, and are thereby concerned for their preservation, equally with those who are non-resident owners of lands at the west. It was therefore believed that the suggestion was entitled to consideration, and in view of the general usefulness of the Manual, that the matter relating to the documentary history and statute regulations of New-York should be inserted.

It will be seen that in preparing the chapter relating to Wisconsin, she was regarded as a State in anticipation of an approval by the people of the Constitution adopted in the Convention of Delegates, held at Madison, on the fourteenth day of December, eighteen hundred and forty-six. All the usual incipient measures had been taken for the ap-

proval of that instrument by Congress, and for her admission into the Union on the same footing with the original States; and as the rejection of her first Constitution was not apprehended, until after that part of the manuscript had gone to press, an apparent, although not an important misnomer, occurs in the chapter head. The rejection of that instrument leaves her to remain under a territorial organization, until another shall have been formed and ratified by the people.

As land titles are protected, and to some extent regulated, by the Constitution of every commonwealth, it has been deemed advisable to insert those of the States noticed, in an Appendix, with a reference thereto in the body of the work. Upon a careful examination, the reader will find that most of them contain important provisions concerning tenures and estates in land, that should be known to every land owner.

If it seem to the profession that there has been a departure from established forms of expression concerning tenures and estates in land, the apology therefor rests in the fact that this Manual was mainly designed for the use of land owners, most of whom are unlearned in legal phraseology, and to whom the expressions used were supposed to be more in accordance with those employed by themselves to express the ideas intended to be conveyed. The license taken, therefore, was not without the desire and design of good, however ill adapted may be the language employed for the attainment of such an end.

In consequence of the frequent and almost innumerable alterations in, and amendments and revisions of the Statutes of the new States, that have occurred within the last ten years, the procurement of the material for the following pages has been attended with some difficulty and delay. As authenticity is the main desideratum in such a work, much pains has been taken to render it reliable. That it will be found entirely free from imperfections the author will not venture to pretend; but that it will be found essentially faithful, he confidently believes. Executed as it has been during intervals of professional business, errors may have been overlooked that will render it obnoxious to criticism; yet if upon the whole, the Manual shall prevent a recurrence of any considerable proportion of the difficulties which it was designed to obviate, the aim and purpose of the author will have been answered.

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CHAPTER I.

THE STATE OF NEW-YORK.

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I. THE SOURCE OF TITLE TO LANDS IN NEW-YORK.

THE discovery and possession of lands on the American Continent, by Europeans acting under the authority of an existing government, constitute the original title under which the same are now held. That title was the exclusive power of acquiring the soil by extinguishing the Indian right of occupancy. [Johnson et al vs. McIntosh, 8 Wheaton, 548; 5 Condensed Reports, 515.]

All Land Titles in New-York are consequently derived from that remote but common source; and involve a very choice and interesting portion of the documentary history of the State.

The precise period when the first claim of title, grounded

on discovery, might have been made to her soil, rests mainly in conjecture; yet authors assert, with confidence, that five hundred years before Columbus entered the western ocean, it was visited by Danes and Normans, who pushed their way from Iceland to Greenland, and thence southwesterly "to a climate that was temperate, to a soil that was fruitful, and to a majestic river flowing south through magnificent highlands." So well has this been established, that it has come to be regarded as a well authenticated historical fact; and moreover, that even those early visitors were preceded by another race who were in possession of the country, and claiming the same as native proprietors.

This induces an inquiry concerning the claimants, which reaches back into an age whose records are forever lost to history.

Of those who have reconnoitered it, but few have returned laden with facts, others only with food for crazy conjecture. Some report the aborigines as descendants of the lost tribes of Israel; some that they are of Tartar origin; and others that they are indigenous to the continent. But until more evidence is adduced in support of the former position, and until the theory of multiform creations can be maintained in opposition to the record of Moses, both the former and latter opinions must be rejected. Such theories, it is true, are largely imposed on the credulity of the age; but as against the evidence that supports the second proposition, they cannot prevail.

It is admitted that orthographical inquirers have found words in the dialects of the tribes resembling those in the Hebrew, and which are uttered with similarity of intonation; and in the absence of better evidence, such facts excite a suspicion that the aborigines descended from Hebrew stock.

No well grounded conclusion, however, can be arrived at from such premises.

It is axiomatic that "that which is certain and unchangeable

prevails against that which is uncertain and changeable;" and it is believed that no language, dialect or tongue, spoken since the confusion at Babel, can be found, wherein there is not some remote resemblance in etymology, accent, or intonation, to some other language, dialect or tongue also spoken. Resemblances to the Greek or Celtic exist in the dialects of the tribes as striking as any which have been found to the Hebrew. Etymology is not reliable data. Neither is similarity of pronunciation safe criteria.

Never, since the great catastrophe upon the plains of Shinar, has there existed a spoken language which was uttered with sounds that could, in every vibration, be gathered by ears wholly unaided by custom or experience; and where no legible hyeroglyphics can be found, and no key obtained, except from intonations varying with every speaker, such a test is of doubtful accuracy. "Of all sources of information," says McKenney in his lectures, "by which the descent of nations can be traced, I consider the deductions of etymology the most uncertain. It is difficult, in such cases, to fix with accuracy the true sound of words; and it is well known that coincidences exist in many languages radically different from one another, and spoken by communities whose separation from any common stock precedes all historic monuments." To the high authority of that bureau officer, may be superadded the opinion of the celebrated John Ledyard, "that a foreigner's ear is too slow to catch, with accuracy, the guttural tones and inflections of an Indian's voice."

But "*the Ethiopian cannot change his skin, nor the leopard his spot.*" They are enduring monuments of ancestral identity—unfading testimonials of their race. They are facts—facts resting in the immutable laws of animal being; and consequently are of themselves a data far more reliable than any to be found in etymology or sounds.

The *Caucasians* were white, as have been all descendants of the parent stock. The *Ethiopians* were black, as

have been their descendants. And the *Asiatic Tartars* were red, as, according to the course of nature their descendants must have been. And as it is both credible and credited, that the whites of the present day were of Caucasian origin, and that the blacks were of Ethiopian, it is no less credible or probable that the red inhabitants of Tartary were the ancestors of the red men of America.

Other facts corroborate this opinion. Whilst the races of men have been unable to change their skin, they have also found it difficult to alter the contour of their skulls. The skulls of the several races are widely dissimilar, and yet those of the Tartar and Indian correspond.

And if manners and customs have any influence in determining the question, sufficient points of similitude between those of the Tartar and North American Indian have been discovered to exhaust the power of common arithmetic. An enumeration cannot be here attempted. But there is a similarity in their modes of obtaining subsistence, in their warfare, and domestic arrangements. Both are archers, both lead a wandering life, both domicil in huts, both have the same token of recognition, both have plaintive music, both are energetic and hardy, and both raise pyramids over the sepulchres of their dead. We assume, therefore, that Tartars preceded the Danes and Normans in the discovery and occupancy of America.

The Tartars, according to Josephus, sprung from Japheth, the third son of Noah, the navigator and survivor of the flood. By a reference to the sacred history of the century which succeeded that remarkable event, in which to avert the disaster of another deluge, the progeny of Noah begun the tower, until which event one language was alone spoken, it will be seen that they were not only confounded in language, "*that they might not understand one another*," but they were scattered abroad "*from thence, upon the face of all the earth.*"

Having found, upon the plains of Tartary, the parent stock of the original proprietors of our soil, the era and manner of their emigration, is the next inquiry.

The *era* is forever lost to chronology, but the *manner* may have been by land, but probably was by water, at *Behring's Straits.* McKenney thinks it "the more enlightened opinion," that there was formerly an isthmus, connecting the continents. If such were the case, they may have crossed dry shod to this country; and if the contrary be true, then less than fifty miles of navigation, by accident or design, brought them to our shores, where they have multiplied, and dwelt in numberless tribes, cantons and confederacies, to the present day.

The Alleghans appear in aboriginal history as the most ancient of the tribes of North America. Like their ancestors in Tartary, they were noble, valiant, and populous. They possessed considerable knowledge of agriculture and of the arts, of the policy of government, of implements of war, and fortifications for defence.*

The latter acquirements indicate the existence of an enemy sufficiently powerful, in their estimation, to jeopard their safety. That such an enemy was found in the Iroquois confederacy is now established by the concurrent testimony of tradition, and the line of fortifications along the Ohio Valley, Lake Erie, and in Western New-York.

The Alleghans were, doubtless, the mound builders of North America.† It is believed that they once occupied, a considerable portion of New-York.

According to Davies, they cultivated corn and apples in large quantities, and dwelt together in towns. Although they were more intelligent, and equally valiant, they were less hardy than the Iroquois, who succeeded them. They fortified their camp with earthen walls, as they moved from place to place, but were nevertheless besieged or driven

* N. Y. Historic So. Col., Vol. 2. † Schoolcraft's notes on the Iroquois, 1846.

from them by the Iroquois, who followed them from the Mississippi Valley to the St. Lawrence.*

Whether the Iroquois were an offshoot from the Alleghans, or were more recent descendants from the parent stock, is not known. The best opinions are, that they had long existed in the south, before they waged the exterminating war upon the Alleghans, which drove the latter up the valley of the Ohio, and caused the erection of the numberless earthen forts, as they receded from their pursuers.

"A series of old forts," says Schoolcraft, "anterior in age to the Iroquois power, extends along the shores of Lake Erie, and even as far east as the ancient Osco, which have striking points of identity with those in the valleys below, and are believed to have been erected by the same people."

The prevailing opinion among ethnological writers is, that the Alleghans were in existence, as a tribe or confederacy, long before the discovery of America by Columbus; and that they were the mound builders of whom so little has been known. In corroboration of this, much evidence may be derived from an old Fort in Highland county, Ohio, where there is reliable data of its abandonment before Columbus entered the western ocean; and of its erection, above six hundred years before;† also, Grave Creek mound, whose trenches were abandoned in 1308.

The ramparts at Marietta bear the same evidence. Fort Osco, near the beautiful village of Auburn, is no less "eloquent of antiquity."‡ As late as 1820, Macauley, the historian, counted the rings on a chesnut stump, standing in one of its moats, and another standing near it, and determined that one germinated prior to 1492, and the other in 1555.‡

Archaeological evidence and tradition concur in the fact that the Alleghans were a confederacy; that such confederacy fell in the twelfth or thirteenth century; and that they

* Gen. Harrison's Discourse. † N. Y. Ethnological Society, 1846.
‡ Macauley's History of New-York, vol. 2.

were finally subdued by the bolder and hardier Iroquois, who, with a few cantons of Algonquins, were in possession of the territory now embraced in New-York, at the period of the settlement of the New-Netherlands by the Dutch in 1614.*

The Iroquois were, therefore, successors to the Alleghans, and the predecessors of the early white settlers of New-York. Composed of six of the most powerful tribes, bound together in an honorable league, the Iroquois confederacy remained for a long period a tower of strength which has no parallel in history. Although they were inferior to their predecessors in knowledge of the arts, they were superior in government. They came together as independent tribes, and their confederacy was a perfect union. Each canton had its civil and military chieftain—the former to preside in council, the latter to marshal its warriors in the field. The former were termed sachems, or sages, and represented the several cantons in the Grand Council—the latter carried out the unanimous resolves of the sachems, and were disgraced by any disobedience of orders. In council, entire unanimity was requisite to a decision.† This gave importance and efficacy to the vote of every sachem.

Upon the matrons was conferred the power to decide when the war-club should be dropped and hostilities cease. This provision enabled a tribe to abandon a warfare, without compromiting its character for bravery.

The Onondagas were the parent tribe, out of which sprung the Mohawks, Oneidas, Cayugas, Senecas, and Tuscaroras, who, with their parent, constituted the Iroquois, or Six Nations.‡ The offshoots took place while the Onondagas were upon the Oswego river, where they had located themselves for some reason not now definitely understood. Requiring a large range for subsistence, they migrated from one region to another, as want of game in one place, and abundance in another, suggested. Their movements were

* Legislative Doc. 1846. † Clinton's Discourse. ‡ Schoolcraft.

up the Oswego river, and upon reaching Three River Point, a part went up the eastern fork, and pushed over the summit into the valley of the stream flowing east, and became the Mohawks.* Another portion went up the western fork, and upon reaching the outlet of Cayuga Lake, divided, and formed the Cayugas† on the east, and Senecas on the west.‡ When the Onondagas reached the hill country, now known as Onondaga, there went out another offshoot eastward, and became the Oneidas. The Tuscaroras sprung from the parent tribe, at a remote day, and went south, whence they were brought back by the Oneidas, by whose chieftains they were marshaled and protected in the war with the French, and subsequently on the side of the States in the Revolution.‖

The effect of this separation appears to have been a rapid increase in numbers, and afterwards the generation of disputes about territory. The Mohawks became quarrelsome, the Oneidas intemperate, the Onondagas overbearing, and the Cayugas and Senecas disposed to a wandering indolence. They often built forts and entrenchments for the protection of their women and children, while they were abroad in warfare, hunting, or fishing. The women cultivated patches of corn, and performed labor and drudgery about their wigwams. After that manner the Iroquois lived in New-York, prior to the seventeenth century, sometimes increasing, but generally decreasing, until the calamities of war, the ravages of pestilence, and the laws of vitality reduced and disorganized them.

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* Brant was of this tribe. † Logan was a Cayuga. ‡ Red Jacket was a Seneca.

‖ *Mingoes* is the self-designation of the Six Nations. The Dutch called them *Maquas*, and the Virginia Indians, *Massawomekes*. The French missionaries gave them the appellation of *Iroquois*, which has been the more popular term. Logan, Brant, and Red Jacket, were Mingo chiefs. Logan is believed to have been born at Osco, near Auburn, and that he went with his father to Shamokin, in Pennsylvania, where the latter, according to Loskiel, died in 1749, having previously been converted to the Catholic faith, by Jesuit missionaries. The Cayugas that had left New-York to hunt in that region, soon after went into the Ohio Valley, where Logan attained manhood and became a chieftain.

Besides these, there were within the present boundaries of the State several tribes of a race known as the Algonquins, or Algonquin-Lenapes, most of whom hunted and fished in the southern portion of the State.

Their rights to domain, however, as well as those of the Iroquois, have been, with a few exceptions, entirely extinguished.

II. POSSESSION OF A PORTION OF THE STATE BY IMMIGRANTS FROM HOLLAND.

History accredits JEAN DE VERRAZZANO, a Florentine in the service of France, as the earliest visitor to New-York, subsequent to the discovery of the continent by Columbus. It is said that he entered New-York bay in 1524, but departed after having obtained a supply of water.

The next white visitors were a crew of sailors engaged in the Dutch West India trade, who in 1598 put into the harbor of New-York, with a view of having a place of shelter during the winter months; and for which purpose they built two small forts, one on the North and one on the South River, to protect them against the attacks of the Indians.*

On the fourth day of September, 1609, Sir HENRY HUDSON anchored in the waters of "The Great North River of NEW-NETHERLAND. Discovering that the Bay was the entrance to what appeared to be an extensive river, Hudson despatched five of his crew to make a particular examination, who, in attempting to do so, were attacked by Indians, and one of

* Nieuw Nederlandt, gelegen aen de landen van America, tusschen de Engelshe Virginies en N. Engelandt, streckende van Zuydt Revier, gelegen op 38½ graeden, tot Cabo Malubaer, op de hoogste van 41½ graeden, is eerst bevaren door de Ingesetenen van desen Staat in den jaer 1598, en insonderheyt by die van den Groenlantsche Compaine, doch sonder vaste habitatie te maaken, als alleen tot een verblyff in de winter. Tot welcken eynde, aldaer twee fortjeens aen de Zuydt en Noordt Revieren tegens den aenloopden Wilden hebben geworpen. Rapport en advys over de gelegentheyt van Nieuw Nederlandt getrokken uyt de stukken en papieren by Commissie der Vergaderinge der XIX in dato 15 dec 1644. Hol. doc. ii. 363. [O'Callaghan's History of New-Netherland.]

their number killed by an arrow shot into his throat. The sailor killed, bore the name of John Coleman, and was buried at Sandy Hook, at a place ever since known as COLEMAN'S POINT.

On the eleventh, the Half Moon* stood up through the Narrows, and on the twelfth, Sir Henry began the exploration of the North River, in the hope of finding a north-west passage to China. After having ascended to a point near the present city of Albany, he returned to Hoboken, and thence to Holland, where he reported the magnificent country which his prowess had discovered.

We pause here to notice the location of the several Indian tribes about the Hudson River. Upon the upper waters were the Maquaas or Mohawks; below them were the Mahicanders or River Indians; and on East River were the Pequods, Wampanoags, Malowwacks, and other tribes of the Algonquin-Lenape family. The Delawares were mostly on the Jersey shore.

In 1610, another vessel was despatched to the New-Netherland with a cargo of merchandise, to be exchanged with the Indians for furs. Others soon followed, and returned laden with a profusion of that commodity.

The eligibility of New-York for commerce was readily apprehended by Europeans, and the same soon became the head quarters of the trade. Their establishments consisted of four houses, which were placed under the superintendence of one HENDRICK CORSTIAENSEN, who visited every Indian settlement in that vicinity, and thereby secured all the furs that the tribes were able to furnish.

In 1613, one Captain ARGAL, of Virginia, visited the Island of Manhattan, with a view, it is said, of looking after a grant of land which he had obtained there from the Virginia Company, soon after which he obliged Corstiaensen to submit himself and his charge to the Governor of Virginia, and to

* The vessel in which Hudson sailed.

agree to pay tribute, in token of his dependence on the English Crown.

As soon as the news of this event reached the merchants in Holland, measures were taken to obtain an exclusive right to trade at this and other points where trade had been opened through their efforts and enterprise. Whereupon, petitions were presented to the Assembly of Holland and West Friesland, praying that the States General be recommended to pass an ordinance conferring on those who had, or might thereafter discover new lands, the exclusive privilege of making six voyages thither. In compliance with this request, the following Octroy was passed:

III. OCTROY OF THE STATES GENERAL OF THE UNITED NETHERLANDS.

"*The States General of the United Netherlands:* To all those to whom these presents shall come, or who shall hear them read, Health! BE IT KNOWN, Whereas, We understand it would be honorable, serviceable, and profitable to this country, and for the promotion of its prosperity, as well as for the maintenance of sea-faring people, that the good Inhabitants should be excited and encouraged to employ and occupy themselves in the seeking out and discovery of Courses, Havens, Countries, and Places which have not, before now, been discovered or frequented; and having been informed by some traders that they intend, through God's merciful help, by diligence, trouble, danger, and expense, to employ themselves thereat, as they should expect to derive handsome profit therefrom, if it pleased Us to privilege, octroy and favor them, that they should alone resort and sail to, and frequent the Courses, Havens, Countries, and Places, by them newly found and discovered, for six voyages, in compensation for their outlays, troubles, and dangers: With interdiction to all, directly or indirectly to resort or sail to, or frequent the said Courses, Havens, Countries, or Places, before and sooner

than the first discoverers and finders thereof shall have completed the aforesaid six voyages:—

"We, therefore, having duly weighed the aforesaid matter, and finding, as herebefore stated, the aforesaid undertaking to be laudable, honorable, and serviceable to the prosperity of the United Provinces, and wishing that the trial should be free and common for all and every of the Inhabitants of this country, have, and do hereby, invite all and every of the Inhabitants of the United Netherlands to the aforesaid search, and, therefore, have granted and consented, grant and consent hereby that those who any new Courses, Havens, Countries, or Places, shall from now henceforward discover, they alone shall resort to the same or cause them to be frequented, for *four* voyages, without any other person having the power to sail, resort to, or frequent, directly or indirectly, from the United Provinces, the said newly found and discovered Courses, Havens, Countries, or Places, before the first finder and discoverer thereof shall himself have made, or cause to be made, *four* voyages, on pain of confiscation of the ships and goods with which he shall contrary hereto make the attempt, and a fine of Fifty Thousand Netherlands Ducats, to the profit of the aforesaid finder or discoverer. Well understanding that the finder, on completion of the first voyage, shall be holden, within fourteen days after his return from said voyage, to deliver to Us a pertinent report of the aforesaid discovery, that, his adventures thereupon being heard, it may be adjudged and declared by Us, according to circumstances and distance, within what time the aforesaid four voyages shall be fully completed.

"Provided that We, hereby, do not understand to prejudice or in any way diminish our former Grants and Concessions; And if within the same time, or in one year, one or more Companies find and discover such new Courses, Passages, Countries, Havens, or Places, the same shall enjoy together there Our Grant and Privileges; and in case any differences

or questions should arise concerning these, or happen otherwise to spring, or proceed from these Our Concessions, such shall be decided by Us, according to which each shall be bound to regulate himself. And in order that these Our Concessions shall be known equally by all, have We ordered that these be published and affixed at the accustomed places in the United Countries.

"Thus Given at the Assembly of the High and Mighty Lords States General, at Gravenhague, this 27th day of March, in the year 1614." [Holland Document.]

After this was promulgated, the merchants of Amsterdam fitted out five ships for the Netherland trade, which soon reached Manhattan, where a settlement was begun in 1614. On their return to Holland, they made a brilliant report of their discoveries, whereupon the interested parties repaired to the Hague and obtained of the States General the following special grant:

IV. SPECIAL GRANT OF PRIVILEGES BY THE STATES GENERAL.

"The States General of the United Netherlands to all to whom these presents shall come, greeting. WHEREAS Gerrit Jacob Witsen, former burgomaster of the city of Amsterdam, Jonas Witsen and Simon Morissen, owners of the ship called the Little Fox, (het vosje,) Captain Jan de Witt, master; Hans Hongers, Paul Pelgrom, and Lambrecht van Tweenhuysen, owners of the two ships called the Tiger and the Fortune, Captains Adriaen Block and Hendrick Corstiaensen, masters; Arnoudt van Lybergen, Wessel Schenck, Hans Claessen, and Barent Sweetsen, owners of the ship the Nightingale, (Nochtegael,) Capt. Thuys Volckertsen, merchant in the city of Amsterdam, master; and Pieter Clementsen Brouwer, Jan Clementsen Kies, and Cornelis Volkertsen, merchants in the city of Hoorn, owners of the ship the Fortune, Capt. Cornelis Jacobsen Mey, master, have united into

one company, and have shown to Us, by their petition, that after great expenses and damages, by loss of ships and other perils, during the present year, they, with the abovenamed five ships, have discovered certain new lands, situated in America, between New-France and Virginia, being the seacoasts between 40 and 45 degrees of latitude, and now called NEW NETHERLAND:—

"And whereas, they further represent that We did, in the month of March, publish, for the promotion and augmentation of commerce, a certain consent and grant, setting forth that whosoever should discover new havens, lands, places, or passages, should be permitted exclusively to visit and navigate the same for four voyages, without permitting any other person out of the United Netherlands to visit or frequent such newly discovered places, until the said discoverers shall have performed the four voyages, within the space of time prescribed to them for that purpose, under the penalties therein expressed, &c., and request that we should be pleased to accord to them due testimony of the aforesaid grant in the usually prescribed form:

"WHEREFORE, the premises having been considered, and We, in our Assembly, having communication of the pertinent report of the petitioners relative to the discoveries and finding of the said new countries between the abovenamed limits and degrees, and also of their adventures, have consented and granted, and by these presents do consent and grant, to the said petitioners, now united into one company, that they shall be permitted exclusively to visit and navigate the above described lands, situate in America, between New-France and Virginia, the seacoasts of which lie between the 40th and 45th degrees of latitude, and which are now named NEW NETHERLAND, as is to be seen on the figurative maps by them prepared; and to navigate, or cause to be navigated, the same for four voyages, within the period of three years, to commence from the first day of January, 1615, or sooner,

without it being permitted, directly or indirectly, to any one else to sail, to frequent, or navigate, out of the United Netherlands, those newly discovered lands, havens, or places, within the space of three years, as above, on penalty of the confiscation of the vessel and cargo, besides a fine of fifty thousand Netherlands ducats, for the benefit of said discoverers. Provided, however, that by these presents We do not intend to prejudice or diminish any of our former grants and concessions; and it is also our intention that if any disputes or differences should arise from these our concessions, that they shall be decided by ourselves.

"We, therefore, expressly command all governors, justices, officers, magistrates, and inhabitants, of the aforesaid United Netherlands, that they allow said company peacefully and quietly to enjoy the whole benefit of this our grant, and to interpose no difficulties or obstacles to the welfare of the same. Given at the Hague, under our seal, paraph, and the signature of our Secretary, on the 11th day of October, 1614." [Hol. Doc. 1. 39. Alb. Rec. xxiv. 167.]

Having thus secured the trade of this region, they proceeded to erect a trading house at De Riviere van den Vorst, at Albany, and also on the southern extremity of Manhattan Island. By means of these three several posts, the trade of both the Iroquois and Algonquin-Lenapes was ensured.

On the first of January, 1618, the grant to the New-Netherland Company expired by its own limitation. In the following spring the breaking up of the ice caused so much injury to the fort on Castle Island that the Company were obliged to abandon it and retire to the Norman's Kill, where their agents concluded a treaty of alliance and peace with the Iroquois.* By this the Dutch secured to themselves the

* The Dutch who settled New-Netherland, now New-York, in 1609, entered into an alliance with the Five Nations, which continued without any breach on either side, till the English gained this country. The Norman's Kill derives its present name from Andries Bratt, who was surnamed "De Noorman," or Northman, having been a native, it is said, of Denmark. Colden's Hist. of the Five Nations, 33.

Indian trade, and the Iroquois the means of maintaining ascendancy over all other tribes of savages in North America.

In June, 1621, the Dutch West India Company was chartered and placed under the management of Lords Directors; who, two years after, sent hither a command to take possession of the settlement at New-Netherland. Its government was confided to a council consisting of PIETER BYLVELT, JACOB ELBERTSEN WISSINK, JAN JANSEN BROUWER, SYMEN DERCKSEN POS and REYNERT HARMENSSEN, who were invested with supreme executive and legislative authority over the colony. Although claiming the preemption of the soil, the rights of the Indians to the possession thereof remained unextinguished. The Dutch, therefore, occupied Manhattan Island only by sufferance. But as a permanent settlement was contemplated, it became necessary to take some order upon the subject. At length a purchase of the Island, estimated to contain twenty-two thousand acres, was effected, at the price of sixty guilders, or twenty-four dollars.

This event occurred in 1626; and concurrently therewith Staten Island, and some other places in that vicinity, were purchased by the Dutch General and Council, who thereupon erected a block house and palisade at the southern extremity of Manhattan Island, which received the appellation of Fort Amsterdam, and became the seat of government and capital of New-Netherland. The next document affecting the title to lands in New-York, is the grant of the West India Company.

V. FREEDOMS AND EXEMPTIONS GRANTED BY THE ASSEMBLY OF THE XIX. OF THE PRIVILEGED WEST INDIA COMPANY, TO THOSE PLANTING COLONIES IN NEW-NETHERLAND, IN 1629.

"I. Such members of the said company as may be inclined to settle any colonie in New Netherland, shall be permitted to send in the ships of this company going thither, three or four persons to inspect the situation of the country, provided that they, with the officers and ship's company, swear to the articles, so far as they relate to them, and pay for provisions and for passage, going and coming, six stuyvers per diem; and such as desire to eat in the cabin, twelve stuyvers, and to be subordinate and give assistance like others, in cases offensive and defensive; and if any ships be taken from the enemy, they shall receive, pro rata, their proportions with the ship's company, each according to his quality; that is to say, the colonists eating out of the cabin shall be rated with the sailors, and those who eat in the cabin with those of the company's men who eat at table and receive the lowest wages.

"II. Though, in this respect, shall be preferred such persons as have first appeared and desired the same from the company.

"III. All such shall be acknowledged Patroons of New Netherland who shall, within the space of four years next after they have given notice to any of the Chambers of the Company here, or to the Commander or Council there, undertake to plant a colonie there of fifty souls, upwards of fifteen years old; one fourth part within one year, and within three years after the sending of the first, making together four years, the remainder, to the full number of fifty persons, to be shipped from hence, on pain, in case of willful neglect, of being deprived of the privileges obtained; but it is to be observed that the company reserve the island of the Manhattes to themselves.

"IV. They shall, from the time they make known the situation of the places where they propose to settle colonies, have the preference to all others of the absolute property of such lands as they have there chosen; but in case the situation should not afterwards please them, or that they should have been mistaken as to the quality of the land, they may, after remonstrating concerning the same to the Commander and Council there, be at liberty to choose another place.

"V. The Patroons, by virtue of their power, shall and may be permitted, at such places as they shall settle their colonies, to extend their limits four miles* along the shore, that is, on one side of a navigable river, or two miles† on each side of a river, and so far into the country as the situation of the occupiers will permit; provided and conditioned that the company keep to themselves the lands lying and remaining between the limits of colonies, to dispose thereof, when and at such time as they shall think proper, in such manner that no person shall be allowed to come within seven or eight miles‡ of them without their consent, unless the situation of the land thereabout were such, that the Commander and Council, for good reasons, should order otherwise; always observing that the first occupiers are not to be prejudiced in the right they have obtained, other than, unless the service of the Company should require it, for the building of fortifications, or something of that sort; remaining, moreover, the command of each bay, river, or island, of the first settled colonie, under the supreme jurisdiction of their High Mightinesses the States General, and the Company; but that on the next colonies being settled on the same river or island, they may, in conjunction with the first, appoint one or more council, in order to consider what may be necessary for the prosperity of the colonies on the said river and island.

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* Equal to sixteen English miles. † Or eight English miles.
‡ Thirty-two English miles.

"VI. They shall forever possess and enjoy all the lands lying within the aforesaid limits, together with the fruits, rights, minerals, rivers, and fountains thereof; as also the chief command and lower jurisdictions, fishing, fowling, and grinding, to the exclusion of all others, to be holden from the Company as a perpetual inheritance, without it ever devolving again to the Company, and in case it should devolve, to be redeemed and repossessed with twenty guilders per colonie, to be paid to this Company at the Chamber here, or to their commander there, within a year and six weeks after the same occurs, each at the Chamber where he originally sailed from; and further, no person or persons whatsoever shall be privileged to fish and hunt but the Patroons and such as they shall permit; and in case any one should in time prosper so much as to found one or more cities, he shall have power and authority to establish officers and magistrates there, and to make use of the title of his colonie, according to his pleasure and to the quality of the persons.

"VII. There shall likewise be granted to all Patroons who shall desire the same, venia testandi, or liberty to dispose of their aforesaid heritage, by testament.

"VIII. The Patroons may, if they think proper, make use of all lands, rivers and woods, lying contiguous to them, for and during so long a time as this Company shall grant them to other patroons or particulars.

"IX. Those who shall send persons over to settle colonies shall furnish them with proper instructions, in order that they may be ruled and governed conformably to the rule of government made, or to be made, by the Assembly of the Nineteen, as well in the political as in the judicial government; which they shall be obliged first to lay before the directors of the respective colleges.

"X. The Patroons and Colonists shall be privileged to send their people and effects thither, in ships belonging to the Company, provided they take the oath, and pay to the

Company for bringing over the people as mentioned in the first article; and for freight of the goods five per cent. ready money, to be reckoned on the prime cost of the goods here; in which is, however, not to be included such creatures and other implements as are necessary for the cultivation and improvement of the lands, which the Company are to carry over without any reward, if there is room in their ships. But the Patroons shall, at their own expense, provide and make places for them, together with every thing necessary for the support of the creatures.

"XI. In case it should not suit the Company to send any ships, or in those going there should be no room, then the said Patroons, after having communicated their intentions, and after having obtained consent from the Company in writing, may send their own ships or vessels thither: provided, that in going or coming they go not out of their ordinary course; giving security to the Company for the same, and taking on board an assistant, to be victualed by the Patroons, and paid his monthly wages by the Company; on pain, for doing the contrary, of forfeiting all the right and property they have obtained to the colonie.

"XII. Inasmuch as it is intended to people the island of the Manhattes first, all fruits and wares that are produced on the lands situate on the North River, and lying thereabout, shall, for the present, be brought there before they may be sent elsewhere: excepting such as are from their nature unnecessary there, or such as cannot, without great loss to the owner thereof, be brought there; in which case the owners thereof shall be obliged to give timely notice in writing of the difficulty attending the same to the Company here, or the commander and Council there, that the same may be remedied as the necessity thereof shall be found to require.

"XIII. All the Patroons of colonies in New Netherland, and of colonies on the island of Manhattes, shall be at liber-

ty to sail and traffic all along the coast from Florida to Terra Neuf, provided that they do again return with all such goods as they shall get in trade to the island of Manhattes, and pay five per cent. for recognition to the Company, in order, if possible, that after the necessary inventory of the goods shipped be taken, the same may be sent hither. And if it should so happen that they could not return, by contrary streams or otherwise, they shall, in such case, not be permitted to bring such goods to any other place but to these dominions, in order that under the inspection of the directors of the place where they may arrive they may be unladen, an inventory thereof made, and the aforesaid recognition of five per cent. paid to the Company here, on pain, if they do the contrary, of the forfeiture of their goods so trafficed for, or the real value thereof.

"XIV. In case the ships of the Patroons, in going to, or coming from, or sailing on the coast from Florida to Terra Neuf, and no further, without our grant, should overpower any of the prizes of the enemy, they shall be obliged to bring, or cause to be brought, such prize to the college of the place from whence they sailed out, in order to be rewarded by them; the Company shall keep the one-third part thereof, and the remaining two-thirds shall belong to them, in consideration of the cost and risk they have been at, all according to the orders of the Company.

"XV. It shall be also free for the aforesaid Patroons to traffic and trade all along the coast of New Netherland and places circumjacent, with such goods as are consumed there, and receive in return for them, all sorts of merchandise that may be had there, except beavers, otters, minks, and all sorts of peltry, which trade the company reserve to themselves. But the same shall be permitted at such places where the company have no factories, conditioned that such traders shall be obliged to bring all the peltry they can procure to the island of Manhattes, in case it may be, at any rate, prac-

ticable, and there deliver to the Director, to be by him shipped hither with the ships and goods; or, if they should come here, without going there, then to give notice thereof to the company, that a proper account thereof may be taken, in order that they may pay to the company one guilder for each merchantable beaver and otter skin; the property, risk, and all other charges, remaining on account of the Patroons, or owners.

"XVI. All coarse wares that the colonists of the Patroons there shall consume, such as pitch, tar, weed-ashes, wood, grain, fish, salt, hearthstone, and such like things, shall be brought over in the company's ships, at the rate of eighteen guilders ($7 20) per last; four thousand weight to be accounted a last, and the company's ship's crew shall be obliged to wheel and bring the salt on board, whereof ten lasts make a hundred. And in case of the want of ships, or room in the ships, they may order it over at their own cost, in ships of their own, and enjoy in these dominions such liberties and benefits as the company have granted; but in either case they shall be obliged to pay, over and above the recognition of five per cent., eighteen guilders for each hundred of salt that is carried over in the company's ships.

"XVII. For all wares which are not mentioned in the foregoing article, and which are not carried by the last, there shall be paid one dollar for each hundred pounds weight; and for wines, brandies, verjuice, and vinegar, there shall be paid eighteen guilders per cask.

"XVIII. The company promises the colonists of the Patroons, that they shall be free from customs, taxes, excise, imposts, or any other contributions, for the space of ten years; and after the expiration of the said ten years at the highest, such customs as the goods are taxable with here for the present.

"XIX. They will not take from the service of the Patroons any of their colonists, either man or woman, son or daugh-

ter, man-servant or maid-servant; and though any of them should desire the same, they will not receive them, much less permit them to leave their Patroons, and enter into the service of another, unless on consent obtained from their Patroons in writing; and this for and during so many years as they are bound to their Patroons; after the expiration whereof, it shall be in the power of the Patroons to send hither all such colonists as will not continue in their service, and until then shall not enjoy their liberty. And all such colonists as shall leave the service of his Patroon, and enter into the service of another, or shall, contrary to his contract, leave his service; we promise to do every thing in our power to apprehend and deliver the same into the hands of his Patroon, or attorney, that he may be proceeded against, according to the customs of this country, as occasion may require.

"XX. From all judgments given by the courts of the Patroons for upwards of fifty guilders, ($20,) there may be an appeal to the company's commander and council in New Netherland.

"XXI. In regard to such private persons as on their own account, or others in the service of their masters here, (not enjoying the same privileges as the Patroons,) shall be inclined to go thither and settle, they shall, with the approbation of the Director and Council there, be at liberty to take up as much land, and take possession thereof, as they shall be able properly to improve, and shall enjoy the same in full property either for themselves or masters.

"XXII. They shall have free liberty of hunting and fowling, as well by water as by land, generally, and in public and private woods and rivers, about their colonies, according to the orders of the Director and Council.

"XXIII. Whosoever, whether colonists of Patroons for their patroons, or free persons for themselves, or other particulars for their masters, shall discover any shores, bays, or other fit places for erecting fisheries, or the making of salt

ponds, they may take possession thereof, and begin to work on them in their own absolute property, to the exclusion of all others. And it is consented to that the Patroons of colonists may send ships along the coast of New Netherland, on the cod fishery, and with the fish they catch to trade to Italy, or other neutral countries, paying in such cases to the company for recognition, six guilders ($2 40) per last; and if they should come with their lading hither, they shall be at liberty to proceed to Italy, though they shall not, under pretext of this consent, or from the company, carry any goods there, on pain of arbitrary punishment; and it remaining in the breast of the company to put a supercargo on board each ship, as in the eleventh article.

"XXIV. In case any of the colonists should, by his industry and diligence, discover any minerals, precious stones, crystals, marbles, or such like, or any pearl fishery, the same shall be and remain the property of the Patroon or Patroons of such colony; giving and ordering the discoverer such premium as the Patroon shall beforehand have stipulated with such colonist by contract. And the Patroons shall be exempt from all recognition to the company for the term of eight years, and pay only for freight, to bring them over, two per cent., and after the expiration of the aforesaid eight years, for recognition and freight, the one-eighth part of what the same may be worth.

"XXV. The company will take all the colonists, as well free as those that are in service, under their protection, and the same against all outlandish and inlandish wars and powers, with the forces they have there, as much as lies in their power, defend.

"XXVI. Whosoever shall settle any colonie out of the limits of the Manhattes Island, shall be obliged to satisfy the Indians for the land they shall settle upon, and they may extend or enlarge the limits of their colonies if they settle a proportionate number of colonists thereon.

"XXVII. The Patroons and colonists shall in particular, and in the speediest manner, endeavor to find out ways and means whereby they may support a minister and schoolmaster, that thus the service of God and zeal for religion may not grow cool, and be neglected among them; and that they do, for the first, procure a comforter of the sick there.

"XXVIII. The colonies that shall happen to lie on the respective rivers or islands (that is to say, each river or island for itself) shall be at liberty to appoint a deputy, who shall give information to the commander and council of that Western quarter, of all things relating to his colonie, and who are to further matters relating thereto, of which deputies there shall be one altered, or changed, in every two years; and all colonies shall be obliged, at least once in every twelve months, to make exact report of their colonie and lands thereabout, to the commander and council there, in order to be transmitted hither.

"XXIX. The colonists shall not be permitted to make any woollen, linen, or cotton cloth, nor weave any other stuffs there, on pain of being banished, and as perjurers to be arbitrarily punished.

"XXX. The company will use their endeavors to supply the colonists with as many blacks as they conveniently can, on the conditions hereafter to be made; in such manner, however, that they shall not be bound to do it for a longer time than they shall think proper.

"XXXI. The company promises to finish the fort on the island of the Manhattes, and to put it in a posture of defence without delay." [Holland Documents, Vol. 2: 98,99.]

Under this grant the feudal tenures of Europe were transferred to our soil. "Colonies," in the sense in which the term is used in the above grant, were but another name for "lordships" and "seigneuries," which the French were cotemporaneously establishing in Canada, where the appendages of high and low jurisdiction, mutation fines, mo-

nopolies, water courses, hunting, fishing, fowling and grinding, now existing in the charter of several patroons, form a part of the civil law of the country.

VI. THE PATROONS' PURCHASES, AND THE RATIFICATION THEREOF.

It appears from the accredited history of that day,* that upon the publication of the grant just above cited, it was found that several of the Directors of the West India Company had individually put themselves in a condition to secure a share of the privileges and advantages which that document held out to capitalists. It is alledged that seven days before it was published, the agents of SAMUEL GOODYN and SAMUEL BLOEMMART bought from the native proprietors the right of possession of an immense tract of land on what was then called South River Bay, and that their purchase was ratified at Fort Amsterdam, the following year.

In the spring of 1630, the Sannahagog tract, so called, was purchased of the natives by the agents of KILIAN VAN RENSSELAER,† another Director of the West India Company. This purchase was situated on the west side of the North River, extending from Beeren Island to Smacx Island, and being "two days' journie in breadth."

Soon after the Sannahagog purchase, the same Director purchased the lands lying north and south of Fort Orange, and extending to Moenimines Castle, at the mouth of the Mohawk; and also a tract on the east side of the river, from opposite Castle Island to a point facing Fort Orange. These several conveyances are said to have been ratified by the

* O'Callaghan.

† Kilian Van Rensselaer was a merchant in Amsterdam, and one of the first Patroons in the State. He was the thirteenth descendant from HENRY WOLTERS VAN RENSSELAER. His first wife was Hellegonda Van Bylet, and his second was Anna Van Wely. Johannes, the eldest son by the first wife, succeeded his father as Patroon; and Jeremias, Jan Baptiste, and Rykert, sons by the second wife, in succession were Directors of "the colonie." [See Holland Documents in the Secretary of State's Office, at Albany, for the Patents.]

Director General and Council of New-Netherland, who sealed their ratification on the same day that the Charter of 1629 was proclaimed at Fort Amsterdam.* The intervening tract was purchased by Van Rensselaer in 1637, in exchange for goods and trinkets.

The several purchases embrace a tract forty-eight miles long and twenty-four broad, and estimated to contain over seven hundred thousand acres of land. The tract is now embraced within the counties of Albany, Rensselaer, and Columbia.†

It is believed that the next purchase was made by another Director named MICHAEL PAAUN. His tract was situate on the east side of the river Mauritius, and included some part of Staten Island, and land on the Jersey shore.

The colonies, at first, increased in population but slowly; yet, as it was soon established "that children could be raised in New-Netherland," and as the charter of 1629 provided that every colony should, within four years after its establishment, contain at least fifty persons over fifteen years of age, that condition was complied with. They remained for a number of years, however, a commercial rather than an agricultural possession of the West India Company.

The early settlers upon the colonial grants were sent

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* O'Callaghan.

† Copies of these Deeds are in the Book of Patents GG., 13, 14, 15, 16, 23, 24, 25, 26, and also among the Holland Documents. Those who have studied these Deeds, say, that much confusion exists concerning land marks and dates. It is said that when application was subsequently made to the Duke of York, in 1678, for a warrant to erect the colonie into a manor, the parties interested experienced great trouble from the confusion. As these grants were subsequently confirmed by the Duke of York, and reserved to the grantees in the Constitution of 1777, they have remained unimpaired, and the land suffered to descend to the heirs of the original Patroon. The tenants upon this, as well as other manors in the State, have become dissatisfied with the tenure and the exactions contained in their leases, and, at times, have resisted officers in the collection of rent. Although the Legislature has been repeatedly memorialized to relieve the difficulty complained of, no remedy has yet been devised or found.

hither by the patroons, who soon after furnished the tenants with stock and farming utensils necessary for a beginning, and in a few instances, comfortable farm-houses were erected for their comfort and convenience.

In 1645, THOMAS FFARRINGTON, JOHN TOWNSEND, WILLIAM LAWRENCE, ROBERT FURMAN, and others, made a purchase of the natives, and obtained a patent for sixteen thousand acres of land, to the east of Mespath, and the following year two other grants were made—one, of a large tract about Katskill, to Cornelis Van Slyck, of "Breuckelen,"*

* See Book GG of Dutch Patents, 157, translation 363. As a specimen of these documents, this grant is given entire as follows:

"WE, Willem Kieft, Director-general, and council, on behalf of the High and Mighty Lords States General of the United Netherlands, His Highness of Orange, and the noble Lords Directors of the Privileged West India Company, residing in New Netherland: To all who shall see or hear these presents read, Health. Whereas Cornelis Antonissen, [Van Slyck] of Breuckelen, hath appeared before Us, and with his associates requested permission to settle in free possession the land of Katskill lying on the River Mauritius, there to plant with his associates a Colonie, which he hath promised to do, according to the freedoms and exemptions of New Netherland: WE, therefore, considering the great service which the aforesaid Cornelis Antonissen hath conferred on this country, as well in the making of peace as in the ransoming of prisoners, and it being proper that such notorious services should not remain unacknowledged, We have, as Director and Council, conceded and granted to the aforesaid Cornelis Antonissen, the above-mentioned land of the Katskill, to plant there a Colonie, within the time therefor enacted, and in the order appointed, or to be appointed, by the Noble Lords Majors. Wherefore, WE, in the quality aforesaid, deed and transport in a true, free, and perpetual possession, to the said Cornelis Antonissen, the aforesaid lands of the Katskill, giving him full power, authority, and special command, to enter on, cultivate, and make use of the said lands in the same manner as he should conclude to do with his other patrimonial estate, without our in any manner, in quality aforesaid, having, reserving, or retaining thereon any part, action, or authority in the least, but as regards the same, desisting from all henceforth and forever; promising to maintain this transport firmly, inviolably, and irrevokably; to perform and to fulfil every part thereof under the penalty of answering therefor according to law, without art or guile. This is subscribed, and with our Seal in red wax, fully and perfectly confirmed. Done in Fort Amsterdam, in New Netherland, this 22d of August, of the year of our Lord and Savior one thousand six hundred six and forty.

[Signed,] "WILLEM KIEFT.

"By order of the noble Director-general and council of N. N.

"CORNELIS VAN TIENHOVEN, Secretary."

and the other of a large tract on the east side of the Hudson river, about sixteen miles above New-Amsterdam.†

As years rolled apace, several other valuable and extensive tracts were in like manner purchased of the natives, and patents therefor obtained of the government, by sundry persons of wealth, who, in example of their predecessors, reduced the same into colonies. Under these grants immense tracts of land were let, and the same are yet held under perpetual leases, containing quarter sale reservations and preemptions, by tenants who regard the conditions as oppressive.

Manorial possessions in our country are generally deemed prejudicial to agriculture, and as innovations upon the republican system.

In the course of events, the Dutch became involved in difficulty concerning colonization, which resulted in a surrender of their possessions here to the English.

VII. CAPITULATION TO THE ENGLISH AT THE GOVERNOR'S BOWERY, IN NEW-AMSTERDAM, AUGUST 27, 1664.

"I. We consent that the States General, or the *West India* Company, shall freely injoy all Farms and Houses (except such as are in the forts) and that within six months, they shall have free Liberty to transport all such Arms and Ammunition, as now does belong to them, or else they shall be paid for them.

"II. All Publique Houses shall continue for the Uses which they are for.

"III. All People shall still continue free Denizens, and shall enjoy their Lands, Houses, Goods, wheresoever they are within this Country, and dispose of them as they please.

"IV. If any Inhabitant have a Mind to remove himself, he shall have a Year and six Weeks from this day, to remove himself, Wife, Children, Servants, Goods, and to dispose of his Lands here.

† Book of Patents, 1: 56.

"V. If any Officer of State, or Publique Minister of State, have a Mind to go for *England*, they shall be transported Fraught free, in his Majesty's Frigotts, when these Frigotts shall return thither.

"VI. It is consented to, that any People may freely come from the *Netherlands*, and plant in this Colony, and that *Dutch* Vessels may freely come hither, and any of the *Dutch* may freely return home, or send any Sort of Merchandize home, in Vessels of their own Country.

"VII. All Ships from the *Netherlands*, or any other Place, and Goods therein, shall be received here, and sent hence, after the manner which formerly they were, before our coming hither, for six Months next ensuing.

"VIII. The *Dutch* here shall enjoy the Liberty of their Consciences in divine Worship and Church Discipline.

"IX. No *Dutchman* here, or *Dutch* Ship here, shall upon any occasion, be pressed to serve in War against any Nation whatsoever.

"X. That the Townsmen of the *Manhattans*, shall not have any Soldiers quartered upon them, without being satisfied and paid for them by their Officers, and that at this present, if the Fort be not capable of lodging all the Soldiers, then the Burgomasters, by his Officers, shall appoint some Houses capable to receive them.

"XI. The *Dutch* here shall enjoy their own Customs concerning their Inheritances.

"XII. All Publique Writings and Records, which concern the Inheritances of any People, or the Reglement of the Church or Poor, or Orphans, shall be carefully kept by those in whose Hands now they are, and such Writings as particularly concern the States General, may at any Time be sent to them.

"XIII. No Judgment that has passed any Judicature here, shall be called in Question, but if any conceive that he hath not had Justice done him, if he apply himself to the States

General, the other Party shall be bound to answer for the supposed Injury.

"XIV. If any *Dutch*, living here, shall at any Time desire to travaile or traffique into *England*, or any Place, or Plantation, in Obedience to his Majesty of *England*, or with the *Indians*, he shall have (upon his Request to the Governor) a Certificate that he is a free Denizen of this Place, and Liberty to do so.

"XV. If it do appeare, that there is a publique Engagement of Debt, by the Town of the *Manhattoes*, and a Way agreed on for the satisfying of that Engagement, it is agreed, that the same Way proposed shall go on, and that the Engagement shall be satisfied.

"XVI. All inferior Civil Officers and Magistrates, shall continue as now they are, (if they please) till the customary Time of new Elections, and then new ones to be chosen by themselves, provided that such new chosen Magistrates shall take the Oath of Allegiance to his Majesty of *England*, before they enter upon their Office.

"XVII. All Differences of Contracts and Bargains made before this Day, by any in this Country, shall be determined according to the Manner of the *Dutch*.

"XVIII. If it do appeare, that the *West-India* Company of *Amsterdam*, do really owe any Sums of Money to any Person here, it is agreed that Recognition, and other Duties payable by Ships going for the *Netherlands*, be continued for six Months longer.

"XIX. The Officers Military, and Soldiers, shall march out with their Arms, Drums beating, and Colours flying, and lighted Matches; and if any of them will plant, they shall have fifty Acres of Land set out for them; if any of them will serve as Servants, they shall continue with all Safety, and become free Denizens afterwards.

"XX. If at any Time hereafter, the King of *Great Britain*, and the States of the *Netherland*, do agree that this

Place and Country be re-delivered into the Hands of the said States, whensoever his Majestie will send his Commands to re-deliver it, it shall immediately be done.

"XXI. That the Town of *Manhattans* shall choose Deputyes, and those Deputyes shall have free Voyces in all publique Affairs, as much as any other Deputyes.

"XXII. Those who have any Property in any Houses in the Fort of *Aurania*, shall, (if they please) slight the Fortifications there, and then enjoy all their Houses, as all People do where there is no Fort.

"XXIII. If there be any Soldiers that will go into *Holland*, and if the Company of *West-India* in *Amsterdam*, or any private persons here, will transport them into *Holland*, then they shall have a safe Passport from Colonel *Richard Nicholls*, Deputy-Governor under his Royal Highness, and the other Commissioners, to defend the Ships that shall transport such Soldiers, and all the Goods in them, from any Surprizal or Acts of Hostility, to be done by any of his Majestie's Ships or Subjects. That the Copies of the King's Grant to his Royal Highness, and the Copy of his Royal Highness's Commission to Colonel *Richard Nicholls*, testified by two Commissioners more, and Mr. *Winthrop*, to be true Copies, shall be delivered to the honourable Mr. *Stuyvesant*, the present Governor, on *Monday* next, by Eight of the Clock in the Morning, at the *Old Miln*, and these Articles consented to, and signed by Colonel *Richard Nicholls*, Deputy-Governor to his Royal Highness, and that within two Hours after the Fort and Town called *New-Amsterdam*, upon the Isle of *Manhatoes*, shall be delivered into the Hands of the said Colonel *Richard Nicholls*, by the Service of such as shall be by him thereunto deputed, by his Hand and Seal." [Southwick & Co's Laws of N. Y.]

The above capitulation was confirmed by the peace of Breda. This event occurred in the reign of the Second Charles, who granted the same to his brother, the Duke of York, af-

terwards James the Second. No account was then made of the Iroquois country west of the Hudson. An extract from that regal document connects the history of land titles in New-York.

VIII. GRANT OF CHARLES II. TO JAMES, DUKE OF YORK.

"KNOW YE, that we, for divers good causes, &c., HAVE, &c., and by these presents, &c., Do give and grant unto our dearest brother JAMES, DUKE OF YORK, his heirs and assigns, all that part of the main land of New-England, beginning at a certain place called or known by the name of St. Croix, next adjoining to New-Scotland, in America; and from thence extending along the sea coast unto a certain place called Pamaque or Pemaquid, and so up the river thereof to the farthest head of the same as it tendeth Northward; and extending from thence to the river of Kimbequin, and so upwards by the shortest course to the river Canada, northward. And also all that Island or Islands commonly called by the several name or names of Matowacks or Long-Island, situate, lying and being toward the West of Cape Cod, and the Narrow Higansetts, abutting upon the main land between the two rivers there called or known by the several names of Connecticut and Hudson's river, together, also with the said river called Hudson's river, and all the lands from the west side of Connecticut river to the east side of Delaware Bay. And also all those several Islands, called or known by the names of Martin's Vineyard and Nautukes, or otherwise Nantuckett." Signed and sealed with the royal signet. [Clarke's Compilation of 1826, 80.]

The land between Pemaquid and St. Croix was, by the charter of 1692, annexed to Massachusetts, and a portion of that contained in the foregoing grant, situate between the Hudson and Delaware rivers is embraced with New-Jersey. The balance, together with the territory of the Six Nations, to which the Duke asserted the pre-emption right, remained

the manor, and subsequently became the province, of New-York and dependencies thereof. In 1673 the Dutch retook the colony, but relinquished it at the treaty of Westminster. Upon the accession of James to the throne of England, the grant merged in the crown.

IX. EXTRACT FROM A GRANT OF PRIVILEGES OF HIS ROYAL HIGHNESS TO THE INHABITANTS OF NEW-YORK AND ITS DEPENDENCIES, OCTOBER 30, 1683.

"BE IT ENACTED, &c., That from henceforth no lands within this province shall be esteemed or accounted a chattel or personal estate, but an ESTATE OF INHERITANCE, according to the customs and practice of his MAGESTY'S REALME OF ENGLAND: That all lands and heritages within this Province and Dependencies, shall be free from all fines and licenses upon alienations, and from all heriotts, wardships, liveries, primier seignis, year, day, and wast, escheats and forfeitures, upon the death of parents or ancestors, naturall, unnaturall, casuall or judiciall, and that forever; cases of high treason only excepted: That all wills in writing attested by two credible witnesses, shall be of the same force to convey lands as other conveyances: That no estate of a femme covert shall be conveyed but by a deed acknowledged by her in a court of record, the woman being secretly examined if shee doth it freely without threats or compulsion of her husband: And that shee shall be invested with dower, and may tarry in the chiefe house of her husband forty days after his death." [Appendix to Van Ness & Wentworth's Revision of State Laws.]

Although the original and ultimate title of the English Monarchs was acknowledged for nearly a century, it was repudiated in 1776, when it was declared to be a sovereign State, and effectually subverted, in 1783, by the treaty of Paris.

X. FIRST AND SECOND ARTICLES OF THE TREATY OF PARIS, CONCLUDED SEPTEMBER 3, 1783.

"ART 1. His Britannic Majesty acknowledges the said United States, viz: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent States; that he treats with them as such; and for himself, his heirs, and successors, relinquishes all claims to the government, propriety, and territorial rights of the same, and every part thereof.

"ART. 2. And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are, and shall be, their boundaries, viz: from the Northwest angle of Nova Scotia, viz: that angle which is formed by a line drawn due North from the source of Saint Croix to the highlands, along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the Northwesternmost head of Connecticut river; thence, down along the middle of that river, to the forty-fifth degree of North latitude; from thence, by a line due West on said latitude, until it strikes the river Iroquois or Cataraquy; thence, along the middle of said river, into Lake Ontario, through the middle of said lake, until it strikes the communication by water between that lake and lake Erie; thence, along the middle of said communication into lake Erie, through the middle of said lake, until it arrives at the water communication between that lake and lake Huron; thence, along the middle of said water communication, into the lake Huron; thence, through the middle of said lake, to the water communication between that lake and lake Superior; thence, through lake Superior, Northward to the isles

Royal and Philipeaux, to the Long Lake; thence, through the middle of the said Long Lake, and the water communication between it and the Lake of the Woods, to the said lake of the Woods; thence, through the said lake, to the most Northwestern point thereof; and, from thence, on a due West course, to the river Mississippi; thence, by a line to be drawn along the middle of the said river Mississippi, until it shall intersect the Northernmost part of the thirty-first degree of North latitude. South, by a line to be drawn due East from the determination of the line last mentioned, in the latitude of thirty-one degrees North of the equator, to the middle of the river Appalachicola or Catahouche; thence, along the middle thereof, to its junction with the Flint river; thence, straight to the head of St. Mary's river; and, thence, down along the middle of St. Mary's river, to the Atlantic Ocean. East, by a line to be drawn along the middle of the river St. Croix, from its mouth, in the bay of Fundy, to its source, and, from its source, directly North, to the aforesaid highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence, comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due East from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia."*

Upon the conclusion of the treaty of Paris, the People of this State, in their sovereign capacity, succeeded to all the rights over the soil of New-York that were before the Revolution vested in the British Crown; yet the body of the State

* The United States, or the several States, have a clear title to all the lands described in the boundary lines of the treaty; subject only to the Indian right of occupancy. [8 Wheaton's Reports, 543.]

then remained in the possession of the Six Nations, who had not surrendered their title thereto.

XI. IROQUOIS CESSIONS AND GRANTS OF LAND IN NEW-YORK.*

At Fort Stanwix, Oct. 22, 1784, the SIX NATIONS held a treaty with Wolcott, Butler and Lee, United States Commissioners, in which the Oneidas and Tuscaroras were guarantied a peaceable possession of the lands whereon they were settled, and the Indian territory limited as follows:

"A line shall be drawn, beginning at the mouth of a creek, about four miles east of Niagara, called Oyonwayea, or Johnston's Landing Place, upon the lake, named by the Indians Oswego, and by us Ontario; from thence southerly in a direction always four miles east of the carrying path, between

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* The courts will not take notice of any title to land not derived from our own Government. [Jackson ex. dem. Winthrop, vs. Ingraham, 4. John. R. 163.]

Discovery constitutes the original title to lands on the American continent; and the title thus derived was the exclusive right of acquiring the soil from the natives, and establishing settlements upon it. [8 Wheaton's U. S. Rep. 543.]

The right of the original inhabitants has been in no instance disregarded. [Idem.]

The Europeans respected the rights of the natives as occupants, but asserted the ultimate dominion to be in themselves; and claimed thereby the power to grant the soil while in possession of the natives. [Idem.]

The United States, or the several States, have a clear title to all the lands within the boundary lines described in the treaty; subject only to the Indian right of occupancy. [Idem.]

These rules accord to the Indian the right of possession only. They deny him title, except he receive that title from this Government or its assigns. [5 Cond. Rep. 515.]

It is a principle of universal law, that if an uninhabited country be discovered by a number of individuals who acknowledge no connection with and own no allegiance to any Government whatever, the country becomes the property of the discoverers, so far as they can use it. [8 Wheaton's U. S. Rep. 543.]

Appropriation of land by the Government, is nothing more or less than setting it apart for some peculiar use. [13 Peters, 498.]

The U. S. Government having a standing right of pre-emption to lands occupied by Indians, it is competent for the Government to transfer that right by special or general acts of Congress. [13 Peters, 436.]

lake Erie and Ontario, to the mouth of Tehoseroron, or Buffalo creek, on lake Erie; thence south, to the north boundary of the State of Pennsylvania; thence west, to the end of the said north boundary; thence south, along the west boundary of the said State, to the river Ohio; the said line from the mouth of the Oyonwayea to the Ohio, shall be the western boundary of the lands of the Six Nations; so that the Six Nations shall, and do, yield to the United States, all claims to the country west of the said boundary; and then they shall be secured in the peaceful possession of the lands they inhabit, east and north of the same, reserving only six miles square, round the fort of Oswego, to the United States, for the support of the same."

At Fort Herkimer, June 28, 1785, the ONEIDAS and TUSCARORAS, in consideration of $11,500, conveyed: "All that tract of land situate on the west side of the line commonly called the line of property, established at a treaty held at Fort Stanwix, in 1768, and on the north side of the Pennsylvania line, beginning at the mouth of the Unadilla, or Tianaderha river, where the same empties into the Susquehanna river; thence, up the said Unadilla, or Tianaderha river, ten miles, measured on a straight line; thence due west to the Chenango river; thence southerly down the said Chenango river to where it empties into the said Susquehanna river, and to the said line, called the line of property; thence along the said line to the place of beginning; so as to comprehend all the land belonging to the Oneida and Tuscarora nations, lying south of the said line to be run from the said Unadilla, or Tianaderha river, to the Chenango river, and north of the division line between the State of New-York and the State of Pennsylvania; together with all ways, waters, water courses, rivers, rivulets, creeks, and streams, of water; and also all mines and minerals, which are, or may be, found thereon." &c.

At Fort Schuyler, Sept. 12, 1788, the ONONDAGAS ceded as follows: "*First*, the Onondagas do cede and grant all their lands to the People of the State of New-York forever. *Secondly*, the Onondagas shall, of the said ceded lands, hold to themselves and their posterity, forever, for their own use and cultivation, but not to be sold, leased, or in any other manner aliened or disposed of to others, all that tract of land beginning at the southerly end of the Salt Lake, at the place where the river or stream on which the Onondagas now have their village, empties into the said lake, and runs from the said place of beginning east three miles; thence southerly, according to the general course of the said river, until it shall intersect a line running east and west at the distance of three miles, south from the said village; thence from the said point of intersection west nine miles; thence northerly, parallel to the second course above mentioned, until an east line will strike the place of beginning; and thence east to the said place of beginning. *Thirdly*, the Onondagas and their posterity, forever, shall enjoy the free right of hunting in every part of the said ceded lands, and of fishing in all the waters within the same. *Fourthly*, the Salt Lake, and the lands for one mile round the same, shall forever remain for the common benefit of the People of the State of New-York, and of the Onondagas and their posterity, for the purpose of making salt, and shall not be granted, or in any wise disposed of, for other purposes. *Fifthly*, in consideration of the said cession and grant, the People of the State of New-York do, at this treaty, pay to the Onondagas one thousand French crowns in money, and two hundred pounds in clothing, at the price which the same cost the People of the State of New-York. And the People of the State of New-York shall annually pay to the Onondagas and their posterity, forever, on the first day of June, in every year, at Fort Schuyler, five hundred dollars in silver; but if the Onondagas, or their posterity, shall, at any time hereafter, elect that the whole or

any part of the said five hundred dollars shall be paid in clothing or provisions, and give six weeks previous notice thereof to the Governor of the said State, for the time being, then, so much of the annual payment shall, for that time, be in clothing or provisions, as the Onondagas or their posterity shall elect, and at the price which the same shall cost the People of the State of New-York, at Fort Schuyler aforesaid. *Sixthly*, the People of the State of New-York may, in such manner as they shall deem proper, prevent any persons, except the Onondagas, from residing or settling on the lands so to be held by the Onondagas and their posterity, for their own use and cultivation; and if any persons shall, without the consent of the People of the State of New-York, come to reside or settle on the said lands, or on any other of the lands so ceded, as aforesaid, the Onondagas and their posterity shall forthwith give notice of such intrusions to the Governor of the said State for the time being; and further, the Onondagas, and their posterity, forever, shall, at the request of the Governor of the said State, be aiding to the People of the State of New-York, in removing all such intruders, and in apprehending, not only such intruders, but also felons and other offenders, who may happen to be on the said ceded lands, to the end that such intruders, felons, and other offenders, may be brought to justice."

At Fort Schuyler, Sept. 22, 1788, the ONEIDAS ceded as follows: "*First*, The Oneidas do cede and grant all their lands to the People of the State of New-York, forever. *Secondly*, of the said ceded lands, the following tract, to wit: beginning at the Wood creek, opposite to the mouth of the Canada creek, and where the line of property comes to the said Wood creek, and runs thence southerly to the northwest corner of the tract to be granted to John Francis Perache; thence, along the westerly bounds of the said tract, to the southwest corner thereof; thence to the northwest corner of the tract granted to James Dean; thence, along the westerly bounds

thereof, to the southwest corner of the last mentioned tract; thence, due south, until it intersects a due west line from the head of the Tianaderha, or Unadilla river; thence, from the said point of intersection, due west, until the Deep Spring bears due north; thence, due north, to the Deep Spring; thence, the nearest course to the Canaseraga creek; and thence, along the said creek, the Oneida Lake, and the Wood creek, to the place of beginning, shall be reserved for the following several uses; that is to say: the lands lying to the northward of a line parallel to the southern line of the said reserved lands, and four miles distant from the said southern line, the Oneidas shall hold to themselves and their posterity, forever, for their own use and cultivation, but not to be sold, leased, or in any other manner aliened or disposed of, to others. The Oneidas may, from time to time, forever, make leases of the lands between the said parallel lines, (being the residue of the said reserved lands,) to such persons and on such rents reserved, as they shall deem proper, but no lease shall be for a longer term than twenty-one years from the making thereof; and no new lease shall be made until the former lease of the same lands shall have expired. The rents shall be to the use of the Oneidas and their posterity, forever. And the People of the State of New-York shall, from time to time, make provision by law to compel the lessees to pay the rents, and in every other respect to enable the Oneidas and their posterity to have the full benefit of their right so to make leases, and to prevent frauds on them respecting the same: and the Oneidas, and their posterity, forever, shall enjoy the free right of hunting in every part of the said ceded lands, and of fishing in all the waters within the same; and, especially, there shall forever remain ungranted by the People of the State of New-York, one-half mile square, at the distance of every six miles of the lands along the northern bounds of the Oneida lake, one-half mile in breadth of the lands on each side of the Fish creek, and

a convenient piece of land at the fishing place in the Onondaga river, about three miles from where it issues out of the Oneida lake, and to remain as well for the Oneidas and their posterity, as for the inhabitants of the said State, to land and encamp on. But, notwithstanding any reservation to the Oneidas, the People of the State of New-York may erect public works and edifices as they shall think proper, at such place and places, at or near the confluence of the Wood creek and the Oneida lake, as they shall elect; and may take and appropriate for such works or buildings, lands to the extent of one square mile, at each place: and further, notwithstanding any reservations of lands to the Oneidas, for their own use, the New-England Indians, (now settled at Brotherton, under the pastoral care of the Rev. Samson Occum,) and their posterity, forever, and the Stockbridge Indians, and their posterity, forever, are to enjoy their settlements on the lands heretofore given to them by the Oneidas for that purpose; that is to say, a tract of two miles in breadth and three miles in length, for the New-England Indians, and a tract of six miles square for the Stockbridge Indians. *Thirdly*, in consideration of the said cession and grant, the People of the State of New-York do, at this treaty, pay to the Oneidas two thousand dollars in money, two thousand dollars in clothing, and other goods, and one thousand dollars in provisions; and also five hundred dollars in money, to be applied towards building a grist mill and saw mill at their village: and the People of the State of New-York shall annually pay to the Oneidas, and their posterity, forever, on the first day of June, in every year, at Fort Schuyler, six hundred dollars in silver; but if the Oneidas, or their posterity, shall, at any time hereafter, elect that the whole, or any part, of the said six hundred dollars, shall be paid in clothing or provisions, and give six weeks previous notice thereof to the Governor of the said State, for the time being, then so much of the annual payment shall, for that time, be in clothing or provisions, as the

Oneidas and their posterity shall elect, and at the price which the same shall cost the People of the State of New-York at Fort Schuyler. And, as a further consideration to the Oneidas, the People of the State of New-York shall grant to the said John Francis Perache, a tract of land, beginning in the line of property, at a certain cedar tree, near the road leading to Oneida, and runs from the said cedar tree southerly along the line of property, two miles; then westerly at right angles to the said line of property, two miles; then northerly at right angles to the last course, two miles; and then to the place of beginning; which the said John Francis Perache hath consented to accept from the Oneidas, in satisfaction for an injury done to him by one of their nation. And further, the lands intended by the Oneidas for John T. Kirkland, and for George W. Kirkland, being now appropriated to the use of the Oneidas, the People of the State of New-York shall, therefore, by a grant of other lands, make compensation to the said John T. Kirkland and George W. Kirkland. And further, that the People of the State of New-York shall, as a benevolence from the Oneidas to Peter Penet, and in return for services rendered by him to their nation, grant to the said Peter Penet, of the said ceded lands lying to the northward of the Oneida lake, a tract of ten miles square, wherever he shall select the same. *Fourthly*, the People of the State of New-York may, in such manner as they shall deem proper, prevent any persons, except the Oneidas, from residing or settling on the lands so to be held by the Oneidas and their posterity, for their own use and cultivation. And if any persons shall, without the consent of the People of the State of New-York, come to reside or settle on the said lands, or on any other of the lands so ceded as aforesaid, except the lands whereof the Oneidas may make leases as aforesaid, the Oneidas and their posterity shall forthwith give notice of such intrusions to the Governor of the said State for the time being. And further, the Oneidas and their posterity forever, shall, at

the request of the Governor of the said State, be aiding to the People of the State of New-York, in removing all such intruders; and in apprehending, not only such intruders, but also felons and other offenders, who may happen to be on the said ceded lands, to the end that such intruders, felons, and other offenders, may be brought to justice. Before the execution hereof, the Oneidas, in public council, declared to the commissioners that they had, in return for his frequent good offices to them, given to John J. Bleecker, of the lands reserved for their own use, one mile square, adjoining to the lands of James Dean, and requested that the same might be granted and confirmed to him by the State."

At Albany, Feb. 25, 1789, the CAYUGAS ceded as follows: "*First*, the Cayugas do cede and grant all their lands to the People of the State of New-York, forever. *Secondly*, the Cayugas shall, of the said ceded lands, hold to themselves and to their posterity, forever, for their own use and cultivation, but not to be sold, leased, or in any other manner aliened or disposed of to others, all that tract of land, beginning at the Cayuga salt spring, on the Seneka river, and running thence southerly, to intersect the middle of a line to be drawn from the outlet of Cayuga to the outlet of Waskongh, and from the said place of intersection, southerly, the general course of the eastern bank of the Cayuga lake; thence westerly, to intersect a line running on the west side of the Cayuga lake, at the mean distance of three miles from the western bank thereof, and from the said point of intersection, along the said line, so running on the west side of the Cayuga lake, to the Seneka river, thence down the said river to the Cayuga lake; thence through the said lake to the outlet thereof; thence further down the said Seneka river to the place of beginning, so as to comprehend within the limits aforesaid, and exclusive of the water of Cayuga lake, the quantity of one hundred square miles. Also, the place in the Seneka river, at or near a place called Skayes, where the Cayugas have

heretofore taken eel; and a competent piece of land on the southern side of the river, at the said place, sufficient for the Cayugas to land and encamp on, and to cure their eel. Excepted, nevertheless, out of the said lands so reserved, one mile square at the Cayuga ferry. *Thirdly*, the Cayugas and their posterity, forever, shall enjoy the free right of hunting in every part of the said ceded lands, and of fishing in all the waters within the same. *Fourthly*, in consideration of the said cession and grant, the People of the State of New-York do, at this present treaty, pay to the Cayugas five hundred dollars in silver; and the People of the State of New-York shall pay to the Cayugas, on the first day of June next, at Fort Schuyler, (formerly called Fort Stanwix,) the further sum of one thousand six hundred and twenty-five dollars; and also the People of the State of New-York shall annually pay to the Cayugas, and their posterity, forever, on the first day of June, in every year thereafter, at Fort Schuyler aforesaid, five hundred dollars in silver. But if the Cayugas, or their posterity, shall, at any time hereafter, elect that the whole, or any part of the said annual payment of five hundred dollars, shall be paid in clothing or provisions, and give six weeks previous notice thereof to the Governor of the said State for the time being, then so much of the annual payment shall, for that time, be in clothing or provisions, as the Cayugas or their posterity shall elect, and at the price which the same shall cost the People of the State of New-York at Fort Schuyler aforesaid. And, as a further consideration to the Cayugas, the People of the State of New-York shall grant to their adopted child, Peter Ryckman, whom they have expressed a desire should reside near them, to assist them, and as a benevolence from them, the Cayugas to him, and in return for services rendered by him to their nation, the said tract of one mile square at the Cayuga ferry excepted, out of the said lands reserved to the Cayugas for their own use and cultivation, that of a tract beginning on

the west bank of the Seneka lake, thence running due west (passing one chain north of a house lately erected, and now in the occupation of the said Peter Ryckman,) to the line of partition between this State of New-York and the Commonwealth of Massachusetts, of the lands ceded to each other; thence due south along the said line of partition; thence due east to the Seneka lake; thence northerly along the bank of the said lake to the place of beginning, so as to contain sixteen thousand acres. The People of the State of New-York shall grant three hundred and twenty acres to a white person married to a daughter of a Cayuga, named Thaniowes, including the present settlement of the said person on the south side of Caghsion creek; and that the People of the State of New-York shall grant the residue of the said tract of sixteen thousand acres to the said Peter Ryckman. *Fifthly*, the People of the State of New-York may, at all times hereafter, in such manner and by such means as they shall deem proper, prevent any person, except the Cayugas and their adopted brethren the Paanese, from residing or settling on the lands to be held by the Cayugas and their posterity, for their own use and cultivation: and if any person shall, without the consent of the People of the State of New-York, come to reside or settle on the said lands, or any other of the lands so ceded as aforesaid, the Cayugas and their posterity shall forthwith give notice of such intrusions to the Governor of the said State for the time being; and further, the Cayugas and their posterity, forever, shall, at the request of the Governor of the said State, be aiding to the People of the State of New-York in removing all such intruders; and apprehending, not only such intruders, but felons and other offenders, who may happen to be on the said ceded lands, to the end that such intruders, felons, and other offenders may be brought to justice. Notwithstanding the said reservation herein above specified to the Cayugas, it is declared to be the intent of the parties that the Cayuga called the Fish Carrier, shall have

a mile square of the said reserved lands, for the separate use of himself, and for the separate use of his family, forever. Before sealing and delivery hereof, it was, for the greater certainty, declared to be the intent of the parties, that this grant and cession is only of the lands eastward of the partition line above mentioned between this State of New-York and the Commonwealth of Massachusetts; and that, with respect to such part of their country as is to the westward of the said partition line, the right and property of the Cayugas to be the same as if this grant and cession had not been made. The Cayuga salt spring, and the land to the extent of one mile around the same, to remain for the common use and benefit of the People of the State of New-York, and of the Cayugas and their posterity, forever. And the land to be reserved at the fishing place near Skayes, shall be of the extent of one mile on each side of the river, the above reservation of land on the southern side of the river, only, notwithstanding."

At Fort Stanwix, June 22, 1790, the Cayugas acknowledged the payment, as stipulated in the preceding cession, and made the following stipulation: "And we, the said Cayugas, in consideration thereof, do, by these presents, fully, freely, and absolutely, ratify and confirm the said agreement and cession, and all and singular the articles, covenants, matters, and things, therein expressed and contained, on the part of us, the said Cayugas, done or to be done, executed or performed: and we, the said Cayugas, do further hereby grant and release to the people of the State of New-York, all our right, interest, and claim, in and to all lands lying east of the line of cession by the State of New-York to the Commonwealth of Massachusetts; except the lands mentioned in the deed of cession (of the 25th of February, 1789,) to be reserved to us, the Cayugas, and our posterity."

At Konondaigua, Nov. 11, 1794, the SIX NATIONS made a treaty with Timothy Pickering, in which former cessions by the Oneidas, Onondagas and Cayugas were ratified, and

the land of the Senecas defined as follows: "Beginning on Lake Ontario, at the Northwest corner of the land they sold to Oliver Phelps;* the line runs Westerly along the lake, as far as Oyongwongyeh creek, at Johnston's Landing Place, about four miles Eastward from the Fort of Niagara; then Southerly, up that creek to its main fork; then, straight to the main fork of Stedman's creek, which empties into the river Niagara, above Fort Schlosser; and then onward, from that fork, continuing the same straight course, to that river; this line, from the mouth of Oyongwongyeh creek to the river Niagara, above Fort Schlosser, being the Eastern boundary of a strip of land, extending from the same line to Niagara river, which the Seneca nation ceded to the King of Great Britain, at a treaty held about thirty years ago, with Sir William Johnston;) then the line runs along the river Niagara to Lake Erie; then along Lake Erie, to the Northeast corner of a triangular piece of land, which the United States conveyed to the State of Pennsylvania, as by the President's patent, dated the third day of March, 1792; then due South to the Northern boundary of that State; then due east to the southwest corner of the land sold by the Seneca nation to Oliver Phelps; and then north and northerly, along Phelp's line, to the place of beginning on Lake Ontario. Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneca nation; and the United States will never

* In the year 1786, the State of New-York, in order to put at rest certain claims of Massachusetts, granted to the latter all that part of the State lying west of a line extending from Little Sodus Bay to the Pennsylvania line, except about a mile on the east side of the Niagara river and the islands in that stream. Also ten townships six miles square, in Tioga and Broome. Both tracts embraced ten thousand square miles. In 1787, the State of Massachusetts granted the first tract to Oliver Phelps and Nathaniel Gorham, for $1,000,000, and the other to John Brown for $3,300. Judge Phelps, in company with the Rev. Mr. Kirkland, the Missionary among the Six Nations, and a Commissioner on behalf of Massachusetts, met the Senecas in council near Canandaigua lake, and effected a treaty with them; in and by which they relinquished possession to more than two million acres.

claim the same, nor disturb the Seneca nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase."

At New-York, May 31, 1796, the SEVEN NATIONS, of Canada, who had theretofore made some claim to lands about the St. Lawrence, released all their claim to land in the State, except six miles square, and certain mills and privileges reserved to Alexander Macomb, for Indians of the village of St. Regis.

At Albany, March 29, 1797, the MOHAWKS relinquished all claim to land in the State, and acknowledged payment therefor.

At Genesee, September 15, 1797, the SENECAS, under sanction of the United States Government, deeded to Robert Morris, of Philadelphia, "All that certain tract of land, except as is hereinafter excepted, lying within the county of Ontario, and State of New-York, being part of a tract of land, the right of pre-emption whereof was ceded by the State of New-York to the Commonwealth of Massachusetts, by deed of cession, executed at Hartford, on the sixteenth day of December, in the year of our Lord one thousand seven hundred and eighty-six, being all such part thereof as is not included in the Indian purchase, made by Oliver Phelps and Nathaniel Gorham, and bounded as follows, to wit: Easterly, by the land confirmed to Oliver Phelps and Nathaniel Gorham, by the Legislature of the Commonwealth of Massachusetts, by an act passed the twenty-first day of November, in the year of our Lord one thousand seven hundred and eighty-eight; southerly, by the north boundary line of the State of Pennsylvania; westerly, partly by a tract of land, part of the land ceded by the State of Massachusetts to the United States, and by them sold to Pennsylvania, being a right

angled triangle, whose hypothenuse is in or along the shore of Lake Erie; partly by Lake Erie, from the northern point of that triangle to the southern bounds of a tract of land one mile in width, lying on and along the east side of the strait of Niagara; and partly by the said tract to Lake Ontario; and on the north by the boundary line between the United States and the King of Great Britain: excepting and reserving to them, the said parties of the first part, and their nation, one piece or parcel of the aforesaid tract, at Canawagus, of two square miles, to be laid out in such manner as to include the village, extending in breadth one mile along the river; one other piece or parcel at Big Tree, of two square miles, to be laid out in such manner as to include the village, extending in breadth along the river one mile; one other piece or parcel of two square miles, at Little Beard's town, extending one mile along the river, to be laid out in such manner as to include the village; one other tract of two square miles, at Squaky Hill; one other piece or parcel, at Kaounadeau, extending in length eight miles along the river, and two miles in breadth; one other piece or parcel, at the mouth of the Eighteen Mile, or Koghquaugu creek; one other piece at Cataraugos, on the south side of Cataraugos creek; one other piece or parcel of forty-two square miles, at or near the Allegany river, and two hundred square miles, to be laid out partly at the Buffalo and partly at the Tonnawanda creeks.

At Oneida village, June 1, 1798, the ONEIDAS ceded to the State of New-York "all the lands within the reservation to the westward and southwestward of a line from the north-eastern corner of lot number fifty-four, in the last purchase from them, running northerly to a buttonwood tree marked, on the east side, "Oneida R. 1798," on the west side "H. P. S. 1798," and, on the south side, with three notches and a blaze, standing on the bank of the Oneida lake, in the southern part of a bay called Newageghkoo; also, a mile on each side of the main Genesee road, for the distance of one mile

and a half westward, to commence at the eastern boundary of their said reservation, and also the same breadth for the distance of three miles on the south side, and of one mile on the north side of the said road eastward, to commence at the eastern boundary of the said lot number fifty-four: Provided and excepted, nevertheless, that the following Indian families, viz: Sarah Docksteder, Cornelius Docksteder, Jacob Docksteder, Lewis Denny, John Denny, Jan Joost, and Nicholas, shall be suffered to possess of the tract first above mentioned, the grounds cultivated by them, respectively, and their improvements, not exceeding fifty acres to each family, so long as they shall reside there; and, in consideration of this proviso and exception, the said Indians do further cede a tract of land of one thousand two hundred and eighty acres, as follows, that is to say: Beginning in the southeast corner of lot number fifty-nine, in the said last purchase, and running thence east one mile; thence north two miles; thence west one mile; and thence south two miles; shall be considered as set apart by the said nation or tribe, for the use of the said families, whenever they shall remove from where they now reside."

At Genesee, in the year 1797, the SENECAS sold to Oliver Phelps and Nathaniel Gorham, a large tract in the county of Ontario, which was confirmed by an act of the Legislature of Massachusetts, passed November 21, 1788.

At Buffalo Creek, June 30, 1802, the SENECAS conveyed "Little Beard's reservation," containing one thousand two hundred and eighty acres, to Oliver Phelps, Isaac Bronson, and Horatio Jones.

At Buffalo Creek, June 30, 1802, the SENECAS, with the approbation of the United States Commissioner, deeded to Wilhem Willink, Pieter Van Eeghen, Hendrik Vollenhoven, W. Willink, the younger, I. Willink, the younger, (son of Jan,) Jan Gabriel Van Staphorst, Roelof Van Staphorst, the younger, Cornelis Vollenhoven, and Hendrik Seye, a com-

pany in Holland, who had theretofore purchased a large tract: all those lands situate, lying, and being in the county of Ontario, and State of New-York, 'beginning at the mouth of the Eighteen Mile or Koghquawgu creek; thence, a line or lines to be drawn parallel to lake Erie, at the distance of one mile from the lake, to the mouth of Cattaraugus creek; thence, a line or lines extending twelve miles up the north side of said creek, at the distance of one mile therefrom; thence a direct line to the said creek; thence down the said creek to lake Erie; thence along the lake to the first mentioned creek; and thence to the place of beginning. Also, one other piece at Cattaraugus, beginning at the shore of lake Erie, on the south side of Cattaraugus creek, at the distance of one mile from the mouth thereof; thence running one mile from the lake; thence on a line parallel thereto, to a point within one mile from the Connondauweyea creek; thence up the said creek one mile, on a line parallel thereto; thence on a direct line to the said creek; thence down the same to lake Erie; thence along the lake to the place of beginning.'

At Moscow, in the county of Livingston, September 3, 1823, the SENECAS, with the approbation of Commissioners, conveyed to John Greig and Henry B. Gibson, all that tract, piece, or parcel of land, commonly called and known by the name of the Gardeau reservation, situate, lying, and being in the counties of Livingston and Genesee.

At Buffalo Creek, January 15, 1838, the SENECAS conveyed to Thomas L. Ogden and Joseph Fellows, with the approbation of the U. S. Commissioner, and the other tribes of the Iroquois, all those immense tracts known as the Buffalo Creek,

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The following Acts of the Legislature relate to Indian lands, and should be examined in connection with the Iroquois cessions and grants: Location on Lands of: Sess. Laws, 1788. Agents to purchase Lands of: idem, 1793. Agreements made with, ratified 1796. Concerning pre-emptions, 1798. Sale of lands, 1798. Act concerning bounty lands granted to for services during the Revolutionary war. Act authorizing the Governor to hold treaties with, 1813. Act relative to the different tribes, 1826. Act in relation to certain tribes, of 1841.

the Cattaraugus, the Alleghany, the Tonawanda, and the Tuscarora reservations. [Vide Sess. Laws, 1838.]

At Buffalo Creek, May 20, 1842, divers questions and differences between the parties to the foregoing, were, by treaty, adjusted, so that the Senecas were left in possession of the Cattaraugus and Allegany reservations. [Sess. Laws, 1842.]

XII. RESERVATIONS AND GUARANTIES OF THE CONSTITUTION.

NEW-YORK adopted her first Constitution April 20, 1777, whilst the war of the revolution was upon us. Whatever might have been sound policy at another day and occasion, it was then deemed unwise to arouse the patroons to arms against the effort that was making to throw off the burthens which Great Britain had imposed on this and other colonies; but on the contrary to extend abundant courtesy and care to such eminent land owners. Hence, it was specially provided in that instrument, that all grants and charters made under the authority of the King of Great Britain, prior to the fourteenth day of October, 1775, should be reserved; and that nothing therein contained should affect any grants of land within this State, made by said King, or any of his predecessors.

The same provisions were carried into the amended Constitution of 1821, and have been preserved in that of 1846, in the following words: "All grants of land within this State, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this constitution shall affect any grants of land within this State, made by the authority of the said King or his predecessors, or shall annul any charters to bodies politic or corporate, by him or them made before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority, or shall impair the obligation of any debts contracted by this

State, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice." [Section 18 of Art. 1, of New Constitution, in Appendix.]

Although the former Constitutions did not in terms declare the abolition of all feudal tenures, rents and services certain; nor that the people were possessed of the original and ultimate property in and to all lands within the borders of the commonwealth, they recognized and recited the declaration of independence, and renounced and abjured all foreign authority, as well over lands as the people. In 1846, however, it was deemed politic to make the principle fundamental, and to restrict the terms of leases. Hence the following provisions in the present constitution:

"The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail, from a defect of heirs, shall revert or escheat to the people." [Const. of N. Y., Sec. 11 of Art. 1.]

"All feudal tenures, of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain, which at any time heretofore have been lawfully created or reserved." [Id., Sec. 12.]

"All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners according to the nature of their respective estates." [Id., Sec. 13.]

"No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid." [Id., Sec. 14.]

"All fines, quarter sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made, shall be void." [Id., Sec. 15.]

Whilst all subsisting leases for terms exceeding twelve

years, and all such as contain reservations of fines, quarter sales, and other similar restraints upon alienation, were vested rights that could not be disturbed, the prevailing discontent amongst the tenants of the several manors, indicated a necessity for the latter provisions, and to which the statutes will doubtless be made to conform.

XIII. LAND TITLES GENERALLY.

The Constitution of New-York declares all lands within the State to be allodial, and that the entire and absolute property vests in the owners according to the nature of their respective estates. The Statute declares every estate of inheritance a fee simple, or fee; and every indefeasible estate a fee simple absolute, or an absolute fee. [1 R. S., 717.] A fee continues forever, and is transmissible or descendible to heirs. [Wright on Tenures, 148.]

All estates in lands come within one of the four divisions following, viz: First, Estates of inheritance; Second, Estates for life; Third, Estates for years; Fourth, Estates at will. These are subject to the following provisions: "Estates of inheritance, and for life, shall continue to be denominated estates of freehold; estates for years shall be chattels real; and estates at will, or by sufferance, shall be chattel interests, but shall not be liable as such to sale on executions." [1. R. S. 717, Sec. 5.]

Estates of inheritance are defeasible or indefeasible; when they are defeasible they are mortgage interests; and when indefeasible they are termed a fee simple absolute. Estates are also divided with reference to the period of their enjoyment, into estates in possession, and estates in expectancy—the former being where the right to possession is immediate; the latter where the possession is postponed to a future day. Estates in expectancy are divided into future estates and reversions—the one being where the estate is limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination

by lapse of time, or otherwise, of a precedent estate created at the same time; and the other is the residue of estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised. Future estates are also divided, and are either vested or contingent—vested when there is a person in being who would have an immediate right to the possession of the lands, upon the ceasing of the immediate or precedent estate; and contingent whilst the person to whom, or the event upon which, they are limited to take effect, remains uncertain. [Id., Sec. 13.]

Successive estates for life cannot be limited except to persons in being at the creation thereof; and in case a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto are void, and upon the death of those persons, the remainder takes effect the same as if no other life estates had been created. Nor can a remainder be created upon an estate for the life of any other person or persons than the grantee or devisee of such estate, unless such remainder be in fee. If a remainder be created upon an estate in a term for years, it is required to be for the whole residue of such term. When a remainder shall be created upon any such life estate, and more than two persons shall be named as the persons during whose lives the estate shall continue, the remainder takes effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced. Contingent remainders cannot be created on a term of years, except where the nature of the contingency on which it is limited be such that the remainder must vest in interest, during the continuance of not more than two lives, in being at the creation of such remainder, or upon the termination thereof. Estates for life cannot be limited on a term of years, except to a person in being at the creation of such estate. [Id., 719, Sec. 21.]

Future estates, however, may be created to take effect in the alternative, so that if the first in order shall fail to vest, the next in succession may be substituted for it, and the same will take effect accordingly. The probability, or improbability, of any contingency, makes no difference with the estate. It will not be void on that account, if it were otherwise valid. [Idem, 720.]

The absolute power of alienation of lands in New-York cannot be suspended by deed, will, or otherwise, for a longer period than during the continuance of not more than two lives, in being at the creation of the estate, except that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, shall die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain their full age. [Id., Sec. 16.]

There is another division of estates recognized by statute, which relates to the number and connection of the owners thereof. These are denominated estates in severalty, joint tenancy, and tenancy in common. The nature of these will be apprehended by the reader, from the foregoing explanations, and therefore require no comment. Where estates are either granted or devised to one person, the same will be in severalty, but if the same be to two or more it will be held to be a tenancy in common, in all cases where the grant or testament does not otherwise expressly declare, except where estates are vested in executors or trustees. In the latter case it will be a joint tenancy. This rule applies as well to estates not vested as to those already created.

Estates in trust may be created where the trust is express, and for the purpose of selling lands for the benefit of creditors; or of selling, mortgaging, or leasing them, for the benefit of legatees, or for the purpose of satisfying any charge thereon; or of receiving the rents and profits and applying them

to the use of any person during the life of such person, or for a time; or of accumulating them for a period of time, and for a specific purpose not inconsistent with the foregoing regulations. Upon the death of a surviving trustee of an express trust, the trust vests in the Court of Chancery, and another person may be appointed by that court to execute it.

"The people of this State in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands, the title to which shall fail from a defect of heirs, shall revert or escheat to the people." All feudal tenures are abolished, yet the people, in their sovereign capacity, are quasi the lord, and take by escheat under the provisions of the statute.

Every citizen of the United States is capable of holding lands in New-York, and of taking the same by descent, devise, or purchase; and no title or claim of any citizen of this State, who was in actual possession of lands on the twenty-first day of April, 1825, or at any time before, can be defeated or prejudiced on account of the alienism of any person through or from whom his title or claim to such lands may have been derived. While the foregoing might seem to restrict freehold estates to citizens of the United States, it is nevertheless provided that aliens and Indians may, in certain cases, and subject to certain conditions, become vested with a title. By the laws of 1825, and which have become a part of the revised code, aliens coming to this country, who shall make a deposition or affirmation in writing, before any officer authorized to take the proof of deeds to be recorded, that they are residents of, and intend always to reside in the United States, and to become citizens thereof as soon as they can be naturalized, and that they have already taken such incipient measures as the laws of the United States require, to enable them to obtain naturalization, and which shall be certified by such officer, and be filed and recorded by the

Secretary of State, may take and hold lands, and within six years convey the same. In case any such alien shall die within the six years next after having filed and recorded such deposition or affirmation, his lands will descend to the heirs of his body, in the same manner as if he had been a citizen at the time of his death. If, however, he have no heirs in the country at his decease, his lands escheat to the State; but according to the custom of the Legislature, in cases where there are heirs living in a foreign country, at his decease, and who subsequently come and themselves file a deposition which entitles them to hold real estate, and demand a release, the same will be released to them if the same are not sold; or if sold, then the avails will be granted them, subject to a drawback of a per centage and charges.

Every person capable of holding lands (except idiots, lunatics, and infants) may convey; yet aliens must convey within six years after having filed the affidavit above mentioned, and Indians must previously obtain the consent of the Legislature. The State, as a matter of course, may always convey, by the executive officer thereof, and under the seal entrusted to his care.

XIV. THE EXECUTION OF DEEDS AND MORTGAGES IN NEW-YORK.

"A DEED," says Blackstone, "is a writing, *sealed and delivered* by the parties." In England, whence our laws are derived, much formality and precision were essential to the validity of a deed, in consequence of its being an act the most solemn and authentic that a man can perform, in relation to the disposal of his property. Whatever a man avows in a deed, he is forever estopped from contradicting. Formerly, deeds were required to be indicted on stamped parchment, and indented, that is, as many copies as there were parties to the instrument were placed together, and the upper margin thereof cut in a waving line, each to correspond with the

other. Hence the term "indenture," which is yet employed in the body of absolute conveyances, but without any force beyond the significancy of a deed. These, with many other arbitrary laws concerning conveyances, have either been relaxed by the Legislature, or adapted to the condition of a people who are themselves sovereigns, and as such, in their collective capacity, possess the original and ultimate property in all lands within the borders of the State. So much formality, however, as is essential to the security of parties to a deed, is, nevertheless, required.

The statute provides, that "every grant in fee, or of a freehold estate, shall be subscribed and sealed by the person from whom the estate or interest conveyed is intended to pass, or his lawful agent." [1 R. S., 731, Sec. 137.] No particular form of words is requisite, beyond what may be termed a bare sufficiency to specify the agreement and bind the parties. Prior to the reign of the Second Charles, conveyances were made in England by parol; but as it opened the door to the grossest frauds, a legal and orderly arrangement of written or printed words were found necessary in all grants. The English statute, grounded upon that necessity, while it forbade oral grants, established a rule that has found its way into ours. An orderly arrangement of written words is therefore essential to a deed; and these should set forth the name and residence of each of the parties, the consideration, the precise interest granted, a concise description of the premises, the place where situated, the reservations, if any made, and the covenants of the grantor.

The conveyance may be either on paper or parchment, but if it be written on stone, board, linen, leather, or the like, it is no deed. The reason assigned in the books for the use of paper or parchment is, that "writing thereon unites in itself, more perfectly than in any other way, preservation and convenience."

It must be subscribed by the grantor, or his agent. The name of the grantor is required, if the person executing the deed be capable of writing it; if he be not, then his mark, in any form he may choose to adopt, will answer for a signature, provided there be a subscribing witness of the fact.

It must be sealed. Where there are no orders of knighthood or nobility, impressions of coats of arms are superfluities; yet a seal, in order to be valid, must be composed of wax, wafer, or some adhesive or impressive substance. That most commonly used is a wafer, with a small piece of paper covering it, attached to the deed, at the right of the signature. Any similar sealing is valid, but a scroll, enclosing L S, at the end of a name, is not a *sealing* within the statute.

It must be delivered. Deeds take effect from the time of their delivery, and where they are not acknowledged previous to delivery, they must be attested by at least one subscribing witness. [1 R. S., 731.]

The consideration must be good. Fraud, collusion and usury vitiate contracts. A consideration, to be good, depends not upon equivalents, except so far as the same may indicate bad faith, usury, or collusion, as in the case of a transfer of property, to hinder, delay, or defraud creditors. A deed without any consideration is invalid, for it is construed to inure only to the benefit of the grantor. [2 Bl., 297.] Except, as against creditors, very slight considerations will support a deed. A pecuniary consideration is necessary; yet this is not confined to money. The rule is satisfied by land or property in exchange, a resulting benefit, or securities for the payment. [9 Cowan's R., 60.] Love and affection, as between parent and child, &c., is a good consideration, where the transfer is otherwise legal, and is not made with a view to secrete property, or defraud creditors.

A consideration for a deed should be expressed therein; but where it is not, it may be shown dehors the deed if one actually passed. The proof must, however, be explanatory,

and not contradictory, of any thing contained in a deed, for whatever is avowed therein cannot be denied by the grantor.

It has been held, that where the only consideration expressed in a deed is, that a grantee shall support the grantor, or some other person, or do some act, to enforce which the agreement must be in writing, by law, the same is void, because the grantee is not bound to perform. [16 Johnson, 47.] Such a consideration is destitute of substance, and cannot support a deed.

It must be accepted in fact, or by construction. To give effect to a delivery, there must be an acceptance, or something equivalent to one, in a case of bargain and sale. The mere passing of a deed to another who refuses to take it, does not complete the transfer; until he accepts, the transaction is inchoate and imperfect. Where the delivery is the mandate of a decree, or the condition of a previous contract, the rule bends to the exigency of the case; but in those cases, more regard is had to the personal liability of parties and their obligation to perform their covenants, than to what constitutes a valid transfer of the land which the deed in question purports to convey. A tender of a deed duly executed, and which is either witnessed or acknowledged, and delivered to a third person, for the benefit of the grantee, will, in some special cases, it is presumed, invest him with the title. In such case, however, such deposit must be after refusal by the grantee, and with his knowledge, or by his permission, direction or consent.

What constitutes a delivery must depend, in many cases, upon circumstances and contingencies which cannot be here enumerated. It has been held, that a formal delivery is not necessary, if there be acts evincing an intent to deliver. [1 J. C. 250.] But where a deed was executed and acknowledged, but retained by the grantor as security for the consideration money, although done by the direction and at the

request of the grantee, it was held that it was no conveyance, and that the title remained in the grantor. But if a deed be executed and acknowledged and delivered to a third person, by consent of both parties, until some condition precedent is performed by the grantee, and such condition shall be subsequently performed, and the grantee afterward receive the deed; in such case the deed will be valid, and the title of the grantee will relate back to the time when the deed was made an escrow. [18 John, 544.]

Fraud receives no quarter in the law, and it is not protected by a seal. It is a vice whose turpitude so far enters into the essence of any contract, that the whole instrument is supposed to be contaminated therewith. It is, however, a question of fact, where fraud is alledged; and whenever it is put in issue in courts of justice, it is the province of a jury to determine it. [8 Cowan, 406.]

A conveyance of land subject to the condition of being defeated by a payment of a specified sum, within a limited time, is termed a mortgage. This species of written instruments is much in use, and is suggested by the wants and convenience of mankind. The conditions of a mortgage are usually inserted in its body, but the defeasance may be contained in a separate instrument. It should, however, be executed in due form, for recording in the same office, with the conveyance. The practice of separating the defeasance from the conveyance is liable to accidents and abuse, is productive of fraud, and should be discouraged.

The character of any conveyance is determined by the clear and certain intention of the parties; and any agreement in a deed, or in a separate instrument, showing that the parties intended that the conveyance should operate as a security for the re-payment of money, is, in effect, a mortgage. A deed, although absolute in its terms, may be proved by parol to have been intended only as a mortgage. And if a deed be once a mortgage, its character cannot be afterwards

changed. The maxim is, "once a mortgage, always a mortgage."

A power of sale is usually inserted in a mortgage; yet, such power is not requisite to its validity. It is a matter of convenience in most cases, however, and enables the mortgagee to effect a collection of his debt with greater facility and ease.

The execution and delivery of mortgages are governed by the same rules which regulate the execution of deeds. And as an instrument under seal cannot be revoked by another of lesser authority in law, it follows that instruments for the cancelation of mortgages should be signed, sealed and delivered with the same formality.

Although a mortgage is a species of deed, conveying a qualified interest in land, it is proper to remark that the freehold is adjudged to remain in the mortgagor, and that the mortgagee acquires but a chattel interest in the premises. It is termed a lien, and not a fee. But as the mortgagor may be disseized and dispossessed by a foreclosure, the same formality is required in the execution of a mortgage as in an absolute conveyance.

The legal operation of a deed is to pass the incident as well as the principal, although the latter only be mentioned; and this effect cannot be avoided, without a reservation therein, or in a contemporaneous instrument. Growing crops, for instance, are an incident which pass with land, unless they are reserved. They are, however, not an incident, if they have been previously sold. All prior and contemporaneous negotiations are merged in a deed. This should be understood by every land dealer. Whatever stipulations and reservations the parties agree to, prior to the execution of a deed, become nugatory, if no mention thereof be made in the conveyance, or some contemporaneous writing. The courts hold that a deed must receive its construction as to what it conveys, from its language and matter.

In construing deeds, that which is most material and certain prevails over that which is less so. This very plain and evident proposition lies at the bottom of a multitude of decisions, settling the law in respect to boundaries. Thus, when a deed defines a line by a certain number of chains and links to the bank of a river, a spring, or a marked tree, and it is found that the chains do not agree with the monuments, the latter, being most certain, control. Hence it is adjudged that courses and distances shall yield to natural and ascertained objects, such as a river, a stream, a spring, or a marked tree. [5 Cowan's R., 37.]

The interest in land which passes to the grantee is qualified by the covenants contained in a deed. Thus, if one be in possession of land without title, and convey to another by quit claim, the latter acquires but a possessory title to the premises; but if the deed contain covenants of warranty it is otherwise, for it would operate as an estoppel upon the grantor, if he should seek to regain possession.

Deeds are expounded by the courts so as to give them effect according to the intention of the parties, where that intention can be determined from the face of the instrument; and all uncertainties are taken in favor of the grantee in possession, although no covenants will be taken by implication or inference.

XV. THE PROOF AND ACKNOWLEDGMENT OF DEEDS AND MORTGAGES IN NEW-YORK.

In order to entitle any conveyance of land to be recorded by any County Clerk, the statute provides that it shall be acknowledged by the party or parties executing the same, or proved by a subscribing witness thereto, before any of the following officers, viz:

1. If acknowledged or proved within this State, the Chancellor, Justices of the Supreme Court, Circuit Judges, Supreme Court Commissioners, Judges of County Courts, Mayors and

Recorders of cities, Commissioners of Deeds in cities, and Justices of the Peace in towns; but no Judge, Commissioner of Deeds, or Justice of the Peace, shall take any acknowledgment out of the county or city, for which he was appointed.

2. If acknowledged or proved out of this State, and within the United States, the Chief and Associate Justices of the Supreme Court of the United States, District Judges of the United States, the Judges or Justices of the Supreme or Superior or Circuit Court of any State or Territory within the United States, and the Chief Judge, or any Associate Judge of the Circuit Court of the United States in the District of Columbia; but no proof or acknowledgment taken by any such officer shall entitle a conveyance to be recorded, unless taken within some place or territory to which the jurisdiction of the court to which he belongs shall extend.

3. Every acknowledgment, or proof of a deed or mortgage made or taken before the Mayor of either of the cities of Philadelphia or Baltimore, or before any Consul of the United States, resident in any foreign port or country, or before a Judge in the highest court in Upper Canada or Lower Canada, and certified by them respectively, shall be as valid and effectual as if taken before one of the Justices of the Supreme Court of this State. [1 R. S., 747, Sec. 4.]

The statute further provides "that if the party or parties executing such conveyance shall be or reside in any State or Kingdom in Europe, or in North or South America, the same may be acknowledged before any Minister Plenipotentiary, or any Minister Extraordinary, or any Charge d'Affaires of the United States resident, and accredited within such State or Kingdom. If such parties be or reside in France, such conveyance may be acknowledged or proved before the Consul of the United States, appointed to reside at Paris; and if such parties be or reside in Russia, such conveyance may be acknowledged or proved before the Consul of the United States, appointed to reside at St. Petersburgh. [Id., Sec. 5.] If

the party or parties to such conveyance reside within the United Kingdom of Great Britain and Ireland, or the dominions thereto belonging, the same may be acknowledged or proved before the Mayor of the city of London; the Mayor or Chief Magistrate of Dublin, or the Provost or Chief Magistrate of Edinburgh, or before the Mayor or Chief Magistrate of Liverpool, or before the Consul of the United States, appointed to reside at London. [Id., Sec. 6.] Such proof or acknowledgment duly certified, under the hand and seal of office of such Consul, Mayors or Chief Magistrates, respectively, or of such Minister or Charge d'Affaires, shall have the like force and validity, as if the same were taken before a Justice of the Supreme Court of the State. [Id., Sec. 7.] Commissioners may be appointed to take proof of deeds without the State, and the acknowledgment or proof taken before them shall be of the like force and validity as if the same were taken before the proper officer within this State. But no acknowledgment of any conveyance having been executed, shall be taken by any officer, unless the officer taking the same shall know, or have satisfactory evidence, that the person making such acknowledgment is the individual described in and who executed such conveyance."

"The acknowledgment of a married woman residing within this State, to a conveyance purporting to be executed by her, shall not be taken unless, in addition to the requisites contained in the preceding section, she acknowledge on a private examination apart from her husband, that she executed such conveyance freely and without any fear or compulsion of her husband; nor shall any estate of any such married woman pass by any conveyance not so acknowledged." [1 R. S., Sec. 10.]

"When any married woman not residing in this State shall join with her husband in any conveyance of any real estate situate within this State, the conveyance shall have the same effect as if she were sole; and the acknowledgment

or proof of the execution of such conveyance by her, may be the same as if she were sole." [Id., Sec. 2.]

The proof of the execution of any conveyance shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in and who executed such conveyance; and such proof shall not be taken unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such instrument. [Id., Sec. 12.]

"Upon the application of any grantee in any conveyance, his heirs or personal representatives, or of any person claiming under them, verified by the oath of the applicant, that any witness to the conveyance, residing in the county where such application is made, refuses to appear and testify, touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or proof of conveyances, except a Commissioner of Deeds and Justices of the Peace, may issue a subpœna, requiring such witness to appear and testify before such officer, touching the execution of such conveyance." [Id., Sec. 13.]

Every person who, being served with such subpœna, shall, without reasonable cause, refuse or neglect to appear, or appearing shall refuse to answer upon oath, touching the matters aforesaid, shall forfeit to the party injured *one hundred dollars;* and may also be committed to prison by the officer who issued such subpœna, there to remain without bail, and without the liberties of the jail, until he shall submit to answer upon oath as aforesaid. [Id., Sec. 14.]

"Every officer who shall take the proof or acknowledgment of any conveyance, shall endorse a certificate thereof, signed by himself on the conveyance; and in such certificate shall set forth the matters herein before required to be done, known, or proved, *on such acknowledgment or proof,*

together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given." [Id., Sec. 15.]

Inattention to the latter provision on the part of acknowledging officers, commonly proves vexatious, and frequently disastrous. A deed, although in fact perfectly acknowledged, but which has endorsed upon it a certificate which does not fully set forth every fact requisite to a perfect acknowledgment, can neither be read in evidence nor recorded. Indeed, an imperfect certificate is of no avail whatever to the grantee or his assigns, but may induce a reliance, as upon a broken reed, until it is too late to retrieve the error. The statute is very explicit in this respect, and requires the certificate to *set forth all the matters required to be done*, in order to constitute a perfect acknowledgment. In terms, it requires the officer to *know*, or *have satisfactory evidence*, that the person making an acknowledgment *is the person* described in and who executed the conveyance. These are matters required, and hence the certificate must set forth the fact. If the proof be made by a subscribing witness thereto, that is, to the conveyance, the statute requires that such witness state his own place of residence, and that he knew the person described in and who executed the same. This, also, is a matter required to be done, and must be set forth fully. In no case can a deed be proved by a subscribing witness unless the officer *know* such witness, or *have satisfactory evidence* that he is the subscribing witness whose name appears to the deed. This, as well as the name of the witness, is material matter and must be embraced in the certificate. If a married woman residing within this State desire to acknowledge a deed, she must, in addition to other requirements, acknowledge on a *private examination apart from her husband*, that she executed such conveyance *freely and without any fear or compulsion of her husband*. This, also, must be set forth, to the end that a court, or recording officer, may have the

official declaration of the acknowledging officer that the statute has in all respects been complied with; and so in respect to every other provisional requirement concerning acknowledgments or the proof of deeds and mortgages. It were better that the certificate embrace redundant matter than omit a word that is material.

To the certificate when written, should be subscribed not only the proper name of the acknowledging officer, but his official title at length. If the officer be a Judge, it should appear of what court; if a Commissioner, that he is a Commissioner of Deeds of the city and county of New-York, or other place as thecasemay be; and if he be a Minister Plenipotentiary or Charge d'Affaires, to what Government he is accredited.

Abbreviations in official signatures are sometimes allowed, but when they fail to express definitely the official capacity in which the act in question is performed, or to contradistinguish the officer from any other officer of the government, the signature is defective: as for instance, "Comr." is an accepted abbreviation of "Commissioner;" but unless it be accompanied with the words "of Deeds," it may be construed to mean as well a "Commissioner of Excise," or a "Commissioner of Highways," as a "Commissioner of Deeds," who alone can take the acknowledgment and proof of deeds, among the list of "Commissioners." Hence such a signature would be insignificant, and consequently defective. So where the officer has a local jurisdiction, as in case of a *Justice of the Peace*, the county which limits that jurisdiction should be annexed, in order that the court, or the recording officer, may determine whether any further authentication is requisite. This, however, is otherwise, where the official name and title appear at length in the body of the certificate, for in that case, the signature or proper name of the officer is alone necessary.

XVI. THE RECORDING OF DEEDS AND MORTGAGES IN NEW-YORK, AND THE EFFECT THEREOF.

THE practice of requiring muniments of title to be placed in the archives of the government, although somewhat onerous upon grantees, was attended with an advantage which countervailed all arguments to the contrary.

In the earlier days of this commonwealth, much vexation, fraud and disaster grew out of its disregard. Upon the organization of the State by counties, with a Clerk and a seal, that officer was charged as keeper of the archives of his county, and required to record in books, to be by him provided and kept, all conveyances of land within his county, provided the same were duly executed, acknowledged, or proven, and authenticated. The County Clerks are now the recorders for their respective counties. The statutes regulating the recording of deeds are as follows: "Every conveyance of real estate within this State [hereafter made] shall be recorded in the office of the Clerk of the county where such real estate shall be situated; and every such conveyance not so recorded shall be void, as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded." [1 R. S., 746, Sec. 1.

Before the Revised Statutes went into operation, there existed a different rule in relation to the recording of mortgages than that which prevailed in respect to deeds; but the revisers placed deeds and mortgages on the same footing. Deeds and mortgages are now denominated "conveyances," and the same rules are applicable to both. "Every conveyance of real estate shall be recorded," is now the language employed, and includes as well defeasible as indefeasible titles.

Although the statute is peremptory in form, it is potential in effect; in so far, that he who chooses to hazard his title by neglecting to record his deed, may do so, and abide any disaster that may attend the jeopardy. The consequence of his neglect is, that his unrecorded deed is *absolutely void*, as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded. A subsequent conveyance, however, will not take precedence, although first recorded, unless it be in *good faith, and for a valuable consideration.* The good faith will be presumed, until the contrary be shown in all cases; hence, the burden of proving bad faith and want of consideration, to defeat a subsequent purchaser or mortgagee, will rest upon the prior purchaser.

"Good faith," in this connection, indicates *knowledge*, or notice of the prior unrecorded conveyance. If the subsequent purchaser knew of the prior deed, however slight may be his knowledge, the law will not accredit him good faith toward the prior grantee, in taking a subsequent conveyance of the same land; for to do so, would be to contravene the general policy of the statute. A *valuable consideration* is requisite to the validity of the second conveyance; for if there be no consideration paid by the subsequent purchaser or mortgagee, he will have lost nothing of value, in case his deed is declared void; and the equity of the statute will be in favor of the prior grantee, whose deed was upon a valuable consideration. Hence, the statute requiring good faith and a valuable consideration on the part of a subsequent purchaser, to enable his deed to prevail against another of a prior date, is founded in equity and sound policy.

It is further enacted, that different sets of books shall be provided by the Clerks of the several counties, for the recording of deeds and mortgages; in one of which sets, all conveyances, absolute in their terms, and not intended as mort-

gages, or as securities in the nature of mortgages, shall be recorded; and in the other set, such mortgages and securities shall be recorded." [Id., Sec. 2.]

"Every deed conveying real estate, which by any other instrument in writing shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; and the person for whose benefit such deed shall be made, shall not derive any advantage from the recording thereof, unless every writing operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage, or conditional deed, be also recorded therewith, and at the same time." [Id., Sec. 3.]

This section of the statute was enacted for the prevention of fraud. Whilst it recognizes the doctrine advanced in relation to deeds and mortgages where the defeasance is separate from the conveyance, it at the same time makes provision against the collusion and fraud which such conveyances might otherwise cover, by going upon record as absolute conveyances, to the prejudice of creditors of the grantor, when the same was in fact but a mortgage. The grantee, therefore, of such a conveyance, must take heed that the defeasance executed by himself to the grantor thereof, be not only recorded, but recorded contemporaneously with his conveyance, lest he lose all benefit of the recording of the latter. The Clerk, it will be remembered, is required to provide and keep different sets of books, in which to keep the record of deeds and mortgages. Whilst the recording is notice to all the world of the existence of a conveyance, it must be observed nevertheless, that an improper record is not a notice that will bind a creditor, subsequent purchaser, or incumbrancer. To record a conveyance, absolute upon its face, but intended as a mortgage without the defeasance, would be to record it as a deed, in a set of books other and different from those which contain the record of mortgages.

In such case, the record thereof would not be the record of a mortgage; and the constructive notice thereof would not be notice of a mortgage, but rather of a deed; and being improperly recorded, the statute deprives the grantee of all benefit of the record. To protect it against subsequent purchasers and incumbrancers, it must be recorded as a mortgage; but this cannot be done unless the defeasance goes upon record "therewith and at the same time." In 1 Paige, 553, Chancellor Walworth remarks that "the object of this statute undoubtedly was to require every deed or instrument which was in fact only a mortgage, to be recorded. In Day vs. Dunham, 2 John, Ch. Rep. 188, Chancellor Kent held, that a deed absolute upon its face, but intended only as a security by way of mortgage, must be recorded as a mortgage, to protect the property against a bona fide purchaser; and that a constructive notice, arising from its being recorded as a deed, was not sufficient. It is true, in that case there was a written defeasance; but it was not executed until six months after the recording of the absolute deed, and long after the conveyance to the adverse party. It therefore could not have altered his rights if the defeasance had continued in parol. If the deed and defeasance had been recorded together as a mortgage, the moment the defeasance was executed it would not have protected the property against the intermediate conveyance. The decree in that cause was afterwards reversed in the Court of Errors, on the ground that the intermediate purchaser had actual notice, but the decision upon the point now under consideration was deemed correct. [15 John, 555.] The same question came before the court in James vs. Johnson and Morey, [6 Johnson, Ch. Rep. 417,] where there was no written defeasance, and was decided in the same way. When that case afterwards came before the Court of Errors, [2 Cowan, 247,] the present Chief Justice examined that question and concurred in the construction of the statute given by Chan-

cellor Kent; and the correctness of that construction was not questioned by any member of the court.

There can be no hardship or injustice in such a construction; but on the contrary, it will more effectually carry into effect the intention of the Legislature, and prevent fraudulent conveyances and secret trusts. If a conveyance is intended only as a mortgage, there can be no good reason why the terms on which it is to be defeasible should not appear on its face. If, through inadvertence, it is taken as an absolute deed, the holder may comply with the terms of the statute by making a written defeasance, specifying the conditions on which it was intended to be given, and recording both together in the book of mortgages. If he do this before the rights of any third party have intervened, he will be protected. And if he neglect it, he will only be in the same situation of every other mortgagee who neglects to have his security recorded. To entitle any conveyance to be recorded, either as a deed or mortgage, it must be properly acknowledged by the party or parties executing the same, or proved by a subscribing witness thereto and have endorsed thereon a certificate of such proof or acknowledgment, which certificate goes upon the record as an incident, together with any authentication that may be attached. The statute provides that "where any conveyance shall be proved or acknowledged before any Judge of the County Courts, not of the degree of Counsellor at Law in the Supreme Court, or before any Commissioner of Deeds, or Justice of the Peace of any county, it shall not be entitled to be read in evidence, or to be recorded in any other county than that in which such Judge, Commissioner or Justice resides, unless in addition to the preceding requisites there shall be subjoined to the certificate of proof or acknowledgment signed by such Judge, Commissioner or Justice of the Peace, a certificate under the hand and official seal of the Clerk of the county in which such Judge, Commissioner or Justice resides, specifying that such Judge, Commissioner or

Justice of the Peace was, at the time of taking such proof or acknowledgment, duly authorized to take the same, and that the said Clerk is well acquainted with the hand writing of such Judge, Commissioner or Justice of the Peace, and verily believes that the signature to the said certificate of proof or acknowledgment is genuine. [Id., Sec. 18.] This section, however, does not apply to any conveyance executed by any agent for the Holland Land Company, or by any agent for the Pulteney Estate, lawfully authorized to convey real estate. [Id., Sec. 19.]

The certificate of the proof or acknowledgment of every conveyance, and the certificate of the genuineness of the signature of any Judge, Commissioner, or Justice of the Peace, in the cases where such last mentioned certificate is required, should be recorded, together with the conveyance so proved or acknowledged; and unless the said certificates be so recorded, neither the record of such conveyance nor the transcript thereof can be read or received in evidence. [Id., Sec. 20.]

The jurisdiction of County Judges not of the degree of Counsellor at Law, Commissioners of Deeds for any city or county, and Justices of the Peace, are limited to their respective counties, and they are not judicially known beyond the confines thereof. Within their respective counties, however, all persons are bound to observe and recognize their acts. Their signatures carry all necessary evidence of the matter contained in their certificates, both to courts and recording officers. But where the deed is proved or acknowledged before a Judge not of the degree of Counsellor at Law, or a Commissioner of Deeds, or a Justice of the Peace, residing in Albany, and the land conveyed is in Cayuga, the Clerk of the latter county does not judicially know their signatures, and hence cannot safely record the deed. But it is otherwise with the Clerk of Albany. He is bound to know their signatures. He keeps the rolls of office upon which are entered their names, in the proper hand writing of each

of such officers, respectively, and by reference to which, he is enabled to determine not only that they have been duly commissioned and sworn, but that the signature of any one of them attached to a certificate of proof or acknowledgment of a conveyance, is genuine. Hence his certificate in such cases is required, and when given under the *seal of the county* (an impression which has been recorded in the office of the Secretary of State, and which is judicially known throughout the commonwealth,) it becomes that evidence of the authenticity of the certificate of the Judge, Commissioner, or Justice, as the case may be, which all courts and recording officers in the State are bound to recognize.

By placing both certificates upon the record, together with the conveyance, the public, and all parties in interest, are enabled to determine whether the conveyance recorded was properly executed, and the record itself is thereby made evidence in all courts of justice through all future time.

The proximity of New-York to the State of Connecticut, and the very considerable intercommunication and reciprocity of their inhabitants, have rendered some special legislation, in respect to conveyances executed by the Treasurer of that State, expedient. It is therefore enacted, that "All conveyances of real estate, executed since the tenth day of March, one thousand eight hundred and twenty-five, or hereafter to be executed by the Treasurer of the State of Connecticut, which shall be acknowledged by him before the Secretary of State of the State of Connecticut, and the acknowledgment of which shall be certified by the said Secretary, under the seal of the said State, in the manner herein prescribed, may be recorded in the proper offices within this State, without further proof thereof; and every such conveyance, or the record thereof, or the transcript of such record, duly certified, may be read in evidence, as if such conveyance had been acknowledged before a justice of the supreme court." [Id., Sec. 21.]

It is the duty of the recording officer to record every conveyance entitled to be recorded, in the order, and as of the time when the same shall be delivered to him for that purpose, and shall be considered as recorded, from the time of such delivery. He is required to make an entry in the record immediately after the copy of every conveyance recorded, specifying the time of the day, month, and year, when the said conveyance was recorded, and to endorse upon every conveyance recorded by him, a certificate, stating the time as aforesaid when, and the book and page where, the same was recorded.

Upon payment of any mortgage which has been received, the same may be discharged upon such record by the recording officer, whenever there shall be presented to him a certificate, signed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified, as hereinbefore prescribed, to entitle *conveyances* to be recorded; specifying that such mortgage has been paid, or otherwise satisfied, or discharged. This certificate of satisfaction, together with the certificate of its proof or acknowledgment, goes upon the record as the evidence upon which the Clerk cancels the record of the mortgage.

XVII. RECORDING DISTRICTS IN NEW-YORK.

EACH county is a recording district for all conveyances affecting the title to land therein; the County Clerk is, by statute, the recording officer; and the county seat, with a few exceptions, the location of his office. The earliest statute on this subject was enacted in 1787, but the same has been several times amended. The counties then existing have been divided and subdivided into those now forming the political divisions of the State. (See following page.) The records of the several counties contain the conveyances of land situated within them at the time of their execution.

Upon the erection of new counties, new records were

opened for all subsequent conveyances. In tracing land titles, therefore, from the county records, recourse must be had to the records of that county which embraced the land in question at the time of the conveyance or conveyances sought. This, when unaided by any faithful chronology of the several alterations and changes, is a task that is attended

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ALBANY, an original county in the Colony, erected in.....1683
ALLEGANY county was taken from Genesee, and erected in.....1806
BROOME county was taken from Tioga, and erected in.....1806
CATTARAUGUS county was taken from Genesee, and erected in.....1803
CAYUGA county was a part of Onondaga, and erected in.....1799
CHAUTAUQUE county was taken from Genesee, and erected in.....1808
CHEMUNG county was taken from Tioga, and erected in.....1836
CHENANGO county was taken from Tioga and Herkimer, and erected in.....1798
CLINTON county was taken from Albany, and erected in.....1788
COLUMBIA county was also a part of Albany county, and erected in.....1786
CORTLAND county was taken from Onondaga, and erected in.....1808
DELAWARE county was taken from Ulster and Otsego, and erected in.....1797
DUTCHESS county was an original county in the Colony, and erected in.....1683
ERIE county was taken from Niagara, and erected in.....1821
ESSEX county was taken from Clinton, and erected in.....1799
FRANKLIN county was also taken from Clinton, and erected in.....1803
FULTON county was a part of Montgomery, and erected in.....1837
GENESEE county was taken from Ontario, and erected in.....1802
GREENE county was taken from Ulster and Albany, and erected in.....1800
HAMILTON county was taken from Montgomery, and erected in.....1816
HERKIMER county was taken from Montgomery, and erected in.....1791
JEFFERSON county was taken from Oneida, and erected in.....1805
KINGS county was an original county in the Colony, and erected in.....1683
LEWIS county was taken from Oneida, and erected in.....1805
LIVINGSTON county was taken from Ontario and Genesee, and erected in.....1823
MADISON county was taken from Chenango, and erected in.....1806
MONROE county was taken from Ontario and Genesee, and erected in.....1821
MONTGOMERY county was the ancient Tryon county, and erected in.....1784
NEW-YORK, the New-Amsterdam of the Dutch, was erected in.....1683
NIAGARA county was taken from Genesee, and erected in.....1808
ONEIDA county was taken from Herkimer, and erected in.....1798
ONONDAGA county was erected from the military tract in Herkimer in.....1794
ONTARIO county was set off from Montgomery, and erected in.....1789
ORANGE county, an original county in the colony, was erected in.....1683
ORLEANS county was taken from Genesee, and erected in.....1824
OSWEGO county was taken from Oneida and Onondaga, and erected in.....1816
OTSEGO county was taken from Montgomery, and erected in.....1791
PUTNAM county was taken from Dutchess, and erected in.....1812
QUEENS county, an original county in the Colony, was erected in.....1683

with much embarrassment, and oftentimes with great difficulty and expense. With an accurate knowledge of the derivation and age of each county, the title of any given parcel of land may be easily traced through the records of the several counties whose jurisdiction at different periods covered it; as for instance: Cayuga was taken from Onondaga, Onondaga from Herkimer, and Herkimer from Montgomery, the name of which was changed from Tryon county, in 1784; therefore, the Montgomery records should be examined for any deeds recorded between 1784 and 1791, the Herkimer records for such as were recorded between 1791 and 1794, the Onondaga records for such as were recorded between 1794 and 1799, and the Cayuga records for such as have been recorded since, conveying land therein.

XVIII. WILLS OF REAL ESTATE IN NEW-YORK.

THIS species of conveyance was introduced into the Athenian government by Solon, for the purpose of breaking in upon the order of succession which had theretofore re-

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RENSSELAER county was taken from Albany, and erected in.....1791
RICHMOND county, an original county in the colony, was erected in.....1683
ROCKLAND county was taken from Orange, and erected in.....1798
ST. LAWRENCE county was taken from Oneida, and erected in.....1802
SARATOGA county was taken from Albany, and erected in.....1791
SCHOHARIE county was taken from Albany and Otsego, and erected in.....1795
SCHENECTADY county was taken from Albany, and erected in.....1809
SENECA county was taken from Cayuga, and erected in.....1804
STEUBEN county was taken from Ontario, and erected in.....1799
SUFFOLK county, an original county in the Colony, was erected in.....1683
SULLIVAN county was taken from Ulster, and erected in.....1809
TIOGA county was taken from old Montgomery, and erected in.....1791
TOMPKINS county was taken from Cayuga and Seneca, and erected in.....1817
ULSTER county, an original county in the Colony, was erected in.....1683
WARREN county was set off from Washington, and erected in.....1813
WASHINGTON county was the ancient Charlotte county, and was erected in....1772
WAYNE county was taken from Ontario and Seneca, and erected in.....1823
WESTCHESTER county, an original county in the Colony, was erected in.....1683
WYOMING county was taken from Genesee, and erected in.....1841
YATES county was taken from Ontario, and erected in.....1823

mained unaltered for centuries. The doctrine upon which wills were predicated was, "that the general interests of society require that every man should have the free disposition, as well as the enjoyment, of his own property"—a doctrine recognized in this country as a concomitant of civil liberty.

In most cases, the statute of descents makes a just distribution of one's property after his death; yet there are oftentimes cogent reasons for a different apportionment. But as devises are allowed, in opposition to that statute, certain forms and ceremonies in their execution are required, to the end that they may be the *good pleasure* of a competent testator, and not the result of imbecility, coercion, or fraud.

Wills were allowed in the Roman Republic only when they were executed in the presence of five citizens, representing the people at large. Subsequently, by a law of the prætors, the number was increased to seven, who were required to attest them by their signatures and seals. To these Justinian superadded the requirement, that one-fourth of the estate should in all cases be reserved to the children of the testator, "to rebut evidence of imbecility."

Under the feudal system, no will was valid without the assent of the lord. In the reign of Charles II. this provision was abolished, and with it military tenures. In Scotland, until a recent period, a will was void, if it divested the major part of the estate from the lineal heir. The English rule on this subject was imported into this country on the settlement thereof, and became a part of the colonial jurisprudence. The statute of the Second Charles is the groundwork of ours, and from which many sections were copied verbatim.

In New-York, all persons, except idiots, persons of unsound mind, married women and infants, may devise their real estate by a last will and testament, and such devise may be made to any person capable in law of holding real estate. [2 R. S., 2., Sec. 1.] No corporation can take real estate by devise, unless its charter expressly authorize it. [Id., Sec. 3.]

The following provisions of the statute, are applicable to the execution of wills, and contain all the necessary directions concerning the manner of their execution.

"Every last will and testament of real or personal property, or both, shall be executed and attested in the following manner:

"1. It shall be subscribed by the testator at the end of the will.

"2. Such subscription shall be made by the testator in the presence of each of the attesting witnesses, or shall be acknowledged by him to have been so made, to each of the attesting witnesses.

"3. The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed to be his last will and testament.

"4. There shall be at least two attesting witnesses, each of whom shall sign his name as a witness at the end of the will, at the request of the testator." [2 R. S., 7., Sec. 40.]

"The witnesses to any will, shall write opposite to their names their respective places of residence; and every person who shall sign the testator's name to any will by his direction, shall write his own name as a witness to the will. Whoever shall neglect to comply with either of these provisions, shall forfeit fifty dollars, to be recovered by any person interested in the property devised or bequeathed, who will sue for the same. Such omission shall not affect the validity of any will; nor shall any person liable to the penalty aforesaid, be excused or incapacitated on that account from testifying respecting the execution of such will." [Id., Sec. 41.]

"No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked or altered, otherwise than by some other will in writing, or some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which the will

itself was required by law to be executed; or unless such will be burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person, the direction and consent of the testator, and the fact of such injury or destruction, shall be proved by at least two witnesses. [Id., Sec. 42.]

By this provision it will be seen that the same formality is required in the execution of a revocation of a will, as in the execution of the will itself. It must be signed, witnessed and published. And in case it is the purpose of a testator to burn or destroy a will, and he directs another person to do it, the latter should see to it that two witnesses may be present, to the end that they may testify to the consent and direction of the testator as well as to the fact of the destruction of the will.

There is no established *form* for a will of real estate. If the will be so drawn that its provisions are not inconsistent with each other, or in violation of the laws regulating estates, and the same is intelligible as to the intent and design of the testator, it is valid. But if a will be so drawn that its execution is rendered impossible, [8 Paige, 333] or creates trusts, in violation of the law, or suspends the absolute power of alienation of real estate for a longer period than the continuance of two lives, in being at the creation of the estate, [1 R. S., 718, Sec. 15; 9 Paige, 527.] the property will descend according to law of inheritance and descents.

In construing wills, full effect is given to the *particular*, as well as the *general* intent of the testator, so far as the same can be ascertained, and is consistent with the rules of law. And where a will contains inconsistent clauses, which cannot be reconciled to each other, effect will be given to the last clause, as the final determination of the testator, unless the contrary conclusion is apparent. In the latter case, both

are nullified, not being susceptible of effectuation by executors. [9 Paige, Ch. R., 107.] But the courts seek an interpretation that will give effect to the dying manifesto of the testator in respect to his property, if the same can be determined from the instrument to be in conformity with the general laws of the land. In most cases, provisions apparently conflicting may be reconciled with each other, or so determined that the latter may be taken as the last and the controling expression of the decedent's will and pleasure.

Every estate and interest in lands which is descendible to heirs may be devised. [2 R. S., 2, Sec. 2.] This provision was taken from that of England, which provided that all and singular persons having any manors, lands, tenements, or hereditaments of the estate of inheritance, should have full power to will the same. [Stat. 32, Hen. VIII., Chap. 1.] According to Blackstone, the words lands, tenements and hereditaments, include "whatever may be inherited," be it corporeal, incorporeal, real, personal, or mixed. [2 Bl. Com., 17.] As the right of entry would descend to the heir, it follows as a concomitant of a devise by will, that the heir under the will is invested with that right.

But the testator cannot divest his widow of her dower in his real estate by will, except she elect to take such pecuniary provision or jointure as he shall see fit to provide for her. The statute invests her with an *estate in dower*, in and to one-third part of all the lands whereof her husband was seized at any time during the marriage, [1 R. S., 732,] and being vested, her husband has not the power to devise her estate, unless by adultery she shall have forfeited the right, and the marriage for that reason has been dissolved. To protect the wife in the enjoyment of her rights, is the leading purpose of the statutes regulating descents; nor do those concerning wills in any respect weaken her claim. Yet, if her husband die, leaving a will which makes pecuniary provision for her, or devises particular lands to her, in lieu of

her dower in all, she is obliged to make her election, whether she will take the lands so devised, or the provision so made, or whether she will be endowed of the lands of her husband. [1 R. S., 734, Sec. 13.] This election, however, she is compelled to make within one year, if she desires to retain her dower in the lands; for unless she make such election, she shall be deemed in law to have chosen to receive in lieu thereof the devises or bequests contained in the will. [Id., Sec. 14.]

Not only is a widow entitled to dower in the lands of her husband at his decease, but she is entitled to dwell in the chief house of her husband forty days after his death, without being liable to pay any rent therefor, and to have meanwhile her reasonable sustenance out of his estate. [Id., Sec. 17.]

It is usual for the testator to designate and appoint the executors of his will. This, however, may be omitted, and in such case a suitable person or persons will be appointed by the surrogate to execute its provisions, and who will be required to give security for the performance of the trust. And though the testator do appoint executors, if at the time of his decease they be dead, or have departed the country, or are under the age of twenty-one years, or incapable in law of making a contract, (except married women,) or an alien, not being an inhabitant of this State, or shall have been convicted of an infamous crime, or shall be adjudged incompetent, administrators are required to be appointed by the Surrogate. So also, in case all the executors named renounce their appointment.

The testator may appoint guardians or a guardian for his infant children in and by his will. The statute provides that "every father, whether of full age or a minor, of a child likely to be born, or of any living child under the age of twenty-one years, and unmarried, may by his deed, or LAST WILL, duly executed, dispose of the custody and tuition of

such child during its minority, or for any less time, to any person or persons, in possession, or remainder." [2 R. S., 152, Sec. 11.] A testamentary guardian may be appointed, notwithstanding a previous appointment, by deed of another person, for the appointment by will, when it takes effect, works a revocation of that made by a deed. [3 Kent. A testamentary guardian is authorized to take the custody and management of the profits of the real estate of the infant, until the latter arrives at the age of twenty-one years.

In executing a will, any mark which the testator uses as his signature, will be accredited as a valid subscription. If another write the testator's name, at his request, the signature will be valid, provided such person also sign his own name as a witness, the maxim being "*Qui facit per alium, facit per se.*" But care should be taken that the beneficiaries are not called by the testator as witnesses. For it is provided that "if any person shall be a subscribing witness to the execution of any will, wherein any beneficial devise, legacy, or interest, or appointment of any real or personal estate, shall be made to such witness, and such will cannot be proved without the testimony of such witness, the said devise, legacy, interest, or appointment shall be void, so far only as concerns such witness, or any person claiming under him; and such person shall be a competent witness, and compellable to testify respecting the execution of the said will, in like manner as if no such devise or bequest had been made." [2 R. S., 9, Sec. 50.]

No particular form of words is necessary to be used by the testator in declaring the instrument signed by him to be his last will and testament. It is sufficient, if he actually communicate to the attesting witnesses the information that he knows and understands the nature of the instrument he is executing, and intends distinctly to recognize it as his will. He must in some language indicate to the witnesses, that it is his will, so that they may understand him. It has been

held, that where the attestation clause recites that the will was executed and published by the testator, as his last will and testament, in the presence of the witnesses, specifying, that all the requisite formalities were complied with, and the same is read over in the presence and hearing of the testator and witnesses, and understood by him and them, a request from the testator, that they will subscribe the same, as witnesses to his execution thereof, will, of itself, be a sufficient publication of the instrument, as his last will and testament. [8 Paige's R., 488."*]

XIX. THE PROBATE AND RECORDING OF WILLS OF REAL ESTATE IN NEW-YORK.

Surrogates, or if there be no such officer, then First Judges of counties, are invested with authority to take proof of the execution of wills, and to admit the same to probate and record; First, where the testator was at the time of his death

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* Wills are revoked by the birth of lawful issue afterward, unless some settlement shall have been made for such issue, in the will or otherwise. [2 R. S., 8, Sec. 43; 1 Wash., 140.]

A will of an unmarried woman is revoked by her subsequent marriage. [Idem, 44.]

Parol evidence of the revocation of a will is inadmissible. [2 John, 31.]

A mere intention does not work a revocation. [9 Cowan, 203.]

The slightest degree of cancelation, with intent to revoke, will operate as a revocation. [4 Cowan, 433.]

The mere act of canceling a will is nothing, unless it be done *animo revocandi*. [7 John, 394.]

The mental sanity of the testator is presumed, until the contrary appears. [5 John, 144.]

Duress may be proved by parol, but not the testator's own declarations, as to that point. [2 John, 31.]

A devise to a witness or his wife, is void. [2 John, C. 314.]

An obliteration of a will is not per se a revocation. [3 McCord, 282.]

An agreement made by the testator to convey any property by him devised, does not work a revocation; but the same will pass to the legatee, subject to the condition imposed by the testator's contract. [2 R. S., 8, Sec. 45.]

An incumbrance, executed by the testator, upon premises devised, does not work a revocation. [Idem, 46.]

A legal instrument, wholly inconsistent with a former devise, executed by a testator, does operate as a revocation. [Idem, 47.]

an inhabitant of the county of which the officer is Surrogate or Judge; Secondly, where the testator was a non-resident of the State, but shall have died in the said county, leaving assets therein; Thirdly, where the testator was a non-resident of the State, and shall have died out of the State, but hath left assets in the said county; Fourthly, where the testator was a non-resident, and shall have died out of this State, leaving assets that have come into the said county.

An executor, heir, devisee, legatee, or other person interested in any will, may apply to the Surrogate or Judge for probate of the same, who has power to cause the will to be produced, in case it is not in the possession of the applicant. Application being thus made, it is the duty of the officer "to ascertain, if the will relate exclusively to real estate, the names and places of residence of the heirs of the testator, unless upon diligent inquiry the same cannot be ascertained; or if the will relate to both real and personal estate, the names and places of residence of the heirs, widow, and next of kin of the testator, unless upon diligent inquiry the same cannot be ascertained." [Sess. Laws 1837, Sec. 5.] And he shall also ascertain whether any and who of the persons mentioned in the preceding section, are minors, and the names and places of residence of their general guardians, if they have any; and if there be no general guardian within this State, the Surrogate shall, by an order to be entered, appoint a special guardian for such minor, to take care of his interest in the premises, and the written consent of every person so appointed special guardian, to serve as such, shall be filed with the Surrogate. The testamentary guardian named in the will to be proved, shall not for this purpose be deemed a general guardian. [Id., Sec. 6.] Thereupon it is the duty of the officer to issue citations, requiring the said widow, heirs, and next of kin, or such of them as the statute requires in the premises, to appear on a day therein mentioned, and attend the probate of the will. The statute requires the citation

to be personally served on such of the persons to whom it is directed, as reside in the same county with the Surrogate, or an adjoining county, at least eight days before the day for proving the will; or by leaving a copy at the residence of such person with some individual of suitable age and discretion; and in like manner, upon persons residing in any other county in the State, at least fifteen days before the day of hearing; and also in like manner, upon persons residing without the State, not less than fifteen nor more than ninety days before the day of hearing, or by publishing a copy of the citation in the State paper for six weeks previous to the day appointed for taking the proof. [Sess. Laws 1837, Chap. 460, as amended in 1840.]

On the day mentioned in said citations, or such further day as may be appointed, upon proof being made of the due service of the citation, the surrogate shall cause the witnesses to be examined before him. All such proofs and examinations shall be reduced to writing. Two at least of the witnesses to such will, if so many are living in this State, and of sound mind, and are not disabled from age, sickness, or infirmity, from attending, shall be produced and examined; and the death, absence, insanity, sickness, or other infirmity of any of them, shall be satisfactorily shown to the Surrogate taking such proof: and the Surrogate shall inquire particularly into the facts and circumstances, before establishing the same, or granting letters testamentary or of administration thereof. [Id., Sec. 10.] In case the proof of any will is contested, and any person having the right to contest the same shall, before probate made, file with the Surrogate a request in writing, that all the witnesses to such will shall be examined; then all the witnesses to such will, who are living in this State and of sound mind, and who are not disabled from age, sickness, or infirmity from attending, shall be produced and examined; and the death, absence, insanity, sickness or other infirmity of any of them, shall be satisfac-

torily shown. [Id., Sec. 11.] This may be done, although the will is not contested. The Surrogate is invested with power to issue subpœnas, and adjourn the proceedings at his discretion, until all requisite proof can be adduced by the parties interested in sustaining or defeating the will.

After the witnesses to the will, and such others as shall have been produced, shall have been sworn and examined, and the Surrogate is judicially satisfied that the will was duly executed, that the testator, at the time of executing the same, was in all respects competent to devise real estate, and not under restraint, it is his duty to record the will, together with the proof and examinations taken in regard to proving the same, and to endorse upon the will a certificate, under his hand and seal of office, showing that such will has been admitted to probate.*

XX. THE TITLE TO REAL ESTATE BY DESCENT.

The statute [1 R. S., 742] provides that the real estate of every person who shall die without devising the same, shall descend in the following manner, namely: First, to his lineal descendants; Secondly, to his father; Thirdly, to his mother; and Fourthly, to his collateral relatives; subject, in all cases, to the rules and regulations hereinafter prescribed. If the intestate leave several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, the inheritance will descend to such persons in equal parts,

* It is the duty of the Surrogate to proceed to the dwelling house of an aged, sick, or infirm witness, and there take his or her testimony. [Sess. Laws 1841, Chap. 129.]

No will shall be deemed proved, until all the witnesses residing within this State shall have been examined. [Idem.]

If all the witnesses be dead, absent, or incompetent to testify, the will cannot be recorded as a will of real estate. [Idem.]

When one or more are examined, and the others are dead, insane, or absent, then such proof of the hand-writing of the testator, and of other circumstances, as would be required in a court, shall be received. [Sess. Laws 1840.]

Where witnesses to a will all reside out of the State, a court of equity can issue a commission to the State where the witnesses reside, and thereby obtain their testimony. [1 Barbour.]

however remote from the intestate the common degree of consanguinity may be. If any of the children of such intestate be living, and any be dead, the inheritance will descend to the children who are living, and to the descendants of such children as shall have died; so that each child who shall be living, shall inherit such share as would have descended to him, if all the children of the intestate who shall have died leaving issue, had been living; and so that the descendants of each child who shall be dead, shall inherit the share which their parent would have received if living. In case the intestate shall die without lawful descendants, and leaving a father, then the inheritance will go to such father, unless the inheritance came to the intestate on the part of his mother, and such mother be living; but if such mother be dead, the inheritance descending on her part goes to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; if there be no such brothers or sisters, or their descendants, living, such inheritance will descend to the father in fee.

If the intestate shall die without descendants, and leaving no father, or leaving a father not entitled to take the inheritance, and leaving a mother and a brother or sister, or the descendant of a brother or sister, then the inheritance will descend to the mother during her life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance. If the intestate in such case shall have no brother or sister, nor any descendants of any brother or sister, the inheritance shall descend to the mother in fee.

If there be no father or mother capable of inheriting the estate, it will descend, in the cases hereinafter specified, to the collateral relatives of the intestate; and if there be several such relatives, all of equal degree of consanguinity to the intestate, the inheritance will descend to them in equal parts,

however remote from the intestate the common degree of consanguinity may be. If all the brothers and sisters of the intestate be living, the inheritance will descend to such brothers and sisters; if any of them be living, and any be dead, then to the brothers and sisters and every of them who are living, and to the descendants of such brothers and sisters as shall have died; so that each brother or sister who shall be living, shall inherit such share as would have descended to him or her, if all the brothers and sisters of the intestate who shall have died leaving issue, had been living, and so that such descendants shall inherit the share which their parent would have received if living.

In respect to the other lineal descendants of the brothers and sisters of the intestate, to the remotest degree, it is provided that the same law of inheritance shall prevail. [Id., Sec. 91.] But if there be no heir entitled to take under any of the above provisions, and the inheritance came to the intestate on the part of the father, the same descends to the father's brothers and sisters and their heirs; or if it came to the intestate on the part of the mother, the inheritance will descend to the mother's brothers and sisters and their heirs. In either case, if the parent through whom the estate came to the intestate, have no brothers or sisters, nor descendants of brothers or sisters, the estate will go to the brothers and sisters of the other parent, and to their descendants. [Id., Sec. 11, 12.] Where the estate came from neither the father or mother of the intestate, then the brothers and sisters of both will take in equal shares the same as if they were brothers and sisters of the intestate. If any be dead, their descendants inherit the share that their parent would have received if living. [Id., Sec. 13.] If the intestate shall have been an illegitimate, and shall have died without issue, his mother, or if she be dead, the relatives on the part of his mother, inherit the estate. [Id., Sec. 14.]

Relatives of the half blood inherit equally with those of

the whole blood, and the same rule applies to their descendants; unless the inheritance came by descent, devise, or gift of some one of his ancestors, in which case all who are not of the blood of such ancestor, are excluded. Posthumous children inherit the same as if born in the life-time of the intestate and had survived him. [Id., Sec. 18.] Illegitimate children and relatives cannot inherit under any of the foregoing provisions, as they are said to have no inheritable blood. [4 Kent, 400.]

XXI. LAND TAXES IN NEW-YORK.

All lands in the State, except such as belong to the State, or the United States, public library associations, or whereon colleges, academies, seminaries, churches, schools, court-houses, jails, poor-houses, alms-houses, houses of industry, of refuge and for correction are erected, are subject to taxation. The levy is made by the Board of Supervisors of each county, and the rate bill is apportioned from the assessment rolls prepared by the Assessors of towns, between the first days of May and July in each year. In preparing assessment rolls the Assessors are required to enter thereon the name of every taxable inhabitant in the town, with the quantity and full value of the land to be taxed to each person, together with all non-resident lands, properly described and distinguished. [1 R. S., 382.]

The statute requires the assessment rolls to be completed on or before the first day of September, in every year, and a fair copy thereof to be made and left with one of their number; and notices setting forth that such Assessors have completed the roll, and that a copy has been left with one of their number, naming him, at some place to be specified therein, where the same may be seen and examined by any inhabitant of the town or ward for twenty days, and that at the expiration thereof, the Assessors will review their assessments on the application of any person conceiving himself

aggrieved, to be posted in three public places in the town. [Id., 384, Sec. 19.] At the time and place specified in the notice, the Assessors are required to meet and review their assessments, and to alter and correct the same on due proof of any error therein, and upon the completion thereof to certify to their correctness, and deliver the roll to the Supervisor of their town before the first day of October, who is required to deliver the same to the Board of Supervisors at their next meeting, which is on the second Tuesday of November, in each year. [Id., 20 to 27.]

The Board of Supervisors of each county, at their annual meeting, are required to examine the rolls of the several towns, and to equalize the same, so that the valuations in one town shall bear a just relation to those in another; and also to determine the amount of money to be levied for State, county and town purposes, to apportion the same among the several towns of the county, and to prepare, sign, and cause to be delivered to the several Collectors of towns, warrants for the collection thereof. [Id., 28 to 31.]

The Collector, upon receiving any warrant for the collection of taxes, is required to cause notices of the reception thereof to be posted up in five public places in the ward or town, designating therein some central and convenient place in such town, where he will attend from nine o'clock in the forenoon, till four o'clock in the afternoon, at least once in each week for thirty days, on a day also to be specified in such notice, for the purpose of receiving payment of taxes; at which time and place he is required to attend accordingly, and receive any taxes offered to be paid, with one per cent. fees. And if any taxes remain unpaid, at the expiration of said thirty days, it is then his duty to proceed and collect the same of the several and respective persons named in the tax list, with five per cent fees. [Sess. Laws 1845, 189.] On the first day of February next succeeding the time when he shall have received his warrant, he is required to pay over

the money collected to, and settle with, the County Treasurer of his county. [1 R. S., 386, Sec. 37.]

It is further provided, that in case any person shall refuse or neglect to pay the tax imposed on him, the Collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods and chattels in his possession, wheresoever the same may be found within the district of the Collector, and that no claim of property made by any other person shall be effectual to prevent a sale. In default of payment or collection of taxes on any farm assessed to a resident, the Collector is required to return the same to the Supervisor, who will cause the same to be added to the assessment of the following year. [Id., 392, Sec. 27.] If the taxes of non-resident lands are not paid to the Collector in the life-time of his warrant, the amount thereof is required to be credited to the Collector, by the County Treasurer, who thereupon and before the first day of April ensuing, is required to transmit a certificate thereof to the Comptroller of the State, who, thereupon, is required to credit the county with the amount of said taxes in his account with such county, for taxes due the State. [Id., Sec. 30.]

"Whenever any tax, charged on lands returned to the Comptroller, and the interest thereon shall remain unpaid for two years from the first day of May following the year in which the same was assessed, the Comptroller shall proceed to advertise and sell such land in the manner hereinafter pro-[vided. Id., Sec. 52.]

Taxes are perpetual liens upon real estate, and take precedence of all other incumbrances.

XXII. LAND TAX FORFEITURES AND REDEMPTIONS IN NEW-YORK.

A forfeiture of lands is the penalty of non-payment of land taxes and neglect of redemption. It however is rather the

result of a valid conveyance by the Comptroller, and a compliance with the statute by the purchaser, than of any law declaring such penalty. The people, through their organs, having the right to impose taxes upon lands, and to transfer the same to a stranger, in case of non-payment of such tax by the owner, a forfeiture is wrought out for the latter as destructive to his interests as any which might have been, in terms, declared. The forfeiture is not absolute until title in another through the Comptroller's deed becomes perfect. If the owner have neglected to pay his taxes to the Collector, he may pay them to the County Treasurer, at any time before he shall have made his returns thereof to the Comptroller, and to the State Treasurer thereafter within two years from the ensuing first day of May, or before actual sale by the Comptroller. If payment be not then made, the sale takes place under the sixty-third section of title three of chapter thirteen of the Revised Statutes, which is as follows: "On the day mentioned in the notices, the Comptroller shall commence the sale of such lands, and shall continue the same from day to day until so much of each parcel assessed shall be sold as will be sufficient to pay the taxes, interest, and charges thereon. The purchasers at such sales, shall pay the amount of their respective bids to the Treasurer, within forty-eight hours after the sale; and if any such purchaser shall refuse or neglect to pay the same within that time, the Comptroller shall state an account against him, and shall deliver it to the Attorney General, who shall be entitled to recover the same from the purchaser by auction, in the name of the People of this State; and for that purpose, he shall forthwith cause a suit to be instituted therefor. After such payment shall have been made, the Comptroller shall give to the purchaser of any such lands, a certificate in writing, describing the lands purchased, the sum paid, and the time when the purchaser will be entitled to a deed." But, as has been intimated, the owner or occupant, or any other person,

may redeem at any time within two years after the sale, upon paying to the Treasurer the amount of the purchaser's bid, and ten per cent per annum thereon from the date of the Comptroller's certificate to the purchaser. "If no person shall redeem such lands within such two years, the Comptroller shall, at the expiration thereof, execute to the purchaser, his heirs or assigns, in the name of the People of this State, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject, however, to all the claims which the people of this State may have thereon for taxes or other liens or incumbrances. [1 R. S. 399, Sec. 80.]

The language of the foregoing section is qualified by other sections whenever the land sold is occupied. For it is provided that whenever any land sold for taxes by the Comptroller, and conveyed as hereinbefore provided, shall at the time of conveyance be in the actual occupancy of any person, the grantee to whom the same shall have been conveyed, or the person claiming under him, shall serve a written notice on the person occupying such land, stating in substance the sale and conveyance, the person to whom made, and the amount of the consideration money mentioned in the conveyance, with the addition of thirty-seven and a half per cent on such amount, and the further addition of the sum paid for the Comptroller's deed; and stating also, that unless such consideration money, and the said thirty-seven and a half per cent, together with the sum paid for the Comptroller's deed, shall be paid into the treasury for the benefit of such grantee, within six months after the service of such notice, that the conveyance of the Comptroller will become absolute, and the occupant, and all others interested in the land, be forever barred from all right or title thereto. [Id., Sec. 84.] Such notice may be served personally, or by leaving the same at the dwelling-house of the occupant, with any person of suitable age and discretion belonging to the family. [Id., Sec. 85.] "The occupant, or any other person, may, at any

time within the six months mentioned in such notice, redeem the said land, by paying into the treasury such consideration money, with the addition of thirty-seven and a half per cent thereon, and the amount that shall have been paid for the Comptroller's deed; and every such redemption shall be as effectual as if made before the conveyance of the lands sold." [Id., Sec. 86.]

By an act passed in 1830, it was provided that the time for redeeming any such lands should be within six months from and after the time of filing in the Comptroller's office of the evidence of the service of the said notice, and not the six months mentioned in the statute above cited; so that the occupant of any such lot, or any other person, may redeem the same within six months from the day of the filing in the Comptroller's office, the proof of the service of said notice. The receipt of the Treasurer, countersigned by the Comptroller, and accompanied by a certificate of the Comptroller, under seal, is evidence of the redemption.

XXII. LIMITATION OF ACTIONS FOR THE RECOVERY OF REAL ESTATE.*

The limitation upon actions for the recovery of real estate, or of dower therein, is twenty years. [2 R. S., 221, Sec. 5.] An occupant of land under some written instrument, decree, or judgment, for twenty years, is deemed to have an adverse possession, in case the land during that time shall have been cleared, fenced and improved. [Id., 222, Sec. 9.] Whenever the relation of landlord and tenant exists, the possession of the tenant is deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or where there has been no written lease, until the

*The limitation upon contracts not under seal, express or implied, notes, bills, drafts, accounts, judgment in courts not of record, trespasses on land, unlawful detention of goods, libels, and criminal conversations, is six years; false imprisonments and assaults, *four years;* against sheriffs, for neglect, *three years;* slander of character or title, two years; and against officers, for escapes, one year.

expiration of twenty years from the time of the last payment of rent. [Id., 223, Sec. 13.]

But if any person, entitled to an action, or to make an entry, avowry, or cognizance, be, at the time such title shall first descend or accrue, either within the age of twenty-one years, insane, imprisoned on any criminal charge, or in execution upon some conviction for a criminal offence, for any term less than for life; or a married woman, ten years after the removal of such disability is allowed for such action, entry, avowry, or cognizance. [Id., Sec. 16.] If death ensue during the existence of the disability, the heirs have a limitation for the same purpose, of ten years after such death. [Id., Sec. 17.]

XXIII. REAL ESTATE EXEMPTIONS IN NEW-YORK.

No real estate, nor chattel real, of a debtor, except a seat or pew occupied by him, or his family, in a church, or place of public worship, are exempt from levy and sale on execution. Several ineffectual attempts have been made in the Legislature to procure the passage of a law exempting the wife's separate real estate from the debts of her husband, and to exempt a certain number of acres to the debtor and his family, for a residence, but hitherto all indications are unfavorable to such a result.*

*Section 22, Title 5, Chap. 6, Part 3 of the Revised Statutes, provides that the following property, when owned by any person being a householder, shall be exempted from levy and sale under any execution, and such articles thereof as are moveable, shall continue so exempt, while the family of such person, or any of them, may be removing from one place of residence to another:

1. All spinning wheels, weaving looms, and stoves, put up or kept for use, in any dwelling house:

2. The family bible, family pictures, and school books, used by or in the family of such person; and books not exceeding in value fifty dollars, which are kept and used as a part of the family library:

3. A seat or pew occupied by such person or his family, in any house, or place of public worship:

4. All sheep, to the number of ten, with their fleeces, and the yarn or cloth manufactured from the same, one cow, two swine, the necessary food for them, all ne-

XXIV. INTEREST OF MONEY IN NEW-YORK.

INTEREST, in its legal sense, is an established equivalent for the use of another's money. The practice of exacting a per centage for the loan or forbearance of money originated with the children of Israel. Among them it often resulted in constraining debtors to surrender their persons as slaves to the service of their creditors. Whilst it may be inferred that a fair compensation for the use of money was acceptable to the Lawgiver, it is palpable that taking interest from the poor was regarded as oppression. Hence, 1491 B. C., an ordinance was given unto that people, commanding them not to lay usury (interest) upon the poor. [Vide Ex., Chap. 22: 25.] The same thing was also prohibited by the Levitical law. [Vide Lev., Chap. 25: 37.]

Some have supposed that those authorities indicate that the taking of any interest from any person is obnoxious to the law of God. Such, however, is not the import of the language used, and all inferences tending to such a conclusion are rebutted by an event occurring one thousand five hundred and twenty-four years afterward, and noted at verse thirty-seven of the twenty-fifth chapter of Matthew, where the right to

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cessary pork, beef, fish, flour and vegetables actually provided for family use, and necessary fuel for the use of the family for sixty days:

5. All necessary wearing apparel, beds, bedsteads, and bedding for such person and his family, arms and accoutrements required by law to be kept by such person, necessary cooking utensils, one table, six chairs, six knives and forks, six plates, six tea-cups and saucers, one sugar-dish, one milk-pot, one tea-pot, and six spoons, one crane and its appendages, one pair of andirons, and a shovel and tongs:

6. The tools and implements of any mechanic, necessary to the carrying on of his trade, not exceeding twenty-five dollars in value.

By an act passed April 11, 1842, it was provided, that in addition to the foregoing articles, *necessary* household furniture and working tools, and team owned by any person, being a householder, or having a family for which he provides, to the value of not exceeding one hundred and fifty dollars, shall be exempt from levy and sale under execution, except for the purchase money thereof. And as a further protection against the improvidence occasioned by inebriety, it was in the same act further provided, that any assignment, sale, or pledge, of property exempt by law from execution, for intoxicating liquors, shall be absolutely void.

usury (interest) was clearly indicated by a competent judge. [Vide also Luke 19 : 23.] In later times, however, in order to prevent oppression of the poor, it has been found necessary to regulate the rate by enactments. The New-York statute upon this subject is as follows :

" The rate of interest upon the loan or forbearance of any money, goods or things in action, shall continue to be seven dollars upon one hundred dollars, for one year, and after that rate for a greater or less sum, or for a longer or shorter time." [1 R. S., 760, Sec. 1.]

There is a growing desire among the people, to have the rate reduced to six per cent ; but as the present rate invites hither much foreign capital, the expedience of any change may be considered doubtful.

XXV. THE PENALTY AND FORFEITURE OF USURY IN NEW-YORK.

Usury, in its primitive sense, was interest. The import of the term has been qualified by general consent, and it now signifies excess of interest beyond that which is allowed by law. To regulate trade, and prevent extortion, laws have been enacted, regulating interest and preventing usury. By a statute passed May 15, 1837, the receiving of usury was made a misdemeanor, for which the offender may be indicted, tried and convicted, and fined, not exceeding one thousand dollars, or imprisoned, not exceeding six months, or both, at the discretion of the court. It was therein also made the duty of all courts of justice to charge grand juries especially to inquire into any violations of the act, to prevent usury.

In addition to the foregoing penalty, it was provided that all bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever, (except bottomry and respondentia bonds and contracts,) and all deposits of goods, or other things whatsoever, whereupon or whereby there

shall be reserved or taken any greater sum or greater value, for the loan or forbearance of any money, goods, or other things in action, than at and after the rate of seven per centum per annum, shall be void.

Not only does the usurer lose the excess, but he forfeits the principal together with the lawful interest thereon, which, otherwise, he might acquire. And in order to place the proof of usury within the reach of the maker of a usurious contract, the statute provides that a defendant may call the plaintiff, in an action at law, as a witness to prove the facts concerning the excess of interest by him taken or reserved; and if such plaintiff swear falsely concerning the same, that he shall be subject to the pains and penalties of corrupt perjury.

Whilst the statute above cited is rigorous concerning usury, it has no application to the sale or transfer of bonds, notes, or securities which are valid in their inception. If the original transaction between the parties to an obligation for the payment of money be not tainted with usury, the holder of such paper may transfer the same at whatever discount he may choose to make, and the purchase thereof by a third person will be protected by law; but if, in making such transfer at a discount, the payee, or obligee guaranty the payment or collection of the whole amount secured by the face of the instrument, he cannot be held thereon for the excess beyond the consideration by him received of the purchaser, and simple interest thereon, from the time of the transfer.

CHAPTER II.

THE STATE OF OHIO.

Native Proprietors of the Territory northwest of the river Ohio. Exploration and Settlement thereof by the French. Grants by Governors of Posts. The Coutume De Paris. Vandreuil's Capitulation to General Amherst, and Surrender of the Territory to Great Britain. Extracts from the Charters of Massachusetts, Connecticut, New-York and Virginia. Succession of the United States to the rights of Great Britain over the Territory. Cessions of Domain from Massachusetts, Connecticut, New-York and Virginia. Treaties extinguishing the Indian Right of Occupancy. Ordinance of Congress concerning the Territory. The Constitution of Ohio. Land Titles generally in the State. The Execution, Attestation, Proof, Acknowledgment and Recording of Conveyances. The Execution and Probate of Wills of Real Estate. Descents. Land Taxes. Tax Sales and Redemptions, Limitations and Exemptions. Interest of Money, and Usury.

II. NATIVE PROPRIETORS OF THE TERRITORY NORTHWEST OF THE RIVER OHIO.

When this magnificent country was visited by Raymbault, it was in the peaceable possession of the Hurons and numerous cantons of the Algonquin race—the former an offshoot from the parent stock of the Iroquois—the latter remnants of a powerful confederacy, which, on account of the secession of the Foxes, had been dissolved about a century before. The seat of Algonquin power, and the theatre of their operations, had, in the better days of their confederacy, been beyond the copper mines; but after the Alleghans and Iroquois had swept along and passed the confines of the valleys of the Mississippi and Ohio, they ranged southward to, and the

Delawares had even crossed the Ohio, and established themselves on the head waters of the Atlantic rivers.* The Iroquois claimed the Ohio country, but did not occupy it.

The Algonquins were a very warlike people; but in their numerous struggles for supremacy, had found the Iroquois to be their superiors.

Neither history nor tradition indicate the parentage of this race; yet ethnology accredits them an ancestry on the plains of Asiatic Tartary. [Vide Ante 28.] Although rude and uncultivated, they had some knowledge of husbandry, which they displayed in the cultivation of orchards and patches of corn. They evinced a disposition for society, in the compactness of their villages and the proximity of their towns. And although unused to the ways of civilization, and destitute of all bibliothecal information, they were profound in the philosophy of nature. They were honest, also. Guile was a stranger to the red man, until the strategy of a paler face taught him deceit. Rude as he was, there was a nobility in his character which neither crowns nor coronets confer—the nobility of honor.

Having for a long period been in the undisputed possession of the country, the Indians had come to regard it as their own; and in that belief, and not without some semblance of justice, have they pertinaciously adhered to their claim, as the rude hand of civilization has pushed them from their hunting grounds, and driven them with sabre and firelock, from forest to forest, and from river to river, disputing their right to the land of their birth, and the soil that entombs the bones of their fathers.

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* When William Penn came to America, in 1682, he found the Delawares in Pennsylvania. They claimed to have been on the Delaware river upwards of forty years; but were then under the orders of the Iroquois to remove to Shamokin, or Wyoming. [Colden's Five Nations, Vol. 1: 31, 32.] When they began to recede, they opposed the white settlements, and subsequently burnt Col. Crawford at the stake. It was the Delawares that opposed the settlement at Marietta, and drove the whites across the river. [Metcalf's Wars.]

II. EXPLORATION AND SETTLEMENT OF THE COUNTRY NORTHWEST OF THE OHIO, BY THE FRENCH.

Upon the discovery of this immense continent, the nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. France colonized Canada and Acadie, and asserted her right of dominion over the wilderness world westward and southward to its "uttermost bounds," including the territory northwest of the river Ohio. To consummate her title by possession, she sent forth as pioneers in the enterprize, deputations both from her church and state establishments; the former to convert the natives, and the latter to treat and to trade with them.

As the country had never been explored by civilized people, it was without any known boundaries or limits. The colonial government therefore, in the name of the King of France, preluded the enterprize by asserting the pre-emption to "all the western wilderness then occupied by heathen," which included the territory northwest of the river Ohio.

In 1641, the first company of exploration was sent out under the lead and guidance of a Jesuit missionary by the name of Raymbault, who pushed his way to the Falls of St. Marys, from whence he returned the following year with a report that the natives were disposed to friendship.

In 1654, another band joined the Ottawas and with them made an excursion to Green Bay. In 1660, another corps of fur traders ventured into the upper lake country, and returned in company with three hundred Algonquins, and sixty canoes laden with furs, which gave great eclat to the excursion; whereupon one Mesnard was detailed to make a more thorough exploration of the country, and to effect a congress of the tribes in that quarter.

Upon the accession of Tracy as Viceroy of the Canadian colonies, Father Claude was despatched with instructions to erect a chapel in the green valley of Che-goi-me-gon, which

he accomplished in 1665; after which, it is said, the doctrines of the cross, the terrors of hell, and the judgments of heaven were published therein by the pious missionary.* Attracted by the display of gorgeous symbols, the Chippewas flocked to his chapel; the Pottawatamies tendered friendly greetings; the Hurons invited him to their wigwams, and the Illinois and Miamis sent messages to this wonderful visitor. After a successful mission of two years in the wilderness, Father Claude returned to Quebec and recommended a permanent colonization of the country.

In 1668, a settlement was begun at St. Marys, under the auspices of James Marquette. But as no congress of the tribes had been effected, the Intendant General of Canada despatched one Nicholas Perrot to the Miami settlement at Chicago, to accomplish that end. Perrot was successful in the enterprize, and the congress was held in 1671.†

In 1673, Marquette undertook the exploration of the Mississippi, and proceeded far enough to ascertain that it emptied into the sea.

The next adventurer of note, who had the temerity to make a thorough exploration, was Robert De La Salle, a native of Normandy. Having conceived various plans for colonial advancement, he applied to the King of France, who invested him with a "seigneurie" at Frontenac, to which he at once repaired in the year 1678. On reaching it, he set himself about the work of exploration, by constructing a ship of ten tons burthen, upon which he sailed to Niagara, where he built another called the "Griffin," upon which he sailed to Green Bay, from which point, after loading the craft with furs and sending her back, he, with the balance of his men, proceeded as far as Peoria.

La Salle projected a line of fortifications, which were afterwards built upon the water line of the northwest, from lake Ontario to the Mississippi.

* Early travelers in the west. † Colden.

After having established a line of trading posts through the country, and secured the favor of the Indian tribes, measures were adopted for planting permanent settlements therein. The French Government conceded the right of the natives to occupy the country during their pleasure, but claimed the title to be in the King of France.

The first colonial establishment was erected at Detroit, under a grant from Louis XIV. to Antoine De La Motte Cadillac, in 1701. The extent of this grant was fifteen acres square, and under the authority contained in it, the same was established as a seigneury. There had been a fort at this point from 1664, and another at Mackinaw.

In 1720, settlements were made at Kaskaskia and Cahokia, and in 1730 at Vincennes. After this, several other French settlements were planted in the territory.

III. THE COUTUME DE PARIS.

During the period of French jurisdiction over the territory northwest of the river Ohio, its inhabitants were subjected to the law of Canada, which was the Coutume De Paris, or Custom of Paris. However suitable that law may have been for its theatre and occasion, it was illy adapted to these forest settlements, and could not be enforced with strictness or uniformity. Its feudal character and concomitants had an influence, however, beyond the pale of its provisional requirements, and induced a serf-like obedience to all officers in command at the posts, whose authority was arbitrary and severe.

The Commandants were invested with authority to convey or grant land to the settlers with the permission of the Governor General of Canada, but subject to the confirmation of the King of France, who claimed the original and ultimate title in case of escheat. These grants contained reservations and appendages, and were modeled after the patents in use in Canada. The patentees or purchasers were required to

erect their dwellings on ground, with a front of an arpen and a half, running forty arpens back, in order to keep the settlements in a close line along the banks of the lakes and rivers, the better to protect themselves against the savages, and the more conveniently to act together in an emergency. They were also required to improve their land within three years from the date of their deeds, and were prohibited from working thereon at the trades of blacksmithing or gunsmithing, under the penalty of forfeiture. Each grant also reserved the right of shooting rabbits, hares, and partridges, and required the grantee to plant or assist in planting a May-pole at the door of the principal Manor annually, on the first day of May. [Vide Coutume De Paris, in 3 Vols.]

IV. CAPITULATION AND SURRENDER BY THE FRENCH TO GREAT BRITAIN.

The title asserted by the King of France to the Northwestern Territory, on account of the colonization and settlement thereof, was surrendered in 1760, to Great Britain, and confirmed to that government by treaty stipulations, in 1763.

Whilst the settlements were yet few and feeble, and the settlers themselves were buffeting the hard fortunes of a wilderness life, the Earl of Chatham conceived and put in operation a plan for circumventing and defeating any further extension of French jurisdiction over this region of country —a plan that was consummated by the sending hither of a large military force, which, co-operating with the colonial troops, met and defeated the French on the heights of Abraham. After this event, the Canadian possessions were, by the Marquis De Vandreuil, capitulated and surrendered to General Amherst. The articles bear date November, 1760, but were not confirmed until the execution of a treaty by and between the two governments, in 1763. [Vide Hist. of New-France, Vol. 1.]

V. CHARTERS AND OTHER ACTS UNDER WHICH THE STATES OF MASSACHUSETTS, CONNECTICUT, NEW-YORK AND VIRGINIA, PREFERRED CLAIMS TO THE WASTE AND UNAPPROPRIATED LANDS IN THE WESTERN COUNTRY.

In the reign of James the First, his majesty granted a charter to the VIRGINIA colony, under date of May 23, 1609, the sixth section of which was in the following words: "And we do also, of our special grace, &c., give, &c., unto the said Treasurer and Company, &c., all those lands, countries and territories, situate, lying and being in that part of America called Virginia, from the point of land called Cape or Point Comfort, all along the sea coast to the northward two hundred miles, and from the said Point or Cape Comfort, all along the sea coast to the southward two hundred miles; and all that space and circuit of land lying from the sea coast of the precinct aforesaid, up into the land throughout, from sea to sea, west and north-west; and also all the islands within one hundred miles along the coast of both seas of the precinct aforesaid."* [7 James I., Vol. 1, 465.]

On the 23d day of April, 1662, a colonial charter was granted to CONNECTICUT, containing the following grant and confirmation: "And know ye further, that we, of our abundant grace, certain knowledge, and mere motion, have given, granted and confirmed, and by these presents for us, our heirs and successors, do grant and confirm unto the said Governor and Company, and their successors, all that part of our dominions in New-England, in America, bounded on

* The charter of 10th April, 1606, extended but fifty miles inland from the Atlantic; the second charter, being the one from which the above extract was taken, bounded the colony by the Pacific on the west; and the third, dated March 12, 1612, added to the domain all islands within three hundred leagues of the coast. On the 15th July, 1624, a commission for the government of Virginia was issued, without making any alteration in the boundaries thereof. The subsequent grants to Lord Baltimore and William Penn, carried away some of the territory on the north, and those to the proprietors of Carolina, on the south. [Vide Documents in State Department at Washington, and also Jefferson's Notes on Virginia.]

the east by Narragansett river, commonly called Narragansett bay, where the said river falleth into the sea; and on the north by the line of the Massachusetts plantation; and on the south by the sea; and in longitude as the line of the Massachusetts colony, running from east to west, that is to say, from the said Narragansett bay on the east, to the south sea on the west part, with the islands thereunto adjoining," &c., &c. [14 Car., 2.]

Although this grant seems to have been quite indefinite, in respect to the western boundaries, yet Connecticut assumed that it gave her some interest in the domain north-west of the Ohio. [See Clarke's U. S. Land Laws, 80.]

The grant of Charles Second to James, Duke of York, (afterward King James the Second,) the annexation of the territory of the Six Nations, the provincial charters, and the subsequent independence of New-York, were claimed to invest that State with a title to some portion of the public domain. [See Grant to Duke of York, Ante, 57.]

The claim of MASSACHUSETTS was derived from her charter of 1691. The following passages occur in that document:

"William and Mary, by the Grace of God, King and Queen of England, Scotland, France, and Ireland, Defenders of the Faith, &c., to all to whom these presents shall come, greeting: We do by these presents, for us, our heirs, and successors, will and ordain, that the territories and colonies commonly called or known by the names of the colony of the Massachusetts Bay and colony of New Plymouth, the province of Main, the territory called Accada or Nova Scotia, and all that tract of land lying between the said territories of Nova Scotia and the said province of Main, be erected, united, and incorporated; and we do by these presents unite, erect, and incorporate the same into one real province, by the name of our province of the Massachusetts Bay, in New England; and of our special grace, certain knowledge, and mere motion, we have given and granted, and by these presents, for

us, our heirs, and successors, do give and grant unto our good subjects, the inhabitants of our said province or territory of the Massachusetts Bay, and their successors, all that part of New England, in America, lying and extending from the Great River, commonly called Monomack, alias, Merimack, on the north part, and from three miles northward of the said river, to the Atlantic, or western sea or ocean, on the south part, and all the lands and hereditaments whatsoever lying within the limits aforesaid, and extending as far as the outermost points or promontories of land called Cape Cod and Cape Malabar, north and south, and in latitude, breadth, and in length, and longitude, of and within all the breadth and compass aforesaid throughout the main land there, from the said Atlantic or western sea and ocean, on the east part, towards the south sea, or westward, as far as our colonies of Rhode Island, Connecticut, and the Naragansett country; and also all that part and portion of main land beginning at the entrance of Piscataway harbor, and so to pass up the same into the river of Newichwannock, and through the same into the furthest head thereof, and from thence northwestward, till one hundred and twenty miles be finished, and from Piscataway harbor mouth aforesaid, northeastward along the sea coast to Sagadehock; and from the period of one hundred and twenty miles aforesaid to cross overland to the one hundred and twenty miles before reckoned, up into the land from Piscataway harbor, through Newichwannock river; and also the north half of the Isles of Shoals, together with the Isles of Capawock and Nantucket, near Cape Cod aforesaid, and also the lands and hereditaments lying and being in the country or territory commonly called Accada or Nova Scotia, and all those lands and hereditaments lying and extending between the said country or territory of Nova Scotia, and the said river of Sagadehock, or any part thereof.

"That it shall and may be lawful for said Governor and

General Assembly to make or pass any grant of lands lying within the bounds of the colonies of the Massachusetts Bay and New Plymouth, and province of Main, in such manner as heretofore they might have done by virtue of any former charter or letters patent; which grants of lands, within the bounds aforesaid, we do hereby will and ordain to be, and continue forever of full force and effect, without our further approbation or consent. And so as nevertheless, and it is our royal will and pleasure that no grant or grants of any lands lying or extending from the river of Sagadehock to the Gulf of St. Lawrence and Canada rivers, and to the main sea northward and eastward, to be made or passed by the Governor and General Assembly of our said province, be of any force, validity, or effect, until we, our heirs, or successors, shall have signified our or their approbation of the same."* [3 William and Mary, Vol. 1, 462.]

By virtue of the several charters and grants above noted, the States of Massachusetts, Connecticut, New-York, and Virginia, asserted claims to the western territory at the period of the American Revolution.

VI. SUCCESSION OF THE PEOPLE OF THE UNITED STATES TO THE RIGHTS OF ENGLAND.

The British Government, upon succeeding to the rights of the King of France, took military possession of the territory north-west of the river Ohio, and by means of commandants and agents, labored with assiduity to secure the favor of the native proprietors. But little, however, was done for the white settlers, the fur trade being the engrossing object of governmental endeavors in this quarter until the people of the United States succeeded to all the rights of Great Britain to the soil. [Vide Ante 59, for the Definitive Treaty.]

* The first Massachusetts charter was granted on 4th of March, 1628, to Sir Henry Rosewell and others, by Charles I., and was vacated by quo warranto, in 1684. [Clarke's U. S. Land Laws, 79.]

VII. CESSIONS BY VIRGINIA, NEW-YORK, MASSACHUSETTS AND CONNECTICUT, RECOMMENDED BY CONGRESS.

By an act of Congress, passed on the sixth day of September, 1780, the States having or preferring any claim to lands in the western country, were recommended to cede the same, or a portion thereof, to the General Government, for the benefit of the Union. [Journal of Congress 1780, Vol. 2, 582.]

VIII. THE CESSION OF NEW-YORK.

"To all who shall see these presents, we, James Duane, William Floyd, and Alexander McDougall, the underwritten delegates for the State of New-York in the honorable Congress of the United States of America, send greeting:

"Whereas, by an act of the Legislature of the said State of New-York, passed at a session held at Albany, in the year of our Lord one thousand seven hundred and eighty, entitled 'An act to facilitate the completion of the articles of confederation and perpetual union among the United States of America,' it is declared that the People of the State of New-York were, on all occasions, disposed to manifest their regard for their sister States, and their earnest desire to promote the general interest and security, and more especially to accelerate the federal alliance, by removing, as far as it depended upon them, the impediment to its final accomplishment, respecting the waste and uncultivated lands within the limits of certain States; and it is thereby enacted by the People of the said State of New-York, represented in Senate and Assembly, and by the authority of the same, that it might and should be lawful to and for the delegates of the said State in the honorable Congress, and they, or the major part of them, so assembled, are thereby fully authorized and empowered, for, and on behalf of that State, and by proper and authentic acts or instruments, to limit and restrict the boundaries of the

said State in such manner and form as they shall judge to be expedient, either with respect to the jurisdiction, as well as the right or pre-emption of soil, or reserving the jurisdiction in part or in the whole, over the lands which may be ceded or relinquished with respect only to the right of pre-emption of the soil; and by the said act it is further enacted that the territory which may be ceded or relinquished by virtue thereof, either with respect to the jurisdiction as well as the right or pre-emption of soil, or the right or pre-emption of soil only, shall be and inure for the use and benefit of such of the United States as shall become members of the federal alliance of the said States, and for no other use or purpose whatsoever; and, by the said act, it is provided and enacted that the trust reposed by virtue thereof, shall not be executed by the delegates of the said State, unless at least three of the said delegates shall be present in Congress; and whereas, by letters patent under the great seal of the said State of New-York, bearing date the 29th day of October last past, reciting that the Senate and Assembly had, on the 12th day of September, then last past, nominated and appointed us, the said James Duane, William Floyd, and Alexander McDougall, together with John Morin Scott and Ezra L'Hommedieu, delegates to represent the said State in the Congress of the United States of North America, therefore, in pursuance of the said nomination and appointment, the People of the said State of New-York did thereby commission us, the said James Duane, William Floyd, and Alexander McDougall, and the said John Morin Scott and Ezra L'Hommedieu, or any majority who should from time to time, attend the said Congress; and if only one of the said delegates should at any time be present in the said Congress, he should, in such case, be authorized to represent the said State in the said Congress, as by an authentic copy of the said act, and an exemplification of the said commission, remaining among the archives of Congress, fully appears:

"Now, therefore, know ye, that we, the said James Duane, William Floyd, and Alexander McDougall, by virtue of the power and authority, and in the execution of the trust reposed in us, as aforesaid, have judged it expedient to limit and restrict, and we do, by these presents, for and in behalf of the said State of New-York, limit and restrict the boundaries of the said State in the western parts thereof, with respect to the jurisdiction, as well as the right or pre-emption of soil, by the lines, and in the form following, that is to say: a line from the northeast corner of the State of Pennsylvania, along the north bounds thereof to its northwest corner, continued due west until it shall be intersected by a meridian line, to be drawn from the forty-fifth degree of north latitude, through the most westerly bent or inclination of lake Ontario; thence by the said meridian line to the forty-fifth degree of north latitude, and thence by the said forty-fifth degree of north latitude; but if, on experiment, the above described meridian line shall not comprehend twenty miles due west from the most westerly bent or inclination of the river or strait of Niagara, then we do, by these presents, in the name of the People, and for and on behalf of the State of New-York, and by virtue of the authority aforesaid, limit and restrict the boundaries of the said State in the western parts thereof, with respect to jurisdiction, as well as the right of pre-emption of soil, by the lines, and in the manner following, that is to say: a line from the northeast corner of the State of Pennsylvania, along the north bounds thereof, to its northwest corner, continued due west until it shall be intersected by a meridian line, to be drawn from the forty-fifth degree of north latitude, through a point twenty miles due west from the most westerly bent or inclination of the river or strait Niagara; thence by the said meridian line to the forty-fifth degree of north latitude, and thence by the said forty-fifth degree of north latitude: and we do, by these presents, in the name of the People, and for and on behalf of the State of New-York, and

by virtue of the power and trust committed to us by the said act and commission, cede, transfer, and forever relinquish, to and for the only use and benefit of such of the States as are, or shall become parties to the articles of confederation, all the right, title, interest, jurisdiction, and claim, of the said State of New-York, to all lands and territories to the northward and westward of the boundaries to which the said State is in manner aforesaid limited and restricted, and to be granted, disposed of, and appropriated in such manner only as the Congress of the said United or Confederated States shall order and direct.

"In testimony whereof, we have hereunto subscribed our names, and affixed our seals, in Congress, the first day of March, in the year of our Lord one thousand seven hundred and eighty-one, and of our independence the fifth." [Clarke's U. S. Land Laws, 86.]

IX. THE CESSION OF VIRGINIA.

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

"Whereas the General Assembly of the Commonwealth of Virginia, at their sessions begun on the 20th day of October, 1783, passed an act, entitled 'An act to authorize the delegates of this State in Congress to convey to the United States, in Congress assembled, all the right of this commonwealth to the territory northwestward of the river Ohio,' in these words following, to wit:"

[Here follows the preamble of the act.]

"Be it enacted by the General Assembly, that it shall and may be lawful for the delegates of this State to the Congress of the United States, or such of them as shall be assembled in Congress, and the said delegates, or such of them so assembled, are hereby fully authorized and empowered for and

on behalf of this State, by proper deeds or instruments in writing, under their hands and seals, to convey, transfer, assign, and make over unto the United States in Congress assembled, for the benefit of the said States, all right, title, and claim, as well of soil as jurisdiction, which this commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying, and being, to the northwest of the river Ohio, subject to the terms and conditions contained in the before-recited act of Congress of the 13th day of September last: that is to say, upon condition that the territory so ceded shall be laid out and formed into States, containing a suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the States so formed shall be distinct republican States, and admitted members of the Federal Union; having the same rights of sovereignty, freedom, and independence, as the other States.

"That the necessary and reasonable expenses incurred by this State in subduing any British posts, or in maintaining forts and garrisons within and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States: and that one Commissioner shall be appointed by Congress, one by this Commonwealth, and another by those two Commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this State, which they shall judge to be comprised within the intent and meaning of the act of Congress of the tenth of October, one thousand seven hundred and eighty, respecting such expenses. That the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be pro-

tected in the enjoyment of their rights and liberties. That a quantity not exceeding one hundred and fifty thousand acres of land, promised by this State, shall be allowed and granted to the then Colonel, now General, George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the post of Kaskaskies and St. Vincents were reduced, and to the officers and soldiers that have been since incorporated into the said regiment, to be laid off in one tract, the length of which not to exceed double the breadth, in such place, on the northwest side of the Ohio, as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion, according to the laws of Virginia. That in case the quantity of good land on the southeast side of the Ohio, upon the waters of the Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon continental establishment, should, from the North Carolina line, bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops, in good lands, to be laid off between the rivers Sciota and Little Miami, on the northwest side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That all the lands within the territory so ceded to the United States, and not reserved for, or appropriated to, any of the beforementioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered a common fund, for the use and benefit of such of the United States as have become, or shall become, members of the confederation or federal alliance of the said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever: Provided, that the trust hereby reposed in

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

"And whereas the said General Assembly, by their resolution of June sixth, one thousand seven hundred and eighty-three, had constituted and appointed us, the said Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, delegates to represent the said Commonwealth in Congress for one year, from the first Monday in November then next following, which resolution remains in full force, now, therefore, know ye, that we, the said Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, by virtue of the power and authority committed to us by the act of the said General Assembly of Virginia before recited, and in the name and for and on behalf of the said Commonwealth, do by these presents convey, transfer, assign and make over, unto the United States, in Congress assembled, for the benefit of the said States, Virginia inclusive, all right, title, and claim, as well of soil as jurisdiction, which the said Commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying, and being to the northwest of the river Ohio, to and for the uses and purposes, and on the conditions of the said recited act. In testimony whereof, we have hereunto subscribed our names and affixed our seals, in Congress, the — day of —, in the year of our Lord one thousand seven hundred and eighty-four, and of the independence of the United States, the eighth." [Clarke's U. S. Land Laws, 98.]

The foregoing deed of cession was afterwards amended on the recommendation of Congress, so far as to empower Congress to divide the territory into not more than five, nor less than three, States, as the future condition and circumstances of the country might require. [See Act of Virginia, Dec. 30, 1788; R. S. of Indiana, 18.]

X. THE CESSION OF MASSACHUSETTS.

"To all who shall see these presents, we, Samuel Holten and Rufus King, the underwritten delegates for the Commonwealth of Massachusetts, in the Congress of the United States of America, send greeting:"

[Here follows the recital of the acts of the State of Massachusetts, authorizing its delegates in Congress to make the cession.]

"Now, therefore, know ye, that we, the said Samuel Holten and Rufus King, by virtue of the power and authority to us committed by the said acts of the General Court of Massachusetts, before recited, in the name, and for and on behalf, of the said Commonwealth of Massachusetts, do, by these presents, assign, transfer, quit-claim, cede, and convey, to the United States of America, for their benefit, Massachusetts inclusive, all right, title, and estate, of and in, as well the soil as the jurisdiction, which the said Commonwealth hath to the Territory or tract of country within the limits of the Massachusetts charter, situate and lying west of the following line, that is to say: A meridian line to be drawn from the forty-fifth degree of north latitude, through the westerly bent or inclination of lake Ontario, thence, by the said meridian line, to the most southerly side line of the territory contained in the Massachusetts charter; but if, on experiment, the above described meridian line shall not comprehend twenty miles due west from the most westwardly bent or inclination of the river or strait of Niagara, then we do, by these presents, by virtue of the power and authority aforesaid, in the name and on behalf of the said Commonwealth of Massachusetts, transfer, quit-claim, cede, and convey to the United States of America, for their benefit, Massachusetts inclusive, all right, title, and estate, of and in, as well the soil as the jurisdiction, which the said Commonwealth hath to the territory or tract of country within the

limits of the Massachusetts charter, situate and lying west of the following line, that is to say: A meridian line to be drawn from the forty-fifth degree of north latitude, through a point twenty miles due west from the most westerly bent or inclination of the river or strait Niagara; thence, by the said meridian line, to the most southerly side line of the territory contained in the Massachusetts charter aforesaid, for the purposes in the said recited acts declared, and to the uses in a resolve of Congress of the tenth day of October, one thousand seven hundred and eighty, mentioned.

"In testimony whereof, we have hereunto subscribed our names and affixed our seals, in Congress, this nineteenth day of April, in the year of our Lord one thousand seven hundred and eighty-five, and of the independence of the United States of America, the ninth." [Clarke's U. S. Land Laws, 102.]

XI. THE CESSION OF CONNECTICUT.

"To all who shall see these presents, we, William Samuel Johnson, and Jonathan Sturges, the underwritten delegates for the State of Connecticut, in the Congress of the United States, send greeting: Whereas the General Assembly of the State of Connecticut, on the second Thursday of May, in the year of our Lord one thousand seven hundred and eighty-six, passed an act in the following words, viz: 'Be it enacted by the Governor, Council, and Representatives, in General Court assembled, and by the authority of the same, that the delegates of this State, or any two of them, who shall be attending the Congress of the United States, be, and they are hereby, directed, authorized, and fully empowered, in the name and behalf of this State, to make, execute, and deliver, under their hands and seals, an ample deed of release and cession of all the right, title, interest, jurisdiction and claim, of the State of Connecticut, to certain western lands, beginning at the completion of the forty-first degree

of north latitude, one hundred and twenty miles west of the western boundary line of the Commonwealth of Pennsylvania, as now claimed by said Commonwealth, and from thence by a line drawn north, parallel to, and one hundred and twenty miles west of the said west line of Pennsylvania, and to continue north until it comes to forty-two degrees and two minutes north latitude; whereby all the right, title, interest, jurisdiction, and claim, of the State of Connecticut, to the lands lying west of said line to be drawn as aforementioned, one hundred and twenty miles west of the western boundary line of the Commonwealth of Pennsylvania, as now claimed by said Commonwealth, shall be included, released, and ceded to the United States, in Congress assembled, for the common use and benefit of the said States, Connecticut inclusive.' Now therefore, know ye, that we, the said William Samuel Johnson and Jonathan Sturges, by virtue of the power and authority to us committed by the said act of the General Assembly of Connecticut, before recited, in the name, and for and on behalf of the said State of Connecticut, do, by these presents, assign, transfer, quitclaim, cede and convey to the United States of America, for their benefit, Connecticut inclusive, all the right, title, interest, jurisdiction and claim, which the said State of Connecticut hath in and to the beforementioned and described territory or tract of country, as the same is bounded and described in the said act of Assembly, for the uses in the said recited act of Assembly declared.

"In witness whereof we have hereunto set our hands and seals, this thirteenth day of September, in the year of our Lord one thousand seven hundred and eighty-six, and of the sovereignty and independence of the United States of America, the eleventh." [Clarke's U. S. Land Laws, 103.]

XII. INDIAN TREATIES, CESSIONS AND GRANTS.

It has been remarked, that the right of Europeans to which the people of the United States were subrogated, was the right of acquiring the soil of the native proprietors by extinguishing the Indian right of occupancy. Immediately after the conclusion of the definitive treaty of peace with Great Britain, the Indian territory northwest of the Ohio received the especial attention of Congress, and George Rogers Clarke, Richard Butler and Arthur Lee, were appointed Ministers Plenipotentiary to proclaim peace to and treat with the tribes in that region.

At Fort McIntosh, January 21, 1785, those gentlemen met the sachems and warriors of the WYANDOTS, DELAWARES, CHIPPEWAS, and OTTAWAS in council, where peace and the protection of the government were guarantied to the latter upon conditions of reciprocity, and the following boundary line between the United States and the Wyandot and Delaware nations established, viz: Beginning at the mouth of the Cuyahoga, and running thence up the said river to the portage between that and the Tuscarawas branch of the Muskingum; thence down said branch to the forks above Fort Lawrence; thence westerly to the portage of the Big Miami; thence along said portage to the Great Miami; thence down the southeast side of the same to its mouth; thence along the south shore of Lake Erie to the place of beginning. The posts of Detroit and Mackinac, and a belt of six miles on the eastern margin of the peninsula of Michigan were relinquished to the United States. [Congressional Journals of 1785, 1: 390.]

At Fort Harmar, January 9, 1789, Arthur St. Clair, Governor of the Northwestern Territory and Minister Plenipotentiary for settling boundaries with Indian nations, concluded a treaty with the HURONS, DELAWARES, OTTAWAS, POTTAWATTAMIES, and SACS, in and by which the boundaries

contained in the treaty of Fort McIntosh were confirmed, and "all lands east, south and west" thereof, claimed by said tribes, were relinquished to the United States. [Journal of Congress, 1789, 1: 393.]

At Greenville, August 3, 1795, General Anthony Wayne, then commanding the western division of the army of the United States, to put an end to the Indian wars on the frontier, and to restore harmony between the United States and the HURONS, DELAWARES, SHAWANESE, OTTAWAS, CHIPPEWAS, POTTAWATTAMIES, MIAMIS, EEL RIVERS, WEAS, KICKAPOOS, PIANKESHAWS, and KASKASKIAS, concluded a treaty of peace with said nations, in and by which the old boundary line was confirmed, and the following tracts of land, being sixteen in number, ceded to the United States, viz: One piece of land six miles square, at or near Loromie's store; one piece two miles square, at the head of the navigable waters or landing on the St. Mary's river, near Girty's town; one piece six miles square, at the head of the navigable waters of the Auglaize river; one piece six miles square, at the confluence of the Auglaize and Miami rivers; one piece six miles square, at or near the confluence of the rivers St. Mary's and St. Joseph's; one piece two miles square, on the Wabash river, at the end of the portage from the Miami of the lake, and about eight miles westward from Fort Wayne; one piece six miles square, at the Old Wea towns, on the Wabash river; one piece twelve miles square, at the British fort on the Miami of the lake, at the foot of the rapids; one piece six miles square, at the mouth of the said river, where it empties into the lake; one piece six miles square, upon Sandusky lake, where a fort formerly stood; one piece two miles square, at the lower rapids of Sandusky river; the post of Detroit, and all the land to the north, the west, and the south of it, of which the Indian title had been extinguished by gifts or grants to the French or English Governments; and so much more land

to be annexed to the district of Detroit, as should be comprehended between the river Rosine, on the south, lake St. Clair on the north, and a line, the general course whereof should be six miles distant from the west end of lake Erie and Detroit river; the post of Michilimackinac, and all the land on the island on which that post stood, and the main land adjacent, of which the Indian title had been extinguished by gifts or grants to the French or English Governments; and a piece of land on the main to the north of the island, to measure six miles on lake Huron, or the strait between lakes Huron and Michigan, and to extend three miles back from the water on the lake or strait; and also, the island De Bois Blanc, being an extra and voluntary gift of the Chippewa nation; one piece of land six miles square, at the mouth of Chicago river, emptying into the southwest end of lake Michigan, where a fort formerly stood; one piece twelve miles square, at or near the mouth of the Illinois river, emptying into the Mississippi; one piece six miles square, at the Old Piorias fort and village, near the south end of the Illinois lake. In return, the United States relinquished their claims "to all other Indian lands northward of the river Ohio, eastward of the Mississippi, and westward and southward of the great lakes and the waters uniting them, except one hundred and fifty thousand acres near the Ohio rapids, the posts of St. Vincennes and Fort Massac, and the lands occupied by the French settlers. [U. S. Laws, 1: 398.]

At Fort Wayne, June 7, 1803, William Henry Harrison, Governor of Indiana Territory and Superintendent of Indian Affairs, concluded a treaty with the same tribes in and by which sundry matters of difference between them and the United States were adjusted, and the land included in the term "post of Vincennes," defined as follows: "Beginning at Point Coupee, on the Wabash, and running thence by a line north seventy eight degrees west twelve miles; thence by a line parallel to the general course of the Wabash, until it shall be

intersected by a line at right angles to the same, passing through the mouth of White river; thence by the last mentioned line, across the Wabash and towards the Ohio, seventy-two miles; thence by a line north twelve degrees west, until it shall be intersected by a line at right angles to the same, passing through Point Coupee and the last mentioned line to the place of beginning." [Clarke's U. S. Laws, 159.]

At Vincennes, August 7, 1803, a council was held, in which the United States were represented by William Henry Harrison, and all the tribes named in the treaty of Fort Wayne, except the Weas, by their own sachems and warriors, and a treaty concluded confirming the treaty of Fort Wayne. [Id., 161.]

At Vincennes, August 13, 1803, the same Commissioner concluded a treaty with the KASKASKIAS, in and by which the latter relinquished all the Illinois country, except a tract of three hundred and fifty acres near Kaskaskia. [Id., 172.]

At Vincennes, August 18, 1804, the same Commissioner concluded a treaty with the DELAWARES, in which the latter ceded to the United States all their right and title to the country between the Ohio and Wabash rivers, and below the tract ceded by the treaty of Fort Wayne. [Id., 173.]

At Vincennes, August 27, 1804, the PIANKESHAWS ceded to the United States all their right to land below Clark's Grant, between the Ohio and the Wabash.* [Id., 175.]

At Fort Industry, July 4, 1805, the sachems of the HURONS, OTTAWAS, CHIPPEWAS, MUNSEES, DELAWARES, SHAWANEES, and POTTAWATTAMIES, ceded all land within one hundred and twenty miles of the western line of Pennsylvania. [Id., 162.]

At Grouseland, near Vincennes, August 21, 1805, Gen.

* Clark's Grant, was one hundred and fifty thousand acres of land granted to the officers and soldiers of Colonel Clarke's regiment, who, under his command, reduced the posts of Kaskaskia and Vincennes, during the Revolutionary War. [Harrison's Discourse.]

Harrison concluded a treaty with the DELAWARES, POTTAWATTAMIES, MIAMIS, EEL RIVERS, and WEAS, in and by which the latter relinquished their claim to land south of a line to be drawn from the northeast corner of the tract to be ceded by the treaty of Fort Wayne, so as to strike the general boundary line, running from a point opposite to the mouth of the Kentucky river to Fort Recovery, at the distance of fifty miles from its commencement on the Ohio river. [Id., 163.]

At Detroit, November 17, 1807, William Hull, Governor of Michigan, concluded a treaty with the OTTAWAS, CHIPPEWAS, WYANDOTS, and POTTAWATTAMIES, in and by which the latter ceded to the United States all lands comprehended within the following boundaries, viz: Beginning at the mouth of the Miami of the Lakes, and running thence up the middle thereof to the mouth of the Auglaize; thence north to a parallel of latitude to be drawn from the outlet of lake Huron; thence northeast to White Rock; thence east to the line of Upper Canada; thence southwardly through the river and lake St. Clair, and Detroit river, into lake Erie, to a point due east of the aforesaid Miami river; thence west to the place of beginning. [Id., 164.]

At Brownstown, November 25, 1808, Governor Hull concluded a treaty with the above tribes and the SHAWANEES, in and by which the latter ceded a right of way for a road from the Miami Rapids to the Connecticut Reserve, and another to run southward from Fort Sandusky. [Id., 167.]

At Fort Wayne, September 30, 1809, Gen. Harrison concluded a treaty with the DELAWARES, POTTAWATTAMIES, MIAMIS, and EEL RIVERS, in which they ceded to the United States a tract of land about the Wabash, and between the latter and Racoon Creek. [Id., 168.]

At Vincennes, December 9, 1809, the same Commissioner concluded a treaty with the KICKAPOOS, who therein ceded to the United States a tract of land between the Wabash and

Vermillion rivers, and the land ceded in the foregoing treaty. [Id., 70.]

At St. Louis, August 24, 1816, Ninian Edwards, William Clark, and Auguste Choteau, Commissioners, concluded a treaty with the OTTAWAS, CHIPPEWAS, and POTTAWATTAMIES, in and by which the latter relinquished to the United States a tract of land in Illinois, beginning ten miles above the mouth of Fox river; running thence so as to cross Sandy creek, ten miles above its mouth; thence in a direct line to a point ten miles north of the portage, between Chicago creek and the river Depleines; thence to a point ten miles north of the mouth of Chicago creek; thence to a point ten miles southward of the mouth of said creek; thence to the Kankakee, ten miles above its mouth; thence to the mouth of the Fox river, and thence to the place of beginning. [Id., 177.]

At Spring Wells, near Detroit, September 8, 1815, William H. Harrison, Duncan McArthur, and John Graham, Commissioners, concluded a treaty of peace with the HURONS, DELAWARES, SENECAS, SHAWANEES, MIAMIS, CHIPPEWAS, OTTAWAS, and POTTAWATTAMIES, in which the hostilities of the latter were pardoned, and the boundaries and cessions of former treaties re-confirmed. [Id., 186.]

At the foot of Miami Rapids, September 29, 1817, another treaty was effected between the same parties, in which the sachem, chiefs and warriors of the said tribes ceded to the United States a large tract between the Sandusky and Auglaize. [Id., 187.]

At St. Mary's, Ohio, October 2, 1818, the POTTAWATTAMIES ceded all land south of the Wabash, and a tract about the Tippecanoe. [Id., 201.]

At St. Mary's, Ohio, October 6, 1818, a treaty was concluded with the MIAMIS, in which the latter ceded an immense tract between the Wabash and Miami rivers. [Id., 203.]

At St. Mary's, Ohio, September 30, 1818, the HURONS

ceded to the United States five thousand acres in Michigan. [Id., 206.]

At St. Mary's, Ohio, October 2, 1818, the WEAS ceded all their lands in Ohio, Indiana, and Illinois. [U. S. Laws, Vol. 6: 733.]

At Edwardsville, September 25, 1818, a treaty was concluded with the PEORIAS, KASKASKIAS, MITCHIGANIANS, CAHOKIAS, and TAMAROIS, by Messrs. Edwards and Choteau, Commissioners, in which certain lands in Illinois, not ceded in the treaty of Vincennes, in 1803, were relinquished. [Id., Vol. 6: 784.]

At Saginaw, September 24, 1819, Lewis Cass concluded a treaty with the CHIPPEWAS, in which the latter ceded an extensive tract in the region of the Auglaize. [Clarke's Cessions, 301.]

At Fort Harrison, August 30, 1819, the KICKAPOOS, of the Vermillion, ceded all their right to lands on the Wabash, or any of its waters.. [Id., 304.]

At Edwardsville, July 30, 1819, the same tribe ceded their land between the Wabash and the east line of the State of Illinois, northward of the Vincennes tract. [Id., 305.]

At Vincennes, August 11, 1820, the WEAS relinquished all their right to land in the Wabash country, and agreed to remove therefrom. [Id., 308.]

At Chicago, August 29, 1821, Lewis Cass and Solomon Sibley, Commissioners, concluded a treaty with the OTTAWAS, CHIPPEWAS, and POTTAWATTAMIES, in which the latter ceded to the United States their possessions in the west and south-west part of Michigan, with certain reservations. [Id., 309.]

At Prairie des Chiens, August 19, 1825, a treaty of peace was concluded with the CHIPPEWAS, SACS, FOXES, MENOMINIES, IOWAS, SIOUX, WINNEBAGOES, OTTAWAS, and POTAWATTAMIES, in which the latter agreed upon boundaries between themselves, and surrendered certain territory in Wisconsin. [Id., 320.]

At Mississinewa, upon the Wabash, September 23, 1826, a treaty was concluded with the MIAMIS, by Lewis Cass, James B. Ray, and John Tipton, Commissioners, in which the former ceded to the United States all their claim to land in the State of Indiana, north and west of the Wabash, and the cession of St. Mary's, concluded October 6, 1818, with a few reservations. [Id., 324.]

At Fon du Lac, August 5, 1826, Lewis Cass and Thomas L. McKenney, concluded a treaty with the CHIPPEWAS, by which certain differences growing out of the treaty of Prairie des Chiens were adjusted. [Id., 327.]

At Mississinewa, October 16, 1826, the POTTAWATTAMIES ceded to the United States a large tract in northern Indiana. [Id., 331.]

At Butte des Morts, August 11, 1827, Lewis Cass and Thomas L. McKenney obtained from the CHIPPEWAS a cession of lands in Wisconsin. [App. to Laws of 1829, 83.]

At St. Joseph's, September 19, 1827, the same Commissioners obtained from the POTTAWATTAMIES, a cession of their lands in Michigan. [Id., 87.]

At Green Bay, August 25, 1828, Lewis Cass and Pierre Menard, Commissioners, concluded with the WINNEBAGOES, POTTAWATAMIES, CHIPPEWAS, and OTTAWAS, a treaty, ceding a large tract of land lying south of the river Wisconsin. [Id., 74.]

At Prairie du Chien, July 29, 1829, the CHIPPEWAS, OTTAWAS, and POTTAWATTAMIES ceded their lands situate upon the Fox river, in Illinois, and above Rock river, in Wisconsin, [App. to Laws of 1830, 35,] and in August of the same year, the WINNEBAGOES ceded the tract between the Wisconsin and Rock Rivers. [Id., 30.]

At Washington, Feb. 28, 1831, the SENECAS ceded their land upon the Sandusky, and April 6, 1832, they, together with the SHAWANEES, ceded their lands between the Miami and Scioto. [App. to Laws of 1831, 43, 152.]

At Wapaghkonnetta, August 8, 1831, the SHAWANEES ceded their land in the county of Allen, Ohio. [Id., 48.]

At Washington, February 8, 1831, the MENOMONEES ceded all their lands southeast of Winnebago lake, Fox river and Green Bay. [Id., 62.]

At the Indian Reserve, on the Miami of Lake Erie, August 30, 1831, the OTTAWAS ceded the Presque Isle Reservation, and land on Blanchard's Fork, of the Auglaize, and agreed to remove west of the Mississippi. [Id., 56.]

At McCutcheonsville, January 19, 1832, the WYANDOTS ceded the Big Spring reservation, in Crawford county, Ohio. [Id., 60.]

At Castor Hill, October 27, 1832, the KASKASKIAS ceded their lands, excepting about three hundred and fifty acres in Illinois, and the 29th, the PIANKESHAWS relinquished their lands in Illinois. [App. to Laws of 1833, 19, 20.]

At Fort Armstrong, September 15, 1832, Winfield Scott and John Reynolds procured from the WINNEBAGOES, all their lands south and east of the Wisconsin and Fox rivers. [Id., 23.]

At Maumee, February 18, 1833, the OTTAWAS relinquished the Miami River and Miami bay reservations. [Id., 57.]

At Chicago, September 26, 1833, the CHIPPEWAS, OTTAWAS, and POTTAWATTAMIES ceded their lands on the western shore of lake Michigan. [App. to Laws 1834, of 15.]

At the Wabash Forks, October 23, 1834, the MIAMIS ceded a portion of the Miami reserve, ten sections at Racoon village, twenty-three thousand acres on the Wabash river, and six sections at Flat Belly's village. [App. to Laws of 1838, 9.]

At Tippecanoe, April 11, 1836, the POTTAWATTAMIES ceded thirty-six sections of land in Indiana, and on the 23d of the same month, the WYANDOTS ceded a portion of their reservation in Crawford county, and a portion of Cranberry swamp. [App. to Laws of 1836, 37, 61.]

At Yellow River, August 5, 1836, the POTTAWATTAMIES

relinquished twenty-six sections of land in western Indiana. [App. to Laws of 1837, 130.]

At Detroit, January 14, 1837, Henry R. Schoolcraft, Commissioner, procured from the CHIPPEWAS a cession of one hundred and two thousand four hundred acres within the State of Michigan. [App. to Laws of 1838, 45.]

At Washington, November 1, 1837, the WINNEBAGOES relinquished all claim to lands east of the Mississippi. [Id., 39.]

At the Wabash Forks, November 6, 1838, the MIAMIS ceded the Wabash river, Abouette, Flat Rock, and Seek's Village reservations. [App. to Laws of 1839, 27.]

By means of the foregoing cessions, the United States extinguished the Indian right of occupancy to all the territory northwest of the river Ohio, except a few small reservations since relinquished, or which are still occupied by fragments of tribes that yet linger eastward of the Mississippi.

XIII. EXTRACT FROM AN ORDINANCE OF CONGRESS CONCERNING THE TERRITORY NORTHWEST OF THE OHIO, PASSED JULY 13, 1787.

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

"Be it ordained by the authority aforesaid, That the estates, both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child or grand child to take the share of their deceased parent in equal parts among them: and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in

equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases, to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force, until altered by the legislature of the district. And until the Governor and Judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered, by the person, being of full age, in whom the estate may be, and attested by two witnesses: provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers, shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

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

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

"ART. II. The inhabitants of the said territory shall always be entitled to the benefit of the writ of habeas corpus,

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

"ART. III. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

"ART. IV. The said territory, and the Sates formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contract-

ed, and a proportional part of the expenses of government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the Legislature of the District or Districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The Legislatures of those Districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary, for securing the title in such soil, to the bona fide purchasers. No tax shall be imposed on lands, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

"ART. V. There shall be formed in the said territory, not less than three, nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western State in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash, from Post Vincents to the Ohio, by the Ohio by a direct line drawn due north, from the mouth of the great Miami to the said territorial line. The eastern State shall be bounded by

the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: provided, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States, in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: provided the constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

"ART. VI. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted: provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid."* [Peter's U. S. Stat., Vol. 1, 57.]

* On the 7th of May, 1800, the north-western territory was divided; and on the 30th of April, 1802, an act to enable the people of the eastern division 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, was approved, by which a convention to form a constitution was authorized to be held at Chilicothe. This act offered to the convention a proposal that section sixteen in every township be granted to such township, for the use of schools, and that the Sciota and Muskingum Salt Springs be granted to the State, to be used as its legislature should direct. [Peter's U. S. Stat., 174.]

XIV. THE CONSTITUTION OF OHIO.

On the twenty-ninth of November, in the year one thousand eight hundred and two, the Constitution of Ohio was adopted in convention at Chilicothe. It is silent on the subject of land titles, and leaves the regulation of tenures to the legislature. [See Appendix.]

XV. LAND TITLES GENERALLY IN OHIO.

By the treaty which terminated the War of the Revolution with Great Britain, and the cessions of Massachusetts, Connecticut, New-York, and Virginia, the United States Government acquired a valid estate in fee, to all the land embraced within the territory northwest of the Ohio, except the Connecticut and Virginia reservations, which remained the property of those States respectively.

Grants, either by the General or the State Governments, of land owned by them respectively, convey a valid title to States, companies or individuals, competent to receive patents therefor.*

*A patent alone passes land from the United States to the grantee. [13 Peters, 498.]

A land patent from the United States is conclusive in an action at common law. [Id., 436.]

The seizin of lands belonging to the Indian tribes, is in the Sovereign, and the Indians are mere occupants. A purchaser from them can only acquire the Indian title, and they may resume it, and make a different disposition of it. [Paine, 457.]

The title to land under grants in 1773 and 1775, by the Illinois and Piankeshaw nations, cannot be recognized in the courts of the United States. [8 Wheaton, 543.]

The possession of land by Indians, does not affect the validity of patents granted by the State. The right of a State to grant the land of Indians, without their consent, is a political question. The patent, however, is not affected by the possession of the Indians. [3 John, 375.]

A sale of lands, surveyed, but not patented, in the Virginia Military District, passes the whole interest of the holder to the purchaser. [7 Ham., 156.]

In Ohio, the owners of land situated upon the banks of navigable streams, running through the State, are owners of the beds of the streams to the middle, subject only to the easement of navigation. [3 Ham., 495.]

A patent issued on a Virginia Military land warrant, gives a title which, though examinable, has no presumption against it. [7 Wheaton, 122.]

The early grants of land to the Ohio Company of Associates, to John Cleves Simmes, to the United Brethren, to the Canadian refugees, and to the French settlers, as well as to others, carried to the purchasers an absolute fee of the tracts or parcels granted.

The grants to the State of Ohio, for certain specified objects, vested the State with a valid title.

In respect to the different kinds of estates in land, the regulations in Ohio are substantially the same as in New-York. [Ante 79.] All feudal tenures are abolished, save rents and services certain, and subject to the liability to escheat, the entire and absolute property vests in the owners according to the nature of their respective estates.

XVI. EXECUTION OF DEEDS AND MORTGAGES IN OHIO.

The Revised Statutes of Ohio provide that all conveyances of land shall be by deed, duly executed and acknowledged, or proven by the grantor or his lawful agent, and that land cannot otherwise be conveyed, affected, or incumbered. They prescribe no form for deeds; wherefore any written or printed document which sets forth with precision the names of the parties, the land intended to be conveyed, and the terms and conditions of the grant, may be accredited as a deed, if it be legible and evince an intention and purpose to convey.

Every man above the age of twenty-one years, and every unmarried woman above the age of eighteen years, competent to hold lands, have the right to convey. The deed, to be properly executed, must be prepared on paper, parchment, or some similar substance capable of being delivered to the grantee.

It must be signed. One section of the statute requires "every deed, mortgage, or other instrument of writing, by which any land, tenement or hereditament shall be conveyed or otherwise affected or incumbered in law," to be signed by the grantor, grantors, or makers, yet by another, "deeds and mortgages may be executed by an attorney of

the owners, where such attorney has a written power executed by the owners or owner of the estate, and attested and acknowledged with all the formalities required to a deed." The signing consists in writing the name of the grantor or grantors, as the case may be, at the bottom of the instrument, or in the event of inability to write the name, in the making of such a mark thereto as the grantor is accustomed to subscribe as his or her sign manual.

It must be sealed. The statute, above in part cited, also provides that instruments in writing affecting the title to land shall be sealed by the grantor. The practice and the manner of sealing with wax, wafer, or other adhesive and impressive substances, were treated of at length in a previous chapter. [Ante 85.] It is believed that the common law rule ought not to be relaxed; that the solemnity of a deed is measurably impaired by the allowance of substitutes for seals. A different view, however, has been taken, and the initials "L. S." enclosed in an indented circle, are recognized in Ohio as a valid sealing of a deed, [4 K. C., 453,] it being held that the letters L. S. sufficiently indicate the purpose of the grantor to seal his deed. Wax and wafers are generally used, and good conveyancers consider their use the preferable mode of sealing.

It must be witnessed. The statute requires the signing and sealing to be "in the presence of two witnesses, who shall attest such signing and sealing, and subscribe their names to such attestation." Any person of sufficient age and discretion to understand the nature of the act done, is competent to be a witness to a deed, but it is imprudent to make choice of persons as witnesses who are incompetent to be sworn in any court having jurisdiction of the matter.

It must be delivered. This is not in terms required, nevertheless, it is provided by statute that a delivery of a conveyance, duly executed, shall be valid and effectual to pass the title of the grantor or grantors in and to the land in

question; leaving in full force the requirements of the common law concerning the delivery. [Ante 85.]

When conveyances are executed by some person other than the grantor or grantors, but in his or their behalf, such person must have been thereunto authorized by a "written power signed, sealed, attested and acknowledged by the owner or owners of the estate; and when the estate of a femme covert is proposed to be conveyed by attorney, or her right of dower in any lands, tenements, or hereditaments relinquished, she must have joined her husband in the execution of the power, and have acknowledged the same separately and apart from him, according to the provisions concerning conveyances by husband and wife."

Any conveyance, however, made under a power of attorney from a husband and wife, must contain the name of the wife, "and will, if thus executed, divest her of her estate in the lands, tenements and hereditaments so conveyed, or her right of dower therein, as fully as if such conveyance were executed by her in person; provided, that at any time previous to the sale and conveyance of any lands, tenements or hereditaments, so authorized to be sold and conveyed, the wife shall have not revoked such power of attorney." The recording of a power of attorney is another pre-requisite to a conveyance by the attorney. The statute on this subject is imperative and therefore establishes a rule which is inflexible. This must be done in all cases before the execution, by an attorney, of a deed or mortgage.

In respect to foreign conveyances or incumbrances upon lands in Ohio, it is provided that they shall be executed either according to the laws of the State where they are made, or according to the laws of Ohio. Either will answer the law, and when thus executed, a deed or mortgage is held to be as valid as if executed within this State, in conformity with the foregoing provisions. [R. S. of Ohio, 360.]

It may be well to notice, in this connection, that married women in Ohio may have an interest in land beyond their dower right, which, by an act passed February 28, 1846, cannot be aliened by the husband. This act provides that the interest of any married man in the real estate of his wife, belonging to her at the time of their intermarriage, or which may come to her by devise, gift or inheritance during coverture, or which may have been purchased with her sole and separate money, or other property, and during her coverture shall have been deeded to her, or to any trustee in trust for her, shall not be liable to be taken by any process of law or chancery for the payment of his debts during the life of the wife, or the life or lives of the heir or heirs of her body." [Id., Sec. 1.] All conveyances and incumbrances of the husband's interest in the real estate of the wife, in the first section mentioned, shall be void and of no effect during the life of the wife, and during the life or lives of the heir or heirs of her body, unless an instrument of such conveyance or incumbrance shall have been executed, attested and acknowledged according to the laws of this State, for the conveyance or incumbrance of the estate of the wife in lands, tenements and hereditaments, situate within this State.* [Id., Sec. 2.]

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* A deed or grant purporting to convey an estate in severalty where the grantor had only a joint tenancy, or tenancy in common, is not void but conveys all the grantor's interest in the premises. [2 Ham., 110.]

In Ohio, it is indispensable to the validity of a conveyance, that the grantee be capable of receiving it. He must be a person in being at the time of its execution. 4 Ham., 157.]

A valid title to land can be acquired only through a written conveyance. A parol exchange does not transfer title, and did not before the statute of frauds, even though the parties had taken actual possession. [1 Ham., 243.]

A title to land cannot be conveyed by an assignment endorsed upon a deed. [2 Ham., 221.]

Possession of land for twenty years raises the presumption of a deed, but possession alone is not sufficient. [1 Ham., 330.]

A deed made for a gambling consideration is void, and the land is forfeited to the heirs of the grantor, subject to his debts. [1 Ham., 395.]

XVIII. THE PROOF AND ACKNOWLEDGMENT OF DEEDS AND MORTGAGES.

Not only are all deeds and mortgages required to be signed and sealed by the grantor, but to be acknowledged in the presence of two witnesses. The phraseology of the statute seems to contemplate an acknowledgment before witnesses. The language is, "such signing and sealing shall be acknowledged by such grantor in the presence of two witnesses, who shall attest such signing and sealing, and subscribe their names to such attestation; and such signing and sealing shall also be acknowledged by such grantor or grantors, maker or makers, before a Judge of the Supreme Court, or of the Court of Common Pleas, a Justice of the Peace, Notary Public, Mayor, or other presiding officer of an incorporated town or city, who shall certify such acknowledgment on the same sheet on which such deed, mortgage or other instrument of writing may be printed or written." It is presumed that it was not the intention of the General Assembly to require the witnesses to attend before the acknowledging officer in cases where the grantor or grantors are personally known to him, yet the language employed requires it. If the officer be personally acquainted with the grantors he may take their acknowledgment at once upon their appearance before him, but where he is unacquainted with them and cannot from personal knowledge determine whether they are the persons named in and who executed the deed or mortgage in question, it is his duty to examine on oath one or both of the witnesses to the instrument as to their identity, and thus became legally informed in respect thereto, to his satisfaction. He must be satisfied of the fact.

"And when a husband and wife, (she being eighteen years of age or upwards,) shall within the State of Ohio,

execute any deed, mortgage, or other instrument of writing for the conveyance or incumbrance of the estate of the wife, or her right of dower in any land tenement or heriditament situate within this state, such deed, mortgage or other instrument of writing shall be signed and sealed by the husband and wife; and such signature and sealing shall be attested and acknowledged in the manner hereinbefore prescribed; and in addition thereto, the officer before whom such acknowledgment shall be made, shall examine the wife separate and apart from her husband, and shall read or otherwise make known to her, the contents of such deeds, mortgage or other instrument of writing, and if upon such separate examination she shall declare that she did voluntarily sign, seal, and deliver the same, and that she is still satisfied therewith, such officer shall certify such examination and declaration of the wife, together with the acknowledgment aforesaid of such deed, mortgage or instrument of writing, and subscribe his name thereto." Every acknowledgment must be certified, whether of husband and wife, or otherwise, and that the officer is "satisfied from personal knowledge, or from the testimony of some witness, (naming him) that the person or persons making such acknowledgment is, or are, the person or persons whom they represent themselves to be, and shall subscribe his name to such certificate." All the facts requisite to a lawful acknowledgment must be certified. A certificate that a deed was acknowledged according to law has been held to be defective.*

The foregoing directions relate exclusively to acknow-

*The laws of the territory northwest of the Ohio of 1795 and 1802, virtually repealed the ordinance of Congress of 1789 so far as relates to the execution, proof and acknowledgment of deeds. [1 Ham., 12.]

An United States Judge may, in any part of the Union, take acknowledgments of deeds of land in the territory over which his powers extend. [Id., 14.]

If the person taking an acknowledgment of a deed gives himself no official character, either in his certificate or subscription, it is insufficient, and the record is irregular and inoperative. [2 Ham., 55.]

ledgments taken within the State of Ohio. In relation to foreign acknowledgments the statute provides "that all deeds, mortgages, powers of attorney, and other instruments of writing for the conveyance or incumbrance of any lands, tenements or hereditaments situate within this State, executed acknowledged or proved in any other State in conformity with the laws of such State, territory or country, or in conformity with the laws of this State, shall be as valid as if executed within this State in conformity with the foregoing provisions." To entitle a deed so executed in another State to be read in evidence or recorded, there must be attached thereto a certificate under the official seal of the County Clerk, or other officer who keeps the rolls of office, signed by the acknowledging officer, setting forth the fact that the person whose name appears to the certificate of acknowledgment, was at the time of taking the same, a Judge, Justice of the Peace, Notary Public, or Mayor, as the case may be, duly commissioned and sworn, and that by the laws of the State, he was empowered to take said acknowledgment, and further, that he is acquainted with the hand writing of such acknowledging officer, and that he believes his signature to said certificate annexed, to be genuine.

XIX. THE RECORDING OF DEEDS AND MORTGAGES IN OHIO AND THE EFFECT THEREOF.

A County Recorder is provided by the laws of Ohio, who is required to keep an office at the county seat, and in proper books to be provided for that purpose, to record all deeds, mortgages and other instruments in writing affecting the title to land in the same county, which shall have been executed attested and acknowledged according to law. This duty is however subject to the payment of his fees, which he may require on entering any deed in his office. The recording of deeds is a safe method of preserving munimentsof title; enables the owner to produce at all times documentary ev-

idence thereof, and protects him against stealthy conveyances, by his grantor, to others.

Deeds are required to be recorded in the proper office within six months from the time of their execution. Unrecorded deeds are good as against the grantor and his heirs, and void as to subsequent bona fide purchasers whose deeds shall have been recorded.*

The act provides that mortgages "shall be recorded in the office of the recorder of the county in which such mortgaged premises are situated, and shall take effect from the time of presentation for record; the first presented shall be the first recorded and the first recorded shall have preference." †

*In Ohio, a deed to a bona fide purchaser need not be recorded as against a prior unrecorded deed. [1. Pet., 552.]

In general, notice of an unrecorded deed is equivalent to a record of a deed, and will destroy the effect of a deed subsequently registered. [1. Ham., 264.]

But an implied notice of a prior unregistered deed, will not be sufficient to set aside a subsequent deed. [Idem.]

† Ohio contains the following counties, each of which is a recording district for all conveyances affecting land therein, and the county seat therein the location of the recorder's office. For the benefit of non-resident land owners, both are given; the former in small capital letters, the latter in Roman letters, viz: ADAMS, West Union; ALLEN, Lima; ASHTABULA, Jefferson; ATHENS, Athens; BELMONT, St. Clairsville; BROWN, Georgetown; BUTLER, Hamilton; CARROLL, Carrollton; CHAMPAIGN, Urbanna; CLARK, Springfield; CLERMONT, Batavia; CLINTON, Wilmington; COLUMBIANA, New-Lisbon; COSHOCTON, Coshocton; CRAWFORD, Bucyrus: CUYAHOGA, Cleveland; DARKE, Greenville; DELAWARE, Delaware; ERIE, Sandusky City; FAIRFIELD, Lancaster; FAYETTE, Washington; FRANKLIN, Columbus; GALLIA, Gallipolis; GEAUGA, Chardon; GREENE, Xenia; GUERNSEY, Cambridge; HAMILTON, Cincinnati; HANCOCK, Findlay; HARDIN, Kenton; HARRISON, Cadiz; HENRY, Napoleon; HIGHLAND, Hillsboro': HOCKING, Logan; HOLMES, Millersburg; HURON, Norwalk; JACKSON, Jackson; JEFFERSON, Steubenville; KNOX, Mount Vernon; LAKE, Painesville; LAWRENCE, Burlington; LICKING, Newark; LOGAN, Belle Fontaine; LORAIN, Elyria; LUCAS, Toledo; MADISON, London; MARION, Marion; MEDINA, Medina; MEIGS, Chester; MERCER, Celina; MIAMI Troy; MONROE, Woodfield; MONTGOMERY, Dayton; MORGAN, McConnelsville; MUSKINGUM, Zanesville; OTTAWA, Port Clinton; PAULDING, Charloe; PERRY, Somerset; PICKAWAY, Circleville; PIKE, Piketon; PREBLE, Eaton; PORTAGE, Ravenna; PUTNAM, Putnam; RICHLAND, Mansfield; ROSS, Chillicothe; SANDUSKY, Lower Sandusky; SCIOTO, Portsmouth; SENECA, Tiffin; SHELBY, Sidney; STARK, Canton; SUMMIT, Akron; TRUMBULL, Warren; TUSCARAWAS, New-Philadelphia; UNION, Marysville; VAN WERT, Van Wert; WARREN, Lebanon; WASHINGTON, Marietta; WAYNE, Wooster; WILLIAMS, Bryan; WOOD, Perrysburg.

XX. WILLS OF REAL ESTATE IN OHIO.

Intimately connected with the subject of conveyances by deed, are devises by will. In Ohio, every person of full age, and of sound mind and memory, except femmes covert, may devise real estate. As both affect, or may affect, the title to lands, the regulations concerning them are alike important to land owners.

Less formality is required in the execution of wills which bequeath personal estate only, than in respect to those which devise real estate, yet both (with the exception of death-bed testaments of personal estate,) are required to be in writing, and signed at the end thereof by the party making the same, or by some other person in his or her presence, and by his or her direction.

They must be in writing. No prescription exists concerning the form, nor have there been any adjudications which go further than to require wills to be legible, intelligible, and so consistent in their provisions as to be capable of construction and execution by executors. They may be written on paper, parchment, or any similar material.

They must be signed—signed at the end thereof by the party making the same, or by some other person in his or her presence, and by his or her direction. "Qui facit per alium facit per se," is a maxim which holds as well in cases of wills as deeds, except that the person acting as amanuensis for the testator, or devisor, must act in his presence. The signing may be done by making a mark, but it should be by writing the name at length.

They must be attested. The statute requires all written wills to "be attested and subscribed in presence of such party (that is the testator,) by two or more competent witnesses who saw the testator subscribe it (them,) or heard him acknowledge the same." The witnesses are not required to be present at the execution. If they heard the testator state that

he did execute the will in question, they may subscribe the same, and their subscription will be held to be a sufficient attestation. But the witnesses must be competent. They must be of sufficient age to understand, and of legal ability to testify on the probate thereof. They should be persons of discretion, not interested in any legacy or bequest contained in the will, and who, from infamy of character or other cause, are not incompetent as witnesses in a court of justice.

The testator may appoint his executors by will or codicil, or he may omit to do so at his pleasure. The validity of a will in no wise depends upon their appointment therein, as the courts having jurisdiction are invested with power to appoint administrators to execute it.

The power of the testator to devise or bequeath his property to whomsoever he pleases, is qualified only by the right of his wife, if the testator be a married man and leave a wife him surviving, to elect within six months from the probate whether she will claim her dower in his lands, or abide by the will. "If any provision be made for a widow in the will of her husband, she shall within six months after probate of the will, make her election whether she will take such provision or be endowed of his lands; but she shall not be entitled to both, unless it plainly appear by the will to have been the intention of the testator that she should have such provision in addition to her dower." [Stat. Wills, Sec. 45.] The intention should be declared in the instrument, if such were the purpose of the testator; yet if it can be clearly ascertained, without any express declaration to that effect, the courts will accord to the widow both the legacy and dower. The Statute also provides how that election shall be made. "The election of the widow to take under the will, shall be made known to the Court of Common Pleas of the proper county, which shall be entered upon the minutes of the court, and if the widow fail to make such election, she shall

retain her dower, and such share of the personal estate of her husband as she would be entitled to by law in case her husband had died intestate. If she elect to take of the will she shall be debarred of her dower, and take under the will alone." [Id., Sec. 45.]

Posthumous children cannot be cut off by neglect of the parent, where he or she have no children born at the time of the execution of a will. In such case, if no provision be made in the will for the after born child, and no settlement have been made for it, the will shall be deemed revoked, unless such mention of the child shall be made in the will as to show an intention not to provide for it; and no other evidence to rebut the presumption of such revocation can be received. [Act passed March 23, 1840.]

It is usual for the testator to seal his will after its execution, in an envelop, and to deposit the same with the executor or some other person; and it is provided that if wills are sealed, the seal shall not be broken by the executor or other person, until produced in court for probate.

No will is effectual to pass real or personal estate until admitted to probate.*

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* Wills fail to pass real property unless executed according to the laws of the State where the property devised is situated. [9 Wheaton's Reports, 566.]

Whether a will be properly executed or not, must be decided by the courts in reference to the laws in force at the time of its execution, without reference to the testator's death. [5 Watts, 399.]

Under the Statutes of 1810, a femme covert was authorized to devise real estate held in her own right. [5 Ham., 65.]

It is a valid republication of a will for the testator to declare in the presence of witnesses that the paper contains his last will and testament, provided the fact be endorsed on the will and subscribed by the witnesses, though such endorsement be not subscribed by the testator. [7 Ham., Part 2: 39.]

Where a testator at the time of making his will was in the possession of lands under a verbal agreement, for the purchase, but afterwards, and before his decease obtained a deed of the same, it was held that the lands so deeded, passed to the devisee under his will. [4 Ham., 115.]

XXI. THE PROBATE AND RECORDING OF WILLS IN OHIO.

Wills are required to be proved and recorded. In Ohio, the Courts of Common Pleas in the several counties have the powers of a Court of Probate. They have power to compel the production of wills and the attendance of witnesses before them. Upon application, the Court of Common Pleas of the proper county is, by an act passed May 23, 1840, required to "cause the witnesses of such will, and such other witnesses as any person interested therein(that is the will) may desire, to come before such court; and said witnesses shall be examined in open court, and their testimony reduced to writing and filed: provided, that in all cases any witnesses other than the subscribing witnesses to the will, are introduced, the court may order their testimony to be taken and reduced to writing by a Master Commissioner of the court; which testimony shall be filed with said will." [Id., Sec. 13.]

"If it shall appear to the court, when the will is offered for probate, that any witness is gone to parts unknown; or, if the witnesses to a will were competent at the time of attesting its execution, and afterwards became incompetent by reason of interest, infamy, or other cause, the will may be admitted to probate and allowed upon such proof as would be satisfactory; and in like manner as if such absent or incompetent witnesses were dead." [Id., Sec. 14.] Witnesses who are absent from the State may be examined under a commission which may be issued by the court to one or more persons of the State or place where the absent witness shall reside, and the testimony thus taken is as valid as if taken in open court. [Id., Sec. 15.]

"If it shall appear that such will was duly attested and executed, and that the testator at the time of executing the same, was of full age, and of sound mind and memory, and not under any restraint, the court shall admit the will to probate." [Id., Sec. 16.]

It has been decided that an application to admit a will to probate, though rejected, extinguishes no right and binds no body; but when admitted to probate, it binds every body. [Chapman's Will, 6 Ohio Reports, 148. Hunter's Will, Id., 499.]

Appeals lie to the Supreme Court from an order admitting a will to probate, but if the Court of Common Pleas adjudge the testimony insufficient and refuse the probate, no appeal lies.

When admitted, wills are required to be filed and recorded in the office of the Clerk of the Court, together with the testimony; and an exemplified copy with the order of probate, under seal of the court, is legal evidence of such probate.

The statute renders the probate so far conclusive, that if no person interested shall, within two years after probate had, appear and contest the validity of the will, the probate is "forever binding," saving, however, to infants, married women, and persons absent from the State, or of insane mind, or in captivity, the period of two years after the disability is removed is allowed for appearance and contestation. [Act 1840, Sec. 21.]

The mode provided for contesting a will, is by bill in chancery, which may be filed within said two years by any person interested in the will or estate of the deceased; and upon the proper issue framed, the capacity of the testator in mind, memory, &c., may be tried by a jury.

Thus far, domestic wills have alone been treated of. Foreign wills, or wills executed, proved, and allowed, in any other of the United States, or territory thereof, according to the laws of such State or territory, are admitted to record in Ohio, in the manner and for the purposes following: "A copy of the will and probate thereof, duly authenticated, shall be produced by the executor, or by any person interested therein, to the Court of Common Pleas of the county in which there is any estate upon which the will may operate; whereupon the court shall continue the motion to the next term, and notice of the application shall be given to all persons interested,

in some public newspaper printed or in general circulation in the county where such motion is made, at least three weeks successively; the first publication to be forty days, at least, before the said time for the final hearing of said motion. If, on hearing, it shall appear to the court that the instrument ought to be allowed in this State, the court shall order the copy to be filed and recorded; and the will and the probate and record thereof shall then have the same force and effect, as if the will had been originally proved and allowed in the same court, in the usual manner; provided, however, that nothing herein contained shall be construed to give any operation or effect to the will of an alien, different from what it would have had if originally proved and allowed in this State. After allowing and admitting to record a will, so executed, the court may grant letters testamentary thereon, or letters of administration with the will annexed, and shall proceed in the settlement of the estate that may be found in this State; and the executor taking out letters, or the administrator with the will annexed, shall have the same power to sell and convey the real and personal estate by virtue of the will, or the law, as other executors or administrators with the will annexed shall or may have by law." [Id., Sec. 29, 30, 31, 32.]

There is another provision in this act which is worthy of especial notice. It is that "no lands, tenements, or hereditaments shall pass to any devisee in a will, who shall know the existence thereof and have the same in his power to control for the term of three years; unless, within that time, he shall cause the same to be offered for or admitted to probate."

The evils growing out of a neglect to produce a will within three years are manifold; hence the above enactment, together with another, which declares that in cases of such neglect, "the estate devised to such devisee shall descend to the heirs of the testator."

XXII. THE TITLE TO REAL ESTATE BY DESCENT.

Succession to the estate of an ancestor deceding intestate, is now the custom of all civilized nations. Hereditary descent, if not the design of Providence, is clearly a dictate of humanity. It induces both paternal care and filial loyalty and regard.

The Jews had a rule upon the subject that was general throughout their nation. The example was imitated by the Athenians, who expounded and liberalized the doctrine. Insinuating itself among the continental nations, it finally became a part of the common law, which afterwards found its way across the Atlantic, where it intermingled with the economical regulations of the several colonies. It is not uniform, however, in this country. The people of the United States have no general law of descents. Each State has adopted for herself such a rule upon the subject as her Legislature has deemed politic and wise. The rule adopted in this State, was indicated in the ordinance of 1787 for the government of the territory northwest of the river Ohio. As enacted by the Legislature, it is substantially the same as that in the State of Indiana. [See Indiana.]

XXIII. LAND TAXES IN OHIO.

All real property within this State, except churches and school houses, and the grounds not exceeding twenty acres upon which they are situate, cemeteries, grave yards, buildings belonging to scientific, literary or benevolent societies, together with the land occupied by them, land belonging to the State or United States, or sold by the latter within five years, court houses and other county buildings, with not exceeding ten acres of land upon which they are situate, market houses, public squares, township houses, and fire engine houses, is subject to taxation.

In the assessments preparatory to the levy of taxes, the

statute requires "each separate parcel of real property to be valued at its true value in money, including the value of crops growing thereon; but the price for which such real estate would sell at auction, or at a forced sale, shall not be taken as the criterion of such true value." [Act of March 2, 1846, Sec. 12.]

On the third Monday of March, eighteen hundred and forty-six, (and once in six years thereafter) the said act required the County Commissioners of each county to meet at the office of the County Auditor, and when so met, to divide their county into at least two and not more than four districts, except the county of Hamilton, which may be divided into not less than six, nor more than twelve, and to appoint some well qualified citizen of such county as Assessor for each district. [Id., Sec. 20.]

The Assessors respectively, after having first given a bond in the penalty of two thousand dollars, and taken an oath, for the faithful performance of their duties, are required to make out from the maps and descriptions furnished them by the County Auditor, and from such other sources of information as shall be in their power, a correct and pertinent description of each parcel of real property in their district; and when thereunto necessary, they may require the owner or occupant of any parcel of land to furnish them any title papers or other documents relating to the description, in his possession or under his control, and in case of refusal, they may employ a surveyor to survey the same and make a description therefrom at the expense of the owner, to be charged in the tax; and having determined the value thereof according to the best of their judgment, they shall each return the list for their respective districts to the County Auditor, under oath, on or before the tenth day of July following. Intervening the six years, Township Assessors, whilst annually taking an account of personal property in each town or ward, are required to enter upon their lists all real property in

their township or ward that shall have become subject to taxation since the last listing, with the value thereof, and all new buildings exceeding in value one hundred dollars, and to return the same to the County Auditor, who enters all returns in books to be provided for that purpose. On the first Monday of August next, after the District Assessors shall have made their returns, the County Commissioners, District Assessors, County Surveyor and County Auditor, or a majority of them, are required to convene at the county seat and organize themselves as a "County Board of Equalization." The County Auditor having laid before them the returns made to him by the Assessors, they are required to proceed to equalize such valuation, so that each parcel shall be entered on the tax list at its true value. In doing so, they are required to raise the valuation of such parcels as have been returned below, and to reduce the valuation of such as have been returned above, but seeing to it that they do not reduce the aggregate below the valuation of the county as fixed by the State Board of Equalization. The State Board consists of one person from each Senatorial District, appointed by joint ballot of the Senate and House of Representatives, and meets at Columbus on the fourth Monday of October. The result of their labors in the equalization of real property among the counties, is transmitted by the Auditor of the State to the several County Auditors; and on or before the fifteenth day of July annually, the State Auditor determines the aggregate per centum to be levied on the whole taxable property of the State for defraying the ordinary expenses of the government and its public institutions, for the support of schools, and to pay such interest on the public debt as the revenues from the public works shall not furnish, and transmits the same to County Auditors, who after ascertaining the amount in addition to be raised for local purposes authorized by law, are required to proceed forthwith "to determine the sum or sums to be levied upon each parcel of

real property (and upon the amount of personal property moneys and credits) listed in their county, in the name of each person, company or corporation, which shall be assessed and set down in three or more columns, in such manner and form as the Auditor of the State shall prescribe: Provided, that all taxes levied for State purposes, and all taxes levied for county purposes, shall each be set down in a separate column; and provided also, that each County Auditor, in determining the per centum to be levied for any purpose or purposes, on any property entered in his books for taxation, (when the amount so levied is to be set down in one column,) shall assume such per centum not containing any fractions of less than one fifth of a mill as will produce a gross sum nearest the amount which he is required to levy for such purposes, and in extending the sum levied on any parcel or amount of property, money, or credits, he shall carry out no fraction of a cent, but in any case where such fraction is greater than half a cent it shall be carried out one cent." [Act of March 2, 1846, Sec. 52.] "For every purpose for which he is required to assess taxes, the County Auditor shall assess an equal per centum of tax on all real and personal property agreeably to the value thereof." [Id., Sec. 24.]

The amount of money to be raised in the several counties respectively for roads, bridges, public buildings, the support of the poor, and other county purposes, is determined by the County Commissioners, and by them reported to the County Auditor; and the Trustees of Towns, in like manner, ascertain the amount to be raised for town purposes, and report the same to him. [Id., Sec. 55 and 56.] The taxes being levied, as aforesaid, are receivable by the Treasurer at the county seat in each county from the fifteenth day of September, until the first Monday in January in each year, that officer being furnished a duplicate of the levy.

The Revised Statutes provide, "that the County Auditor shall attend at his office on the first Monday in January,

annually, to make settlement with the Treasurer of his county, and ascertain the amount of taxes with which such Treasurer is to stand charged; and the Auditor shall then take from the duplicate previously put into the hands of the Treasurer for collection, a list of all such taxes as such Treasurer shall have been unable to collect thereon, describing the property on which such delinquent taxes are charged, as the same is described on such duplicate, and shall note thereon in a marginal column the several reasons assigned by such Treasurer, why such taxes could not be collected, and such list shall be signed by the Treasurer, who shall testify to the correctness thereof under oath or affirmation, to be administered by the Auditor. [Id., Sec. 27.] Lands delinquent for taxes are then returned to the Auditor of the State, at Columbus, where the taxes may be paid until the first day of March without penalty, from the first day of March to the first day of May with a penalty of ten per cent, and after that with a penalty of twenty-five per cent. Six per cent interest is added, in making up the duplicate for the next year.

If the same land is again returned as delinquent, it is the duty of the Auditors of the several counties to "cause the list of lands delinquent in the respective counties to be published at least four weeks, between the third Monday of November and the first Monday in January, in some newspaper printed in the respective counties, if any be printed therein, and if none be printed therein, then in some newspaper having general circulation in such county, to which list there shall be attached a notice that the whole of the several tracts, or town lots in said list contained, or so much thereof as will be necessary to pay the taxes, interest and penalty charged thereon, will be sold at the court house in such county, on the second Monday in January next thereafter, by the County Treasurer, unless such taxes, interest and penalty be paid before that time." If payment be not made, the sale is required to be made on that day, at and after ten o'clock, and

the Auditor is Clerk at the sale, and delivers a certificate thereof to purchasers, who are required to pay immediately, the taxes in arrear, the penalty and interest.

When land thus returned for delinquent taxes is offered for sale, but not sold for want of bidders, it is forfeited to the State, and "thenceforth all the right, title, claim and interest of the former owner or owners thereof, shall be considered as transferred to and vested in said State, to be disposed of as the Legislature may by law direct." By an act passed March 12, 1845, however, the Treasurer was authorized to adjourn the sale from day to day, until he shall have offered for sale, or disposed of, each and every tract of land specified in the notice; and it was further provided, that if any tract or parcel of land should not sell at public sale for an amount sufficient to pay the taxes, interest and penalty, which stands against such tract, the Auditor should return the same as unsold, to be retained upon the list of forfeited lands, to be offered for sale the next succeeding year, as other forfeited lands.

The sale is subject, however, to the redemption, which forms the following topic of inquiry.

XXIV. LAND TAX FORFEITURES AND REDEMPTIONS IN OHIO.

By an act of the General Assembly, passed March 3, 1831, it is provided that all lands sold for taxes may be redeemed at any time within two years from the sale thereof; and that all lands belonging to minors, femmes covert, insane persons and persons in captivity, sold for taxes, may be redeemed at any time within two years from and after the expiration of such disability. [Id., Sec. 1.]

Applications for the redemption of lands are required to be made to the Court of Common Pleas of the county in which the lands are situated; or, if they lie in two counties, then of the county where they were sold; but notice thereof, published six weeks in a newspaper printed in,

or circulating in, the county, must be given by the applicant, describing the land, the original owner and the purchaser, and specifying when the application will be made. The applicant is also required, at the time of publishing the notice, to deposit with the Clerk of the court to which the application is to be made an amount of money equal to that for which the land was sold, and the taxes subsequently paid thereon by the purchaser, or those claiming under him, together with interest and fifty per centum on the whole amount paid by such person including costs, or at his discretion he or she may tender to the purchaser or purchasers, or his or their agent or attorney, the amount of taxes, interest and penalty due thereon, instead of depositing the same with the Clerk of the court; and if the said purchaser or purchasers, his or their agent or attorney, will not accept the same, the owner or owners, his or their agent or attorney, may make the application to the court, and the costs will abide the event. [Id., Sec. 2, 3, 4.]

"If the court to which such application shall be made, shall be satisfied that due notice has been given, as required in the third section of this act, or that the deposit (or tender) has been made, they shall proceed to examine the testimony of such applicant relative to his right of redemption, and the counter testimony of the adverse party, if any be offered; and if on such examination the court shall be satisfied that the applicant is entitled to redeem such land or town lot, they shall make an order of redemption, which shall vest in the applicant all the title which passed by such sale, and shall award restitution of the premises, and direct that the applicant pay the costs of the application, (in case he shall not have made a tender; if he shall have made a good tender, the costs abide the event) and the court shall at the same time order the money so deposited as aforesaid to be paid to the adverse party. [Id., Sec. 6.] But it is also provided "that in case any lasting and valuable improvements shall have been

made by the purchaser at a sale for taxes, or by any person claiming under him, on any land or town lot, for which an order of redemption shall be made as aforesaid, the premises shall not be restored to the person obtaining such order, until he shall have paid or tendered to the adverse party, the value of such improvements; and if the parties cannot agree on the value of such improvements, the same proceedings shall be had in relation thereto, as shall be prescribed in any law existing at the time of such proceedings, for the relief of occupying claimants of land; provided that no purchaser of any land or town lot sold for taxes, nor any person claiming under him, shall be entitled to any compensation for any improvements which he shall make on such land or town lot, within two years after the sale thereof." [Id., Sec. 7.]

The time allowed for redemption of land sold on a mortgage foreclosure, is one year. A widow forfeits her dower in lands sold for taxes, if she do not redeem in one year from the day of sale.

XXIV. REAL ESTATE EXEMPTIONS IN OHIO.

By an act entitled "an act to amend an act entitled an act to regulate judgments and executions at law," passed March 9, 1840, the several statutes relating to the property of householders exempted from execution underwent a thorough revision. The revised act increased the amount of exempted personal property, but reserved to the debtor, exempt from sale upon decrees or executions, no real estate whatever.

On the 28th of February, 1846, however, an act was passed for the protection of the rights of married women, in which it is provided "that the interest of any man in the real estate of his wife, belonging to her at the time of their intermarriage, or which may come to her by devise, gift, or inheritance during coverture, or which may have been purchased with her sole and separate money, or other property, and during her coverture, shall have been deeded to her, or

to any trustee in trust for her, shall not be liable to be taken by any process of law or chancery, for the payment of his debts during the life of the wife, or the life or lives of the heir or heirs of her body." [Id., Sec. 1.]

"All conveyances and incumbrances of the husband's interest in the real estate of the wife, in the first section mentioned, shall be void and of no effect during the life of the wife, and during the life or lives of the heir or heirs of her body, unless an instrument of such conveyance or incumbrance shall have been executed, attested and acknowledged, according to the laws of this State for the conveyance or incumbrance of the estate of the wife in lands, tenements and hereditaments situate within this State."* [Id., Sec. 2.]

* By an act, passed March 9, 1840, it is provided "that each person who has a family, shall hold the following property exempt from execution or sale, for any debt, damages, fine or amercement, to wit:

First, The wearing apparel of such family; the beds, bedsteads and bedding necessary for the use of such family; one stove and pipe used either for cooking or for warming the dwelling house; an amount of fuel sufficient for the period of sixty days, actually provided and designed for the use of such family.

Secondly, One cow, or if the debtor own no cow, household furniture, which is to be selected by the debtor, and not exceeding fifteen dollars in value; two swine, or pork therefrom, or if the debtor own no swine, household or kitchen furniture, to be selected by the debtor, not exceeding six dollars in value; six sheep, the wool shorn therefrom, and the cloth or other articles manufactured therefrom, or in lieu of such sheep, household furniture, to be selected by the debtor, not exceeding ten dollars in value; and sufficient food for such animals, when owned by the debtor, for the period of sixty days.

Thirdly, The bibles, hymn books, psalm books, testaments and school books, used in the family, and all family pictures.

Fourthly, Any amount of provisions actually prepared and designed for the sustenance of such family, not exceeding forty dollars in value, to be selected by the debtor; and such other articles of household and kitchen furniture or either, necessary for the debtor and his family, and to be selected by the debtor, not exceeding thirty dollars in value.

Fifthly, The tools and implements of the debtor, necessary for carrying on his trade or business, whether mechanical or agricultural, to be selected by him, not exceeding fifty dollars in value. [Id., Sec. 1.]

The amount of beds, bedsteads and bedding necessary for the use of such family; the amount of fuel necessary for the period of sixty days actually provided and designed for the use of such family; the amount of food for the use of the animals exempted from execution, for the period of sixty days, shall be determined by two disinterested householders of the county, to be selected by the officer holding the

XXVI. LIMITATION OF REAL ACTIONS IN OHIO.

By an act passed February 18, 1831, all actions of ejectment, or other actions for the recovery of the title or possession of lands, tenements or hereditaments, are required to be brought within twenty-one years after the cause of action shall have accrued, and not after. [Id., Sec. 1.] If, however, any person entitled to have or maintain any such action be, at the time his right or title first descended or accrued, within the age of twenty-one years, femme covert, insane or imprisoned, every such person may, after the expiration of twenty-one years from the time his or her right or title first descended or accrued, bring such action within ten years after such disability removed, and at no time thereafter. [Id., Sec. 2.] But if in any action commenced within the time above limited, judgment shall be arrested and reversed, or the suit abate, or the plaintiff become non-suited, and the time limited as aforesaid shall expire, the plaintiff may commence a new action within one year after such arrest and reversal of judgment, non-suit, or abatement of action, as aforesaid, and not afterward.† [Id., Sec. 6.]

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execution. And the value of the provisions, household and kitchen furniture, and the tools and implements of the debtor, necessary for carrying on his trade or business, by this act exempted from executions, hall be estimated and appraised by said householders. [Id., Sec. 2.]

Since the passage of the foregoing an act explanatory of the fifth clause has been passed, in and by which it is provided that the same "shall be so construed as to authorize the execution debtor, if he be engaged at the time in the business of agriculture, to select as tools and implements necessary for carrying on his trade or business, one work horse, or mare, or one yoke of work oxen, with the necessary gearing for the same; and if said judgment debtor be actually engaged at the time in the practice of medicine and surgery, he shall be entitled to select as above one horse or mare, and one saddle and bridle; also medicines, instruments and books pertaining to his profession, not exceeding in value the sum of fifty dollars." [Act of March 4, 1844.]

† The limitation upon actions upon the case, covenant, debt, founded on specialty on contract in writing, is fifteen years after the cause of action accrued; upon actions upon contracts not in writing, and upon the case for consequential damages, ix years; upon trespasses, detinue, trover and replevin, four years; upon libels, slander, malicious prosecutions, and false imprisonment, one year. [Ohio Stat. of 1931.]

XXVII. THE INTEREST OF MONEY IN OHIO.

The Statutes provide that all creditors shall be entitled to receive interest on all money after the same shall become due, either on bond, bill, promisory note, or other instrument of writing, or contract for money or property; on all balances due on settlement between parties thereto, or money withheld by unreasonable and vexatious delay of payment; and on all judgments obtained from the date thereof, and on all decrees obtained in any Court of Chancery, for the payment of money, from the day specified in the said decree, or if no day be specified, then from the day of the entering thereof, until such debt, money, or property is paid, at the rate of six per centum per annum, and no more.* [Act Jan. 12, 1824.]

XXVIII. REGULATIONS CONCERNING USURY IN OHIO.

No statute for the punishment of usury, as in New-York, has been enacted in Ohio. That which relates to the subject of interest, fixes the rate at six per cent, and "no more." No greater sum than at and after the rate of six per centum per annum is allowed. In the case of the Lafayette Benevolent Society vs. Lewis, (Ohio Reports) it was judicially determined, that a contract to pay more than six per cent cannot, but that legal interest on a contract to pay a certain principal and a rate of interest exceeding six per cent can, be enforced. The contract is valid for the principal and lawful interest, but void for the excess.

* Under the Statutes of Ohio concerning the interest of money, only six per cent per annum, for the loan or forbearance of money, can be recovered, even though the contract contain stipulations for the payment of a greater rate. [7 Ham., 30.]

Interest upon interest is recoverable where instalments are suffered to fall in arrear. In such case, the holder of the obligation is entitled to his interest upon the instalment, and interest due, from the day when the same became payable. [4 Ham., 373.]

In estimating the damages under a covenant of warranty, interest is not recoverable when the premises have been occupied by the warrantee. [5 Ham., 154.]

CHAPTER III.

THE STATE OF INDIANA.

Source of Title to Lands in Indiana. Settlement thereof by the French. Capitulation to the English. The Quebec Act. Relinquishment of the Country by Great Britain. The Cessions of Massachusetts, Connecticut, New-York, and Virginia. Erection of the Territory Northwest of the river Ohio. Ordinance of 1787. Acts of Congress concerning the early settlers. The Erection and Division of Indiana Territory. Admission into the Union of Indiana as a State. Her Constitution. Land Titles generally. The Execution, Attestation, Proof, Acknowledgment and Recording of Conveyances. The Execution, Attestation, Probate and Recording of Wills of Real Estate. The Statute of Descents. The Levy and Collection of Land Taxes. Tax Sales, Forfeitures and Redemptions. Limitations and Exemptions. Interest of Money and Usury.

I. SOURCE OF TITLE TO LANDS IN INDIANA—SETTLEMENT THEREOF BY THE FRENCH—CAPITULATION TO THE ENGLISH—THE QUEBEC ACT, ETC.

As the State of Indiana was erected from a portion of the territory of the United States lying northwest of the river Ohio, the preceding chapter as correctly indicates the source, and history of land titles in this, as in the State of Ohio. For an account, therefore, of the native proprietors; of the exploration and settlement of the territory by the French; the acquirement and relinquishment thereof by Great Britain; the Cessions of Massachusetts, Connecticut, New-York and Virginia; the treaties extinguishing the Indian right of occupancy; and the ordinance of Congress for the govern-

ment of the territory, the reader will see Ante 127 to 157 inclusive.*

Soon after the adoption of the Federal Constitution, the subject of the claims of the early settlers at and about Vincennes, was brought to the notice of Congress, and resulted in the passage of an act granting four hundred acres of land to each head of a family, who resided there in 1783, and the same to those or the heirs of those who had formerly resided there, but who had removed therefrom upon the condition of their return and occupancy thereof within the period of five years. The act also confirmed to settlers the titles derived by them of commandants of forts to the extent of four hundred acres to each person; appropriated to the inhabitants of Vincennes five thousand four hundred acres of land, at that place; and authorized the Governor to grant one hundred acres to persons enrolled in the militia at Vincennes the preceding year. [U. S. Statutes, Vol. 1, 221.] This measure aroused the slumbering energies of the pioneers, and invested the settlements with an ambition for progress. Their land titles had been for a long period in a condition of uncertainty and painful solicitude. This act alleviated their anxiety, removed their doubts, and evinced a generosity on the part of the government that gave earnest of a brighter future.

In the course of events, all that part of the territory of the United States situated northwest of the river Ohio, and westward of a line commencing at a point nearly opposite the mouth of the Kentucky river, and extending northward to and beyond Fort Recovery, was erected into a separate territory by the name of the Indiana Territory, with a government seat at Vincennes.

*In 1774 an act called the "Quebec Act" was passed, which established the Ohio river as the Southern boundary of Canada, and guarantied to the Catholic inhabitants residing in the territory, the right of trial by jury, and the undisturbed possession of their churches and property. [Mc Gregor.]

II. ACT OF CONGRESS ENTITLED "AN ACT TO DIVIDE THE TERRITORY OF THE UNITED STATES NORTHWEST OF THE OHIO INTO TWO SEPARATE GOVERNMENTS, APPROVED MAY 7, 1800.

"Section I. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the fourth day of July next, all that part of the territory of the United States northwest of the Ohio river, which lies westward of the line beginning at the Ohio, opposite to the mouth of Kentucky river, and running thence to Fort Recovery, and thence north, until it shall intersect the territorial line between the United States and Canada, shall, for the purpose of temporary government, constitute a separate territory, and be called the Indiana territory.

"Section II. And be it further enacted, That there shall be established within the said territory, a government, in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States northwest of the river Ohio; and the inhabitants thereof shall be entitled to, and enjoy, all and singular, the rights, privileges, and advantages granted and secured to the people by the said ordinance.

"Section III. And be it further enacted, That the officers for the said territory, who, by virtue of this act, shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as, by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the territory of the United States northwest of the river Ohio: And the duties and emoluments of Superintendent of Indian

Affairs shall be united with those of Governor: provided, that the President of the United States shall have full power, in the recess of Congress, to appoint and commission all officers herein authorized; and their commissions shall continue in force until the end of the next session of Congress.

"Section IV. And be it further enacted, That so much of the ordinance for the government of the territory of the United States northwest of the Ohio river, as relates to the organization of a General Assembly therein, and prescribes the power thereof, shall be in force and operate in the Indiana territory, whenever satisfactory evidence shall be given to the Governor thereof, that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: provided that until there shall be five thousand free male inhabitants of twenty-one years and upwards, in said territory, the whole number of representatives to the General Assembly shall not be less than seven, nor more than nine, to be apportioned by the Governor to the several counties in said territory, agreeably to the number of free males, of twenty-one years and upwards, which they may respectively contain.

"Section V. And be it further enacted, That nothing in this act contained, shall be construed so as in any manner to affect the government now in force in the territory of the United States northwest of the Ohio river, further than to prohibit the exercise thereof within the Indiana territory, from and after the aforesaid fourth day of July next; provided, that whenever that part of the territory of the United States which lies to the eastward of a line beginning at the mouth of the Great Miami river, running thence due north to the territorial line between the United States and Canada, shall be erected into an independent State, and admitted into the Union on an equal footing with the original States, thenceforth said line shall become and remain permanently the boundary line between such State and the Indiana terri-

tory; any thing in this act contained to the contrary notwithstanding.

"Section VI. And be it further enacted, That until it shall be otherwise ordered by the Legislatures of the said territories, respectively, Chillicothe, on the Scioto river, shall be the seat of the government of the territory of the United States northwest of the Ohio river; and that Saint Vincennes, on the Wabash river, shall be the seat of government for the Indiana territory." [U. S. Statutes by Peters, Vol. 2: 58.]

Upon being divorced from Ohio, the inhabitants of this territory at once entered upon a career that has signalized them as an enterprising, brave and generous people.

In 1809, all that part of Indiana territory lying west of the Wabash, and a direct line drawn from Post Vincennes due north to the territorial line between the United States and Canada, was by Congress erected into a separate territory called Illinois. [See post Chap. IV.]

III. ACT OF CONGRESS ENTITLED "AN ACT TO ENABLE THE PEOPLE OF THE INDIANA TERRITORY TO FORM A CONSTITUTION AND STATE GOVERNMENT, AND FOR THE ADMISSION OF SUCH STATE INTO THE UNION ON AN EQUAL FOOTING WITH THE ORIGINAL STATES." APPROVED APRIL 19, 1816.

"Section I. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the inhabitants of the territory of Indiana be, and they are hereby authorized, to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States, in all respects whatever.

"Section II. And be it further enacted, That the said State shall consist of all the territory included within the follow-

ing boundaries, to wit: Bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south, by the river Ohio, from the mouth of the Great Miami river to the mouth of the river Wabash; on the west, by a line drawn along the middle of the Wabash, from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the northwestern shore of the said river; and from thence, by a due north line, until the same shall intersect an east and west line drawn through ten miles north of the southern extreme of Lake Michigan; on the north by the said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio: provided, that the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory northwest of the river Ohio: provided, also, that the said States shall have concurrent jurisdiction on the river Wabash, with the State to be formed west thereof, so far as the said river shall form a common boundary to both.

Section III. And be it further enacted, That all male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said territory at least one year previous to the day of election, and shall have paid a county or territorial tax; and all persons having in other respects the legal qualifications to vote for representatives in the General Assembly of the said territory, be, and they are hereby authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties within the said territory, according to the apportionment made by the Legislature thereof, at their last session, to wit: From the county of Wayne, four representatives; from the county of Franklin, five representatives; from the county of Dearborn, three representatives; from

the county of Switzerland, one representative; from the county of Jefferson, three representatives; from the county of Clark, five representatives; from the county of Washington, five representatives; from the county of Knox, five representatives; from the county of Gibson, four representatives; from the county of Posey, one representative; from the county of Warrick, one representative; and from the county of Perry, one representative. And the election for the representatives aforesaid, shall be holden on the second Monday of May, one thousand eight hundred and sixteen, throughout the several counties in the said territory; and shall be conducted in the same manner, and under the same penalties, as prescribed by the laws of said territory regulating elections therein for members of the House of Representatives.

"Section IV. And be it further enacted, That the members of the Convention, thus duly elected, be, and they are hereby, authorized to meet at the seat of government of the territory on the second Monday of June next; which Convention when met, shall first determine, by a majority of the whole number elected, whether it be or be not expedient, at that time, to form a constitution and State government for the people within the said territory; and if it be determined to be expedient, the Convention shall be, and hereby are, authorized to form a constitution and State government; or if it be deemed more expedient, the said Convention shall provide by ordinance for electing representatives to form a constitution or frame of government, which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance; and shall then form, for the people of said territory, a constitution and State government: provided that the same, whenever formed, shall be republican, and not repugnant to those articles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-

seven, which are declared to be irrevocable between the original States and the people and States of the territory northwest of the river Ohio; excepting so much of the said articles as relates to the boundaries of the States therein to be formed.

"Section V. And be it further enacted, That until the next general census shall be taken, the said State shall be entitled to one representative in the House of Representatives of the United States.

"Section VI. And be it further enacted, That the following propositions be, and the same are hereby, offered to the Convention of the said territory of Indiana, when formed, for their free acceptance or rejection, which, if accepted by the Convention, shall be obligatory upon the United States:

"*First.* That the section numbered sixteen, in every township, and when such section has been sold, granted, or disposed of, other lands, equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools.

"*Second.* That all salt springs within the said territory, and the land reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole the quantity contained in the thirty-six entire sections, shall be granted to the said State, for the use of the people of the said State, the same to be used under such terms, conditions and regulations as the Legislature of the said State shall direct: provided the said Legislature shall never sell or lease the same, for a longer period than ten years at any one time.

"*Third.* That five per cent of the net proceeds of the lands lying within the said territory, and which shall be sold by Congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-

fifths shall be applied to those objects within the said State, under the direction of the Legislature thereof, and two-fifths to the making of a road or roads leading to the said State under the direction of Congress.

"*Fourth.* That one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the Legislature of the said State, to be appropriated solely to the use of such seminary by the said Legislature.

"*Fifth.* That four sections of land be, and the same are hereby granted to the said State, for the purpose of fixing their seat of government thereon, which four sections shall, under the direction of the Legislature of said State, to be located at any time in said township and range as the Legislature aforesaid may select, on such lands as may hereafter be acquired by the United States, from the Indian tribes within said territory: provided that such locations shall be made prior to the public sale of the lands of the United States, surrounding such location: And provided always, that the five foregoing propositions herein offered, are on the conditions, that the Convention of the said State shall provide, by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of December next, shall be and remain exempt from any tax, laid by order or under the authority of the State, whether for State, county or township, or other purpose whatever, for the term of five years, from and after the day of sale. [Peters' Ed. U. S. Statutes, Vol. 3: 399.]

IV. ORDINANCE ACCEPTING THE PROPOSALS OF CONGRESS, JUNE 29, 1816.

"Be it ordained by the representatives of the people of the territory of Indiana, in Convention met at Corydon, on Monday, the 10th day of June, in the year of our Lord

eighteen hundred and sixteen, That we do, for ourselves and posterity, agree, determine, declare, and ordain, that we will, and do hereby, accept the propositions of the Congress of the United States, as made and contained in their act of the nineteenth day of April, eighteen hundred and sixteen, entitled "an act to enable the people of the Indiana territory to form a State government and constitution, and for the admission of such State into the Union, on an equal footing with the original States.

"And we do, further, for ourselves and our posterity, hereby ratify, confirm, and establish, the boundaries of the said State of Indiana, as fixed, prescribed, laid down, and established, in the act of Congress aforesaid; and we do, also, further, for ourselves and our posterity, hereby agree, determine, declare, and ordain, that each and every tract of land sold by the United States, lying within the said State, and which shall be sold from and after the first day of December next, shall be and remain exempt from any tax laid by order, or under any authority of the said State of Indiana, or by or under the authority of the General Assembly thereof, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale of any such tract of land; and we do, moreover, for ourselves and our posterity, hereby declare and ordain, that this ordinance, and every part thereof, shall forever be and remain irrevocable and inviolate, without the consent of the United States, in Congress assembled, first had and obtained for the alteration thereof, or any part thereof." [R. S. Indiana, 37.]

V. THE CONSTITUTION OF INDIANA.

The Constitution of Indiana was adopted in a convention of delegates, held at Corydon, on the 29th day of June, eighteen hundred and sixteen. Unlike that of New-York, it makes no mention of tenures, or estates in land. [See App.]

VI. LAND TITLES GENERALLY IN INDIANA.

The general character of land titles in the States erected from the territory northwest of the Ohio was indicated in the preceding chapter; but the nature and divisions of estates in land are set forth only in the following sections of the Statute.

"All estates tail are abolished: and all estates which, according to the common law, would be adjudged a fee tail, shall hereafter be adjudged a fee simple; and if no valid remainder shall be limited thereon, shall be a fee simple absolute." [R. S. 424, Sec. 56.]

"Where a remainder in fee shall be limited upon any estate which would be adjudged a fee tail, according to the law as it existed prior to the abolition of estates tail in this State, such remainder shall be valid as a contingent limitation upon a fee, and shall vest in possession, on the death of the first taker without issue, living at the time of such death. [Id., Sec. 57.]

"A future estate shall be deemed and construed to be any estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of any precedent estate, created at the same time; and when any such future estate is dependent on a precedent estate, it may be termed a remainder." [Id., Sec. 58.]

"A freehold estate, as well as a chattel real, may be created to commence at a future day; and an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold, or a chattel real, either contingent or vested, may be created, expectant on the determination of a term of years, and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this article." [Id., Sec. 59.]

"Two or more future estates may be created, to take effect

in the alternative, so that, if the first in order shall fail to vest, the next in succession shall be substituted for it, and take effect accordingly." [Id., Sec. 60.]

"A remainder may be limited on a contingency, which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be construed a conditional limitation, and shall have the same effect as such a limitation would have by law." [Id., Sec. 61.]

"No future estate otherwise valid shall be void, on the ground of the probability or improbability of the contingency on which it is limited to take effect." [Id., Sec. 62.]

"No remainder, valid in its creation, shall be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder is limited to take effect; but should such contingency afterwards happen, the remainder shall take effect in the same manner and to the same extent as if the precedent estate had continued to the same period." [Id., Sec. 63.]

"A conveyance made by a tenant for life or years, purporting to grant or convey a greater estate than he possessed, or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee or alienee all the estate which the tenant could lawfully convey." [Id., Sec. 64.]

"No expectant estate shall be barred by any alienation, or other act of the owner of the precedent estate, nor by any destruction of such precedent estate by disseisin, or the forfeiture, surrender, or merger thereof." [Id., Sec. 65.]

"The absolute power of aliening real estate shall not be suspended by any limitation or condition whatever, contained in any grant, conveyance, or devise, for a longer period than during the existence of a life, or any number of lives, in being at the creation of the estate conveyed, granted, or devised, and therein specified, with the exception that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the person or persons

to whom the first remainder is limited shall die under the age of twenty-one years, or upon any other contingency by which the estate of such person or persons may be determined, before they attain their full age." [Id., Sec. 66.]

"Where a remainder for life shall be limited on any other than a life or lives in being at the creation of such estate, all the life estates, subsequent to those persons entitled to take life estates, according to the provisions of the last preceding section shall be void; and upon the death of those persons entitled to take, the remainder shall take effect, in the same manner as if such void estates had not been created." [Id., Sec. 67.]

"No remainder shall be created upon an estate for the life of any other person or persons than that of the grantee or devisee of such estate, unless such remainder be an estate in fee; nor shall any remainder be created upon such an estate for life, in a term for years, unless such remainder be for the whole residue of the term." [Id., Sec. 68.]

"When a remainder shall be created upon any such life estate as is specified in the last preceding section, and more persons shall be named, as the persons during whose lives the life estate shall continue, than were in being at the creation of such estate, such remainder shall take effect upon the death of the persons entitled, under the conveyance, grant, or devise, according to the provisions of this article, in the same manner as if no other lives had been introduced therein. [Id., Sec. 69.]

"A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which such remainder is limited be such, that the remainder must vest in interest, during the continuance of one or more lives, in being at the creation of such remainder, or at the termination of said lives; and no estate for life shall be limited, as a remainder on a term of years, except to a person in being at the creation of such estate." [Id., Sec. 70.]

"All the provisions contained in this article, respecting fu-

ture estates, shall be construed to apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended, in respect to a fee." [Id., Sec. 71.]

"The delivery of the deed, where an expectant estate is created by deed, and the death of the testator, where it is created by devise, shall be deemed the time of the creation of the estate." [Id., Sec. 72.]

"Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor." [Id., Sec. 73.]

"Where a future estate shall be limited to heirs, or issue, or children, posthumous children shall be entitled to take the estate, in the same manner as if born before the death of their parent; and any future estate depending on the contingency of the death of any person without heirs, or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent." [Id., Sec. 74.]

VII. EXECUTION OF DEEDS AND MORTGAGES OF LAND IN INDIANA.

By the Revised Statutes of Indiana, all conveyances of land, or of any estate or interest therein, except leases for a term not exceeding three years, are required to be by deed, in writing, subscribed and sealed by the person from whom the lands, estate, or interest conveyed is intended to pass, or by his lawful attorney; and that if a deed be not acknowledged previous to its delivery, an attesting witness is necessary. [R. S., 416, Sec. 16, 17.] A verbal transfer of land is void. The same rule concerning the form and execution of deeds obtains in Indiana that controls in New-York, except that here the sealing may be done with ink. The provision of

the statute is, "that all deeds, conveyances, bonds, and powers of attorney for the conveyance of real estate, or of any interest therein, shall be executed with a seal, either of wax, or wafer, or of ink; and all other instruments of writing to which, by law or the agreement of the parties, a seal is necessary, may be sealed by any of those methods." The sealing with ink is performed by making an indented circle or scroll at the end of the name, and inserting the letters L. S. therein; yet it has been decided that it is not necessary to the validity of a scroll as a seal, that any letters or word whatever, should be enclosed in it. [Kilgore vs. Powers, 5 Blackf., 22.]

No witnesses to the execution of a deed are required, if it be duly acknowledged before its delivery to the grantee therein. [R. S., 417, Sec. 14.] To enable an attorney to execute a deed lawfully, he must be thereunto authorized by an instrument in writing, executed by his principal, and sealed and acknowledged in like manner as such conveyance would be required to be executed and acknowledged by the principal. [Id., Sec. 15.] No covenant will be implied in any conveyance of real estate, whether it contain real covenants or not; if a covenant of seizin, warranty or the like, be intended, the deed must express it.

As mortgages are but defeasible deeds, they come within the term "conveyances" used in the statute; and as no special provisions have been made in respect to them, their execution and attestation are left upon the same footing as that of absolute conveyances.

The effect of a deed is declared to be the passing of the incident as well as the principal, and that when lands are conveyed all tenements thereon and hereditaments thereunto appertaining also pass. [R. S., 423, Sec. 52.] A deed of land, embraces all chattels real thereon, or affixed thereto; but no greater estate or interest shall be construed to pass by any conveyance than the grantor himself possessed at the delivery of the deed, or could then lawfully convey, except

that every grant and conveyance shall be conclusive as against the grantor and his heirs claiming from him by descent. [Id., 417, Sec. 23.]

Deeds containing any provision for the revocation or determination of the same at the will of the grantor, are declared by statute to be void as against subsequent purchasers, in good faith and for a valuable consideration; and all conveyances or assignments in writing, or otherwise, of any estate or interest in lands, tenements or hereditaments, to hinder, delay or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, are also void. [Id., 591, Sec. 16.] But in such case, it has been held, that the conveyance passes the title to the grantee, subject to the rights of creditors, and subsequent purchasers who claim under creditors, and cannot be questioned by the grantor himself, or by strangers who have no claim. [Burget vs. Burget, 1 Ohio R., 469. Barr vs. Hatch, et. al., 3 Ohio R., 395.]

VIII. THE PROOF AND ACKNOWLEDGMENT OF DEEDS AND MORTGAGES IN INDIANA.

To entitle any deed or mortgage to be recorded, it must be acknowledged by the party or parties executing the same, or proved by a subscribing witness thereto, or by proof of the handwriting of the parties thereto, or of any subscribing witness. Such proof or acknowledgment is required by statute to be made before a Supreme Judge, Judge of a Circuit Court, Justice of the Peace, Recorder, Notary Public, or Mayor of a city within the State, or before a Judge of a Supreme or Circuit Court, or Court of Common Pleas, Justice of the Peace, or Mayor or Recorder of a city, or Notary Public, of any other State, or before any Commissioner appointed by the Governor of this State in another State for such purpose, or before a Minister Plenipotentiary, Charge d'Affaires,

or Consul of the United States, in a foreign country. [R. S. Indiana, 418, Sec. 28.]

In case of refusal or inability of the grantor to acknowledge his deed or mortgage, and where he shall have died after the execution but before acknowledgment thereof, a provision is made as follows: "If any grantor shall refuse to acknowledge any deed, conveyance, or instrument of writing, executed by him, which by law is required to be recorded, the grantee, or any person claiming under him, may apply to any officer authorized by law to take the acknowledgment of such deed, conveyance, or instrument of writing, in the county where the land lies, or where such grantor, or any subscribing witness resides; and such officer shall thereupon issue a summons to such grantor to appear at a certain time and place before such officer, to hear the testimony of the subscribing witness to the deed; and such summons, with a copy of the deed annexed, shall be served upon the grantor by such person as such officer shall designate, at least seven days before the time therein assigned for proving the deed, conveyance, or other instrument of writing. At such hearing, or at any adjournment thereof, the due execution of such deed, conveyance, or instrument in writing may be proved by the testimony of one or more of the subscribing witnesses thereto; or if they are dead, insane, or out of the State, then by due proof of the handwriting of the grantor or of any witness thereto; and if proved to the satisfaction of the officer, he shall certify the same on the deed, conveyance, or instrument in writing, and in such certificate shall note the presence or absence, as the case may be, of such grantor. If the grantor in any deed, conveyance, or instrument in writing required to be recorded shall be dead, or shall have left the State, or cannot be found, and shall not have acknowledged the same, it may be proved before any officer authorized to take the acknowledgment thereof, by the testimony of any subscribing witness thereto. If any such grantor shall refuse

to acknowledge any such deed, conveyance, or instrument in writing, or shall be dead or out of the State, and the subscribing witness or witnesses thereto are dead, out of the State, or cannot be found, the same may be proved before any officer authorized to take the acknowledgment thereof, by proving the handwriting of the grantor or grantors, or of any subscribing witness thereto. [R. S., Sec. 33.]

A copy of the unacknowledged deed may be filed with the Recorder as a "caution," which, during the ensuing thirty days, will have the same effect as recording. [See effect of recording, post 206.] But where the execution of a deed shall be proved, the proof must be made by a disinterested and competent witness; and the testimony taken, together with the name or names of the witness or witnesses, and place or places of his or their residence, are required to be set forth in the officer's certificate. Proof, however, of the execution of a deed is inadmissible where there was no subscribing witness to the same.

In this State, as in Ohio, where a married woman joins in a conveyance with her husband, she is required to have the contents of the deed made known to her by the officer; and and on an examination, "private, separate, and apart from, and without the hearing of her husband," must acknowledge that she executed such deed or conveyance, "of her own free will and accord, and without any coercion or compulsion from her husband."

A married woman under twenty-one years of age, but over eighteen, in addition to the above, must obtain the consent of her father or guardian, who must declare before the acknowledging officer, that he believes that such release and relinquishment of dower is for the benefit of such married woman, and that it would be prejudicial to her, and her husband, to be prevented from disposing of the lands conveyed. [Id., Sec. 41.] Although, as a general rule, full age alone gives capacity to convey, a married woman over eighteen but un-

der twenty-one years of age, may, if the above condition be complied with. And where a married woman joins in a power of attorney authorizing another to convey, the power is ineffectual to authorize a conveyance of her interest, except it be thus acknowledged.

The acknowledgment or proof must be certified, and which certificate is required to be endorsed upon the deed, or annexed thereto. [Id., Sec. 43.] Not, however, that the deed was on such a day acknowledged or proven according to law, but certifying that such and such acts were done and performed as in law, are required to be done by the grantor, or a witness or witnesses, to constitute a valid acknowledgment. There is a prevailing aptitude amongst public officers to err in this particular, and thereby frequently subject parties to great inconvenience, from defective certificates. Facts, not conclusions, are called for, in the certificate. If the grantor appeared before the officer, let the certificate so state; if he were personally known to the officer, let it so state; if he were not known, but was identified by another, let the latter be named, and that he was sworn, and on oath testified that the person appearing as grantor was the same person who executed the deed: if such proof be satisfactory, concerning the identity, that should be stated. And if the deed were not acknowledged, but proved by a subscribing witness, or by proving the handwriting of the grantor, the certificate must contain the names, residence, and testimony of the witness or witnesses sworn. So also as to the making known to a married woman the contents and purport of a deed, and of her "private examination, separate and apart from her husband, and without his hearing;" the facts alone, not the conclusions of the officer, must be stated in the certificate.

This is required in cases where a married woman, under the age of twenty-one, but over eighteen years of age, acknowledges a deed or conveyance with the consent, and with the declaration, of her father or guardian, that her re-

lease or relinquishment of dower is for her benefit, and that it would be prejudicial to her and her husband, to be prevented from disposing of the lands thus conveyed. Any certificate which does not fully recite all these facts, falls short of the requirements of the statute, and is void. Too much care, therefore, cannot be taken by acknowledging officers in this particular. A deed improperly certified can neither be legally recorded, nor read in evidence.

What has been said of a deed is also true of a power of attorney to convey land, or a mortgage incumbering it. All such and similar instruments are required to be acknowledged or proved in the same way; and the acknowledgment or proof to be certified in the same manner. And "no acknowledgment or proof of the execution of any deed or conveyance taken by any officer authorized to take the same, shall entitle such deed or conveyance to be recorded, unless taken in the county, district, place, State, territory, or country, to which the jurisdiction of such officer extends, or within which he is required to reside." [Id., Sec. 45.]

IX. THE RECORDING OF DEEDS AND MORTGAGES IN INDIANA, AND THE EFFECT THEREOF.

The Registry Act of Indiana requires "every conveyance of any real estate in fee simple, or of any interest therein, or for life, or of any future estate, and every lease for more than three years from the making thereof, to be recorded in the Recorder's office of the county where such real estate or leasehold shall be situated; and every such conveyance or lease not so recorded within ninety days from the execution thereof shall be fraudulent, and void, as against any subsequent purchaser, or mortgagee in good faith, and for a valuable consideration." [R. S., 418, Sec. 25.]

The leading object of recording is to give notice of the existence of the conveyance. Not only does a registry attain that object in law, but it is a cheap and feasible method

of accomplishing the object, and at the same time spreads upon the public records perpetual evidence of title. A subsequent purchaser, with notice of the former deed, acquires no priority over it, yet the proof of that notice is often difficult, and generally uncertain. It were better in all cases to record a deed.

Concerning mortgages, also, it is provided "that every deed or conveyance in the nature of a mortgage of real estate, or of any interest or estate therein, shall be recorded in the Recorder's office of the county wherein the same is situated, within ninety days after the execution thereof; and if not so recorded, the same shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee in good faith, and for a valuable consideration." [Id., Sec. 26.]

Whenever a deed, absolute on its face, is intended to be made defeasible by a separate defeasance, it is provided that such deed shall not thereby be defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the record of deeds for the county where the lands lie." There appears to be no requirement in the Statutes of Indiana requiring different sets of books to be provided in which to record deeds and mortgages; and hence the requirement in New-York, that a deed intended as a mortgage shall be recorded as a mortgage, has no application here. [4 Blackf., 522; 5 Id., 123.]

The statute also provides that the certificate or certificates of the proof or acknowledgment, together with any legal certificate of authentication that may be attached, shall go upon the record with the conveyance itself; and that unless the same be recorded with the conveyance, neither the record of the conveyance, nor any transcript thereof, shall be received in evidence. [Id., Sec. 48.]

In reference to deeds and mortgages that are acknowledged

or proved abroad, the following provisions occur: "When any deed, conveyance, mortgage, or other instrument required to be acknowledged or proved in any other county in this State than the one in which the same is required to be recorded, the acknowledgment or proof thereof may be taken by any officer herein authorized to take such acknowledgment or proof, and certified by the Clerk of the Circuit Court of the county in which such officer resides, and attested by the seal of said court, except when such acknowledgment or proof is taken by a Notary Public, or a Mayor of a city, in which case such acknowledgment or proof, certified and attested under the hand and official seal of such Notary or Mayor, shall be sufficient." [R. S., Sec. 37, 420.]

"All deeds and conveyances, acknowledged or proved out of this State and within the United States, or any of the territories thereof, and brought hither to be recorded, may be acknowledged or proved before any officer authorized to take such acknowledgment or proof in another State, and certified by the Clerk of any Court of Record of the county in which such officer resides, and attested by the seal of said court, unless such acknowledgment or proof shall have been taken before the Mayor or Recorder of a city, Notary Public, or Commissioner, to take the acknowledgment of deeds, appointed by the Governor of this State; in which case such acknowledgment or proof shall be certified under the hand of such officer, and attested by his official seal." [Id., Sec. 38.]

"If the parties executing any deed, conveyance, or instrument which is to be recorded in this State, shall acknowledge the same in any foreign country, the acknowledgment or proof thereof, as aforesaid, shall be certified under the hand and official seal of the Minister, Charge d'Affairs, or Consul of the United States, taking the same."* [Id., Sec. 38.]

* Non-resident land owners may observe in this note the several recording districts or counties in Indiana, in small capital letters, with the county seat annexed, viz: ADAMS, Decatur; ALLEN, Fort Wayne; BARTHOLOMEW, Columbus; BENTON,

X. EXECUTION OF WILLS OF REAL ESTATE IN INDIANA.

All persons, except married women, infants, idiots and persons of unsound mind may devise, by a last will and testament, their lands, tenements and hereditaments, or any interest therein, descendible to their heirs; and the same may be made to any person or corporation capable in law of holding real estate. [R. S., 485, Sec. 1, 2.] And every person capable in law of devising real estate, may bequeath personal property by a last will and testament. [Id., Sec. 7.] The statute requires all wills, whether real or personal estate, (except nuncupative wills of personal property) to be in writing, and signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of such testator, by two or more competent witnesses." [R. S., 491, Sec. 1.]

Oxford; BLACKFORD, Hartford; BOONE, Lebanon; BROWN, Nashville; CARROLL, Delphi; CASS, Logansport; CLARK, Charlestown; CLAY, Bowling Green; CLINTON, Frankfort; CRAWFORD, Fredonia; DAVIESS, Washington; DEARBORN, Lawrenceburgh; DECATUR, Greensburgh; DEKALB, Auburn; DELAWARE, Muncietown; DUBOIS, Jasper; ELKHART, Goshen; FAYETTE, Connersville; FLOYD, New-Albany; FOUNTAIN, Covington; FRANKLIN, Brookville; FULTON, Rochester; GIBSON, Princeton; GRANT, Marion; GREEN, Bloomfield; HAMILTON, Noblesville; HANCOCK, Greenfield; HARRISON Corydon; HENDRICKS, Danville; HENRY; New-Castle; HUNTINGTON, Huntington; JACKSON, Brownstown; JASPER, Rensselaer; JAY, Portland; JEFFERSON, Madison; JENNINGS, Vernon; JOHNSON, Franklin; KNOX, Vincennes; KOSCIUSKO, Warsaw; LAGRANGE, Lima; LAKE, Crown Point; LAPORTE, Laporte; LAWRENCE, Bedford; MADISON, Andersontown; MARION, Indianapolis; MARSHALL, Plymouth; MARTIN, Mount Pleasant; MIAMI, Peru; MONROE, Bloomington; MONTGOMERY, Crawfordsville; MORGAN, Martinsville; NOBLE, Port Mitchell; OHIO, Rising Sun; ORANGE, Paoli; OWEN, Spencer; PARKE, Rockville; PERRY, Rome; PIKE, Petersburgh; PORTER. Valparaiso; POSEY, Montgomery; PULASKI, Winamac; PUTNAM, Greencastle; RANDOLPH, Winchester; RICHARDVILLE, Kokomo; RIPLEY, Versailles; RUSH, Rushville; Scott, Lexington; SHELBY, Shelbyville; SPENCER, Rockport; STEUBEN, Angola; ST. JOSEPH'S, South Bend; SULLIVAN, Sullivan; SWITZERLAND, Vevay; TIPPECANOE, Lafayette; TIPTON, Canton; UNION, Liberty; VANDERBURGH; Evansville; VERMILLION, Newport; VIGO, Terrehaute; WABASH, Wabash; WARREN, Williamsport; WARRICK, Booneville; WASHINGTON, Salem; WAYNE, Centreville; WELLS, Bluffton; WHITE, Monticello; WHITLEY, Columbia. [Cady's Register.]

In comparison with those in New-York, the requirements in this behalf are few and easy of performance. And yet an exact observance with such as the Statutes do contain is indispensable to the validity of a will. They are rules which are inflexible and unbending. Thus the form of the will is unimportant, except so far as its perspicacity is concerned; it may be signed either with the name or mark by the testator, or another in his presence by his direction; and the presence and attestation of two witnesses completes the execution. Legatees when they consent to become witnesses, lose their legacy over and above the amount that they would inherit, if the decedent had died intestate. [2 Blackf., 355.]

The witnesses should be legal witnesses, competent in respect to capacity, character and disinterest. Yet if witnesses are competent at the time of attesting the execution of a will or testament, their subsequent incompetency, from whatever cause it may arise, will not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

Codicils to written wills are required to be executed in the same manner as wills.

The provisions relating to the right of the testator to devise and bequeath all his property, subject to the right of dower of his wife if he leave one surviving, and the right of posthumous children to inherit, if not provided for, are substantially the same as in New-York. [Ante 108.] Concerning revocations, it occurs that "no will or testament in writing, nor any clause thereof, except as hereinafter specified, shall be revoked, unless by burning, tearing, cancelling and obliterating the same with the intention of revoking it, by the testator himself, or by some person in his presence, and by his direction and consent, or by some other will, codicil, or other writing, signed, subscribed and attested as required in the foregoing section (that is that which relates to the signing and attestation of wills,) of this article; and when

any such will or testament is burnt, torn, cancelled, or obliterated by any other person than the testator himself, the direction and consent of such testator, and the fact of such injury or destruction, shall be proved by at least two witnesses. If after the making of any will, the testator shall duly make out and execute a second will, the cancelling or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive and give effect to his first will; or unless after such cancelling, destruction, or revocation, he shall duly republish the previous will."* [Id., Sec. 30.]

XI. THE PROBATE AND RECORDING OF WILLS IN INDIANA.

In each organized county in Indiana there is a Probate Court consisting of one Judge elected by the people for the term of seven years, the Clerk of the Circuit who is ex-officio Clerk of Probates, and the Sheriff who is its executive officer. This Court has a seal, and has original and exclusive jurisdiction over all matters relating to the probate of last wills and testaments, granting of letters testamentary, of administration and of guardianship. [R. S., 655, Sec. 5.] "Upon the death of a testator, any executor, devisee or legatee named in his will, may have such will proved before the proper Probate Court, or before the Clerk of such court when the same is not in session." [Id. 492, Sec. 34.] "Proof of last wills and testaments may be taken by the Probate Court or the Clerk of such court:

1. Where the testator at, or immediately previous to his death, was an inhabitant of such county, whether such testator died in such county or not.

* It was held that by the Statute of this State, a will devising real estate must be in writing, signed by the testator and attested by two witnesses, in the presence of the testator; and that it may in the same manner be revoked. [2, Black., 353.]

It is in contravention of well settled principles to admit a parol cancelation of a deed or will in writing. [Idem.]

Unsealed wills, codicils and revocations are valid in Indiana. [Id., 356.]

2. Where the testator, not being an inhabitant of this State, shall die in such county, leaving assets therein.

3. Where the testator not being an inhabitant of this State, shall die out of the State, not leaving assets in such county, but assets of such testator shall come into the county thereafter." [Id., Sec. 35.]

"Witnesses may be summoned by subpœna, to be issued by the Clerk of the Probate Court, to appear and testify respecting the execution, subscribing and attestation of such will;" [Id., Sec. 36.] and the person having custody of the will may be cited to produce it, or in default thereof, may be imprisoned for contempt of the process of the court.

It provided that "wills offered for probate shall be proved by one or more of the subscribing witnesses, or if they be dead, and or out of the State, or have become incompetent since attesting such will, then by the proof of the hand writing of the testator, or of at least two of the subscribing witnesses thereto; and the Probate Court, or Clerk thereof, taking such proof shall inquire particularly into the facts and circumstances of the execution, subscribing and attesting of such will, and shall be satisfied of the genuineness and validity thereof, before admitting the same to probate, or granting letters testamentary, or of administration with the will annexed, thereon." [Id., Sec. 39.]

"If none of the subscribing witnesses to such will be produced, their insanity, death, subsequent incompetency, or absence from the State, shall be satisfactorily shown before proof of the handwriting of the testator or of any of the subscribing witnesses shall be received. [Id., Sec. 40.] "Whenever proof of any will is made by proving the handwriting of the testator, or of any of the subscribing witnesses thereto, such proof thereof shall be taken and received as would be proper to prove the same on a trial at law." [Id., Sec. 40.]

"And if it shall appear upon the proof taken that the will was duly executed; that the testator at the time of executing

the same was of full age to devise his property, and of sound mind and memory, and not under coercion and restraint, the said proofs and examinations are required to be written down by said Clerk, and subscribed by the witnesses examined, and attested under his hand and seal of office; and the will and said proofs and examination, with such attestation, to be recorded by said Clerk in a book provided and kept for that purpose, and certified to be a full and true record." [Id., Sec. 43.]

Ample provision has been made for the contestation of wills by persons interested in defeating their probate, by the making of objections in writing, duly verified, alledging the grounds of the opposition to be made. Whenever objections are interposed, the hearing may be postponed to a subsequent term and to which the devisees, legatees, trustees, guardians, and all other beneficiaries of the will are required to be cited to appear. After due examination and trial, it is the duty of the Court to pass upon the validity of the will; from whose decision an appeal lies to the Circuit Court.

Foreign wills affecting property in Indiana are also provided for. Any will that shall have been proved or allowed, in any other of the United States, or in any foreign country according to the laws of such State or country, may be received and recorded in this State, provided the same shall be duly certified under the seal of the court or officer taking such proof; or an exemplified copy thereof, or the record thereof, together with the certificate of probate thereof, duly authenticated under seal, is produced to the Probate Court of the county in which there is any real or personal estate devised or bequeathed; and if the court upon inspection be satisfied that said will was properly executed, according to the laws of this State, and proved according to the laws of the State in which it was executed, or according to the laws of Indiana, it is his duty to order the same to be recorded by the Clerk. This being done, the will becomes as effectual, as if executed within the State of Indiana. [R. S., 495, Sec. 46, 50.]

XII. THE TITLE TO REAL ESTATE BY DESCENT IN INDIANA.

The title to real estate in the State of Indiana, by descent, is regulated by the following provisions of the State, viz:

"The real estate of every person dying intestate shall descend in the manner provided by, and subject to the rules and provisions of, this article.

1. When any intestate shall die, leaving children, and none of the children of such intestate shall have died, leaving descendants, such estate shall descend to the children of such intestate in being at the time of his death in equal proportions.

2. The law of descent as presented in the above first rule, shall apply in every case in which there are several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, whether children, grand children or great grand children, or more remote descendants of such intestate; so that the inheritance shall descend to such persons of equal degree of consanguinity to the intestate in equal parts, however remote from the intestate such equal and common consanguinity may be.

3. If any of the children of such intestate be living, and any be dead, the inheritance shall descend to the children of such intestate who are living, and to the descendants of such of his children as shall have died, so that such child of the intestate who shall be living, shall inherit the share which would have descended to him, if all the children of the intestate, who shall have died leaving descendants, had been living, and so that the descendants of each deceased child of the intestate shall inherit the share which their parents would have received if living.

4. The rule of descent, as prescribed in the above third rule, shall apply in all cases in which the descendants of the intestate entitled to share in the estate are of unequal degree of consanguinity to the intestate; so that those who are of

the nearest degree of consanguinity shall take the shares which would have descended to them had all the descendants in the same degree of consanguinity with themselves, who shall have died leaving issue, been living; and so that the issue of the descendants who shall have died, shall respectively take the shares which their parents, if living, would have received." [R. S., 433, Sec. 109.]

"In case the intestate shall die without children, or their descendants to take the inheritance, his estate shall go to his kindred in the direct ascending line of consanguinity, and to his collateral relations as specified in the following sections of this article, subject to the provisions made in favor of the widow of such intestate; the inheritance, in all such cases, being governed by the rules of descent hereinafter established in this article." [Id., Sec. 110.]

"If the intestate shall die without children, or their descendants, and leaving a father and mother, or either of them, and brothers and sisters, or the descendants of any brother or sister, or leaving any of such relatives, the inheritance shall descend as follows:

1. If there be a father and mother, or either of them, and brothers and sisters, and the descendants of any brother or sister who shall have died, or the descendants of any or all such brothers or sisters, all the brothers and sisters being dead, one-half of the inheritance shall go to the father and mother, as joint tenants, or if either be dead, then to the one who shall be living; and the other half of such inheritance shall go to the said brothers and sisters, or to such as shall be living, and the descendants of such as shall be dead; and if all such brothers and sisters be dead, then to their descendants.

2. If there be neither brothers nor sisters of the intestate, nor the descendants of any such brother or sister, and the father and mother of such intestate be living, the whole of the inheritance shall go to such father and mother, as joint

tenants; if the father only be living, he shall take the inheritance, unless the estate came to the intestate on the part of the mother; if the father be dead or incapable of inheriting the estate, it shall go to the mother of the intestate.

3. If there be neither father nor mother of such intestate, and there be brothers and sisters of such intestate, or brothers and sisters and the descendants of any brother or sister who shall have died, or only the descendants of brothers and sisters; then, the whole of such inheritance shall go to such brothers and sisters, and to the descendants of them, according to the rules of descent hereinafter, in this article." [R. S., 434, Sec. 111.]

"If there be no descendants nor relatives entitled to take the inheritance according to the preceding sections of this article, such inheritance (subject to the provisions hereinafter made in favor of the widow of the intestate) shall descend as follows:

1. If the inheritance came to the intestate on the part of his father, it shall go to the paternal grandfather and grandmother, as joint tenants; or if one of them be dead, then to the survivor.

2. If there be no grandfather nor grandmother, as above specified, to take the inheritance, the same shall descend to the brothers and sisters of the father of the intestate, or to such as shall be living, and the descendants of such as shall be dead; or if all the brothers and sisters be dead, then to their descendants.

3. If there be no descendants of such brothers and sisters of the intestate father, nor other heirs entitled to take according to the preceding provisions of this section, the inheritance shall then go to the nearest of kin, of equal degree of consanguinity to the intestate, among the paternal kindred.

4. If there shall be no heirs entitled to take the inheritance as above provided, the same shall descend to the natural kindred in like manner, and be subject to the same law of de-

scent, in all respects, as if such maternal kindred had been the paternal kindred of the intestate, as in this section before provided.

5. Whenever the inheritance shall have come to the intestate on the part of his mother, the same shall go to the maternal grandfather and grandmother of the intestate, as joint tenants, or to the survivor of them; or if neither be alive, then to the brothers and sisters of the intestate's mother, and to their descendants; or if there be no such brothers or sisters, nor the descendants of any of them living, then to the nearest of kin, of equal degree of consanguinity to the intestate, among the maternal kindred; and such inheritance shall descend in like manner to the maternal kindred, and be governed in all respects by the law of descents, as prescribed herein, as if the said maternal kindred were the paternal kindred of such intestate.

6. If there shall be no maternal relatives to take the inheritance coming to the intestate on the part of his mother, according to the provisions of this section, then such inheritance shall descend to the paternal kindred of the intestate in like manner, and be subject to the same law of descent, in all respects, as if said paternal kindred were the maternal kindred of said intestate, as in the section above specified." [R. S., 435, Sec. 112.]

"Whenever the inheritance shall not have come to the intestate on the part of the father or mother, and there shall not be any children, or their descendants, of such intestate, nor any father, mother, or brothers and sisters, or the descendants of any such brother or sister of such intestate, such inheritance shall descend as follows:

1. One-half of the said inheritance shall go to the paternal grandfather and grandmother of such intestate, as joint tenants; or if one shall have died, then to the survivor.

2. If there shall be neither paternal grandfather nor grandmother living, such half of the inheritance shall go to the

brothers and sisters of the father of the intestate, and to the descendants of any of them who shall have died; or if all such brothers and sisters shall have died, any or all of them leaving descendants, then to such descendants.

3. If there be no relatives of the intestate entitled to the inheritance, as above provided in this section, then such half of said inheritance shall go to the nearest of kin, in equal degree of consanguinity to such intestate, among his paternal kindred.

4. If there be no paternal kindred entitled to such part of the inheritance as above specified, the same shall descend to the widow of the intestate, if living; or if there be no widow, then to the maternal kindred of such intestate in like manner, and governed in all respects as if such maternal kindred had been of the paternal kindred of such intestate.

5. The other half of such inheritance, as above in this section specified, shall go to the maternal kindred of the intestate, in like manner as in this section provided for the half of such inheritance which goes to the paternal kindred, and shall, in all respects, be governed by the same rules of descent among such maternal kindred as if they had been the paternal kindred of the intestate as aforesaid.

6. If there be no maternal kindred entitled to such remaining half of the inheritance, the same shall descend to the widow of the intestate, if living, or if there be no widow, then to the paternal kindred of the intestate, in like manner, and governed in all respects as if such paternal kindred had been of the maternal kindred of the intestate." [R. S., 435, Sec. 113.]

"In all cases in which the inheritance shall descend, in whole or in part, to the collateral relatives of the intestate and their descendants, as specified in this article, such relatives shall share the inheritance as follows:

1. If there be several relatives, all of equal degree of consanguinity to the intestate, such inheritance shall descend to

them in equal parts, however remote from the intestate such equal and common degree of consanguinity may be.

2. If the relatives entitled to the inheritance be of unequal degree of consanguinity to the intestate, such inheritance shall so descend that those of the nearest degree of consanguinity to such intestate shall take the shares that would have descended to them if all the relatives of the same degree of consanguinity to such intestate who shall have died leaving descendants, were living; and so that the descendants of such deceased relatives shall inherit the shares which their parents, if living, would have received.

3. Whenever the inheritance is in any case directed to go to the nearest of kin in equal degree of consanguinity to the intestate, and there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the ancestor nearest to the intestate shall be preferred to those claiming through an ancestor who is more remote.

4. Kindred of the half blood, and their descendants, shall inherit equally with those of the whole blood in equal degree of consanguinity to the intestate; unless the inheritance shall have come to the intestate by descent, devise, or gift of some of his ancestors; in which case such kindred of the half blood and their descendants shall not inherit, except they also be of the blood of such ancestor; but if in any such case there be no relatives of the whole blood, in equal or nearer degree of consanguinity to such intestate, nor their descendants, entitled to take such inheritance according to the provisions of this article, then such kindred of the intestate, of the half blood, and their descendants, shall take the same as if they were of the whole blood.

5. Whenever the inheritance shall have come to the intestate by gift, or by virtue of any conveyance in consideration of natural love and affection, from any person living at the death of such intestate, such inheritance, shall descend to

such person, if the intestate shall have died without leaving any children or their descendants." [R. S., 436, Sec. 114.]

"When in any case specified in the last clause of the last preceding section, the husband or wife of any person to whom any such estate may have been given or conveyed, shall have made valuable and lasting improvements thereon, or the separate estate or moneys of such husband or wife shall have been applied to the making of such improvements, such husband or wife, as the case may be, when such estate shall descend to the grantor or donor thereof, as provided in the said last clause, shall hold a lien thereon for the payment of such improvements, or for reimbursement for his or her moneys invested therein, deducting therefrom the value of the use and enjoyment of such premises by the person in whose favor such lien is declared." [Id., 436, Sec. 115.]

"Such husband or wife may file a bill in chancery against the person to whom such estate is above directed to descend; and the court may decree the payment or reimbursement out of such premises or otherwise, to such husband or wife, of the value of such improvements, or the sums of money invested therein; and no conveyance of such premises or incumbrance made thereon by the person aforesaid, shall in any way affect or defeat the lien of such husband or wife." [Id., 437, Sec. 116.]

"The widow of the intestate may, if she choose, take as an heir of her husband, to the extent and in the cases specified in this section, as follows:

1. If the heirs entitled to take such inheritance shall be the grandfather and the grandmother of the intestate, or either of them, or the brothers and sisters of the father or mother of the intestate, or the descendants of any such brother or sister, the widow may, in any such case, take one-third part of such inheritance, as an heir of the intestate.

2. If the only heirs entitled to take the inheritance shall be such as are included within any of the provisions of this

article, by virtue of which they take as being designated to be nearest of kin in equal degree of consanguinity to the intestate, the widow of the intestate may, in any such case, take one equal half of such inheritance, as an heir of the intestate.

3. If there be no heirs of the intestate entitled to take such inheritance, as prescribed in this article, such widow may take the whole thereof, as the heir of said intestate." [R. S., 438, Sec. 117.]

"Whenever the widow of the intestate shall take as heir, as above specified, any part of such inheritance, the remaining part thereof, if any, shall go to the lawful heirs of the intestate, entitled thereto, in like manner as if such remaining part were the whole of such inheritance." [Id., 437, Sec. 118.]

"Whenever the widow shall take as heir of the intestate, she shall not be endowed of the residue of such inheritance; but instead of taking as such heir, she may elect to take her dower in such estate; in which case she shall not take any part thereof as such heir." [Id., 437, Sec. 119.]

"Such widow shall be presumed to have elected to take her dower in such inheritance, unless, within one year after the death of such intestate shall be known to her, she shall have declared her intention, in writing, filed in the Clerk's office of the Probate Court of the county in which such inheritance may be situated, to take as the heir as aforesaid of such intestate." [Id., 437, Sec. 120.]

"If she take as heir, she shall take such inheritance, subject to the debts, liabilities, liens, and judgments against the intestate and his estate, and the costs and charges of administration thereof, as other heirs in like cases." [Id., 437, Sec. 121.]

"Every illegitimate child shall be considered as an heir of his mother, and shall inherit her estate, in whole or in part, as

the case may be, in like manner as if he had been born in lawful wedlock." [Id., 438, Sec. 122.]

"If any man shall marry a woman who has, previous to the marriage, borne any illegitimate child, and after marriage shall acknowledge such child as his own, such child shall be deemed legitimate to all intents and purposes." [Id., 438, Sec. 123.]

"If any illegitimate child shall die intestate, without having been acknowledged, as provided in the last preceding section, and without descendants lawfully entitled to inherit his estate, the same shall descend to his mother; or if she be dead, it shall descend to the children, or their descendants, of such mother; and if there be no such children nor their descendants, then to the other relatives of the intestate, on the part of the mother, as if such intestate had been legitimate." [Id., 438, Sec. 124.]

If any person, dying intestate, shall leave no heirs or kindred entitled to the inheritance according to the provisions of this article, his estate shall escheat to the State of Indiana, to be applied exclusively to the support of Common Schools of the several townships of the county or counties in which such estate may be situated, in such manner as may be directed by law." [Id., 438, Sec. 125.]

"The estate of a husband, as a tenant by the courtesy, or of a widow as tenant in dower, shall not be affected by any of the provisions of this article, except the widow's right to dower, when she shall succeed to the whole or any part of the inheritance, as the heir of her husband; nor shall the same affect the limitation of any estate by deed or will." [Id., 438, Sec. 126.]

"No person who is himself a citizen, or capable of inheriting, shall be precluded from the inheritance by reason of the alienism of any of his ancestors." [Id., 438, Sec. 127.]

"Descendants and relatives of the intestate begotten before

his death, but born thereafter, shall in all cases inherit in the same manner as if they had been born in the life time of the intestate, and had survived him. [Id., 438, Sec. 128.]

The degrees of kindred shall be computed according to the rules of the civil law. [Id., 438, Sec. 129.]

XIII. THE LEVY AND COLLECTION OF TAXES ON LANDS IN INDIANA.

All lands in the State are subject to taxation, except such as belong to the State, and to the United States, or have been sold by the United States within five years next preceding the levy; school houses, court houses, jails, and lands whereon county buildings are situate; churches and church grounds, not exceeding ten acres; grave yards, not exceeding ten acres; buildings erected for the use of any literary benevolent, charitable, or scientific institution, and lands not exceeding twenty acres; lands granted for the use of schools, until sold; and lands reserved to or for any individual by any treaty between the United States and any Indian tribe. [R. S., 208, Sec. 1 to 9.]

That the reader may easily apprehend the mode of levying and collecting taxes in this State, he should be informed of the existence in the counties respectively of a board of County Commissioners, a County Auditor, and a County Assessor. These officers are elected by the people. The Commissioners hold their offices three, the Auditor five, and the Assessor two years, and until successors are qualified. Between the first day of March, and the twenty-fifth day of May, in each year, the County Assessors, after having been furnished by the Auditors of the counties respectively with a copy of the assessment roll of the preceding year, are required "to ascertain by diligent inquiry, the names of all the taxable inhabitants of their respective counties, and also all the taxable property, real and personal, within the same. [R. S., 212, Sec. 28.]

For this purpose, it is his duty to "call upon each and every person resident in his county, for a list of all their real and personal property liable to taxation, and not already entered on his list and valued; and for a statement of all changes made in their real estate, and improvements made thereon, or destruction or removal of the same since the last appraisement, and shall make a true valuation of the same." [Id., Sec. 34.]

"If the owner of any property liable to taxation shall be unknown, or a non-resident, or absent, or unable to give in a list when called upon by the Assessor, it shall be the duty of the Assessor to make a list thereof from the best information he can obtain." [Id., Sec. 36.]

Each Assessor, after having completed his list, is required to deliver the same to the County Auditor of his county, on or before the first day of June, then next ensuing; on which day the board of County Commissioners, the Auditor and Assessor, are required to meet at the seat of justice of each county, and form themselves into a Board of Equalization.

Upon being thus organized, such Board has power to hear and determine the complaint of any owner of property listed, respecting the same, and the valuation thereof, made subsequently to the preceding March, and to correct such valuation as to the Board may seem proper; and the said Board also has power to equalize the valuation made by the Assessor, either by adding to, or deducting from, his valuation, such sums as to them, or a majority of them, shall appear just and equitable. [Id., Sec. 42.]

It is the duty of the Board to determine the amount of tax to be levied for county purposes, and to subjoin to it the amount of State tax fixed by law, or specially charged upon the county, and to order a levy thereof accordingly. Whereupon a tax list is prepared and furnished on or before the fifteenth day of August ensuing, to the County Treasurer, who, immediately upon receiving it, is required to proceed to the

collection thereof; and for that purpose, and before the first day of the ensuing October, he is required to attend at the place of holding annual elections in each township for the space of one day, and as much longer as the Board of County Commissioners shall have directed, and after the first day of October, until the first day of December following, at the seat of justice of his county. He is also required to post notices of the per centage of the tax, and the time and place that he will attend for its collection, and to publish the same in some newspaper having general circulation in his county (if any there be) for six successive weeks. [Id., Sec. 55.]

"In case any person shall refuse or neglect to pay the tax imposed on him, the County Treasurer shall, after the first day of December, levy the same, together with five per cent damages, and the costs and charges that may accrue, by distress and sale of the goods and chattels of such person as ought to pay the same, wheresoever the same may be found within the county." [Id., Sec. 56.]

"The Treasurer shall give public notice of the time and place of sale, and of the property to be sold, at least ten days previous to the day of sale, by advertisements, to be posted up in at least three public places in the township where such sale shall be made." [Id., Sec. 58.]

Taxes on real estate are a lien which attaches on the first day of March annually, and if taxes thereon are not paid, the lien being perpetual, the lands delinquent are required to be returned as such, to the County Auditor, on the second Monday of the ensuing January; and after the list has been certified by the County Auditor, to forward the same to the Auditor of the State. Yet taxes may be paid into the county treasury at any time, and into the State treasury at any time after the return of the delinquent list to the Auditor of the State, until the third Monday of September annually; but the penalty, interest and costs thereon

must also be paid in at the time of paying the taxes. [Id., Sec. 83.]

The penalty is ten per cent, interest six per cent, and the costs dependent upon the circumstances of the case. If payment be made into the county treasury, the person paying is required to file the Treasurer's receipt with the County Auditor, and take his receipt in place thereof. And in case of payment into the State treasury, the person paying is required to file the Treasurer's receipt with the Auditor of the State, and to take his receipt therefor, which he is required to file in the proper county; and a sale before the filing of the receipt is valid. If, however, proceedings for a sale shall have been commenced before the filing, upon filing the receipt and payment of costs and charges, the proceedings may be stayed. [R. S., 223, Sec. 86.]

Such in brief is the modus operandi for the levy and collection of taxes in Indiana. The penalty of omission or neglect to pay land taxes forms the subject matter of the following article.

XIV. LAND TAX FORFEITURES AND REDEMPTIONS IN IN INDIANA.

No topic, within the scope of the present work, elicits more concern on the part of land owners, mortgagees and judgment creditors, than that which relates to land tax forfeitures and redemptions in a foreign State. The number of this class residing in the eastern and midland States being immense, and no means of information upon this point being at their ready command, losses and disappointments from this cause have been frequent and severe.

Non-residents of this State are informed that "on the first day of October annually, the County Auditor is required to make out and record in a book to be provided for that purpose, a list of all lands returned and remaining delinquent for taxes, charging them with a penalty of ten per centum,

and also with the taxes of the current year; to prepare a list thereof and publish the same at least four weeks successively in some newspaper having general circulation in his county, with a notice thereto appended of the time and place of sale; and that on the first Monday in January thereafter, at the court house in the county, the Treasurer will sell the same at public auction to the bidder who will pay the taxes for the least quantity of land. [R. S., 224, Sec. 90, 91, 92, 93.]

Such sale the Treasurer is required at that time to commence, and to continue from day to day until so much of each parcel assessed shall be sold as will pay the taxes, interest, and charges thereon.

"When less than the whole of any tract is sold, the quantity sold shall be taken off and laid out in a square form, as near as practicable at the most northwesterly corner of the tract; and when less than the whole of any inlot or outlot shall be sold, the part sold shall be taken off and laid off, so that it shall extend from the main or principal street, road, or alley, forming the most convenient front to such lot, to the rear of such lot, and to bound the same by lines, as nearly parallel, with the outlines of such lot as practicable." [Id., Sec. 95.]

The purchasers at such sale shall immediately pay the amount of their respective bids to the Treasurer; or on their failure to do so, the land shall be again forthwith offered for sale, the same as if no sale had been made; and the purchaser so failing shall forfeit and pay for the use of the common school fund of the county a penalty of twenty-five per centum on the amount of their bids, to be recovered by action of debt, in the name of the Treasurer, before any Justice of the Peace or Court having jurisdiction thereof." [Id., Sec. 96.]

"After payment shall have been made, the County Au-

ditor (whose duty it is to attend as Clerk of Sales,) shall give to the purchaser a certificate in writing, describing the land so purchased, the sum paid, and the time when the purchaser will be entitled to a deed; which certificate shall entitle the holder to the possession of the premises therein described." [Id., Sec. 98.]

Such certificate is assignable, by statute, from one person to another, yet no assignment thereof will be held as valid, unless its execution shall be duly acknowledged and recorded in the office of the County Auditor.

The sale divests the original owner of his title; yet two years from the day of sale are allowed for redemption. Any person may redeem, but the redemption is subject to conditions. He who redeems must pay to the County Treasurer for the use of the purchaser, his heirs, or assigns, the sum mentioned in his certificate, the amount of all subsequent taxes paid, with fifty per centum on the whole sum, and interest from the date of purchase, or from the time of payment. And in case any "lasting and valuable improvements" shall have been made by the purchaser, at the tax sale, or by any person claiming under him, on the land proposed to be redeemed, the person redeeming cannot be restored to possession until he shall have paid or tendered to the purchaser at the tax sale, or his assigns claiming the improvements, the value thereof. If the parties cannot agree on the value, the same shall be determined by law. [Id., Sec. 102.]

But no compensation will be allowed for improvements made before the expiration of two years from the date of the sale for taxes. Compensation relates to a class of persons who labor under a disability to redeem within two years, and against whom the above limitation does not run. Infants, idiots, femmes covert, and insane persons, are not concluded by the two years above mentioned, but have two years from the removal of their disability, in which to redeem, and are

frequently obliged to make compensation to the purchaser, or his assigns. [R. S., 226, Sec. 103, 104.]

Herein may be seen the character of tax titles, as well as the rights of such as labor under the disability of infancy, idiocy, coverture, and insanity.

If there be no redemption within two years by any person, the purchaser, or his legal representatives, or assigns, may, at the expiration of that period, obtain from the Auditor a deed, which invests him with all the title acquired by the forfeiture. It is liable to be defeated by the redemption of the four classes of persons above named, if the original owner were of the number, at any time within two years after the removal of the disability. [Id., Sec. 113.]

"In case the sales of any land for taxes shall not be effected for want of bidders, the land shall be considered as forfeited to the State, to be disposed of as the General Assembly shall hereafter by law direct; and until so disposed of or redeemed, shall be continued on the duplicate, charged with all arrearages for which it was so forfeited, and interest; and shall be annually assessed with all accruing taxes, penalties and interest, as other lands. [R. S., 228, Sec. 124.]

"Such lands shall be annually offered for sale with, and on the same terms as, other delinquent lands; and until sold for the amount of all arrearages, may be redeemed on payment of the same into the county treasury, by the owner or owners thereof; and the records made by the County Auditors respecting delinquent lands, the manner of advertisement of the sales thereof, the sales made of the same, and the conveyances therefor executed, and all copies of such records duly certified to be such by the proper County Auditor, under his seal of office, shall be received as prima facia evidence of the facts contained therein."* [Id., 229, Sec. 125, 126.]

* The County Treasurer may appoint deputies, but the principal is liable for his acts. [2 Blackf., 227.] It has been held that sales are not invalid because or by reason of the land having been assessed to the wrong person. [Dewey.]

XV. LIMITATION OF REAL ACTIONS IN INDIANA.

No action for the recovery of any real estate sold on any execution can be brought by the debtor or his heirs, or by any person claiming under him by virtue of any right, title, or interest acquired from or through the debtor after the rendition of the judgment or decree under which the sale was made, unless brought within ten years after the sale." [R. S., 456, Sec. 13.]

No action for the recovery of any real estate sold by any executor or administrator under the provisions of any statute can be maintained, unless commenced within five years after the sale; nor can any action be maintained by any ward, for the recovery of any real estate sold by his or her guardian, unless commenced within five years after the termination of the guardianship." [Id., 458, Sec. 25.]

The above provisions, however, are subject to the exception, that persons out of the State, minors, and others, under any legal disability to sue at the time, when their right of action accrued, may commence actions at any time within five years after returning to the State, attaining majority, or removal of the disability. [Id., Sec. 26.]

"No action of ejectment shall be commenced or maintained for the recovery of any lands or tenements against any person or persons who may have been in the quiet and peaceable possession of the same, under an adverse title, for twenty years, either in his own right, or the right of any other person or persons under whom he claims; and any action of

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If one or two, or more joint owners of lands shall pay the taxes upon the whole, he may sue for and recover of the other, or others, a contribution. [Statutes.]

If the Auditor discover that a sale is invalid, he should refund the money to the purchaser, and omit to give a deed. [Idem.]

Redemptions restore the owner to all his original rights. [Idem.]

The personal property of every widow and orphan in Indiana not exceeding two hundred and fifty dollars in value, and the property of all other persons which by law is exempt from execution, cannot be taxed. [Idem.]

ejectment commenced contrary to the provisions of this section shall be dismissed, at the cost of the party instituting the same. [Id., 799, Sec. 44.]

Married women, insane persons, minors, and persons out of the United States, however, are not debarred until the expiration of five years from the time such disability shall be removed. [Id., Sec. 45.]

The limitation upon actions for dower is twenty years from the death of the husband; but if at the time of his decease, the widow be under the age of twenty-one years, or insane, the time during which such disability continued forms no part of the twenty years.* [Id. 811, Sec. 112.]

XVI. REAL ESTATE EXEMPTIONS IN INDIANA.

The Revised Statutes do not exempt any real estate of a debtor from the operation of judgments or decrees; yet they furnish some protection to debtors and work out in certain cases a measurable exemption of real estate. Whenever any execution has been issued against the lands of a debtor, he may designate the property that shall be first levied upon and sold, and his principal messuage cannot be sold at all, except with his consent, until all his other property subject to taxation, has been exhausted. [R. S., 740, Sec. 393.]

It is further provided that "no goods and chattels, or lands and tenements of any execution debtor, shall be sold on execution issued out of any Court of Record, for less than two-thirds of the fair value thereof, at the time of such sale,

* Statutes of limitations are not in violation of the Constitution of Indiana; they disturb no rights, but only regulate the remedy. [1 Blackf., 36.]

Technical and continuing trusts not cognizable at law, are not barred by statutes of limitation. [Blackf., 77.]

Limitations do not begin to run until the right of action has fully accrued, and has become perfect. [3 Blackf., 324.]

The limitation upon actions upon judgments rendered before a magistrate, for arrears of rent, assumpsit, on contracts not in writing, replevin, waste, and trespasses on land, is six years; for assault and battery, and for false imprisonment, three years; upon statutes for penalties, two years; for slander and libels one year, and other actions twenty years. [R. S., 687, Sec. 101.]

exclusive of all liens, mortgages or incumbrances thereon." [Id., 757, Sec. 395.]

"For that purpose (to ascertain the value) two disinterested householders of the neighborhood where the levy was made, shall be selected as appraisers, one of whom shall be chosen by the execution debtor, and the other shall be chosen by the plaintiff, his agent or attorney; or in the absence of the plaintiff, his agent and attorney, by the officer executing such writ; and said appraisers shall forthwith proceed to value such property according to its fair value at the time; and in case of their disagreement as to such value, they shall choose a like disinterested householder of the neighborhood, and with his assistance they shall complete such valuation." [Id., Sec. 398.]

"In case such execution debtor shall fail to choose an appraiser within three days after notice of such levy, such officer shall choose an appraiser for him, who shall proceed in all respects as if he had been chosen by such execution debtor." [Id., Sec. 399.]

"In case any of said appraisers shall fail to complete such valuation, such plaintiff his agent or attorney, or such officer in their absence, or the execution debtor, or the appraisers, if the two remain who were first chosen, as the case may be, shall choose an appraiser in the place of the one before chosen by him or them, and refusing to act; or if such execution debtor shall in such case fail to choose such appraiser within two days after the notice of such refusal to act by the appraiser chosen by him, such officer shall choose an appraiser for him; and any appraiser thus chosen shall proceed in all respects as if he had been chosen in the first instance." [Id., Sec. 400.]

"Real and personal estate taken in execution shall sell for the best price the same will bring at public auction, over and above two-thirds of the appraised value thereof, as above herein provided." [Id., 409.]

"But the estate or interest of the judgment debtor in any real estate, shall not be sold on execution until the rents and profits thereof shall have first been offered for sale at public auction; and if the same will not sell for a sum sufficient to satisfy such execution, then the estate or interest of the judgment debtor shall be sold by virtue of such execution." [Id., Sec. 410.]

"But before the rents and profits shall be sold as aforesaid, the same shall be appraised at their fair cash value at the time, estimating and setting down such value for each year separately by the appraisers chosen as aforesaid." [Id., Sec. 411.]

"So many years, not exceeding such term of seven years, shall be sold as will pay and satisfy the principal, interest and costs, due and accruing on such execution, and no more; but if a fraction of a year shall occur in making up the sum due as aforesaid, such fraction shall be carried and conveyed as a whole year to the purchaser, and shall entitle him to the whole year in which such fraction occurs, without his paying the balance of the estimated value of such year." [Id., Sec. 412.]

Whenever it shall happen that any property exposed to sale on execution, shall not under the foregoing restrictions sell for want of bidders, the officer may return his execution.* [Id., Sec. 419.]

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* The following personal property, when owned by any person having a family, or being a householder, is exempt from levy and sale under any execution, to wit: The necessary wearing apparel of such person and his family; the family bible and school books used by or in the family; one cow and calf, six sheep, and the wool thereof; two beds and the necessary bedding therefor; household and kitchen furniture, not to exceed in value fifteen dollars; one chopping axe, one plow, one weeding hoe; one loom, one spinning wheel, one reel; and the necessary provisions to supply the family for two months; and also the arms and accoutrements required by law to be kept by such person for military duty, or with which he shall have furnished himself, as the member of any military company. But the whole amount of property so exempt can in no case exceed the value of one hundred dollars, exclusive of such wearing apparel, bible, school books, arms, accoutrements, and the two months

XVII. THE INTEREST OF MONEY IN INDIANA.

The rate of interest upon the loan of forbearance of money, goods or things in action in this State, is at and after the rate of six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time. [R. S., 580, Sec. 25.]

The Statute includes judgments, decrees, and liquidated accounts, as well as bonds, bills, notes, and other instruments in writing, stipulating the payment of money. If, however, it be agreed that no interest shall be charged, such agreement on the part of the creditor, is a waiver of the Statute allowing him interest. In regulating the rate of interest, the Legislature has provided that but six per cent only shall be received; and to carry such provision into effect, the aid of the law is denied to the creditor or lender for the recovery of excessive interest.

The contract is not void except for the excess; yet the usurer loses his interest for his temerity. Herein the Statute differs from that of New-York, upon which, in the main, it is grounded. While, on the one hand, the usurer's hand is impotent to collect his usury, on the other, the debtor cannot

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provisions; and in all cases, the judgment debtor may claim as exempt from execution any other article or articles, so that the whole value of the property so exempted shall not exceed one hundred dollars. [R. S., 743, Sec. 376.]

As to property not exempt, the debtor may designate what shall be first levied upon and first sold; but no goods or chattels of any execution debtor can be sold on execution issued out of any Court of Record, for less than two-thirds of the fair value thereof at the time of such sale. [R. S., 747, Sec. 395.]

To determine the value of property in such case, "two disinterested householders of the neighborhood where the levy shall have been made" may be selected as appraisers, one by the plaintiff, his agent, or attorney, the other by the debtor himself, or if he fail to do so within three days after notice of the levy, then both may be chosen by the plaintiff, his agent, or attorney; and whenever any of the property cannot be sold by an officer for two-thirds the appraised value thereof, such officer may omit to sell, and return his process, stating his failure to sell. Further process however, can issue at a future time. [Id., 750, Sec. 404.]

defraud him out of his just and equitable demand for the principal.* But see the topic concerning usury.

XVIII. THE PENALTY AND FORFEITURE OF USURY IN INDIANA.

Usury belongs to the series of topics which concern land owners and incumbrancers, as well as business men generally having dealings in the States. Holders of mortgages are particularly concerned in those provisions of law, which regulate the receiving or the agreeing to receive excessive interest. In New-York, all bonds, mortgages and other covenants and contracts wherein or whereby excessive interest shall be reserved or taken, or agreed to be reserved or taken, are absolutely void; but in this State a less rigorous statute prevails. "No contract or assurance for the payment of money with interest, or upon which interest has been received, contracted for, taken or reserved, after a greater rate than is allowed by the preceding sections, (six per cent) shall be thereby rendered void; but whenever in any action brought on such contract or assurance, it shall appear upon a special plea to that effect, or otherwise, that a greater rate of interest has been directly or indirectly reserved, contracted for, taken, or received, than is allowed by law, the defendant shall recover his full costs in such suit, and the plaintiff shall only recover judgment for the principal sum due him without interest thereon; or if he shall have taken or received such interest, or any part thereof, before the rendition of such judgment, the same shall be deducted from such principal sum, and

* Interest is not allowable on the open, unliquidated accounts of merchants. The custom of merchants will, however, be considered, but witnesses are not admissible to prove a custom of merchants in the city of another State, allowing them to charge interest on their accounts, when the courts of that State have refused to recognize the custom. [3 Blackford, 312.]

On a note for the payment of a certain sum on a specified day, with interest from the date, if not punctually paid, interest from date was recoverable in case of default. [1 Blackf. 1, 9.]

Interest on money had and received without the owner's knowledge, is recoverable. [4 Blackf. 41.]

judgment shall be rendered for the balance as above." [R. S., 29, Sec. 581.]

All excessive interest that may have been paid, may be recovered back by the person paying the same, together with the lawful interest on the principal borrowed or forborne, provided a suit therefor be brought within a year after payment of the usury; so that the usurer, in fact, forfeits his lawful interest by receiving excess. [Id., Sec. 30.]

"Every person offending against the provisions of this article, (prohibiting unlawful interest) shall be compelled to answer on oath, any bill that may be exhibited against him in chancery, for the discovery of any sum of money, property, or things in action, reserved, contracted for, taken or received, in violation of the foregoing provisions or any of them." [Id., Sec. 31.] If such person discover truly the facts and circumstances concerning the usury, both interest and the excess may be recovered against him, yet in such cases he cannot be held to answer criminally for the usury, nor be subjected to any penalty or forfeiture in any criminal prosecution therefor. All witnesses disclosing usury are in like manner exempted.

"If any person shall, either directly or indirectly, take, receive, reserve by contract or agreement, or accept in money, property, or thing in action, or reserve in any note, bill, obligation, or security, any greater rate of interest than is allowed and authorized by law, upon any loan or forbearance of any money, property or thing in action, or is allowed and authorized by law, upon any debt, obligation, contract, or sum of money, he shall upon conviction thereof, upon indictment in the proper Circuit Court, be fined in double the amount of the excess of interest so taken, received, accepted, reserved, or secured above the rate of interest allowed by law." [Id., Sec. 36.] Compared with New-York, the penalty and punishment are trivial, yet it is believed that severer penalties and punishments would not better subserve the ends of justice or the interests of the people.

CHAPTER IV.

THE STATE OF ILLINOIS.

Source of Title to Lands in Illinois. Erection of Illinois Territory from that part of Indiana lying west of the Wabash. Act enabling the people therein to form a Constitution and State Government. Ordinance accepting the propositions of Congress. Admission of Illinois into the Union as a State. Her Constitution. Land Titles generally, as regulated by Statute. The Execution, Attestation, Proof, Acknowledgment, Authentication, and Recording of Deeds and Mortgages. The Execution, Attestation, Probate and Recording of Wills of Real Estate. Regulations concerning Descents. The Levy and Collection of Land Taxes. Land Tax Forfeitures. Sales and Redemptions. Limitation upon Actions for the Recovery of Lands. The Statute of Exemptions. Interest of Money and Usury.

1. THE SOURCE OF TITLE TO LANDS IN ILLINOIS.

Illinois is the far-famed prairie land whose "meadowy plains, magnificent and vast, with their buffaloes, stags, wildcats, bustards, swan, paroquets and beaver," were so "transcendantly amazing" to the early French travelers in the west, and which have given to this State her enviable celebrity. She derived her name from a tribe of her native proprietors, whose comeliness of person, urbanity of manners, and generous hospitality in giving bread and shelter to the pious Marquette in 1673, were by him so graphically portrayed in the journal of his mission to that people. Illinois, however, was not the self-designation, but a French nomination of the "most handsome, kindly and effeminate" of the tribes of North America.

As this State was erected from Indiana, west of the Wa-

bash, (a portion of the territory of the United States northwest of the Ohio,) the source and deduction of title to the lands within the borders of the State, may be seen in the two preceding chapters. Suffice it here that when it was visited by civilized men, it was in the peaceable possession of the Illinois, Miamis, Peorias and Kaskaskias, who claimed the same as native proprietors. [See Ante 147.] It is believed that the first white man that ever set foot upon the soil of Illinois, was Nicholas Perrot, a messenger sent by the Intendent General of Canada into this region to effect a congress of the tribes; who whilst upon this errand visited the Miami village, on the present site of Chicago in the year 1670. Three years afterwards, however, Illinois was visited by a band of Jesuit Missionaries, under the lead and guidance of James Marquette, and in 1680 by La Salle, who visited an Illinois village of five hundred cabins on the site of Rock Fort, in the county bearing the name of that French chevalier. After exploring the country, and projecting a line of fortifications from Canada to the Mississippi, he returned to France, and from thence to New-Orleans, where he died.

The leading object of private enterprise at that day, was the fur trade, which invited thither various bands of traders in company with or in the trail of the missionaries. This being a source of great profit, trading posts were established at different points from time to time, until 1720, when a permanent settlement was effected at Kaskaskia and Cahokia. [See Ante 131.]

For the Coutume de Paris, the surrender of the country to the English, its relinquishment by Great Britain, the cessions of Massachusetts, Connecticut, New-York and Virginia, and the ordinance of 1787, the reader is referred to ante 127 to 157 inclusive.

By the articles of compact between the original States and the people inhabiting the country northwest of the Ohio, it

was provided that not less than three nor more than five States should be formed from such territory; and that the western State should be bounded by the Mississippi, the Ohio and Wabash rivers. On the seventh day of May in the year 1800, this vast empire was divided by a line drawn from opposite the mouth of the Kentucky river, northward by Fort Recovery to the Canada line,and the country west thereof erected into a territory called Indiana. In the course of events, the following act was passed by Congress:

II. AN ACT FOR DIVIDING THE INDIANA TERRITORY INTO TWO SEPARATE GOVERNMENTS. APPROVED FEBRUARY 3, 1809.

"Sec. I. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of March next, all that part of the Indiana territory which lies west of the Wabash river, and a direct line drawn from the said Wabash river and Post Vincennes, due north to the territorial line between the United States and Canada, shall, for the purpose of temporary government, constitute a separate territory, and be called Illinois.

"Sec. II. And be it further enacted, That there shall be established within the said territory a government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States, northwest of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled 'An act to provide for the government of the territory northwest of the river Ohio'; and the inhabitants thereof shall be entitled to and enjoy all and singular the rights, privileges, and advantages, granted and secured to the people of the territory of the

United States, northwest of the river Ohio, by the said ordinance.

"Sec. III. And be it further enacted, That the officers for the said territory, who, by virtue of this act, shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana territory. And the duties and emoluments of Superintendent of Indian Affairs, shall be united with those of Governor: Provided, that the President of the United States shall have full power, in the recess of Congress, to appoint and commission all officers herein authorized, and their commissions shall continue in force until the end of the next session of Congress.

"Sec. IV. And be it further enacted, That so much of the ordinance for the government of the territory of the United States, northwest of the Ohio river, as relates to the organization of a General Assembly therein, and prescribes the powers thereof, shall be in force and operate in the Illinois territory, whenever satisfactory evidence shall be given to the Governor thereof, that such is the wish of a majority of the freeholders, notwithstanding there may be therein five thousand free male inhabitants of the age of twenty-one years and upwards: Provided, that until there shall be five thousand free male inhabitants of the age of twenty-one years and upwards in said territory, the whole number of representatives to the General Assembly shall not be less than seven nor more than nine, to be apportioned by the Governor to the several counties in the said territory, agreeably to the number of free males of the age of twenty-one years and upwards, which they may respectively contain.

"Sec. V. And be it further enacted, That nothing in this

act contained, shall be construed so as in any manner to affect the government now in force in the Indiana territory, further than to prohibit the exercise thereof within the Illinois territory, from and after the aforesaid first day of March next.

"Sec. VI. And be it further enacted, That all suits, process, and proceedings, which, on the first day of March next, shall be pending in the court of any county which shall be included within the said territory of Illinois, and also all suits, process, and proceedings, which, on the said first day of March next, shall be pending in the General Court of the Indiana territory, in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the territory of Illinois aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana territory had remained undivided.

"Sec. VII. And be it further enacted, That nothing in this act contained shall be so construed as to prevent the collection of taxes, which may on the first day of March next, be due to the Indiana territory on lands lying in the said territory of Illinois.

"Sec. VIII. And be it further enacted, That until it shall be otherwise ordered by the Legislature of the said Illinois territory, Kaskaskia, on the Mississippi river, shall be the seat of government for the said Illinois territory."* [U. S. Statutes by Peters: Vol. 2, 514.]

* On the 16th of April, 1814, Congress passed an act confirming the claims of the early settlers of the territory to lands purchased by them of commandants of posts, and entitling settlers who had cultivated and improved any tract prior to February 5, 1813, to a pre-emption thereof, to the extent of one section of land. [U. S. Stat., Vol. 3, 126.]

On the 27th of February, 1815, an act was passed extending the western boundary of the Illinois Territory, to the middle of the Mississippi river, so as to include all islands in said river between the middle and eastern margin, throughout the length of said line. [Id., 218.]

III. AN ACT TO ENABLE THE PEOPLE OF THE ILLINOIS TERRITORY TO FORM A CONSTITUTION AND STATE GOVERNMENT, AND FOR THE ADMISSION OF SUCH STATE INTO THE UNION ON AN EQUAL FOOTING WITH THE ORIGINAL STATES. APPROVED APRIL 18, 1818.

"Section I. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the inhabitants of the territory of Illinois be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States, in all respects whatever.

"Sec. II. And be it further enacted, That the said State shall consist of all the territory included within the following boundaries, to wit: Beginning at the mouth of the Wabash river; thence up the same, and with the line of Indiana, to the northwest corner of said State; thence east, with the line of the same State, to the middle of Lake Michigan; thence north, along the middle of said lake, to north latitude forty-two degrees thirty minutes; thence west to the middle of the Mississippi river; thence, down along the middle of that river, to its confluence with the Ohio river; and thence, up the latter river, along its northwestern shore, to the beginning: Provided, That the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory northwest of the river Ohio: Provided also, That the said State shall have concurrent jurisdiction with the State of Indiana on the Wabash river, so far as said river shall form a common boundary to both, and also concurrent jurisdiction on the Mississippi river, with any State or States to be formed west

thereof, so far as the said river shall form a common boundary to both.

"Sec. III. And be it further enacted, That all white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory six months previous to the day of election, and all persons having in other respects the legal qualifications to vote for representatives in the General Assembly of the said territory, be, and they are hereby, authorized to choose representatives to form a Convention, who shall be apportioned amongst the several counties as follows: From the county of Bond, two representatives; from the county of Madison, three representatives; from the county of St. Clair, three representatives; from the county of Monroe, two representatives; from the county of Randolph, two representatives; from the county of Jackson, two representatives; from the county of Johnson, two representatives; from the county of Pope, two representatives; from the county of Gallatin, three representatives; from the county of White, two representatives; from the county of Edwards, two representatives; from the county of Crawford, two representatives; from the county of Union, two representatives; from the county of Washington, two representatives; and from the county of Franklin, two representatives. And the election for the representatives aforesaid, shall be holden on the first Monday of July next, and the two following days, throughout the several counties in the said territory, and shall be conducted in the same manner, and under the same regulations, as prescribed by the laws of the said territory regulating elections therein for members of the House of Representatives.

"Sec. IV. And be it further enacted, That the members of the Convention, thus duly elected be, and they are hereby, authorized to meet at the seat of government of the said territory, on the first Monday of the month of August next, which Convention, when met, shall first determine, by a ma-

jority of the whole number elected, whether it be or be not expedient at that time to form a constitution and State government for the people within the said territory, and if it be expedient, the Convention shall be and hereby is authorized to form a constitution and State government; or, if it be deemed more expedient, the said Convention shall provide by ordinance for electing representatives to form a constitution or frame of government; which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance, and shall then form for the people of said territory a constitution and State government: Provided, that the same, whenever formed, shall be republican, and not repugnant to the ordinance of the thirteenth of July, seventeen hundred and eighty-seven, between the original States and the people and States of the territory northwest of the river Ohio; excepting so much of said articles as relate to the boundaries of the States therein to be formed: And provided also, that it shall appear, from the enumeration directed to be made by the Legislature of the said territory, that there are, within the proposed State, not less than forty thousand inhabitants.

Sec. V. And be it further enacted, That until the next general census shall be taken, the said State shall be entitled to one representative in the House of Representatives of the United States.

"Sec. VI. And be it further enacted, That the following propositions be, and the same are hereby, offered to the Convention of said territory of Illinois, when formed, for their free acceptance or rejection, which, if accepted by the Convention, shall be obligatory upon the United States and the said State.

First. That section numbered sixteen, in every township, and when such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may

be, shall be granted to the State, for the use of the inhabitants of such township, for the use of schools.

Second. That all salt springs within such State, and the land reserved for the use of the same, shall be granted to the said State, for the use of the said State, and the same to be used under such terms, and conditions, and regulations, as the Legislature of the said State shall direct.

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

Fourth. That thirty-six sections, or one entire township, which shall be designated by the President of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the Legislature of the said State, to be appropriated solely to the use of such seminary by the said Legislature. Provided, always, that the four foregoing propositions, herein offered, are on the conditions that the Convention of the said state shall provide, by an ordinance irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of January, one thousand eight hundred and nineteen, shall remain exempt from any tax laid by order, or under any authority, of the State, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale: And further, that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue

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

"Sec. VII. And be it further enacted, That all that part of the territory of the United States lying north of the State of Indiana, and which was included in the former Indiana territory, together with that part of Illinois which is situated north of and not within the boundaries prescribed by this act, to the State thereby authorized to be formed, shall be, and hereby is, attached to, and made a part of the Michigan territory, from and after the formation of the said State, subject, nevertheless, to be hereafter disposed of by Congress, according to the right reserved in the fifth article aforesaid, and the inhabitants therein shall be entitled to the same privileges and immunities, and subject to the same rules and regulations, in all respects, with the other citizens of the Michigan territory." [U. S. Statutes by Peters, 428.]

IV. AN ORDINANCE OF THE ILLINOIS CONVENTION, ACCEPTING THE PROPOSITIONS OF CONGRESS.

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

First. That section numbered sixteen in every township, and where such section has been sold, or otherwise disposed of, other lands equivalent thereto, and as contiguous as

may be, shall be granted to the State for the use of the inhabitants of such township for the use of schools.

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

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

Fourth. That thirty-six sections, or one entire township, which shall be designated by the President of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the Legislature of the said State, to be appropriated solely to the use of such seminary by the said Legislature.

And whereas, the four foregoing propositions are offered on the condition that this Convention shall provide by ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of January one thousand eight hundred and nineteen, shall remain exempt from any tax laid by order or under the authority of the State, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale.

And further, that the bounty lands granted, or hereafter to be granted for military service during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt, as aforesaid, from all taxes for the term of three years from and after the date of the patents respectively; and that all the lands belonging to the citizens of the United States, residing without the said State, shall never be taxed higher than lands belonging to persons residing therein."

"Therefore, this Convention, on behalf of, and by the authority of the people of the State, do accept of the foregoing propositions; and do further ordain and declare, that every and each tract of land sold by the United States, from and after the first day of January one thousand eight hundred and nineteen, shall remain exempt from any tax, laid by order or under any authority of this State, whether for State, county or township, or any other purpose whatever, for the term of five years from and after the day of sale.

"And that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held, by the patentees or their heirs, remain exempt, as aforesaid, from all taxes for the term of three years from and after the date of the patents respectively; and that all the lands belonging to the citizens of the United States, residing without the said State, shall never be taxed higher than lands belonging to persons residing therein. And this Convention do further ordain and declare, that the foregoing ordinance shall not be revoked without the consent of the United States.

"Done in Convention at Kaskaskia, the twenty-sixth day of August, in the year of our Lord, one thousand eight hundred and eighteen, and of the Independence of the United States of America, the forty-third." [R. S., Illinois, 27.]

V. THE CONSTITUTION OF ILLINOIS.

The people of the Illinois Territory, having the right of admission into the General Government, as a member of the Union, under the ordinance of 1787, and the law of Congress approved on the eighteenth day of April, 1818, to enable the people of said territory to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, did, by their representatives, in a Convention held at Kaskaskia, on the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighteen, ratify the boundaries assigned by Congress to the State, and adopt a constitution for its government.

That document provides that no freeman shall be disseized of his freehold, except by law or the judgment of his peers, and that all lands theretofore granted as a common to the inhabitants of any town, hamlet, village or corporation, body politic or corporate, or by any government having power to make such grant, should forever remain common to the inhabitants of such town, hamlet, village or corporation; and that such commons should not be leased, sold, or divided, under any pretence whatever, except the commons of Cahokia, and Prairie Du Pont. [Art. 8, Sec. 8.]

It is silent upon the subject of tenures and estates, leaving them to be regulated entirely by the Legislature. [See Appendix.]

VI. LAND TITLES GENERALLY IN ILLINOIS.

Estates in land in this State are regulated by the following provisions of the Revised Statutes:

"Livery of seizin shall in no case be necessary for the conveyance of real property; but every deed, mortgage, or other conveyance in writing, signed and sealed by the party making the same, (the maker or makers being of full age,

sound mind, discovert, at large, and not in duress,) shall be sufficient, without livery of seizin, for the giving, granting, selling, mortgaging, leasing or otherwise conveying or transferring any lands, tenements or hereditaments, in this State; so as, to all intents and purposes, absolutely and fully to vest in every donee, grantee, bargainee, mortgagee, lessee or purchasers, all such estate or estates as shall be specified in any such deed, mortgage, lease or other conveyance. Nothing herein contained shall be so construed as to divert or defeat the older, or better estate or right of any person or persons, not party to any such deed, mortgage, lease or other conveyance." [R. S., 103, Sec. 1.]

"Every estate, feoffment, gift, grant, deed, mortgage, lease, release or confirmation of lands, tenements, rents, services or hereditaments, made or had, or hereafter to be made or had, by any person or persons, being of full age, sound mind, discovert, at large, and not in duress, to any person or persons; and all recoveries, judgments, and executions, had or made, or to be had or made, shall be good and effectual to him, her, or them, to whom it is or shall be so made, had, or given, and to all others; to his, her or their use against the judgment debtor, seller, feoffer, donor, grantor, mortgagor, lessor, releasor or confirmor, and against his her, or their heirs, or heirs claiming the same, only as heir or heirs, and every of them; and against all others having or claiming any title or interest in the same, only to the use of the same judgment debtor, seller, feoffor, donor, grantor, mortgagor, lessor, releasor, or confirmor, or his, her or their said heirs, at the time of the judgment, execution, bargain, sale, mortgage, covenant, lease, release, gift or grant made." [Id., Sec. 2.]

"Where any person or persons stand or be seized, or at any time hereafter shall stand or be seized, of and in any messuages, lands, tenements, rents, services, reversions, remainders, or other hereditaments, to the use, confidence or

trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will or otherwise, by any manner of means whatsoever; in every such case, all and every such person or persons, and bodies politic, that have, or hereafter shall have any such use, confidence or trust, in fee simple, for term of life or for years, or otherwise, or any use, confidence or trust, in remainder or reversion, shall from thenceforth stand, and be seized, deemed and adjudged in lawful seizin, estate and possession of, and in the same messuages, lands, tenements, rents, services, reversions, remainders, and hereditaments, with their appurtenances, to all intents, constructions, and purposes in law, of and in such like estates, as they had or shall have in use, confidence, or trust of, or in the same; and that the estate, right, title and possession, that was or shall be in such person or persons, that were, or hereafter shall be seized of any lands, tenements or hereditaments, to the use, confidence, or trust of any such person or persons, or of any body politic, be from henceforth clearly deemed and adjudged to be in him, her or them, that have, or hereafter shall have such use, confidence or trust, after such quality, manner, form, and condition, as they had before, in or to the use, confidence or trust, that was or shall be in them." [Id., Sec. 3.]

"Any person claiming right or title to lands, tenements or hereditaments, although he she or they may be out of possession, and notwithstanding there may be an adverse possession thereof, may sell, convey and transfer his or her interest in and to the same, in as full and complete a manner as if he or she were in the actual possession of the lands and premises intended to be conveyed; and the grantee or grantees shall have the same right of action for the recovery thereof, and shall in all respects derive the same benefit and advantages therefrom, as if the grantor or grantors had been

in the actual possession at the time of executing the conveyance." [Id., Sec. 4.]

"No estate in joint tenancy in any lands, tenements, or hereditaments, shall be held or claimed under any grant, devise or conveyance whatsoever, heretofore or hereafter made, other than to executors and trustees, unless the premises therein mentioned shall expressly be thereby declared to pass, not in tenancy in common, but in joint tenancy; and every such estate, other than to executors or trustees, (unless otherwise expressly declared, as aforesaid,) shall be deemed to be in tenancy in common." [R. S., 104, Sec. 5.]

"In cases where, by the common law, any person or persons might hereafter become seized, in fee tail, of any lands, tenements or hereditaments, by virtue of any devise, gift, grant or other conveyance, hereafter to be made, or by any other means whatsoever, such person or persons, instead of being or becoming seized thereof in fee tail, shall be deemed and adjudged to be, and become seized thereof, for his or her natural life only, and the remainder shall pass in fee simple absolute, to the person or persons to whom the estate tail would, on the death of the first grantee, devisee or donee in tail, first pass, according to the course of the common law, by virtue of such devise, gift, grant or conveyance." [Id., Sec. 6.]

"If any person shall sell and convey to another, by deed or conveyance, purporting to convey an estate in fee simple absolute, in any tract of land or real estate, lying and being in this State, not then being possessed of the legal estate or interest therein at the time of the sale and conveyance; but after such sale and conveyance, the vender shall become possessed of, and confirmed in the legal estate, to the land or real estate so sold and conveyed, it shall be taken and held to be in trust, and for the use of the grantee or vendee; and the conveyance aforesaid shall be held and taken, and shall be as valid as if the grantor or vendor had the legal estate or

interest at the time of said sale or conveyance." [Id., Sec. 7.]

"Every person in the actual possession of lands or tenements, under claim and color of title, made in good faith, and who shall for seven successive years continue in such possession, and shall also, during said time, pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession, and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section." [Id., Sec. 8.]

"Whenever a person having color of title, made in good faith, to vacant and unoccupied land, shall pay all taxes legally assessed thereon, for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land, to the extent and according to the purport of his or her paper title. All persons holding under such taxpayer by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of taxes for the term aforesaid, shall be entitled to the benefit of this section: Provided, however, if any person having a better paper title to said vacant and unoccupied land, shall, during the said term of seven years, pay the taxes assessed on said land for any one or more years of the said term of seven years, then, and in that case, such taxpayer, his heirs and assigns, shall not be entitled to the benefit of this section." [Id., Sec. 9.]

"The two preceding sections shall not extend to lands or tenements owned by the United States or this State, nor to school and seminary lands, nor to lands held for the use of

religious societies, nor to lands held for any public purpose; nor shall they extend to lands or tenements when there shall be an adverse title to such lands or tenements, and the holder of such adverse title is under the age of twenty-one years, insane, imprisoned, femme covert, out of the limits of the United States, and in the employment of the United States or of this State: Provided such person shall commence an action to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment; or, in case of vacant and unoccupied land, shall within the time last aforesaid, pay to the person or persons who have paid the same, all the taxes, with interest thereon, at the rate of twelve per cent per annum, that have been paid on said vacant and unoccupied land." [Id., Sec. 10.]

"All deeds whereby any estate of inheritance in fee simple shall hereafter be limited to the grantee and his heirs, or other legal representatives, the words "grant," "bargain," "sell," shall be adjudged an express covenant to the grantee, his heirs, and other legal representatives, to wit: that the grantor was seized of an indefeasible estate, in fee simple, free from incumbrances, done or suffered from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed. And the grantee, his heirs, executors, administrators and assigns, may in any action assign breaches, as if such covenants were expressly inserted: Provided, always, that this law shall not extend to lease at rack rent, or leases not exceeding one and twenty years, where the actual possession goes with the lease." [R. S., 105, Sec. 10.]

"Every deed conveying real estate which by anything therein contained shall appear to have been intended only as a security in the nature of a mortgage, though it be an

absolute conveyance in terms, shall be considered as a mortgage. [Id., Sec. 12.]

"Every estate in lands, which shall be granted, conveyed or devised to one, although other words, heretofore necessary to transfer an estate of inheritance, be not added, shall be deemed a fee simple estate of inheritance, if a less estate be not limited by express words, or do not appear to have been granted, conveyed or devised by construction or operation of law." [Id., Sec. 13.]

"When an estate hath been, or shall be, by any conveyance limited in remainder to the son or daughter, or to the use of the son or daughter of any person, to be begotten, such son or daughter, born after the decease of his or her father, shall take the estate in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been conveyed to support the contingent remainder after his death." [Id., Sec. 4.]

"All aliens residing in this State may take by deed, will or otherwise, lands and tenements, and any interest therein, and alienate, sell, assign and transmit the same to their heirs or any other persons, whether such heirs or other persons be citizens of the United States or not, in the same manner as natural born citizens of the United States, or of this State, might do; and upon the decease of any alien having title to, or interest in, any lands or tenements, such lands and tenements shall pass and descend in the same manner as if such alien were a citizen of the United States, and it shall be no objection to any person having an interest in such estate, that they are not citizens of the United States; but all such persons shall have the same rights and remedies, and in all things be placed on the same footing, as natural born citizens and actual residents of the United States."* [Id., 47, Sec. 1.]

* The Legislatures of the States respectively have the right to regulate estates by enactment, under the restrictions of their constitutions, and that of the General Government. [9 Wheaton, 565.]

VII. THE EXECUTION OF DEEDS AND MORTGAGES IN ILLINOIS.

The Revised Statutes of Illinois provide that all deeds and instruments of writing, for the conveyance or incumbrance of real estate, or any interest therein, shall be signed and sealed by the party or parties executing the same, in proper person, or by an attorney or lawful agent, thereunto duly authorized. [R. S., 105, Sec. 16, 24.]

Conveyances may be written or printed, or partly written and partly printed; and although no prescription exists as to their form, they must nevertheless set forth the names and residence of the parties, the land intended to be conveyed and the terms and conditions of the grant. They are also required to be legible, perspicuous, and to evince the purpose of the grantor or grantors therein to convey to the grantee or grantees the premises described. They must be upon paper, parchment, or some other similar material, susceptible of delivery and record. [Breese's Appendix.]

They must be signed. The statutes provide "that they shall be subscribed by the party or parties thereto, in proper person," [Id., Sec. 16,] yet, as "letters of attorney, or agency, authorizing the granting, selling, conveying, assuring, releasing or transferring, and for the acknowledging of grants, sales, leases and assurances," are recognized as valid instruments, it is presumed that the two provisions, when taken together, fully authorize the subscribing of a deed by an attorney of the grantor, and constitute him in such case, a party,

The mode in which titles shall inure, or pass, must be exclusively the subject of the laws of the country where the estate lies. [7 Cranch, 112.]

The title granted by the State, or by the United States, vests the grantee with a title, notwithstanding the land shall be at the time in the possession of the native proprietors. [8 Wheaton, 543.]

The Illinois and Piankeshaw Indian grants made prior to 1775 cannot be recognized by the courts of the United States. [Id., 546.]

Lands in Illinois that were confirmed to the settlers by the Governor of the northwestern territory, were released from any further claims, on the part of the United States. [Breese, 236.]

within the meaning of the statute. But no agent or attorney can legally subscribe a deed for his principal, unless he shall have been thereunto authorized by an instrument in writing, executed and acknowledged by his principal, with all the formalities required in the execution of a deed.

They must be attested. At least one witness to their execution is necessary, when they are not acknowledged previous to their delivery. The language of the act upon this subject is ambiguous concerning the necessity of witnesses in any other case, yet as the term "witnesses" is often used in the revision of 1845, in connection with the subject of conveyances, it is suggested to non-residents that it were well to have one subscribing witness to all deeds, at least, until such statute receive a judicial construction by the courts.

They must be sealed. An instrument in writing is not a deed according to the legal signification of that term unless the same shall be sealed. The statute, however, admits a scrawl, for a substitute. "Any instrument of writing to which the maker shall affix a scrawl by way of a seal, shall be of the same effect and obligation to all intents, as if the same were sealed." [Id., 421, Sec. 56.] The mode usually adopted by grantors is to flourish an indented circle with a pen at the right of the signature, and to insert therein the initials L. S., as an indication that the flourish was intended as a seal; the statute being that the scrawl, to be valid, must be affixed "by way of a seal."

Deeds take effect only from the time of their delivery; [Breese, 278,] and as to creditors and subsequent purchasers, only from the time of the filing thereof for record.* [R. S., 108, Sec. 21.]

All persons of full age, except femmes covert, idiots and lunatics, are entitled to convey real estate, subject to the pro-

* Delivery of a deed is necessary to the transfer of the title of the grantor thereby. Breese, 278.] Deeds cannot take effect until they are delivered to the grantee, or to some one acting in his behalf. [2 Ham., 268.]

visions of the Statute. A femme covert may relinquish her right of dower in any of the real estate of her husband, by joining him in a deed of conveyance and acknowledging the same as mentioned in the succeeding article; but no covenant or warranty contained in any such deed or conveyance, can in any manner bind or affect such woman or her heirs, further than to convey from her and her heirs effectually, "her right and interest expressed to be granted or conveyed in such deed or conveyance. [Id., 106, Sec. 17.]

Deeds pass the incidents as well as the principal, and merge all prior and cotemporaneous negotiations and agreements in parol concerning the premises conveyed. If they contain the words "grant" "bargain," "sell," they are adjudged to express a covenant to the grantor and his heirs and representatives, that the grantor was seized of an indefeasible estate, in fee simple, free from incumbrances done or suffered by the grantor, except the rents and devises that may be reserved; and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed." [Id., 105, Sec. 11.]

"Every deed conveying real estate, which by anything therein contained shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage." [Id., Sec. 12.]

VIII. THE PROOF AND ACKNOWLEDGMENT OF DEEDS AND MORTGAGES IN ILLINOIS.

All deeds, mortgages and other instruments for the conveyance of real estate in this State, or any interest therein, whereby the rights of any person may be affected in law or equity, are required to be acknowledged or proved before one of the following officers, viz: When acknowledged or proven in Illinois, before any Judge, Justice, or Clerk of any Court of Record therein having a seal, or before any Mayor of a

city, Notary Public, or Commissioner authorized to take the acknowledgment of deeds, having a seal, or any Justice of the Peace. When acknowledged or proved without the State of Illinois, and within the United States or their territories, or the District of Columbia; before an officer commissioned for the purpose by the Governor of Illinois, in conformity with the laws of such State, Territory or District, provided, that any Clerk of a Court of Record within such State, Territory or District, shall, under his hand and the seal of such court, certify that such deed or instrument is executed and acknowledged, or proved in conformity with the laws of such State, Territory or District. When acknowledged or proven without the United States, before any court of any Republic, State, Kingdom, or Empire, having a seal, or any Mayor or chief officer of any city or town having a seal, or before any officer authorized by the laws of such foreign country, to take acknowledgments of conveyances of real estate, if he have a seal—such deed to be attested by the official seal of such court or officer; and in case such acknowledgment is taken other than before a Court of Record, or Mayor, or chief officer of a town having a seal, proof that the officer taking such acknowledgment was duly authorized by the laws of his country to do so, shall accompany the certificate of such acknowledgment." [R. S., Ill., 105, Sec. 16.]

Superadded to these provisions are others concerning the proof or acknowledgment of deeds by married women above the age of eighteen years. That their execution of deeds and mortgages may be in all cases voluntary and free, it is required that in addition to the foregoing requirements, "such wife shall appear before some Judge or other officer, authorized to take acknowledgments, to whom she is known, or proved by a creditable witness to be the person who executed such deed or conveyance, and such Judge shall make her acquainted with, and explain to her the contents of such deed or con-

veyance, and examine her separate and apart from her husband, whether she executed the same voluntarily, freely, and without compulsion of her said husband; and if such woman shall, upon such examination, acknowledge such deed and conveyance to be her act and deed—that she executed the same voluntarily and freely without compulsion of her husband, and does not wish to retract, the said Judge or other officer shall make a certificate endorsed on, or annexed to such deed or conveyance, stating that such woman was personally known to the said Judge or other officer, or proved by a witness (naming him) to be the person who subscribed such deed or conveyance, and setting forth the examination and acknowledgment aforesaid, and that the contents were made known to her; and such deed (being acknowledged or proved according to law as to the husband) shall be as effectual in law as if executed while sole and unmarried." [Id., Sec. 17.]

It will be observed that every requirement concerning the proof and acknowledgment calls for certain acts on the part of both the maker of a deed and the acknowledging officer. Those acts, and each and every of them, are essential. Having been done, they are facts, not conclusions, and must be detailed at length in the certificate of such officer. Herein, much difficulty often occurs; too much care, therefore, cannot be taken by acknowledging officers.

"Any conveyance or assignment of certificates of the purchase of land sold for taxes by the Auditor of Public Accounts, may be acknowledged before said Auditor, and such acknowledgment shall be deemed good and valid." [Id., Sec. 19.] But whomsoever assumes the duty of taking the acknowledgment of deeds, be it Auditor, Judge, or other officer, is required to know the person or persons appearing before him to make such acknowledgment, or by a creditable witness to be examined by himself, to receive proof of his or their identity, and that he, she or they are in very fact the person

or persons described in and who executed the conveyance in question. Without such knowledge or proof he is forbidden to act in the premises, and to certify his doings. And in his certificate of acknowledgment endorsed upon or annexed to the conveyance, he is required and commanded to state "that such person was personally known to him to be the person whose name is subscribed to such deed or writing, as having executed the same, or that he was proved to be such by a creditable witness, (naming him)." The precise information, (personal knowledge and proof) the courts regard as facts, which are as necessary to be set forth in the certificate, as the acts constituting the acknowledgment.

The execution of deeds may be proven by a subscribing witness who signed his name thereto as an attesting witness in the presence and at the request of the grantor. When such instances occur another duty devolves on the officer. Before receiving his testimony, the officer is required to ascertain from his own knowledge or by a creditable witness that he is a subscribing witness to the deed. This done, the officer may swear him and proceed to take his testimony; "and if it shall appear from the testimony of such subscribing witness that the person whose name appears subscribed to such deed or writing, is the real person who executed the same, and that the witness subscribed his name as such, in his presence and at his request, the Judge or officer shall grant a certificate stating that the person testifying as subscribing witness was personally known to him to be the person whose name appears to such deed as a witness of the execution thereof, or that he was proved to be such by a creditable witness, (naming him) and stating the proof made by him." [Id., 107, Sec. 20.]

Where the grantor and witness shall be dead, it is provided that the officer "may take proof of the handwriting of such deceased party and subscribing witness or witnesses, (if any) and the examination of a competent and creditable witness,

who shall state on oath or affirmation, that he personally knew the person, whose hand writing he is called to prove, and well knew his signature, (stating his means of knowledge,) and that he believes the name of such person subscribed to such deed or writing, as party or witness, (as the case may be,) was thereto subscribed by such person; and when the handwriting of the grantor or person executing such deed or writing, and of one subscribing witness, (if any there be,) shall have been proved as aforesaid, the Judge or officer shall grant a certificate thereof, stating the proof aforesaid." [Id., Sec. 21.]

IX. THE RECORDING OF DEEDS AND MORTGAGES IN ILLINOIS, AND THE EFFECT THEREOF.

The Statutes provide that deeds and other instruments relating to, or affecting the title to real estate in Illinois, shall be recorded in the county in which such real estate is situated; but if such county is not organized, then they shall be recorded in the county to which, for judicial purposes, such unorganized county is attached. R. S., 108, Sec. 22.

"All deeds, mortgages, and other instruments of writing which are required to be recorded, shall take effect, and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record." [Id., Sec. 23.]

All powers of attorney to convey lands are required to be recorded before any deed executed under the authority contained in the power goes upon record. [Id., Sec. 24.]

From the sections above cited it will be seen that a neglect to record deeds and mortgages, largely jeopards the rights of the alienee. Registry acts are mainly designed for the prevention of fraud, by means of the notice given to all the world

by the record. As between two grantees, the one whose deed or mortgage is first put on record holds as against the other, provided he have no knowledge of the other deed. Indeed no deed or mortgage takes effect as against creditors and subsequent purchasers, without notice, until the same shall be filed for record.

In Illinois, the people biennially elect a County Recorder who, when elected, is commissioned by the Governor, and required to reside at the county seat, and to keep a fair book or books of record, in which to make entry of every deed or writing brought into his office to be recorded, mentioning therein the date, the parties, and the place where the lands, tenements, or hereditaments granted or conveyed by the said deed or writing are situate, dating the entry on the day on which such deed or mortgage was brought into his office, and to record all such deeds and writings in regular succession, according to the priority of time of their being brought into said office; and also to make and keep a complete alphabetical index to each record book, showing the page on which each instrument is recorded, with the names of the parties thereto. He is also required to give a receipt to the person bringing any deed or writing to be recorded, bearing date on the same day as the entry, and containing the abstract aforesaid, and for which entry and receipt he is entitled to no fees, [R, S., 432, Sec. 7,] but for the recording he is entitled to fifteen cents per hundred words, and twenty-five cents for a certificate that the same has been recorded. [Id., 248, Sec. 23.]

But to entitle a deed or mortgage to go upon record, it must be duly acknowledged or proven, and in some cases duly authenticated. Deeds and other conveyances, acknowledged or proven in the State before any Judge, Justice of the Supreme or Circuit Court, or before any court or officer having a seal, and attested by such seal, are entitled to record without further attestation. But when acknowledged

or proven before a Justice of the Peace, residing within the State, the certificate of the Clerk of the County Commissioners' Court, of the proper county, under his seal of office, that the person taking such proof or acknowledgment was a Justice of the Peace at the time of taking the same, must be produced to the Recorder; and when acknowledged or proved out of the State, before an officer other than a Commissioner of this State residing there, the certificate of acknowledgment or proof must be accompanied with a certificate of a Clerk of a Court of Record within the State, Territory, or District where the acknowledging officer resides, under the hand of such Clerk and the seal of his court, setting forth that the deed or instrument is executed, acknowledged or proved in conformity with the laws of such State, Territory, or District.

The conveyance, certificate of acknowledgment, or proof and the certificate of authentication, go upon record together; and for recording the whole thereof, the Recorder is entitled to be paid.

Satisfaction of mortgages may be entered upon record by the mortgagees in the Recorder's office, and the record will thereby be effectually canceled. If not so done, the cancelation may be effected by the mortgagee's signing and sealing in the presence of an attesting witness, and acknowledging in form, satisfaction thereof in writing; which instrument, on being produced to the Recorder, is sufficient authority for him to discharge the record.* [R. S., 110, Sec. 37.]

* Non-residents may discover from this note the several counties or recording districts in small capital letters, with the name of the county seat of each annexed, viz: ADAMS, Quincy; ALEXANDER, Unity; BOND, Greenville; BOONE, Belvidere; BROWN, Mount Sterling; BUREAU, Princeton; CALHOUN, Gilead; CARROLL, Savannah; Cass, Virginia; CHAMPAIGN, Urbana; CHRISTIAN, Edinburg; CLARKE, Marshall; CLAY, Lewisville; CLINTON, Carlyle; COLES, Charleston; COOK, Chicago; CRAWFORD, Palestine; DE KALB, Sycamore; DE WITT, Clinton; DU PAGE, Napierville; EDGAR, Paris; EDWARDS, Albion; EFFINGHAM, Ewington; FAYETTE, Vandalia; FRANKLIN, Benton; FULTON, Lewiston; GALLATIN, Equality; GREENE, Carrollton; HAMILTON, McLeansboro'; HANCOCK, Carthage; HARDIN,

X. WILLS OF REAL ESTATE IN ILLINOIS.

This feature of the Athenian economy has commended itself to favor throughout Christendom; and at this day, the franchise is commensurate with, and a concomitant of freehold estates. In the American Republic, each State defines for itself the limits of the privilege, and by arbitrary statutes, regulates the manner of its exercise.

The statutes of Illinois provide that every person, aged twenty-one years, if a male, or eighteen years, if a female, or upwards, and not married, being of sound mind and memory, shall have power to devise all the estate, right, title and interest, in possession, reversion or remainder, which he or she hath, or at the time of his or her death shall have, of, in and to any lands, tenements, hereditaments, annuities or rents, charged upon or issuing out of them; or goods and chattels or personal estate, of every description whatsoever, by will or testament; all persons of the age of seventeen years, and of sound mind and memory, (married women excepted,) have power to dispose of their personal estate, by will or testament; and married women have power to dispose of their separate estate, both real and personal, by will

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Elizabethtown; HENRY, Morristown; IROQUOIS, Montgomery; JACKSON, Brownsville; JASPER, Newton; JEFFERSON, Mount Vernon; JERSEY, Jerseyville; JO-DAVIESS, Galena; JOHNSON, Vienna; KANE, Geneva; KNOX, Knoxville; LAKE, Little Fort; LA SALLE, Ottawa; LAWRENCE, Lawrenceville; LEE, Dixon; LIVINGSTON, Pontiac; LOGAN, Postville; MACON, Decatur; MACOUPIN, Carlinville; MADISON, Edwardsville; MARION, Salem; MARSHALL, Lacon; McDONOUGH, Macomb; McHENRY, McHenry; McLEAN, Bloomington; MENARD, Petersburg; MERCER, Millersburg; MONROE, Waterloo; MONTGOMERY, Hillsboro'; MORGAN, Jacksonville; OGLE, Oregon City; PEORIA, Peoria; PERRY, Pinckneyville; PIKE, Pittsfield; POPE, Golconda; PUTNAM, Hennepin; RANDOLPH, Kaskaskia; ROCK ISLAND, Rock Island; SANGAMON, Springfield; SCHUYLER, Rushville; SCOTT, Winchester; SHELBY, Shelbyville; STARK, Toulon; STEPHENSON, Freeport; ST. CLAIR, Belleville; TAZEWELL, Tremont; UNION, Jonesboro'; VERMILION, Danville; WABASH, Mt. Carmel; WARREN, Monmouth; WASHINGTON, Nashville; WAYNE, Fairfield; WHITE, Carmi; WHITESIDE, Sterling; WILL, Juliet; WILLIAMSON, Bainbridge; WINNEBAGO, Rockford. [Haskel's Gaz., 290.]

or testament, in the same manner as other persons. [R. S., 536, Sec. 1.]

The statute also declares that all wills, testaments and codicils, by which any land, tenements, hereditaments, annuities, rents, or goods and chattels, are devised, shall be reduced to writing, and signed by the testator or testatrix, or by some person in his or her presence, or by his or her direction, and attested in the presence of the testator or testatrix, by two or more credible witnesses. [Id., Sec. 2.]

Wills are required to be legible, perspicuous, and consistent, and must not contain provisions that are impossible of execution, or which contravene the general policy of the law. Hence, if trusts be created, or the power of alienation be suspended for any limited period, extreme care is requisite on the part of the draftsman, that such trust or suspension is authorized by the statutes of the State.

Wills must be certain in their provisions, and evince the purpose and intent of the testator, to devise his property to the beneficiaries named therein. They will be construed according to the design of the testator in their execution; yet that design must appear from the written manifesto of his pleasure. The statute regulations concerning their execution are inflexible, and must be exactly complied with.

They must be signed. They must not only be reduced to writing, but must be signed "by the testator or testatrix, or by some person in his or her presence, and by his or her direction." [Id., 536, Sec. 2.] The name of the testator, at length, should be subscribed thereto; yet, if he be unable to write, any mark which he has adopted as his sign manual will suffice for a signature, if accompanied with the declaration that the same is his mark. If another write his name by his direction, the same must be done in his presence, or otherwise, such signature is invalid.

They must be attested. Two witnesses, at least, are required to be present at the execution of a will by the testator,

and to attest the same by subscribing their own proper names thereto at the same time. And not only must there be at least two in number, but both of them are required to be "credible witnesses," and who are not incompetent from infamy, interest, or any other cause, to be sworn and examined upon the probate of such will, as to the capacity of the testator, and the circumstances and manner of its execution. Legatees, although competent to attest a will, lose their legacies under it, over and above what they would otherwise have inherited, if there be not two other credible witnesses to the execution thereof, who have no interest in the same. [Id., Sec. 11.]

Wills may or may not contain a provision for the appointment of executors thereof. If they contain no appointment, the court which admits them to probate has the power to supply the omission, by appointing an administrator, with the will annexed.

The statutes provide, that in no case "where any testator or testatrix shall by his or her will, appoint his or her debtor to be his or her executor or executrix, shall such appointment operate as a release or extinguishment of any debt due from such executor or executrix, to such testator or testatrix; unless the testator or testatrix shall in such will expressly declare his or her intention to devise, or release such debt; nor even in that case, unless the estate of such testator or testatrix is sufficient to discharge the whole of his or her just debts, over and above the debt due from such executor or executrix." [Id., Sec. 12.]

"If after making a last will and testament, a child or children shall be born to any testator or testatrix, and no provision be made in such will for such child or children, the will shall not on that account be revoked; but unless it shall appear by such will that it was the intention of the testator or testatrix to disinherit such child or children, the devises and legacies by such will granted and given shall be

abated in equal proportions to raise a portion for such child or children, equal to that which such child or children would have been entitled to receive out of the estate of such testator or testatrix, if he or she had died intestate." [Id., Sec. 13.]

"Whenever a devisee or legatee, in any last will and testament, being a child or grand child of the testator or testatrix, shall die before such testator or testatrix, and no provision shall be made for such contingency, the issue, if any there be, of such devisee or legatee shall take the estate devised or bequeathed, as the devisee or legatee would have done had he or she survived the testator or testatrix; and if there be no such issue at the time of the death of such testator or testatrix, the estate disposed of by such devise or legacy shall be considered and treated in all respects as intestate estate." [Id., Sec. 14.]

All codicils are required to be executed in the same manner as wills; and "no will, testament or codicil shall be revoked, otherwise than by burning, canceling, tearing, or obliterating the same, by the testator himself, or in his presence, by his direction and consent, or by some other will, testament or codicil, in writing, declaring the same, signed by the testator or testatrix, in the presence of two or more witnesses, and by them attested in his or her presence; and no words spoken shall revoke or annul any will, testament or codicil in writing, executed as aforesaid, in due form of law." [Id., Sec. 15.]

It is provided that every devise of land or any estate therein by a married man shall bar his surviving widow's right of dower therein, unless otherwise expressed in the will; but she may elect whether she will take such devise or bequest, or whether she will renounce the benefit of such devise or bequest, and take her dower in the lands. And she will be deemed to have elected to take such jointure or devise, unless within one year after the authentication or probate of the will she shall deliver or transmit to the Court

of Probate of the proper county, a written renunciation. [Id., 199, Sec. 11.]

XI. THE PROBATE AND RECORDING OF WILLS IN ILLINOIS.

By Statute there shall be and remain in each county of this State, a Court of Probate, to be composed of one officer, styled a Probate Justice of the Peace. [R. S., 426, Sec. 1.]

Probate Justices are elected biennially at "annual elections," and are invested with ample powers for determining the competency of testators, for the examination of witnesses concerning wills, admitting them to probate, record, &c., and of issuing letters testamentary therein, or of administration with the wills annexed. [Id., Sec. 6.]

Such courts are required to set in their respective counties on the first Monday in every month, and at such other times as extraordinary circumstances may require, and to continue open until all the business depending before them shall be disposed of. They are required to have a seal under which to issue all necessary process; and to keep books in which to record their proceedings at length. [Id., Sec. 8.]

"When any will, testament or codicil shall be exhibited in the Court of Probate, for probate thereof, it shall be the duty of the court to receive the probate of the same without delay, and to grant letters testamentary thereon, to the person or persons entitled; and to do all other needful acts to enable the parties concerned to make settlement of the estate at as early a day as shall be consistent with the rights of the respective persons interested therein: provided, however, that if any person interested, shall within five years after the probate of any such will, testament or codicil, in the Court of Probate as aforesaid, appear, and by his or her bill in chancery, contest the validity of the same, an issue at law shall be made up, whether the writing produced, be the will of the testator or testatrix, or not; which shall be tried by a jury in the Circuit Court of the county wherein such will, testa-

ment or codicil shall have been proved and recorded as aforesaid, according to the practice in Courts of Chancery in similar cases; but if no such person shall appear within the time aforesaid, the probate as aforesaid, shall be forever binding and conclusive on all the parties concerned, saving to infants, femmes covert, persons non compos mentis, or absent from the State, the like period after the removal of their respective disabilities. And in all such trials by jury as aforesaid, the certificate of the oath of the witnesses at the time of the first probate, shall be admitted as evidence, and to have such weight as the jury shall think it may deserve." [R. S., 537, Sec. 6.]

On the probate of any will at least two credible attesting witnesses are required to be sworn and examined; and before the same can be admitted to record, such witnesses must have declared on oath or affirmation, that they were present and saw the testator or testatrix sign said will, testament or codicil, in their presence, and heard him or her acknowledge the same to be his or her act and deed; and they believed the testator or testatrix to be of sound mind and memory, at the time of signing or acknowledging the same. [Id., Sec. 2.]

"It shall be the duty of each and every witness to any will, testament or codicil made and executed in this State as aforesaid, to be and appear before the Court of Probate, on the regular day for probate of such will, testament or codicil, to testify of and concerning the execution and validity of the same; and the said Court of Probate shall have power and authority to attach and punish, by fine and imprisonment, or either, any witness who shall, without a reasonable excuse, fail to appear when duly summoned for the purpose aforesaid; provided the said punishment by imprisonment shall in no case exceed the space of twenty days; nor shall a greater fine be assessed for any such default, than the sum of fifty dollars." [Id., Sec. 3.]

"When any will, testament or codicil shall be produced to

the Court of Probate, for probate of the same, and any witness attesting such will, testament or codicil, shall reside without the limits of this State, it shall be lawful for the Probate Justice to issue a dedimus potestatem, or commission, annexed to such will testament or codicil, directed to some Judge, Justice of the Peace, Mayor or other chief magistrate of the city, town, corporation or county where such witness may be found, authorizing the taking and certifying of his or her attestation in due form of law. And if the person to whom any such commission shall be directed, shall certify, in the manner that such acts are usually authenticated, that the witness personally appeared before him, and made oath or affirmation that the testator or testatrix signed and published the writing annexed to such commission, as his or her last will and testament; or that some other person signed it by his or her direction; that he or she was of sound mind and memory; and that he or she subscribed his or her name as a witness thereto, in the presence of the testator or testatrix, and at his or her request; such oath or affirmation shall have the same operation and the will shall be admitted to probate in like manner, as if such oath or affirmation had been made in the Court of Probate from whence such commission issued." [Id., Sec. 4.]

"In all cases, wherein a Probate Justice of the Peace, or such other person as may be authorized by law to grant probate of wills and testaments, may and shall have become a witness to any will or testament which is required by law to be proved before him as such Probate Justice of the Peace, or person authorized to grant probate as aforesaid, and the testimony of such witness is necessary to the proof of the same, then, and in such case, it shall be his duty to go before the Circuit Court of the county in which such will is to be admitted to record, and make proof of the execution of the same, in the same manner that probate of wills is required to be made in other cases. And it shall be the duty of the

Clerk of the Circuit Court aforesaid, forthwith to certify such will, proven as aforesaid, to the Probate Court of the county; and said will shall, thereupon, have the same force and effect that it would have had if it had been proven by one credible witness before the Court of Probate; and if there are other witnesses to said will, the Court of Probate shall take their evidence in support of said will, as in other cases." [Id., Sec. 5.]

"After any original will shall have been admitted to probate, the statute requires the Probate Justice to record the same in books to be provided and kept for that purpose; and any authenticated copy thereof certified under the hand and seal of said Probate Justice, is evidence in any court of law or equity. [Id., 540, Sec. 16.]

"Any will, testament and codicil, or authenticated copies thereof, proven according to the laws of any of the United States, or the territories thereof, or of any country out of the limits of the United States, and touching or concerning estates within this State, accompanied with a certificate of the proper officer or officers, that such will, testament, codicil or copy thereof, was duly executed and proved, agreeably to the laws and usages of that State or country in which the same was executed, shall be recorded as aforesaid, and shall be good and available in law, in like manner as wills made and executed in this State.* [Id., 538, Sec. 8.]

XII. THE TITLE TO REAL ESTATE BY DESCENT IN ILLINOIS.

By the Revised Statutes of Illinois, the estates, both real and personal, of resident or non-resident proprietors dying intestate, or whose estates or any part thereof, shall be deemed

*At least two subscribing witnesses are necessary to the validity of wills in Illinois, and the same number are required to prove it, unless their death or absence be such as to admit secondary proof. [Breese, 46.]

A will attested by three or more witnesses, some of whom is or are incompetent, is valid, if two of them are credible and competent. [Idem.]

and taken as intestate estate, and after all just debts and claims against such estates shall be paid as aforesaid, shall descend to and be distributed to his or her children and their descendants, in equal parts; the descendants of a deceased child or grandchild taking the share of their deceased parent, in equal parts among them: and when there shall be no children of the intestate, nor descendants of such children, and no widow, then to the parents, brothers and sisters of the deceased person and their descendants, in equal parts among them; allowing to each of the parents, if living, a child's part, or to the survivor of them, if one be dead, a double portion; and if there be no parent living, then to the brothers and sisters of the intestate, and their descendants. When there shall be a widow and no child or children, or descendants of a child or children of the intestate, then the one-half of the real estate, and the whole of the personal estate, shall go to such widow, as her exclusive estate forever; subject to her absolute disposition and control, to be governed in all respects by the same rules and regulations as are or may be provided in cases of estates of femmes sole: if there be no children of the intestate, or descendants of such children, and no parents, brothers, or sisters, or descendants of brothers and sisters, and no widow, then such estate shall descend in equal parts to the next of kin to the intestate, in equal degree, computing by the rules of the civil law; and there shall be no representation among collaterals, except with the descendants of the brothers and sisters of the intestate; and in no case shall there be a distinction between the kindred of the whole and the half blood, saving to the widow, in all cases her dower, as provided by law. [R. S., 545, Sec. 46.]

"When any femme covert shall die intestate, leaving no child or children, or descendants of a child or children, then the one-half of the real estate of the decedent shall descend

and go to her husband, as his exclusive estate forever." [Id., 546, Sec. 47.]

"Upon the decease of any alien, having title to, or interest in, any lands or tenements, such lands and tenements shall pass and descend in the same manner as if such alien were a citizen of the United States; and it shall be no objection to any person having an interest in such estate, that they are not citizens of the United States; but all such persons shall have the same rights and remedies, and in all things be placed on the same footing as natural born citizens, and actual residents of the United States." [Id., 48, Sec. 1.]

It is further provided, that if any person shall die, seized of any real estate, without having devised the same, and leaving no heirs or representatives capable of inheriting the same, or the devisees thereof capable of holding the same, such estate shall escheat to and vest in the State. [Id., 225, Sec. 1.]

XIII. THE LEVY AND COLLECTION OF LAND TAXES IN ILLINOIS.

All real estate within the State is liable to taxation, except such as belongs to the State, or to the United States; lands sold by the United States within the preceding five years; lands belonging to township school funds; lands whereon any school house, court house, or jail, shall have been erected; lands not exceeding five acres whereon any county buildings are situated; not exceeding ten acres whereon any church shall have been erected; burial grounds not exceeding ten acres; and grounds on which any building belonging to any literary, religious, benevolent, charitable, or scientific institution, shall be situated, not exceeding ten acres.

The statutes invest the County Commissioners' Court with the power to levy taxes in their respective counties, for coun-

ty purposes, under the restrictions that they shall not, unless specially authorized by law, levy a tax that shall exceed four mills on each dollar's worth of property. County taxes are required to be levied at the March terms of such courts, and to be collected with the State revenue, in the manner hereinafter indicated. [R. S., 438, Sec. 8.]

On or before the first day of February, annually, the Auditor of Public Accounts in Illinois is required to prepare and transmit to the Clerks of the Commissioners' Courts for the several counties, a list of lands which have become subject to taxation within the preceding year, from which such Clerks are enabled to prepare the Assessor's book. The Treasurer of each county is ex-officio the Assessor. [Id., Sec. 12, 13.]

It is made the duty of every Clerk of the County Commissioners' Court, on or before the first Monday of March in each year, to cause to be delivered to the Assessor of his county, in a well bound book, a transcript containing a list and description of all taxable lands and town lots lying within his county, except such as shall have been sold to the State, and remain unredeemed, with the names of purchasers of lands from the United States and from this State, together with the names of the present owners, in a separate column, when the same are known; and the said transcript, when returned, is required to be kept for the use of future Assessors. To this, the lands contained in the Auditor's list are required to be added.

Such Clerk is also required to specify, in a separate and distinct list, and deliver the same to the Assessor, all delinquent lands and town lots lying within his county, which may have been previous to that time forfeited to the State for taxes, and remaining unredeemed from such forfeiture. [Id., Sec. 11.]

The Treasurer, in the capacity of Assessor, upon the receipt of such transcript and list, is required to prepare a list

of all taxable property within his county, and to proceed to assess the value thereof by going to the place of residence of each owner of taxable property within his county. And if he shall deem it necessary, he may require every owner of taxable property "to give in, under oath, either by himself or agent, a list and description of all his taxable lands, by townships, ranges, quarter sections, tracts, lots, or parts thereof, and the number of acres in each tract, with the improvements thereon, all town lots, with the improvements thereon, all pleasure carriages, whether with two or four wheels, all horses, mares, jacks, jennies, mules, indentured servants, neat cattle, ships and vessels, stocks, money on hand and at interest, household furniture, and every other description of personal property, all capital employed each year in merchandising, adopting as a criterion, the value of the greatest amount of goods on hand at any time in the year, and he (the Assessor) shall, in the presence of such person, enter the same in his book, and value each tract or lot separately, and each species of personal property separately, placing the description and value in figures, opposite the name of the person owning or listing the same, provided that unimproved town lots may be listed and assessed in blocks." [Id., 439, Sec. 16.]

The minimum value of all lands in the State for the purpose of taxation is three dollars per acre.

"If any Assessor shall be unable to find the owner of any lands or lots contained in his list, he shall value the same according to the best information he can procure, and enter the same on his list in the name of the patentee, or present owner, if known." [Id., 440, Sec. 17.]

"If any person shall give a false or fraudulent list, or refuse to deliver to the Assessor, when called on for that purpose, a list of his or her taxable property, as required by law, the said Assessor, as a penalty therefor, shall assess the property of such person at double its value." [Id., Sec. 18.]

"Lands and town lots owned by non-residents of the county, when once correctly listed for taxation by their owners, shall not be required to be listed again by them till a subdivision or change of ownership takes place." [Id., Sec. 19.]

"If any real or personal property shall be omitted in the assessment of any year or number of years, the same when discovered shall be assessed by the Assessor for the time being, and placed upon the assessment list with the arrearages of tax which might have been assessed with six per cent interest thereon, from the time the same ought to have been paid; the Clerk of the County Commissioners' Court shall also have power to list any property omitted for a previous year or years, and add the same to the Collector's list, and report the same to the County Commissioners' Court at their next term; and said court is required to enter the same of record, and charge the Collector with the same, and the Clerk to certify said charges to the Auditor at the time of certifying the allowances made to Collectors." [Id., Sec. 20.]

"Every Assessor shall complete the assessment of property in his county, on or before the first Monday of August in each year, and return to the County Commissioners' Court the abstract of lands furnished him by said Clerk, also the list of delinquent real estate forfeited to the State and still owned by the same, with the valuation thereof, and his list and description of all taxable property within the county, with the names of owners when known, and valuation." Id., 440, Sec. 21.]

"The Clerks shall make out copies of the said lists, and on or before the second Monday of September in each year, transmit a copy of the list of forfeited lands and lots, with the valuation thereof to the Auditor, and deliver a copy of the other to the Collector of his county for the purpose of collection; and the Commissioners' Court shall be required to make all necessary corrections in the same." [Id., Sec. 22.]

"The Assessor shall add up his own figures in the columns

expressing the total valuation of real estate, the total valuation of personal property, and the total amount of State tax, county tax, and road tax." [Id., Sec. 23.]

"Every Clerk shall immediately after the September term of the County Commissioners' Court, transmit by mail to the Auditor, a statement of the aggregate amount of State tax assessed in his county, and the Auditor shall charge the same to the Collector." [Id., Sec. 24.]

"The Clerk of the County Commissioners' Court shall, at the same time as aforesaid, transmit to the Auditor a statement showing the aggregate amount of tax on real estate in his county, for State and county purposes respectively; also a statement of the amount of taxes on personal property, for State and county purposes respectively, together with a statement of the rate of taxation levied for county purposes in this county." [Id., 441, Sec. 25.

The statutes make ample provision for correcting errors in the assessment rolls, where any person shall feel himself aggrived by the assessment of his property. The County Commissioners' Court, at the September term thereof, next succeeding the assessment, has the power, on the application of any person whose property has been assessed during the current year, to review the record and list certified by the Clerk; and if it shall be made to appear by credible proof, that the valuation of the Assessor was too high, such court in its discretion may order a reduction. But the party aggrieved must apply at the September term next succeeding the assessment complained of, or he will be concluded by the assessment as made by the Assessor.

The Sheriff of each county in Illinois, is ex-officio Collector of taxes levied therein. After having given a bond to the people of the State, for the faithful performance of his duty as Collector of taxes, it is his duty to receive from the County Commissioner's Clerk, the assessed list, and to proceed to collect the taxes charged in said list, by calling upon

each person residing in his county, at his or her usual place of residence, and requiring payment thereof.

It is the duty of such Clerk to deliver the assessment list to the Sheriff, on the second Monday of September annually, or as soon thereafter as such Sheriff shall have given his bond as above provided. [Id., 442, Sec. 31.]

Upon the receipt of the list by the Sheriff, a lien upon the forfeit assessed, attaches for the tax; and no sale or transfer of the same after that time, can defeat or affect such lien. The property may be seized by the Collector and by him sold to discharge the taxes and the costs and expenses of collection. [Id., Sec. 33.]

The statute further provides that in case any person shall refuse or neglect to pay his or her taxes when demanded, or within ten days thereafter, it shall be the duty of the Collector to levy the same, together with the costs and charges that may accrue by distress and sale of the personal property of such person as ought to pay the same wherever the same may be found in the county. No real estate can be legally sold for taxes, whilst personal property can be found by the Collector. But no sale is valid unless, by advertisements posted in at least three public places in the precinct where such sale shall take place, at least ten days previous to the day of sale, the Collector shall have notified the public of the time and place thereof, and the property to be sold. [Id., Sec. 35, 36.]

The sale is required to be at public auction, and if practicable, no more property than is sufficient to pay the tax, costs and charges due, should be sold. "Land shall, if convenient, be sold in parcels, and if sold for more than the amount of the tax, costs and charges, the surplus shall be returned to the owner of such property." [Id., Sec. 37.]

State taxes are required to be collected in gold and silver coin, and Auditor's warrants; and county taxes, in gold and silver coin, Auditor's warrants, or jury certificates.

On or before the first Monday of March next ensuing the receipt of the tax list by the Sheriffs of the several counties, they are required to pay all taxes by them collected for State purposes, into the State treasury. As to county taxes, every Collector is required to pay all sums collected into the county treasury at the end of every month, except county orders and jury certificates; and on the first Monday of June annually, it is his duty to make a final settlement, and to account for and pay over the whole amount of revenue due the county, deducting therefrom the amount of taxes he may have been unable to collect, by reason of the insolvency, removal, or non-residence of persons charged with taxes. [Id., Sec. 43, 44.]

But when any person owning lands in any county shall fail to pay taxes assessed thereon, and the Collectors shall be unable to find any personal property of such person in his county, whereon to levy, of a value sufficient to pay the taxes and costs, it is made the duty of the Collector to make report thereof to the Circuit Court of his county, at the first term thereof in each year. [Id., 444, Sec. 46.]

At least six weeks notice of such report and application, however, is necessary, to be published in some newspaper printed in the said county, if any such there be, or if there be none, then in the nearest newspaper in the State; which notice is required to contain the names of the owner or owners, if known, the amount of the delinquent tax, interest, and costs due thereon, and the year or years for which the same are due; and to mention his intended application to the court for judgment against said lands, and for an order to sell the same, for the satisfaction of such taxes, interest, and costs; and that on the fourth Tuesday next succeeding the day fixed by law for the commencement of the said term of the said Circuit Court, all the lands against which judgment shall be pronounced, and for the sale of which, such order is required to be made, will be exposed to public sale at the

court house of the said county, for the amount of said taxes, interest, and costs due thereon. [Id., Sec. 47.]

Such Circuit Court, at the term aforesaid, is required to call the docket of such cases, and if upon such calling, any defense be offered by any of the owners of lands delinquent and reported, or by any person having a claim or interest therein, it shall hear and determine the same in a summary way, without pleadings; and if no defense be made, to pronounce judgment against the said lands and direct the Clerk to issue an order for their sale. [Id., 445, Sec. 58.]

On the day specified in the Collector's notice, it is the duty of that officer to attend at the court house in his county, and then and there, at the hour of ten o'clock in the forenoon, to proceed to offer for sale, separately, each tract of land in the said list, on which the taxes and costs have not then been paid; and the person offering to pay the taxes and costs, for the least quantity of land, becomes the purchaser of such quantity, to be taken from the east side of the tract. [Id., Sec. 51.

"Any person or persons owning or claiming lands advertised for sale as aforesaid, may pay the taxes, interest and costs due thereon, to the Collector of the county in which the same are situated, at any time before the sale thereof." [Id., 446, Sec. 61.]

In respect to lands designated and known as Illinois and Michigan Canal Lands, sold upon a credit, there are a number of special provisions. Where purchasers fail to pay the taxes assessed on them, it is the duty of the Collector to report such failure to the acting Commissioner of the said canal, and thenceforth all right, interest and title of the said purchaser ceases; and said lands are not permitted in any case to be sold for the non-payment of taxes, and any sale, if made, is declared to be absolutely void. [Id., 450, Sec. 94.]

"That if the taxes upon the said property assessed as

aforesaid, shall not be paid according to law, and it shall be necessary to sell the same for taxes, such sales shall extend to the interest paid, and all improvements thereon; the fee simple title to said property still remaining in the State. [Id., 590, Sec. 2.]

Every tract of land offered for sale by any Collector as hereinbefore provided, and not sold for want of bidders, is considered as forfeit to the people, and the claims thereto of the former owner or owners utterly transferred to and vested in the State of Illinois; yet lands thus forfeited may be redeemed at any time within two years, by paying to the Clerk of the County Commissioners' Court of the county in which said lands may be situated, double the amount for which such real estate was forfeited, and all taxes accruing thereon to the time of redemption, with interest on each year's tax, at the rate of six per cent, from the first Monday of May in each year to the time of redemption. Infants, femmes covert and lunatics may redeem at any time within one year after the removal of such disability or disabilities. [Id., 449, Sec. 78.]

Concerning forfeited lands, as contradistinguished from such as shall be sold by the Collector for taxes as herein above mentioned, it is provided that every two years from the first Monday of September, eighteen hundred and forty-five, the Clerks of the County Commissioners' Courts of the several counties respectively shall cause them to be sold at public auction. When any sale of any lot thus forfeited shall be effected, it is the duty of such Clerk to deliver to the purchaser a certificate of purchase, which, on being presented to the Auditor, entitles the legal holder thereof to a deed "conveying all the right, title, interest and claim of the State to the tracts or lots described in said certificate." [Id., 450, Sec. 87.]

XIV. LAND TAX FORFEITURES AND REDEMPTIONS IN ILLINOIS.

The method provided for the collection of taxes on lands, was indicated in the preceding article. Upon a sale by the Sheriff, acting as Collector, the title of the original owner is overshadowed by the paramount claim and lien of the people of the State. But "real estate sold for delinquent taxes, may be redeemed at any time before the expiration of two years from the date of sale, by the payment in specie, to the Clerk of the County Commissioners' Court of the proper county, of double the amount for which the same was sold, and all taxes accruing after such sale, unless such subsequent taxes have been paid to the Collector, as may be shown by the Collector's receipt, by the person redeeming, with six per cent interest thereon from the first day of May in each year up to the time of payment; provided, that if the real estate of any infant, femme covert, or lunatic, be sold for taxes, the same may be redeemed at any time within one year after such disability shall be removed, upon the terms specified in this section." [R. S., 447, Sec. 69.]

"At any time after the expiration of two years from the sale of any real estate for taxes, if the same shall not have been redeemed, the Collector, on request, and on the production of the certificate of purchase, shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the real estate described in such certificate." [Id., Sec. 71.]

"The deed so made by the Collector, shall be acknowledged and recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs or assigns, the title of the property therein described." [Id., Sec. 72.]

Where purchasers of land sold for taxes, shall neglect to pay the taxes thereon, and such land shall be again sold for taxes before the expiration of two years from the date of his

or her purchase, such purchaser is not entitled to a deed for the land until the expiration of two years from the date of the second sale; during which time the land is subject to redemption upon the usual terms, except that the person redeeming is only required to pay for the use of such purchaser, the amount paid for the land, and double the amount paid by the second purchaser.* [Id., 451, Sec. 97.]

XV. LIMITATION OF ACTIONS FOR THE RECOVERY OF REAL ESTATE IN ILLINOIS.

The statutes provide that no person having any right of entry into any lands, tenements or hereditaments, shall make an entry therein, but within twenty years next after such right shall have accrued; and that such person shall be barred from any entry afterwards. [R. S., 349, Sec. 6.]

That every real, possessory, ancestral or mixed action, or writ of right brought for the recovery of any lands, tenements or hereditaments, shall be brought within twenty years next after the right or title thereto, or cause of such action accrued, and not after. [Id., Sec. 7.]

That every real, possessory, ancestral or mixed action, or writ of right brought for the recovery of any lands, tenements or hereditaments, of which any person may be possessed by actual residence thereon, having a connected title in law or equity, deducible of record, from this State or the United States, or from any public officer or other person authorized by the laws of this State, to sell such land for the non-payment of taxes, or from any Sheriff, Marshal, or other person authorized to sell such land on execution, or under any order, judgment, or decree, of any Court of Record, shall be brought within seven years next after possession being

* In a sale for taxes under special authority, every substantial requisite of the statutes of the State must be complied with either to divest an individual of his property, or to invest a purchaser with a valid title. [4 Peters, 349.]

A poll tax is inhibited by the Constitution of Illinois, and cannot, therefore, be legally imposed or collected. [Breese, 183.]

taken as aforesaid; but when the possession shall acquire such title after taking such possession, the limitation shall begin to run from the time of acquiring title. [Id., Sec. 8.]

But possession, to bar such rights, actions, and suits, must have been continued in manner aforesaid, for the term of seven years next preceding the time of asserting the right of entry, or the commencement of any suit or action. Id., Sec. 9.]

It is further provided, that no person who has or may have any right of entry into any lands, tenements, or hereditaments, of which any person may be possessed, by actual residence thereon, having a connected title in law or equity, deducible of record from this State, or the United States, or from any public officer, or other person authorized by the laws of this State to sell such lands for the non-payment of taxes, or from any Sheriff, Marshal, or other person authorized to sell such land on execution, or under any order, judgment, or decree, of any Court of Record, shall make any entry therein, except within seven years from the time of such possession being taken; but when the possessor shall acquire such title after the time of taking such possession, the limitation shall begin to run from the time of acquiring title. [Id. 350, Sec. 11.]

In all the foregoing cases in which the person or persons who shall have any right of entry, title, or cause of action, shall be, at the time of such right of entry, title, or cause of action, under the age of twenty-one years, insane, or femme covert, such person or persons may make such entry, or institute such action, so that the same may be done within such time as is within the time limited after his or her becoming of full age, sane, or femme sole.* [Id., Sec. 14.]

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* The limitation upon actions of trespass, trover, replevin, for rent, on parol demise, account, upon the case (except slander and actions for malicious prosecutions and such actions as concern the trade of merchandise between merchant and merchant, their factors, or agents) is five years; upon assault, battery, wounding,

XVI. REAL ESTATE EXEMPTIONS IN ILLINOIS.

No real estate of any debtor in Illinois, except not exceeding one-eighth of an acre laid off for a burial place, is exempt from levy and sale upon executions. But the land on which a judgment debtor resides (the homestead) is protected from any levy or sale until all his personal property liable to execution, and all his other real estate shall have been exhausted. [R. S., 301, Sec. 9.]

And when any property, real or personal, shall be taken in execution, if such property be susceptible of division, it is required to be sold in such quantities as may be necessary to satisfy such execution and costs.* [Id., 302, Sec. 10]

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imprisonment, and malicious prosecutions, two years; upon actions of slander, one year; upon actions of debt or covenant upon any lease under seal, any single or penal bill, promissory note, or writing obligatory, sixteen years. [R. S., 343, Sec. 1, 2, 3, 4.]

*The necessary wearing apparel of every person shall be exempt from execution, writ of attachment and distress; and the following property when owned by any person being the head of a family and residing with the same, shall be exempt from levy and sale on any execution, writ of attachment, or distress for rent; and such articles of property shall continue so exempt while the family of such person, or any of them, are removing from one place of residence to another in this State, viz:

First, Necessary beds, bedsteads, and bedding; the necessary utensils for cooking; necessary household furniture, not exceeding in value fifteen dollars; one pair of cards, two spinning wheels, one weaving loom and appendage; one stove and the necessary pipe therefor being in use, or put up for ready use, in any house occupied by such family.

Second, One milch cow and calf, two sheep for each member of the family, and the fleeces, taken from the same, or the fleeces of two sheep, for each member of a family which may have been purchased by any debtor not owning sheep, and the yarn and cloth that may be manufactured from the same, and sixty dollars worth of property suited to his or her condition or occupation in life, to be selected by the debtor.

Third, Necessary provisions and fuel for the use of the family for three months, and necessary food for the stock hereinbefore exempted from sale, or that may be held under the provisions of this chapter.

XVII. THE INTEREST OF MONEY IN ILLINOIS.

The rate of interest upon the loan or forbearance of any money, goods, or things in action, is fixed by the General Assembly of Illinois at six per centum per annum, or six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or a shorter time.

Creditors are allowed to receive at the rate of six per centum per annum for all moneys after they become due, on any bond, bill, promissory note or other instrument of writing; on any judgment recovered before any court or magistrate authorized to enter up the same within this State, from the day of signing judgment until the effects be sold, or satisfaction of such judgment be made; likewise, on money lent, on money due on the settlement of accounts from the day of liquidating accounts between the parties, and ascertaining the balance; on money received to the use of another, and retained without the owner's knowledge; and on money withheld by an unreasonable and vexatious delay of payment. [R. S., 295, Sec. 1, 2.]

XVIII. PENALTY AND FORFEITURE OF USURY IN ILLINOIS.

The statute provides that "no person or corporation shall directly or indirectly accept or receive in money, goods, discounts, or things in action, or in any other way, any greater sum or greater value, for the loan, forbearance or discount of any moneys, goods or things in action, than as above described." [R. S., 295, Sec. 36.]

"Whenever in any action brought on any contract or assurance, for the payment of money, or any other thing, it shall appear to the court before which such action shall be tried, by the pleading on the case, and on application of the defendant, that a greater rate of interest shall have been directly or indirectly received, discounted or taken, than is allowed

by this chapter, the defendant shall recover his full costs, and the plaintiff shall forfeit threefold the amount of the whole interest reserved, discounted or taken, and shall have judgment and execution for the balance only, which may remain due upon said contract or assurance, after deducting threefold the amount of said interest, one-third part of which shall be paid to the defendant, and the remaining two-thirds shall be paid into the county treasury of the county in which such suit shall have been instituted." [Id., Sec. 4.]

"If any person or corporation shall, directly or indirectly, contract to accept or receive in money, goods, discounts or things in action, any greater sum or greater value, for the loan, forbearance, or discount of any money, goods or things in action, than is prescribed by this chapter, he, she, or they shall forfeit and pay to the person sueing for the same, threefold the amount of the whole interest so contracted, to be reserved, discounted or taken: provided said suit be not commenced by either of the contracting parties; and if so, then the amount so recovered shall be paid into the county treasury of the county where such suit shall have been instituted. [Id., Sec. 5.]

Every person, and his personal representatives, who for any such loan, discount or forbearance, shall pay or deliver any greater sum or value than is above allowed to be received, may recover in an action against the person who shall have taken or received the same, and his personal representatives, threefold the amount of the money so paid, or value so paid, or value delivered above the rate aforesaid, either by an action of debt, in any court having any jurisdiction thereof, or by bill in chancery in the Circuit Court, which court is hereby authorized to try the same: provided said action shall be brought, or bill filed within two years from the time when the right thereto accrued.* [Id., Sec. 6.]

* Debtors may call their creditors as witnesses, on any trial where the question of usury is in issue, to prove such usury.

CHAPTER V.

THE STATE OF MICHIGAN.

Source of Title to Lands in the State. Native Proprietors thereof. Erection of Michigan Territory from that of Indiana. Enlargement of the same upon the Admission of Illinois as a State. Act of Congress authorizing the People of the Territory to form a Constitution, and for the Admission of Michigan as a State; and another to Establish the Northern Boundary Line of the State of Ohio, and to Provide for the Admission of Michigan into the Union upon the conditions therein expressed. Her Constitution, and Land Titles generally. The Execution, Attestation, Proof, Acknowledgment, Authentication, and Recording of Conveyances. The Execution, Attestation, Probate, and Recording of Wills of Real Estate. Regulations concerning Titles by Descent. The Levy and Collection of Land Taxes. Land Tax Forfeitures, Sales, and Redemptions. Limitations. Exemptions. Interest of Money, and Usury.

I. SOURCE OF TITLE TO LANDS IN THE STATE OF MICHIGAN—NATIVE PROPRIETORS THEREOF, &C.

This State derived her name from the Lake that washes her western border, called by the natives, Mitch-igye-gan.

Although her advancement in agriculture and commerce would indicate a maturer age, Michigan is but an infant member of the republican family, her years being chronicled by ten annual suns. She is, however, not without the charms of antiquity. In a retrospect nearly obscure in oblivion, when the untutored Indian alone broke the reigning silence of her woodlands, charms clustered about her unique and mysterious inhabitants.

The territory which now forms the domain of the State, first obtained notice in 1620—the year of the landing of the

Pilgrims at Plymouth; and was then in the occupancy of the Algonquins and Hurons, as native proprietors. These races were distinctive in their immediate paternity, yet it is presumed that both were of Tartar origin. [Ante 28.] They were closely allied to each other, as against the Iroquois. Having been for a long period in the undisputed possession of the country, they had come to believe that the rivers and forests, the fish and the wild game, were their own; and that the Great Spirit intended them for their occupation, sustenance and comfort. It is true, that they were rude and uncultivated, and utterly unused to the ways of civilization; yet they dwelt together in towns and villages, and cultivated apples and patches of corn. They were also ingenuous, hospitable, and humane.

Whilst thus in possession of the country, the French government, under whose auspices and patronage Canada had been theretofore colonized, adopted measures for the exploration of the wilderness world about the lakes, with a view to the fur trade, and of making title to the soil thereof, as against the natives. Discovery and possession of any country under the authority of an existing government, is held to make a title thereto, as against them, subject only to their right of occupancy. [8 Wheaton, 543.]

Claiming the country about the lakes, the ecclesiastical establishment at Quebec adopted measures for the exploration thereof by missionaries, among the first of whom was Charles Raymbault, who visited the tribes of Nipising, in 1641. He was succeeded by Bussani, Claude, Mesnard and others, who not only explored the country, but carried the cross and the lilies of the Bourbons to the remotest boundaries of the Canadian territory.

For the documentary history of the surrender of this region to the English, the relinquishment of the same by the latter, the cessions of the States, the treaties extinguishing the Indian right of occupancy, and the ordinance of 1787, for the

government of the territory of the United States northwest of the river Ohio, which included Michigan, see ante, 127 to 157, inclusive.

Michigan was taken chiefly from Indiana territory, previous to the erection of the territory of Illinois, but her boundaries were subsequently enlarged, upon the admission of Illinois into the Union.

II. ERECTION OF MICHIGAN TERRITORY BY AN ACT OF CONGRESS ENTITLED "AN ACT TO DIVIDE THE INDIANA TERRITORY INTO TWO SEPARATE GOVERNMENTS," APPROVED JANUARY 11, 1805.

"Section I. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the thirteenth day of June next, all that part of the Indiana territory, which lies north of a line drawn east from a southerly bend or extreme of Lake Michigan, until it shall intersect Lake Erie, and east of a line drawn from the said southerly bend or extreme of Lake Michigan, until it shall intersect Lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall, for the purpose of temporary government, constitute a separate territory, and be called Michigan.

"Sec. II. And be it further enacted, That there shall be established within the said territory a government in all respects similar to that provided by the ordinance of Congress passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States, northwest of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled, "An act to provide for the territory northwest of the river Ohio;" and

the inhabitants thereof shall be entitled to, and enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the territory of the United States, northwest of the river Ohio, by the said ordinance.

"Sec. III. And be it further enacted, That the officers for the said territory, who by virtue of this act shall be appointed by the President of the United States by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as by the ordinance aforesaid, and the laws of the United States, have been provided, and established for similar offices in the Indiana territory; and the duties and emoluments of Superintendent of Indian Affairs, shall be united with those of Governor.

"Sec. IV. And be it further enacted, That nothing in this act contained, shall be construed so as, in any manner, to affect the government now in force in the Indiana territory, further than to prohibit the exercise thereof within the said territory of Michigan, from and after the aforesaid thirtieth day of June next.

"Sec. V. And be it further enacted, That all suits, process and proceedings, which, on the thirtieth day of June next, shall be pending in the court of any county, which shall be included within the said territory of Michigan; and also all suits, process and proceedings, which on the said thirtieth day of June next, shall be pending in the General Court of the Indiana territory, in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the territory of Michigan aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana territory had remained undivided.

"Sec. VI. And be it further enacted, That Detroit shall be

the seat of government of the said territory, until Congress shall otherwise direct."* (U. S. Statutes, by Peters, Vol. 2, 309.]

III. AN ACT TO ESTABLISH THE NORTHERN BOUNDARY LINE OF THE STATE OF OHIO, AND TO PROVIDE FOR THE ADMISSION OF THE STATE OF MICHIGAN INTO THE UNION UPON THE CONDITIONS THEREIN EXPRESSED. APPROVED JUNE 15, 1836.

"Sec. I. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the northern boundary line of the State of Ohio, shall be established at, and shall be a direct line drawn from the southern extremity of Lake Michigan, to the most northerly cape of the Maumee, (Miami) bay, after that line, so drawn, shall intersect the eastern boundary line of the State of Indiana; and from the said north cape of the said bay, northeast to the boundary line between the United States and the province of Upper Canada, in Lake Erie; and thence, with the said last mentioned line, to its intersection with the western line of the State of Pennsylvania.

"Sec. II. And be it further enacted, That the constitution and State Government, which the people of Michigan have formed for themselves be, and the same is hereby, accepted, ratified and confirmed; and that the said State of Michigan shall be, and is hereby, declared to be one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original States, in all respects

*In 1834 a dispute arose between the people of the State of Ohio and those of the territory of Michigan concerning a tract of valuable land, situated at the proposed terminus of the Wabash and Erie Canal. So much excitement prevailed, that each contending party sent a military force to the disputed frontier, and the people of Michigan called a convention, adopted a constitution, and petitioned Congress to be admitted into the Union with the territory in dispute. Congress, however, decided in favor of the claims of Ohio, and assigned to Michigan in lieu thereof, twenty-five thousand square miles of barren mountainous country on the shores of Lake Superior.

whatsoever: provided always, and this admission is upon the express condition, that the said State shall consist of and have jurisdiction over all the territory included within the following boundaries, and over none other, to wit: beginning at the point where the above described northern boundary of the State of Ohio intersects the eastern boundary of the State of Indiana, and running thence with the said boundary line of Ohio, as described in the first section of this act, until it intersects the boundary line between the United States and Canada, in Lake Erie; thence with the said boundary line between the United States and Canada through the Detroit river, Lake Huron, and Lake Superior, to a point where the said line last touches Lake Superior; thence in a direct line through Lake Superior, to the mouth of the Montreal river; thence through the middle of the main channel of the said river Montreal, to the middle of the Lake of the Desert; thence in a direct line to the nearest head water of the Menomonie river; thence through the middle of that fork of the said river first touched by the said line, to the main channel of the said Menomonie river; thence down the centre of the main channel of the same, to the centre of the most usual ship channel of the Green Bay of Lake Michigan; thence through the centre of the most usual ship channel of the said bay to the middle of Lake Michigan; thence through the middle of Lake Michigan, to the northern boundary of the State of Indiana, as that line was established by the act of Congress of the nineteenth of April, eighteen hundred and sixteen; thence due east, with the north boundary line of the said State of Indiana, to the northeast corner thereof; and thence south, with the east boundary line of Indiana, to the place of beginning.

"Sec. III. And be it further enacted, That, as a compliance with the fundamental condition of admission contained in the last preceding section of this act, the boundaries of the said State of Michigan, as in that section described, declared,

and established, shall receive the assent of a convention of delegates elected by the people of the State, for the sole purpose of giving the assent herein required; and as soon as the assent herein required shall be given, the President of the United States shall announce the same by proclamation; and thereupon, and without any further proceeding on the part of Congress, the admission of the said State into the Union, as one of the United States of America, on an equal footing with the original States in all respects whatever, shall be considered as complete, and the Senators and Representatives who have been elected by the said State, as its representatives in the Congress of the United States, shall be entitled to take their seat in the Senate and House of Representatives respectively, without further delay.

Sec. IV. And be it further enacted, That nothing in this act contained, or in the admission of the said State into the Union, as one of the United States of America, upon an equal footing with the original States in all respects whatever, shall be so construed or understood as to confer upon the people, Legislature, or other authorities of the said State of Michigan, any authority or right to interfere with the sale by the United States, and under their authority, of the vacant and unsold lands within the limits of the said State, but that the subject of the public lands, and the interest which may be given to the said State therein, shall be regulated by future action between Congress, on the part of the United States, and the said State, or the authorities thereof. And the said State of Michigan shall in no case and under no pretence whatsoever, impose any tax, assessment or imposition of any description upon any of the lands of the United States within its limits."* [U. S. Stat. by Peters, 5 : 49.]

*The ordinance of 1787 declared that not less than three nor more than five States should be formed from the territory northwest of the river Ohio. Ohio, Indiana and Illinois had been admitted; so that Michigan was the fourth State that claimed admission; leaving Wisconsin to apply when her population should warrant the application.

IV. AN ACT SUPPLEMENTARY TO THE FOREGOING ACT, APPROVED JUNE 23, 1836.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in lieu of the propositions submitted to the Congress of the United States by an ordinance passed by the Convention of delegates at Detroit, assembled for the purpose of making a constitution for the State of Michigan, which are hereby rejected; and that the following propositions be, and the same are hereby offered to the State Legislature of Michigan, for their acceptance or rejection, which if accepted, under the authority conferred on the said Legislature by the Convention which framed the constitution of the said State, shall be obligatory upon the United States.

First. That section numbered sixteen in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools.

Second. That the seventy-two sections of land set apart and reserved for the use and support of a university by an act of Congress approved on the twentieth day of May, eighteen hundred and twenty-six, entitled, "An act concerning a seminary of learning in the Territory of Michigan," are hereby granted to the State, to be appropriated solely to the use and support of such university, in such manner as the Legislature may prescribe; and provided also, that nothing herein contained shall be so construed as to impair or affect in any way the rights of any person or persons claiming any of said seventy-two sections of lands, under contract or grant from said university.

Third. That five entire sections of land, be selected and located under the direction of the Legislature, in legal divisions of not less than one quarter section, from any of the

unappropriated lands belonging to the United States within the said State, are hereby granted to the State for the purpose of completing the public buildings of the said State, or for the erection of public buildings at the seat of government of the said State, as the Legislature may determine and direct.

Fourth. That all salt springs within the State, not exceeding twelve in number, with six sections of land adjoining or as contiguous as may be to each, shall be granted to the said State for its use, the same to be selected by the Legislature thereof, on or before the first of January, eighteen hundred and forty; and the same, when so selected, to be used on such terms, conditions, and regulations, as the Legislature of the said State shall direct: provided, that no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be conferred or adjudged to any individual or individuals shall, by this section, be granted to said State: and provided also, that the General Assembly shall never sell or lease the same, at any one time, for a longer period than ten years, without the consent of Congress.

Fifth. That five per cent of the net proceeds of the sales of all public lands lying within the said State, which have been or shall be sold by Congress, from and after the first day of July, eighteen hundred and thirty-six, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the Legislature may direct: provided, that the five foregoing propositions herein offered, are on the condition that the Legislature of the said State, by virtue of the powers conferred upon it by the Convention which framed the constitution of the said State, shall provide, by an ordinance irrevocable without the consent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to

the bona fide purchasers thereof: and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, whilst they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or other purpose, for the term of three years from and after the date of the patentees respectively.* [U. S. Statutes by Peters, 59.]

V. THE CONSTITUTION OF THE STATE OF MICHIGAN.

The organic law of Michigan was adopted in a Convention, begun and held at the city of Detroit, on the eleventh day of May, eighteen hundred and thirty-five. As has been intimated, Michigan adopted her Constitution in advance of the act of Congress giving permission, claiming the right of asserting a self-government, under the ordinance of 1787.

It protects real estate from unwarrantable seizure, and makes provision for escheats, yet it leaves the regulation of estates and tenures to the Legislature. [See Appendix.]

VI. LAND TITLES GENERALLY IN THE STATE OF MICHIGAN.

It has been seen, that as the State of Michigan was erected from the territory of the United States northwest of the river Ohio, the title to her lands was derived from the General Government. And as she came into the Union upon the condition that her laws should be republican, her Legislatures have complied with the terms, by regulating estates in land after the example of New-York.

*By an act approved January 26, 1837, Michigan was admitted into the Union, a Convention called for that purpose, having assented to the boundaries assigned her by Congress. She was also declared to be entitled to a share of the surplus revenue of the United States which had been ordered to be distributed, pending the controversy with Ohio concerning the boundary.

Estates of inheritance, estates for life, estates for years, and estates at will, or sufferance, are recognized by statutes, which are nearly literal transcripts of those cited, ante 79.

All estates tail are abolished; and every estate that would have been adjudged a fee tail, under the territorial laws existing prior to the second day of March, eighteen hundred and twenty-one, is, under the revised statutes, a fee simple. [R. S. Mich., 258, Sec. 3.]

Life estates are defined to be those where the use of lands is given by deed or will to one, and the remainder over to the heir. [Id., Sec. 5.]

All estates created by parol, have the effect of estates at will only, and are determinable by notice. [Id., Sec. 6]

Estates for years exist where the right is limited to a term, and so long as fifty years or more remain unexpired, the interest is regarded as real estate. [Id., Sec. 7.]

The original and ultimate property in all real estate is deemed to be possessed by the people; and where the title has been vested, and the incumbent of the title dies without heirs to inherit the same, the property escheats. [Id., 268, Sec. 1.]

Estates vest without restrictions as to alienism. In this respect, Michigan has adopted a policy, wise in itself, and well calculated to encourage a speedy settlement of the State. The statute provides that "any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise, or descent, and he may convey, mortgage, or devise the same; and if he shall die intestate, the same shall descend to his heirs; and in all cases, such lands shall be held, conveyed, mortgaged, or devised, or shall descend in like manner and with like effect, as if such alien were a native citizen of this State, or of the United States." [Id., 266, Sec. 27.]

"The title of any person to any lands heretofore conveyed, shall not be questioned, nor in any manner affected, by reason of

the alienage of any person from or through whom such title may have been derived." [Id., Sec. 27.]

The same liberality is extended to alien widows. Her alienage is no bar to her right of dower in and to all the lands of which her husband was seized during coverture, not relinquished by her, unless barred by jointure settled before marriage.

Dower, at common law, by non-resident, as well as resident widows, is fully guarantied by the statute; and the power to lease, as well as to convey, is unrestricted.

By a statute passed April 1, 1840, all persons, of lawful age, residing in Michigan, are empowered to convey real estate; and all not residing in, but owning lands in the State, are authorized to convey according to the laws of the State in which such person or persons reside. The exception of idiots and persons of unsound mind, contained in the New-York statutes, does not occur in this connection, yet it is to be presumed that the statute is to be taken with that qualification, as by common law capacity is requisite to the validity of any act concerning lands. The transmission of estates by devises and inheritance, is treated of under the appropriate heads.

VII. EXECUTION OF DEEDS AND MORTGAGES OF LANDS IN MICHIGAN.

The statutes provide that all conveyances of lands, or of any estate or interest therein, shall be by deed. [R. S., 257, Sec. 1.]

In a former chapter, this species of instrument was defined to be, such an orderly arrangement of written or printed words as clearly evince the purpose of the grantor in respect to the realty in question. The people of the new States are particularly averse to complicated forms of doing business; and in their desire to expunge from their statute books every vestige of fiction, they have dispensed with many require-

ments, which in the old are deemed safeguards of the title to real estate.

In Michigan, it is expressly provided that no act or ceremony whatever, shall be required to pass real estate other than the execution, witnessing, acknowledging, and recording, of the instrument which purports to transfer the title. Signing and sealing constitute the valid execution, which, together with the witnessing, will be considered in order.

It must be signed. This requirement pre-supposes an instrument susceptible of being signed, written or printed, or partly written and partly printed on paper, parchment, or some other substance equally capable of uniting within itself, preservation and convenience. It has been judicially held, that a transfer of land written upon white birch bark, was not a deed within the meaning of the law, and it is presumed that a writing upon stone, board, linen, or leather, would not be recognized as a valid deed.

It must be legibly written. A chirography, unsusceptible of being deciphered, conveys no information of its contents, and is void for uncertainty. In the language of Chief Justice Hagaman, "a deed to be valid, must be capable of an intelligent record." It must be so free from ambiguity that the purpose of the grantor may be apprehended from its reading. This is important to the grantee, as he cannot acquire any rights under it by implication, unsupported by its provisions. The revised statutes require the signing to be by "the person having the right to convey, or by his attorney;" but in the act amendatory of the revised statutes, passed April 1, 1840, the words, "or by his attorney," are not retained. As the latter enactment contains nothing in contravention of that provision, and does not repeal the statute which contains it, it is presumed that a deed may be signed, either by the grantor, or by his attorney duly authorized.

The signing should be by writing the name of the grantor in the usual manner; but if he cannot write, he may depute another to do it, as his amanuensis, or special agent, or he may make his mark thereto, in such form as he is accustomed to do, for a signature. Where an attorney signs a deed, he must have had authority in writing therefor, duly executed, witnessed, and acknowledged, in the manner in which the deed itself is required to be executed, witnessed, and acknowledged.

It must be sealed. In Michigan, adhesive and impressive substances are not indispensable to the validity of a seal. By an act passed in 1840, it is provided "that a scroll, or devise, used as a seal on any deed or other instrument, shall have the same force and effect as a seal would have, attached thereto, or impressed thereon, except such official seals as may be provided for by law."

It must be witnessed. Two witnesses, who shall subscribe their names thereto as such, are required to a deed. [Sess. Laws 1840.] Formerly, no deed could be acknowledged to which there was not at least one subscribing witness; but for the prevention of fraud, two are now requisite to its validity, in Michigan. As the acknowledgment or proof of the due execution is a necessary step in the process of alienation of real estate, it follows that all pre-requisites to such acknowledgment or proof, must be observed in conveyancing. Two witnesses are therefore indispensable to a valid conveyance; and they should be persons capable in law of being witnesses of the fact, of the signing and sealing by the grantor, in a court having jurisdiction to try the question. In selecting witnesses to a conveyance, therefore, no person who has been convicted of a felony within the State, and not restored to his former rights, should be called, for such are incapable, in law, of proving the fact. So, also, are those who are rendered incompetent from any other cause. Infancy, while it does not necessarily incapacitate a witness, may be so extreme as

to impeach the understanding, and in that way render an infant witness incompetent. If, however, an infant be so far advanced as to be capable of testifying under an oath, which he or she understands, and for a violation of which he or she apprehends the penalty, and who would be received by a court as a witness in a civil cause, he or she may be a subscribing witness to a deed.

This topic relates nominally to deeds, but as a mortgage is only a defeasible deed, both are denominated conveyances, and are governed by the same rules in respect to their execution. Releases of dower in real estate, are required to be executed in the same manner. In Michigan, the latter are termed deeds, in the statute, and if the right become vested by reason of the death of the husband, the widow, under prohibitions and regulations, conveys as if she were vested with the fee of the land. If, however, her right be only contingent as in the life time of her husband, she must, in addition to the signing, sealing, and witnessing, above mentioned, acknowledge on a separate examination, separate and apart from her husband, that she executed the deed or release, "without fear or compulsion from any one;" a certificate of which fact, by the acknowledging officer, must be endorsed upon the deed.

Powers of Attorney, which authorize another to execute a deed or mortgage, although not required in terms, it is presumed should be executed with all the formalities required in the execution of a deed. So, also, any instrument creating or declaratory of any trust concerning real estate, as "no trust concerning lands, excepting such as may arise or result by implication of law, shall be created or declared, unless by an instrument in writing, signed by the party creating or declaring the same, or by his attorney." [Id., 261, Sec. 27.]

To prevail as against a subsequent purchaser or incumbrancer, such trust must be duly witnessed, sealed, acknow-

ledged and recorded; because the three former are indispensable to the latter, and the latter is requisite to afford that notice, which will protect the instrument.

In respect to leases for more than seven years, it is provided, that unless they are executed, acknowledged, and recorded as a deed, they shall be ineffectual, except as against the grantor, his heirs, devisees, and persons, having actual notice. The bearing of this provision will be, therefore, apprehended by land owners and lessees, inasmuch as all leases not so executed may be defeated by a sale to a third person, without notice. It may be further remarked in this connection, that all leases in parol, create only a tenancy at will, and may be terminated at the option of the landlord, if the term of the parol agreement be for more than one year. Parol leases for a longer term than one year, are absolutely void, by the statute of frauds, and confer no right upon the tenant. Leases for more than one and less than seven years, must be in writing, but need not be sealed, acknowledged, nor recorded. Durable, and other leases, for a time beyond the limitation above mentioned, it will be seen, are controlled by the rules which govern in respect to absolute conveyances.

Mortgage defeasances not contained within the body of any conveyance, also come within this regulation. For it is provided, that "when a deed imports to contain an absolute conveyance of any estate in lands, but is made, or intended to be made, defeasible, by force of a deed of defeasance, or bond, or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs, or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been duly executed and recorded in the proper office." [Id., 281, Sec. 30.]

The same method should be pursued in the execution of mortgage discharges; nevertheless, mortgages may be dis-

charged by an entry on the margin of the record thereof, in the registry of deeds, signed by the mortgagee, or his executor, administrator, or assignee, acknowledging the satisfaction of the mortgage; and such entry, by statute, will have the same effect as a deed of release or satisfaction.

The foregoing provisions concerning conveyances of real estate, are guarded by others equally important to every land owner.

"Every conveyance of any estate or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration, of the same lands, rents, or profits as against subsequent purchasers, shall be void." [Fletcher's Revision, 1838, 328, Sec. 1.]

"No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser, who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefitted by such charge, was privy to the fraud intended." [Id., Sec. 2.]

"Every conveyance or charge, of or upon any estate or interest in lands, containing any provision for the revocation, determination or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from such grantor, for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge." [Id., Sec. 3.]

"When a power to revoke a conveyance of any lands, or the rents and profits thereof, and to re-convey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same

lands, rents or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner, and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared." [Id., Sec. 4.]

"If a conveyance to a purchaser, under either of the last two preceding sections, shall be made, before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made." [Id., Sec. 5.]

"No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed, conveyance, contract, agreement, note or memorandum thereof, made in writing, and signed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing." [R. S., 329, Sec. 6.]

"The preceding section shall not be construed to affect, in any manner, the power of a testator in the disposition of his real estate by a last will and testament; nor to prevent any trust from arising or being extinguished, by implication or operation of law; nor to prevent, after a fine shall have been levied, the execution of a deed, or other instrument in writing, declaring the uses of such fine." [Id., Sec. 7.]

"Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, be in writing, and signed by the party by whom the lease is to be made, or by some person thereunto by him lawfully authorized by writing." [Id., Sec. 8.]

"The consideration of any contract or agreement, or note or memorandum thereof, required by the provisions of this chapter to be made in writing, need not be set forth in such written contract, agreement, note, or memorandum, but may be proved by any other legal evidence." [Id., Sec. 9.]

Nothing in this chapter contained shall be construed to abridge the powers of Courts of Equity to compel the specific performance of agreements, in cases of part performance of such agreement." [Id., Sec. 10.]

In addition to the foregoing, it is provided that every conveyance or assignment in writing, or otherwise made with the intent to hinder, delay or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands shall be void, as against the person or persons so hindered, delayed or defrauded, and equally void as against the heirs, successors, personal representatives or assignees of such creditors or purchasers.. So also is every grant or assignment of any existing trust in lands, unless the same be in writing, and lawfully signed and acknowledged or proven. But it is worthy of especial notice, that the question of fraudulent intent in all the foregoing cases, is made by statute a question of fact, and not of law, or the presumption of law. Under the guaranties of the organic law, it may be tried by a jury, before whom all extenuating, and explanatory facts and circumstances may be adduced, in support of the good faith and honesty of every such transaction." [Id., 332, Sec. 4.] For the legal operation of a deed, see ante, 84.

VIII. THE PROOF AND ACKNOWLEDGMENT OF DEEDS AND MORTGAGES IN MICHIGAN.

All deeds, mortgages, releases of mortgaged premises, satisfaction pieces, leases for a term exceeding seven years, declarations of trust, and powers to convey lands, are required to be acknowledged or proven, (if executed within this State,) before some Justice of the Peace, Judge of the Circuit, District,

or Supreme Court of the State of Michigan, or Notary Public, or Master in Chancery; and (if executed in any other State or Territory in the United States) before some Judge, Justice, or other officer, who, in the State where he resides, is authorized to take acknowledgment or proof of deeds by the laws thereof; and (if executed in a foreign country) before the officer authorized in that country to take acknowledgments, and also before any Minister Plenipotentiary, Consul, or Charge d'Affairs of the United States, duly appointed and accredited. [Sess. Laws, 1840, 166.]

But in respect to conveyances executed within the State of Michigan, proof by witnesses is regarded as evidence of the execution thereof, secondary to that of the personal acknowledgment of the fact by the grantor. Hence it is provided, that the conveyance shall be acknowledged "by the party making such deed," who is required to appear in person before the acknowledging officer, and declare to him the execution of the instrument. Yet, "When any grantor shall die, or depart from this State, without having acknowledged his deed, the due execution thereof may be proved by the testimony of any subscribing witness thereto, before any Court of Record in this State; and if all the subscribing witnesses to such deed shall also be dead, or out of this State, the same may be proved before any Court of Record of this State, by proving the handwriting of the grantor, or any subscribing witness." [R. S., 259.]

And if any grantor shall refuse to acknowledge his deed on application to a Justice of the Peace residing in the county where the grantor resides, a summons, with a copy of the deed annexed, may be issued to the grantor, requiring him to appear before the Justice, on a day to be therein named, and hear the testimony of the subscribing witnesses to such deed; which summons is required to be served at least seven days before the day therein named for proving the same. At the hearing, or at any adjournment there-

of, the execution of the deed may be proved by one or more of the subscribing witnesses, after being duly sworn by such officer.

This, in general, enables a grantee to get his deed recorded, even though the grantor refuse to acknowledge it. But where the witnesses are dead, or out of the State, and the grantor refuses to acknowledge his deed, the same may be proved before any Court of Record, after first summoning the grantor, by proving the handwriting of both the grantor and one of the subscribing witnesses. But in no case is it competent to prove the execution of a deed by a femme covert. Her rights will not pass, except by a deed duly acknowledged by her before the officer, "on a private examination, separate and apart from her husband, that she executed the deed without fear or compulsion from any one." [Act of 1840, Sec. 4.]

Having seen what proof or acknowledgment is requisite to a conveyance of real estate, we proceed to inquire what evidence is required that the statute has been complied with. This is answered by another statute, which provides that "a certificate of the acknowledgment of the deed, under the hand of the officer taking the same, or of the proof taken as above provided, before any court or Justice of the Peace, by the Clerk of the court, or the Justice respectively, shall be endorsed on the deed, or annexed thereto; and such deed and certificate may be recorded at length, in the registry of deeds for the county where the lands lie; and no deed shall be recorded without such certificate." [R. S., 260.]

The certificate is designed to be the evidence that the requirements of the statute have been observed; but unless the certificate fully set forth the facts required, it is not such evidence as will entitle the deed either to be read in evidence, or recorded. A certificate that a deed or mortgage has been acknowledged or proven according to law, is defective.

It is not for the acknowledging officer or certifying Clerk to adjudge that the law has been complied with, but to set forth the facts, that the public, and all courts having jurisdiction of the subject matter, may see and determine the legality of the proof or acknowledgment.

This may be illustrated by the case of an acknowledgment by a femme covert, or married woman. The private acknowledgment and disavowal of fear or compulsion, are facts essential to the validity of her deed. Neither the register, nor any court, have the right to presume a fact which does not appear in the evidence. Therefore, unless it appear in the certificate, that the private examination was had, and that she then and there acknowledged that she executed the deed freely and without fear or compulsion from any one, the certificate is defective for any purpose whatever. This illustration answers for every requirement in the acknowledgment or proof of a deed, mortgage, or other instrument, relating to lands, which is required to be acknowledged and recorded.

This topic thus far relates to conveyances executed within the State of Michigan. Where they are executed in other States or Territories the rule is different. The statute accredits a deed of land in Michigan owned by a non-resident, if his deed be executed according to the laws of the State where he resides. But proof that a conveyance was so executed must in all cases accompany it, to the end that it may be seen by the court, the register, and the public, that a deed has been so executed. Hence it is provided, that a deed with the certificate of acknowledgment shall be accompanied "with a certificate of the proper County Clerk or certifying officer, under the seal of his office, that the officer taking the acknowledgment of such deed is such officer as by his certificate of acknowledgment he purports to be, duly commissioned and qualified, and that such deed is executed according to the laws of such State or Territory."

The "proper certifying officer" is generally the Clerk of the county where the officer taking the proof or acknowledgment resides, and who, from his supposed acquaintance with the official character and signature of the officer, from the rolls of office, as well as with the statutes of his own State, can advisedly certify under his seal of office, "that the acknowledging officer is such officer, duly commissioned and sworn," and that the deed was executed according to the laws of such State or Territory.* So also where the grantor resides in and executes a deed in a foreign country. The deed may be recorded, if acknowledged or proven according to the laws of such foreign country, if the fact be made to appear. But from the supposed inconvenience of obtaining in foreign countries the certificate of a County Clerk, authenticating that of the acknowledging officer, it is provided that a second acknowledgment must be made of the execution of the deed before a Consul, Charge d'Affairs, or Minister Plenipotentiary of the United States. The coincidence of the two certificates being endorsed upon, or annexed to the deed, is evidence of the facts, within the statutes of Michigan. Sess. Laws, 1840, 166.]

IX. THE RECORDING OF DEEDS AND MORTGAGES IN MICHIGAN AND THE EFFECT THEREOF.

The many advantages resulting from the practice of registering or recording muniments of title to lands, have commended it to public favor in every State. Otherwise than in respect to the officer charged with that responsible duty, the laws of each, in this behalf, are substantially the same.

In the political organization of Michigan, an officer called a Register of Deeds, has been provided by law. He is chosen by the electors once in two years, and is required to reside, and keep his office at the county seat (called "the seat

* The keeper of the rolls of office which the acknowledging officer signed, and where his oath is deposited, is the proper certifying officer.

of justice") of each organized county in the State. By the former statute every Register of Deeds was required to keep a book, in which he was required to enter all deeds and other instruments, left to be recorded, and all copies left as cautions, in the order in which they were received; noting in the first column the day, hour and minute of the reception, and the other particulars in the appropriate columns, and every instrument so entered was considered as recorded at the time it was so registered. [R. S., 260, Sec. 22.]

He was also required to keep separately from the books kept for the registration of deeds and other instruments, a book expressly for the registering of mortgages, and also a book in which the time of the reception of each mortgage, deed, and the other particulars thereof, were required to be specifically entered.

He is now required to record conveyances at length, and to certify upon every instrument recorded by him, the time when it was received, and the number of the book and page where it is recorded. [Id., 261, Sec. 24.] But every deed, mortgage or other instrument, must have been duly executed to authorize or warrant him in making a record thereof. The certificate of acknowledgment or proof, and the certificate of authentication, if such there be, must show the facts requisite to a valid execution of the instrument, and if executed out of this State, that the officer taking the acknowledgment of such deed is such officer as by his certificate of acknowledgment he purports to be, and at the time of taking the acknowledgment or proof was duly commissioned and qualified, [Sess. Laws 1839, 219,] and that the deed was executed according to the laws of the State or territory where it was acknowledged. [Id.. 1840, 166.]

The last provision may have the effect to supersede the provision contained in the act of 1839, requiring the certificate of the proper certifying officer, that the officer taking the acknowledgment is such officer as by his certificate he

purports to be; nevertheless as the statute of 1839 was not in terms repealed by that of 1840, both requirements are recommended to avoid any question concerning the authentication.

The act of 1839 requires the certificate to be by "the proper certifying officer," yet in the act of 1840 it is required to be by "the proper County Clerk, under his official seal."

It is presumed that the Clerk having charge of the rolls, and in whose office the official oath of the acknowledging officer shall be filed, is the proper officer to authenticate the certificate of acknowledgment; and that his certificate, under his official seal, will entitle a deed otherwise valid, to be recorded by the Register.

Concerning the cancelation of the record of mortgages, it is provided that "any mortgage that has been registered or recorded, or that may hereafter be recorded, shall be discharged upon the record thereof by the officer in whose custody it shall be, whenever there shall be presented to him a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied and discharged," and that "every such certificate and acknowledgment thereof shall be recorded at full length; and a reference made to the book and page containing such record in the minute of the discharge of such mortgage, made by the officer upon the record thereof." [Sess. Laws 1839, 219.]

In 1840 an act was passed providing that it shall be lawful for Registers of Deeds, upon payment of fees, to record all deeds at length in his office, as well those which have been registered as those remaining unregistered. This, most unquestionably, is the better practice; whilst it prevents mistakes, it gives a more perfect notice to the subsequent purchasers and incumbrancers. The records, by an act since passed, are required to be indexed in a book to be prepared

and kept by each Register for that purpose, in order that the records containing the title of lands may be more readily referred to, and searches of land titles thereby facilitated. [Sess. Laws, 1841.]

The effect of the recording of deeds and mortgages in Michigan is not as definitely indicated in the statutes of such State, as in those of New-York; yet the recording is adjudged to be a constructive notice to all the world of the existence of the conveyance recorded, and presumptive evidence of the grantee's title; and that his deed which is first recorded, obtains priority over other conveyances not recorded, of which he has no notice. The record also protects him against the mischiefs of fraud.* [R. S., 260, Sec. 25.]

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*Non resident land owners are informed that Michigan now contains the several counties herein presented in small capitals. The county seats of such of them as have been organized and have them, are annexed in roman letters. The counties of Chippeway Michillimackinac, Houghton, Schoolcraft, Ontonagon and Marquette, are upon the upper peninsula, and the balance upon the lower. The statement is given on the authority of Messrs. Stewart and Gray, Counsellors at Law of Detroit, who prepared the same from documents in the Auditor General's office, and the same is believed to be reliable, viz: ALLEGAN, Allegan; ALCONA, ———; ALPENA, ———; ANTRIM, ———; ARRENAC, ———; BARRY, Hastings; BERRIEN, Berrien; BRANCH, Coldwater; CALHOUN, Marshall; CASS, Cassopolis; CLARE ———; CHIPPEWA, Sault Ste Marie; CHEBOYGAN, ———; CHARLEVOIX, ———; CRAWFORD, ———; CLINTON, De Witt; EATON, Charlotte; EMMETT, ———; GLADWIN, ———; GENESEE, Flint; GRATIOT, ———; HILLSDALE, Hillsdale; HOUGHTON, Copper Harbor; HURON, ———; ISABELLA, ———; IONIA, Ionia; IOSCO, ———; INGHAM Mason; JACKSON, Jackson; KALAMAZOO, Kalamazoo; KALKASKA ———; KENT, Grand Rapids; LAKE, ———; LAPEER, Lapeer; LEELANAN, ———; LENAWEE, Adrian; LIVINGSTON, Howell; MECOSTA, ———; MACOMB, Mt. Clement; MARQUETTE ———; MANISTEE ———; MASON, ———; MICHILLIMACINACK, Michillimacinack; MISSAUKEE, ———; MIDLAND, ———; MONTCALM, ———; MONROE, Monroe; NEWAYGO, ———; ONTONAGON, ———; OTSEGO, ———OMEENA, ———; Oscoda, ———; OGENAW, ———; OSEOLA, ———; OCEANA ———; OTTAWA, Grandhaven; OAKLAND, Pontiac; PRESQE ISLE, ———; ROSCOMMON, ———; SAGINAW, Saginaw City; SHIAWASSEE, Corruna; SANILAC, ———; St. CLAIR, Palmer; ST. JOSEPH, Centreville; TUSCOLA, ———; VAN BUREN, Paw Paw; WYANDOT, ———; WEXFORD, ———; WASHTENAW, Ann Arbor; WAYNE, Detroit.

X. WILLS OF REAL ESTATE IN MICHIGAN.

By the revised statutes of Michigan, "every person of full age and sound mind, being seized in his own right of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein, descendible to his heirs," may devise and dispose of the same by will, in writing, signed by himself, or by some other person in his presence by his express directions, and (if made within the State) attested and subscribed in his presence by three or more competent witnesses. [R. S., 270, and Sess. Laws of 1839, 220.]

Minors have neither the legal capacity to convey nor to devise real estate. Full age or majority is requisite to a testator's competency.

He must be of sound mind. Lunacy, idiocy and imbecility, are visitations which impair the mind and more or less derange or hallucinate the intellect, and destroy the understanding. Literally, a mind that is at all shattered or diseased is unsound; but judicially, a mind is unsound only when its faculties are so far impaired or deranged that the incumbent is disabled from understanding the nature and consequences of the act which he performs. In Michigan the question of sanity or mental soundness has undergone much judicial investigation; and since insanity has come to be regarded as a disease, variously developed and exhibited, in some cases partial and in others general, it is found to be the most difficult of all questions of fact to be determined, whether the unsoundness in a given case, where there is any sanity exhibited, is such that it should invalidate a will or deed.

Wills must be in writing. No particular form of words has been prescribed for a valid will. If such words be employed as intelligibly communicate to the reader the pleasure of the testator as to the disposition of his property after his decease, and such instrument be legibly written, it will suffice. Nor does the statute prescribe the material upon which

they shall be written, yet it is presumed that the same rule applies which governs deeds. It should be paper, parchment or some similar preparation. In a sense, wills are but conveyances of real estate; and as far as practicable, they should be subjected to the same rules.

They must be signed—signed by the testator or by some other person in his presence and by his express direction. It is immaterial which of these requirements is complied with, as the testator's presence is requisite to the execution of the instrument. Either his name or his mark subscribed thereto will answer the statute, but if either be placed to a will by a person other than the testator, the attestation clause should mention the fact.

They must be attested. No will is valid unless attested and subscribed in the presence of the testator by at least three competent witnesses. The attestation must be of the whole of the execution, and not of a portion of it. On the probate, a witness who subscribes a will, will be presumed to have witnessed both the declaration and the signing by the testator; and if on a cross-examination it turn out that he did not, his testimony falls short of the point intended to be reached by the law. Every person of full age and sound mind may dispose of his property by will, is the language of the law; and witnesses are required to testify as well of the condition of the testator's mind, at the time of executing a will, as that he did execute it. Hence the law contemplates the attestation of both; and if the witness believe the testator's mind unsound, he should refuse to subscribe any paper purporting to be his will.

It is the policy of the law, that the property of a decedent shall go to the heirs according to the statute of descents, unless it affirmatively appear that a voluntary, lucid and sane disposition of it has been made by his written will. In guarding this right, the Legislature has presumed that attesting witnesses will apprehend the reasons for their attesta-

tion, and observe the requirements with faithfulness and care.

The number of attesting witnesses has been fixed at three; and these are required to be competent witnesses. By this, is meant, witnesses competent to be sworn and to testify in the Court of Probate, of the facts relating to the execution of a will. They should not be legatees or beneficiaries under the will, because they would be interested in sustaining the will after the testator's death. They should not be infamous persons, who have lost their credibility by conviction of infamous crimes; but should be selected with a view to their testimony on the probate of the instrument. Nevertheless, if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, will not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved. [R. S., 271, Sec. 5.]

It is also provided, that "all beneficial devises, legacies, and gifts, whatsoever, made or given, in any will, to a subscribing witness thereto, shall be wholly void, unless there be three other competent subscribing witnesses to the same; yet a mere charge on the lands of the devisor, for the payment of his debts, shall not prevent his creditors from being competent witnesses to his will. But if such witness, to whom any beneficial devise or legacy may have been made or given, would have been entitled to any share of the testator's estate, in case the will was not established, then so much of the share that would have descended or have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will, and he may recover the same of the devisees or legatees named in the will, in proportion to, and out of the parts devised and bequeathed to them." [Id., 271, Sec. 6.]

In subscribing a will, the witnesses should all attach thereto the places of their residence. This, however, is not

as expressly required in Michigan as in New-York; but the practice, nevertheless, is attended with so many advantages, that the writer is warranted in giving the direction. The attestation clause should recite that the (foregoing) will was executed and published by the testator, and by him declared to be his last will and testament, in the presence of the said witnesses, and that thereupon, on such a day, (naming it,) being the day of the signing and publishing thereof by said testator, (naming him,) at the request of him, the said testator, and in his presence, and in the presence of each other, the said witnesses subscribed their names thereto as witnesses, and to their names affixed their places of residence.

Supplements and codicils are required to be executed in the same manner and with the same formality as wills.

Upon the execution of any will, the same may be sealed up in an envelop, and kept by the testator, or by any other person, until the testator's decease. If delivered to and kept by any person other than the Judge of Probate, such person is required to deliver the same to the Judge within thirty days after the testator's decease, and in case of refusal, he may be imprisoned, and also subjected to damages, at the suit of the party aggrieved. [R. S., 272, Sec. 12.]

It is further provided, that any will in writing, being enclosed in a sealed wrapper, and having endorsed thereon the name of the testator and his place of residence, and the day when, and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the Judge of Probate, in the county where the testator lives; and the Judge of Probate is obliged to receive and safely keep such will, and give a certificate of the deposit thereof. "Such will shall, during the life time of the testator, be delivered only to some person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness; and after the death of the testator, and at the first Probate Court held after notice thereof,

it is required to be publicly opened by the Judge of Probate, and retained by him; and the Judge of Probate shall give notice of such will being in his possession, to the executor therein appointed, if any such there be, otherwise to the persons interested in the provisions of the will; or if the jurisdiction of the case belong to any other court, such will shall be delivered to the executor, or to some other trusty person not interested in the provisions of the same, to be presented for probate in such other court." [Id., 272, Sec. 10.]

In respect to the revocation of wills in writing, it is provided, "that no will, or any part thereof, shall be revoked, unless by burning, tearing, canceling, or obliterating the same, with the intention of revoking it, by the testator himself, or by some person in his presence and by his direction; or by some other will or codicil in writing, or by some other writing, signed, attested, and subscribed, in the manner provided for the making of a will; excepting, only, that nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator." [Id., Sec. 9.]

Whilst it is the obvious purpose of the Legislature of Michigan to recognize the right of every man to dispose of his property as may seem to him best, it has been deemed expedient to place around that right certain guards against the ill effects of forgetfulness and inadvertancy, upon the lawful heirs of the testator's body. It is therefore provided, that "when any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child, they shall take the same share of his estate, both real and personal, that they would have been entitled to if he had died intestate; unless they shall have been provided for by the testator in his lifetime, or unless it shall appear that such omission was intentional, and not occasioned by any mistake or accident." [Id., 274, Sec. 19.]

Unless it shall appear on the probate of the will, that such

omission was intentional, and not occasioned by mistake or accident, or that the child, or issue of any deceased child was provided for, the will becomes ineffectual, as to the heir omitted. Nothing can legally appear, except from proof, either of an intrinsic or extrinsic character. The mention of advances, or of all the children of the testator, or the children of such as shall have deceased, would be proof intrinsic in favor of the will, and is a convenient way of providing against successful contestation. Any proof, however, will be received, which bears upon the facts, but the *onus probandi* rests upon the executors, or legatees, under the will, who are interested in sustaining it.

"When any child of a testator, born after his father's death shall have no provision made for him by his father, in his will, or otherwise, he shall take the same share of his father's estate, both real and personal, as he would have been entitled to if his father had died intestate." [Id., Sec. 20.]

In the two cases last mentioned, where an omitted or posthumous heir is found to be entitled to take, notwithstanding the will, his or her distributive share is required to be taken from all the devisees and legatees respectively, in proportion to their interests under the will, unless there shall be some specific devise or bequest, which, in equity, requires a different apportionment." [Id., Sec. 21.]

It is further provided that when a devise of real or personal estate is made to any child, or other relation of the testator, and the devisee shall die before the testator, leaving issue who survive the testator, such issue shall take the estate so devised, in the same manner as the devisee would have done if he had survived the testator, unless a different disposition thereof shall be made or required by the will. [Id., Sec. 22.]

Executors of a will may be named or omitted, at the pleasure of the testator; so also may guardians of his minor children be appointed or omitted, the Judge of Probate having power to appoint persons to execute a will, and persons

to act as guardians, where none are appointed therein. And whether executors and guardians be appointed by the testator or not, both are required to give security for the faithful performance of their trust, before assuming it, except in the case of a guardian where the will otherwise directs.

XI. THE PROBATE AND RECORDING OF WILLS IN MICHIGAN.

In each organized county in Michigan, there is required to be elected at a general election, a Judge of Probate, whose term of office is four years. This officer is invested with judicial power, in all matters relating to the settlement of estates of deceased persons, executors, administrators, infants and guardians, and is charged with the keeping of the seal, books, files and papers belonging to the Court of Probate, and is required to keep, or cause to be kept, a correct record of all orders, decrees, and other official acts; which record is by law subject to the inspection of all persons interested, without charge. In this court of the proper county, all wills of real and personal estate are required to be proved and recorded; for it is provided that no will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the Probate Court; and that the probate of a will shall be conclusive evidence of its due execution. [R. S., 275, Sec. 12.]

Applications to the Probate Court, for the proof of any will, after the decease of the testator, may be made by any person having an interest therein, or in its execution, or by any heir of the testator, in writing. Such applications are usually in the form of a petition, duly verified, praying for citations to the "heirs and next of kin of the deceased." On the return of such process, or upon some other day or term to which the hearing may be adjourned, it is the duty of the Judge to examine the subscribing witnesses, and such others as may be produced, and to hear, determine, and adjudge

upon all matters relating as well to the capacity of the testator, as to the validity in other respects, of the will produced. If it appear, however, by the consent in writing of all the heirs at law, or by other satisfactory evidence, that no person interested in the estate intends to object to the probate of the will, he has a discretion to grant probate thereof, upon the testimony of one subscribing witness, without requiring the attendance of all of them, although the others should be within reach of the process of the court. [Id., Sec. 13.]

In relation to foreign wills, it is provided that if they shall have been proved and allowed in any other of the United States, or in any foreign country, according to the laws of such State or territory, or country, they may be allowed and recorded in Michigan, in the manner and for the purposes following: "a copy of the will and of the probate thereof, duly authenticated, shall be produced by the executor, or by any person interested therein, to the Judge of Probate, in any county in which there is any estate, real or personal, on which the will may operate, whereupon the Judge shall assign the time and place for hearing the case, and shall cause notice thereof to all persons interested, to be given in some public newspaper, three weeks successively, the first publication to be thirty days at least before the time so assigned. And if, upon the hearing, it shall appear to the Judge that the instrument ought to be allowed in Michigan as the last will and testament of the deceased, he shall order the copy to be filed and recorded, and letters testamentary or of administration with the will annexed, as the case may be, to issue thereon, the same as if said will had been originally proved in Michigan."

XII. THE STATUTE OF DESCENTS IN MICHIGAN.

The statutes provide that, "when any person shall die, seized of any lands, tenements, or hereditaments, or of any right thereto, or entitled to any interest therein, in fee sim-

ple, or for the life of another, not having lawfully derived the same, they shall descend, subject to his debts, in manner following:

1. In equal shares to his children, and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall have the estate equally; otherwise they shall take according to the right of representation.

2. If he shall leave no issue, his estate shall descend to his father.

3. If he shall leave no issue, nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation; provided, that if he shall leave a mother also, she shall take an equal share with his brothers and sisters.

4. If the intestate shall leave no issue, nor father, and no brother, nor sister, living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters.

5. If the intestate shall have no issue, and no father, mother, brother, nor sister, his estate shall descend to his next of kin in equal degree; excepting, that where there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote; provided, however,

6. If any person shall die, leaving several children, or leaving one child, and the issue of one or more others, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to

the issue of any such other children who shall have died, by right of representation.

7. If, at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to said child by inheritance from his said parent shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the said estate equally; otherwise, they shall take according to the right of representation.

8. If the intestate shall leave no kindred, his estate shall escheat to the people of this State." [R. S., 268, Sec. 1.]

It is further provided, that illegitimates shall inherit from their mother the same as if born in wedlock; but they cannot claim any part of the estate of any of her kindred, either lineal or collateral, by reason of their representation of their mother. The mother is the lawful heir of an illegitimate who dies intestate without issue, except where, after the birth of an illegitimate, the parents intermarry, and the father, after the marriage, acknowledge the illegitimate as his child. In such case, the child is held by statute, to be, to all intents and purposes, legitimate; hence, the mother is not then the heir. Posthumous children are considered as living at the death of their parent. [Id., Sec. 13.]

Kindred of the half blood inherit equally with those of the whole blood. In computing the degrees of kindred, the statute requires the rules of the civil law to be followed. They alone control.

XIII. THE LEVY AND COLLECTION OF LAND TAXES IN MICHIGAN.

All real estate in Michigan, with the exceptions hereinafter enumerated, is subject to taxation, and for that purpose

the term includes as well all lands within the State, as all buildings and things erected thereon or affixed thereto. The exemptions are, all property of the United States, or of this State; all the public or corporate property of the several counties, cities, townships, villages, and school districts; the real estate of all literary, benevolent, charitable, and scientific institutions; all property exempt from execution; all houses of religious worship, tombs, and rights of burial; and all estates of Indians. The statute provides that taxes on real estate shall be assessed in the township where the estate lies, to the person who shall be either the owner, or in possession thereof, on the third Monday in April in each year; and in cases of mortgaged real estate, the mortgagor shall be deemed the owner, and be taxable therefor until the mortgagee shall take possession thereof; after which, the mortgagee shall be deemed the owner. [R. S., 77.]

By an act passed in 1843, it was provided, that the Supervisors of towns, in the towns where there shall be no Assessors elected, (and where Assessors are elected, then the Assessors, being two in number,) shall, between the third Monday in April and the third Monday in May in each year, make out an assessment roll of all the taxable property in their townships, either by visiting the residence of each individual, or inquiring personally of the owner, or occupant, of any estate to be taxed, if said owner reside within said township, and shall appraise the same at its true cash value. And in all cases where the owner is an occupant, the assessment shall be in his name, but otherwise, in the name of the occupant; and where a farm lies in two or more townships, the farm shall be assessed in the township where the mansion house may be, and no other. After the assessment roll is completed, a day fixed by law is given until which any person aggrieved may show cause by affidavit, or other satisfactory evidence, why it should be altered; and on the day when the Assessors meet to review their assessment, the evidence

shall be considered, and they may alter the estimated value thereof; but when the party makes affidavit of the value, it shall be assessed at the value sworn to. [Sess. Laws 1843, 64, Sec. 14.]

"The assessment roll shall contain the names of the resident persons liable to be taxed; a full and perfect description of the real estate of such persons; the number of acres in each tract or parcel; the value of each tract or parcel; the aggregate valuation of the personal estate of such person; for which purposes the Auditor General, before the third Monday of April in each year, shall prepare and transmit suitable blanks to the several County Treasurers, who shall immediately supply all the Assessors with the same, which shall be in such form as the Auditor General shall direct." [Id., Sec. 15.]

"The Assessors shall assess all lands in their townships as non-resident lands, which are unoccupied and unclaimed by any resident of their township, and shall enter the same on a part of the roll separate from that containing the estate of residents." [Id., Sec. 17.]

The assessment having been completed, is returned, duly certified, to the Board of Supervisors of the county, which meets on the second Monday in October. [Sess. Laws 1844.]

It is the duty of this Board, in connection with the County Treasurer, to review and equalize the assessments; to correct descriptions of lands; to obtain from Town Clerks the amount of moneys to be raised for town purposes, highways, bridges, and schools; to ascertain the amount necessary to be raised for county purposes, and as a State tax, and thereupon to order a tax to be levied for the amount. Each Supervisor, after having obtained a certificate from the Clerk of the Board, of the tax to be levied in his town, is required to notify the Township Treasurer of the amount, and after such Treasurer shall have given security for its collection, to deliver him the roll, with a warrant annexed, authorizing such

Treasurer to collect such taxes on or before the first day of the ensuing February.

The Treasurer of each township, upon receiving the tax list and warrant, is required to proceed to collect the taxes therein mentioned, and for that purpose to call at least once on the person taxed, if a resident, or at the place of his usual residence in the township, and demand payment of the taxes charged to him; and no property, liable to be taxed, shall be exempt from levy and sale in the collection thereof. In case any person shall refuse or neglect to pay the tax imposed on him, the same is required to be levied by distress, on his goods and chattels, wheresoever found in the township; but if the same be not collected, and the Treasurer shall not be able to collect them, he can only return the fact to the County Treasurer, on the first day of February, who is authorized to credit him the amount of the tax. By an act passed in 1843, and another amending it in 1844, it is provided that, whenever any County Treasurer shall receive, from a Township Treasurer, a certified statement of unpaid taxes on the lands of residents, or non-residents, such County Treasurer shall enter the same in full on the books provided for that purpose, in his office; and after making a transcript thereof, which shall be compared with the Township Treasurer's statement, by the County Clerk, who shall certify such examination and comparison the same, shall be forwarded to the Auditor.

Before the expiration of the month of March ensuing, such transcript is required to be forwarded to the Auditor General, at Detroit. The Act of 1843 provides, "that any person may pay the taxes on lands returned as aforesaid, by paying the amount of the tax, and the five per cent specified in the preceding section, with interest, calculated thereon from the first day of February, at the rate of fifteen per cent per annum, and the office charges hereinafter specified, to the several County Treasurers, in which the lands are situated, at any time before they are sold for taxes or to the State

Treasurer, on the certificate of the Auditor General, until the first day of September following the return." [Id., Sec. 50.]

The office charges referred to in the foregoing section, are twenty-five cents on the first description, and six cents on every one above that number. [Id., Sec. 51.]

In cases of delinquency it is further provided, that "all lands returned to the Auditor General delinquent as aforesaid, upon which the taxes, interest, and charges, shall not be paid, as hereinbefore provided, by the first day of September succeeding their return, or be charged back to the proper county, shall be subject to sale and redemption, as hereinafter provided." [Id., Sec. 56.]

XIV. LAND TAX FORFEITURES AND REDEMPTIONS IN MICHIGAN.

By land tax forfeitures is meant, of course, the consequences of neglect in the payment of taxes. The preceding topic has carried the reader hastily through the mode adopted by the people of Michigan to levy and collect their revenue, and it remains only to give a summary of those provisions which draw from the owner the land itself, or a portion of it, as the penalty for his neglect.

Formerly lands were required to be sold by the County Treasurers respectively, on the first Monday of October next after they were returned as delinquent to the Auditor General, and two years after sale were allowed for redeeming them; but by an act passed in 1845, it was provided that lands returned, "on which the taxes, interest and charges shall remain unpaid for one year succeeding their return, shall be advertised and sold in such manner as is now or may hereafter be provided by law: provided, that no lands bid in by the State for taxes of any previous year, and remaining unredeemed, shall be advertised and sold as other lands, but shall be subject to sale as hereinafter provided."

The sale is required by statute to be under the direction of the Auditor General, after a published notice thereof, and so

much only of each parcel taxed to be sold from the northeast corner thereof, in a square form, as shall be sufficient to pay the taxes, interest and charges.

Discretionary power is vested in the County Treasurer to demand immediate payment of the bids, or to give a reasonable day of payment, and in all cases where payment is not made in twenty-four hours, he may declare the bid canceled, and at his discretion sell the lands again; "and any person so neglecting or refusing to pay any bid, shall not be entitled after such neglect to have his bid received by the Treasurer." [Sess. Laws, 1843.]

It is further provided that "the several County Treasurers shall receive only such funds as shall at the time be receivable by law at the State Treasury, on account of the general and delinquent tax funds, and so much as may be necessary to pay for printing, and sale charges, shall be paid in specie or its equivalent." [Id., Sec. 63.]

"At the sales aforesaid, the respective County Treasurers shall give the purchasers, on the payment of their bids, a certificate in writing describing the lands purchased, and the amount paid therefor, and shall endorse thereon, the kind of funds received; and such certificates shall be regularly numbered, and a copy thereof forwarded to the Auditor General in such manner as he shall direct." [Id., Sec. 64.]

"On the presentation of such certificate of sale to the Auditor General, after the expiration of the time hereinafter provided for the redemption of lands sold, as aforesaid, he shall execute to the purchaser, his heirs or assigns, a deed of the land therein described, unless the Auditor General shall have discovered that the same was improperly sold; which deed shall be prima facie evidence of the regularity of all the proceedings to the date of the deed; but such lands shall be subject to all unpaid taxes properly chargeable thereon." [Id., Sec. 15.]

If any individual shall become the purchaser on such

sale, any person claiming the lands sold, or any interest therein, may redeem the same within one year after the sale, and not afterwards, by paying into the State Treasury the amount for which such parcel was sold, with interest thereon at the rate of twenty-five per cent per annum—twenty of which shall be paid by the State to the purchaser, and five per cent retained to meet incidental expenses: provided, that if redeemed within three months after sale, three months interest shall be charged; if after three and within six months, then six months interest; if after six and within nine months, then nine months interest; and if after nine months and within one year, then one year's interest shall be charged at the rate prescribed. [Sess. Laws, 1845, Sec. 2.]

But when land, at tax sales, is not purchased by individuals, it is brought in by the State. Until such lands shall be sold by the State as hereinafter mentioned, the same may be redeemed at the amount of the bid and twenty-five per cent interest to the day of redemption; but in such case, the person applying to redeem is also required to pay or cause to be paid at the time of such application, all taxes, interest and charges that shall remain unpaid on said lands, in the Auditor General's office at the time of such application, and not otherwise.

It is further provided that the title acquired by such redemption shall have the effect only of releasing the lien or title of the State arising from the forfeiture, and nothing more. [Id., Sec. 4.]

After the expiration of one year from the day of sale and purchase by the State, as aforesaid, such lands as shall not have been redeemed, may be again advertised to be sold on the first Monday of the ensuing October, by the respective County Treasurers; and on that day the same may be again offered for sale, and upon receiving payment of the bid, which shall be not less than the minimum fixed in the no-

tice, a certificate may be issued to the purchaser, which on presentation to the Auditor General entitles him to a deed.

Such deed will convey all the right acquired by the State under the original sale or sales to the State, subject to all taxes duly assessed thereon; and which deed is held to be prima facie evidence of the correctness of all the proceedings to its date, and when duly acknowledged may be recorded and admitted as evidence in courts of justice. [Id., Sec. 5, 6, 7, 8.]

It is further provided that purchasers of tax sales may at their option pay to the State Treasurer on the certificate of the Auditor General, the amount that may be due the State on the lands they may severally purchase, that may have been bid in for taxes, by the State, of any year, and acquire all the rights of the State thereto if not redeemed, and to the redemption money, if redeemed, the same as though they, instead of the State, had been the original purchasers. [Id., Sec. 9.]

On applying to the Auditor General for a deed upon a Treasurer's certificate, the purchaser is required to pay an officer a charge of twenty-five cents for the first, and six cents for each subsequent description contained in each deed, which money the Auditor General is required to pay into the Treasury of the State.

XV. LIMITATION OF REAL ACTIONS IN MICHIGAN.*

Statutes of limitations, although sometimes mischievous in their effects, have been enacted in every State in the Union. They are usually termed statutes of repose. The

* The limitation upon actions upon all debts, contracts, or liability not under seal, except judgments and decrees in Courts of Record, for arrears of rent, assumpsit, replevin and trover, is six years; upon actions for trespass on land, for false imprisonment, slander and libels, two years; against Sheriffs for misconduct or neglect, four years; upon any statute for penalties or forfeitures, one year; and upon all other personal actions, twenty years. [R. S. of Michigan, 577.]

stipulated years which bar a recovery, admonish all claimants of land to diligence, that they may recover that which is justly theirs, before invasions into the ranks of mortality have destroyed the witnesses. On the other hand, their lapse assures occupants of land that their title has become settled, and that all cause for anxiety in that behalf is effectually removed.

By an act passed in 1842, it was provided "that all suits in ejectment hereafter instituted to recover any lands or tenements by any person claiming title under, through or by virtue of any deed or conveyance, executed or hereafter to be executed by any Treasurer of any of the counties of this State, or of the Auditor General, on account of any sale for the non-payment of any taxes hereafter assessed, or hereafter to be assessed, upon such lands and tenements, the said suit in ejectment shall be commenced within six years from the date of such deed or conveyance, and not thereafter." [Sess. Laws, 1842, 133, Sec. 1.]

"Whenever any person claiming title under, through, or by virtue of any such deed or conveyance, shall have entered, or shall enter into the actual possession, and occupy the said lands and tenements described in such deed, any suit in ejectment to recover said lands and tenements, instituted by any person claiming title through any other source, shall be commenced within ten years from the time of so taking the actual possession as aforesaid, and not thereafter." [Id., Sec. 2.]

Actions for the recovery of dower and all other actions for the recovery of real estate, are required to be brought within twenty years after the accruing of the right.

XVI. REAL ESTATE EXEMPTIONS IN MICHIGAN.

It has been observed that exemption laws were the result of wise legislation, and answered the double purpose of inducing frugal providence, and of arresting the hand of un-

feeling creditors. It is neither advantageous to creditors in general, nor to community at large, to permit the fireside of the debtor to be desolated, nor his wife and children to be distressed by executions; for the industrial energies of men are thereby repressed, and their inclination to pay honest dues thereby repelled.

Although a liberal exemption of personal property has been made to debtors in Michigan, no real estate nor property of the nature of real estate, except a pew in a church or place of public worship, and burial places in use as repositories of the dead, is protected from levy and sale upon execution.*

* By an act passed in 1842, it is provided that the household and kitchen furniture of each householder, not exceeding in value two hundred and fifty dollars; the wearing apparel of every person and family; the library of every individual and family, not exceeding in value one hundred and fifty dollars; the types, presses and other materials of every printing office, not exceeding one hundred and fifty dollars in value; the tools, implements and stock necessary to enable every mechanic to carry on his business, not exceeding in value one hundred and fifty dollars; all spinning wheels and weaving looms, with their apparatus, used in families; the pews and slips and seats, in every place of public worship; all public cemeteries; all rights of burial and tombs, while in use as repositories of the dead; one fishing skiff, or boat, seine, nets, or other necessary apparatus, to every person whose principal occupation or business is fishing, not exceeding in value sixty dollars; all arms and military equipage for man and horse; two cows, ten sheep, with the wool and cloth manufactured from the same, and five hogs, to each householder; to each practical farmer one yoke of cattle, with yoke and chains, or one pair of horses and harness, not exceeding in value eighty dollars, one plough, one harrow, one wagon or cart, with all other necessary implements of husbandry, which other implements shall not exceed twenty-five dollars in value; one yoke of cattle, with yoke, cart or wagon and chains for every lumberman; one horse and harness, and one dray to every drayman.

To every practicing physician, one horse, bridle, saddle, surgical instruments, and medicines, not exceeding in value one hundred dollars; a sufficient quantity of hay, grain, feed and roots, for sustaining and keeping the live stock hereinbefore severally allowed to each class of persons for six months, and the requisite provisions and food for the comfortable subsistence of every family and housekeeper, for six months; shall be, and the same are exempted from execution or sale, for any debt, damages, fine or amercement whatever, except upon a judgment for the purchase money thereof. [Sess. Laws, 1842, 70.]

XVII. THE INTEREST OF MONEY IN MICHIGAN.

There exists much diversity of sentiment concerning the interest of money. In some quarters the money lender is regarded as an usurer, and thought undeserving of favor, whilst in others he is esteemed a valuable member of community. Commensurate with the extremity of either sentiment in a State, is the rigor or liberality of the laws concerning interest. In Michigan seven per centum per annum is allowed by law, and collectable on all notes, bills, bonds, demands and accounts where interest is chargeable. It is further provided that in cases of money loaned it shall be lawful for the parties to stipulate in writing for the payment of any interest not exceeding ten per cent. Interest is allowable upon all judgments at law, decrees in chancery, and every verdict, award, assessment, and liquidated demand. [R. S., 160.]

XVIII. THE PENALTY AND FORFEITURE OF USURY IN MICHIGAN.

The statute provides that "the interest of money shall continue to be at the rate of seven dollars, and *no more*, upon one hundred dollars for a year, and at the same rate for a greater or less sum, and for a longer or shorter time: provided, that in cases of money loaned, it shall be lawful for the parties to stipulate in writing for the payment of any interest not exceeding *ten* per cent per annum." [R. S., Sec. 160.]

"In actions brought on any usurious contract or assurance, if it appear upon a special plea to that effect, that a greater rate of interest has been directly or indirectly reserved, taken or received, than is allowed by law, the plaintiff can have judgment for the principal and legal interest only." [Act of 1843, Sec. 2.]

CHAPTER VI.

THE STATE OF WISCONSIN.

Source of Title to Lands in the State. Native Proprietors thereof. Exploration of the country, and settlement by the French at La Point and Green Bay. Surrender thereof to Great Britain. The Quebec Act. The Charter of Virginia. Her Claim and Cession to the General Government. Wisconsin a portion of the Northwestern Territory. Was set off with Indiana and subsequently with Illinois. Was attached to Michigan. Erection of the Wisconsin Territory. Act of Congress for the admission of Wisconsin into the Union. Her Constitution. Land Titles generally. The Execution, Attestation, Proof, Acknowledgment Authentication, and Recording of Deeds and Mortgages. The Execution, Attestation, Probate and Recording of Wills of Real Estate. Descent of Real Estate. Land Taxes. Forfeitures and Redemptions. Limitations. Exemptions. Interest of Money, and Usury.

I. SOURCE OF TITLE TO LANDS IN THE STATE—NATIVE PROPRIETORS THEREOF, &C.

WISCONSIN is the fifth and last State erected from "the territory of the United States, northwest of the Ohio," and is a portion of that vast domain to which France asserted the pre-emption by reason of her exploration and partial settlement thereof, in the seventeenth century. [Ante 129.]

The colonization of Canada and Acadia, by the French, was a movement cotemporaneous with the settlement of New-York, by the Dutch. Upon the discovery of the American continent, the nations of Europe became emulous of each other, and alike eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent opened an ample field to ambitious enterprise, whilst the con-

dition and character of the native proprietors afforded an apology for claiming to exercise over them, the ascendancy of superior genius.

Although the natives had maintained a continued possession of the country from a remote period, under the firm belief that the Great Spirit designed it for their especial and exclusive use, the potentates of the old world readily convinced themselves that the civilization and christianity which they sent to them by their missionaries, were adequate and ample recompense for the Indian's hunting grounds, and his unlimited independence; and as all were in pursuit of territorial wealth and aggrandizement, it became necessary to establish a principle by which the rights of each might be regulated. That principle was, "that discovery gave title to the government by whose subjects or by whose authority it was made, against all other European governments, which title might be consummated by possession."

France claimed the northwestern territory, as she did the Canadas, on the ground of discovery, and claiming thus, she claimed the exclusive right of acquiring the soil of the natives, and of making settlements upon it, as a concomitant. Whilst the Indians were denied the capacity to be, or to become, vested with a title to the soil, they were admitted to be rightful occupants thereof, and to use it at discretion, during their own pleasure.

France claimed that the discovery and partial settlement of Wisconsin made for her a valid title thereto, subject only to the Indian right of occupancy. Her monarch claimed it as an appendage to Canada and Acadia, over which he held undisputed regal sway, as well as Louisiana, and the immense territories watered by the Mississippi and the rivers emptying therein.

Although Wisconsin was nominally occupied by the French, their earliest settlements in the territory were made at points without the borders of the State. The first settle-

ment in Wisconsin was made at La Point, in 1666, and the second at Green Bay, in 1670, being the same year that Nicholas Perrot visited the Miami settlement at Chicago. [Ante 238.]

At that time the territory was occupied chiefly by the Winnebagoes, Foxes, Pottawatamies, Miamis, Mascoutins, and Kickapoos.

Wisconsin remained in the possession of the French, until 1763, when it was surrendered to Great Britain, and became a part of the colonial possessions of that government. Under the letters patent theretofore granted to the colony of Virginia, by Great Britain, (Ante 140,) the English settlers in 1750, became jealous of the movements of the French, in the region of the Lakes, the Wabash and the Mississippi, and remonstrated against any further encroachments by the latter upon the territory embraced within their chartered limits. Whereupon the Algonquins and Hurons became the allies of France, and the Iroquois of the English, and at once engaged in a war that ultimated in determining the jurisdiction of France over the territory northwest of the Ohio. [Ante 132.]

In 1774 the Quebec Act was passed, by which the Ohio river was established as the southern boundary of Canada. It also extended peace and the protection of the government to all Catholic inhabitants residing in the territory. After exercising jurisdiction over the country for twenty years, Great Britain relinquished it to the United States in 1783, under the treaty cited ante 59.

It has been intimated that the early settlers of Virginia, claimed that Wisconsin was embraced within the charter of that colony. Whether it were so or not is unimportant, since that colony upon becoming a State ceded all right, title and interest over it to the General Government. [Ante 140.]

Virginia, however, claims the full credit of having owned and relinquished the entire domain, as well as that of Indiana and Illinois in her deed of cession.

Until the year 1800, Wisconsin remained under the territorial government of Ohio. In that year she was attached to the Indiana territory, and so remained until 1809, when she was set off with Illinois into a territory called the Illinois Territory. Upon the admission of that State into the Union, Wisconsin was attached to Michigan and so remained until the passage of the following act of Congress*:

II. ERECTION OF THE TERRITORY OF WISCONSIN BY AN ACT ENTITLED "AN ACT ESTABLISHING THE TERRITORY OF WISCONSIN." APPROVED APRIL 20, 1846.

"Section I. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the third day of July next, the country included within the following boundaries shall constitute a separate territory, for the purposes of temporary government, by the name of Wisconsin; that is to say: bounded on the east, by a line drawn from the northeast corner of the State of Illinois, through the middle of Lake Michigan, to a point in the middle of said lake, and opposite the main channel of Green Bay, and through said channel and Green Bay, to the mouth of the Menomonie river; thence through the middle of the main channel of the said river, to that head of said river nearest to the Lake of the Desert; thence in a direct line to the middle of said lake; thence through the middle of the main channel of the Montreal river, to its mouth; thence with a direct line

*Lapham in his geography and topography of Wisconsin, remarks "that within the space of one hundred and sixty-six years, Wisconsin has been successively ruled by two kings, one State and four Territories, and we have finally set up for ourselves, without any great and exciting events to produce these revolutions. The people have submitted to each change without a struggle or a murmur. They have been under the government of France from 1670, to 1763, or 93 years; of Great Britain from 1763 to 1794, or 31 years; of Virginia and Ohio from 1794 to 1800, or 6 years; of Indiana from 1800 to 1809, or 9 years; of Illinois from 1809 to 1818, or 9 years; and of Michigan from 1818 to 1836, or 13 years." To that may be added that it remained a Territory 10 years, and then took a place in the Union as one of the United and Confederated States.

across Lake Superior, to where the territorial line of the United States last touches said lake northwest; thence on the north, with the said territorial line, to the White-earth river; on the west, by a line from the said boundary line following down the middle of the main channel of White-earth river, to the Missouri river, and down the middle of the main channel of the Missouri river, to a point due west from the northwest corner of the State of Missouri; and on the south, from said point, due east to the northwest corner of the State of Missouri; and thence with the boundaries of the States of Missouri and Illinois, as already fixed by acts of Congress. And after the said third day of July next, all power and authority of the government of Michigan in and over the Territory hereby constituted, shall cease: provided, that nothing in this act contained shall be construed to impair the rights of person or property now appertaining to any Indians within the said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, or law, or otherwise, which it would have been competent to the Government to make if this act had never been passed: Provided, that nothing in this act contained shall be construed to inhibit the Government of the United States from dividing the Territory hereby established into one or more other Territories, in such manner, and at such times, as Congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States.

"Sec. II. And be it further enacted, that the Executive power and authority in and over the said Territory shall be vested in a Governor, who shall hold his office for three

years, unless sooner removed by the President of the United States. The Governor shall reside within the said Territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the Legislative Assembly before they shall take effect; he may grant pardons for offences against the laws of the said Territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

"Sec. III. And be it further enacted, That there shall be a Secretary of the said Territory, who shall reside therein, and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and one copy of the Executive proceedings on or before the first Monday in December in each year, to the President of the United States; and at the same time, two copies of the laws to the Speaker of the House of Representatives, for the use of Congress. And in case of the death, removal, resignation, or necessary absence, of the Governor from the Territory, the Secretary shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the Governor during such vacancy or necessary absence.

"Sec. IV. And be it further enacted, That the Legislative power shall be vested in a Governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue four

years. The House of Representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for the members of the Council, and whose term of service shall continue two years. An appointment shall be made, as nearly equal as practicable, among the several counties, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the said members of the Council and House of Representatives shall reside in and be inhabitants of the district for which they may be elected. Previous to the first election, the Governor of the Territory shall cause the census or enumeration of the inhabitants of the several counties in the Territory to be taken and made by the Sheriffs of the said counties, respectively, and returns thereof made by said Sheriffs to the Governor. The first election shall be held at such time and place, and be conducted in such manner, as the Governor shall appoint and direct: and he shall, at the same time, declare the number of members of the Council and House of Representatives to which each of the counties is entitled under this act. The number of persons authorized to be elected having the greatest number of votes in each of the said counties for the Council, shall be declared, by the said Governor, to be duly elected to the said Council; and the person or persons having the greatest number of votes for the House of Representatives, equal to the number to which each county may be entitled, shall also be declared, by the Governor, to be duly elected: Provided the Governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the Legislative Assembly shall meet at such place on such day as he shall appoint; but, thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties to the Council and House

of Representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said Legislative Assembly; but no session, in any year, shall exceed the term of seventy-five days.

"Sec. V. And be it further enacted, That every free white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said Territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters at all subsequent elections shall be such as shall be determined by the Legislative Assembly: Provided that the right of suffrage shall be exercised only by citizens of the United States.

"Sec. VI. And be it further enacted, That the Legislative power of the Territory shall extend to all rightful subjects of legislation; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the Governor and Legislative Assembly shall be submitted to, and, if disapproved by the Congress of the United States, the same shall be null and of no effect.

"Sec. VII. And be it further enacted, That all township officers, and all county officers, except Judicial officers, Justices of the Peace, Sheriffs, and Clerks of courts, shall be elected by the people, in such manner as may be provided by the Governor and Legislative Assembly. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, shall appoint, all Judicial officers, Justices of the Peace, Sheriffs, and all Militia officers, except those of the staff, and all Civil officers not herein provided for. Vacancies occurring in the recess of the Council shall be filled by appointments from the Governor, which shall ex-

pire at the end of the next session of the Legislative Assembly; but the said Governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the said Legislative Assembly.

"Sec. VIII. And be it further enacted, That no member of the Legislative Assembly shall hold or be appointed to any office created, or the salary or emoluments of which shall have been increased whilst he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term; and no person holding a commission under the United States, or any of its officers, except as a militia officer, shall be a member of the said Council, or shall hold any office under the Government of the said Territory.

"Sec. IX. And be it further enacted, That the Judicial power of the said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace. The Supreme Court shall consist of a Chief Justice and two Associate Judges, any two of whom shall be a quorum, and who shall hold a term at the seat of Government of the said Territory, annually, and they shall hold their offices during good behavior. The said Territory shall be divided into three Judicial Districts; and a District Court or courts shall be held in each of the three Districts, by one of the Judges of the Supreme Court, at such times and places as may be prescribed by law. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the Probate Courts, and of the Justices of the Peace, shall be as limited by law: Provided, however, that Justices of the Peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said Supreme and District Courts, respectively, shall possess chancery as well as common law jurisdiction. Each District Court shall appoint its Clerk, who shall

keep his office at the place where the Court may be held, and the said Clerks shall also be the Registers in Chancery; and any vacancy in said office of Clerk happening in the vacation of said Court, may be filled by the Judge of said District, which appointment shall continue until the next term of said Court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions of the said District Courts to the Supreme Court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court, shall a trial by jury be allowed in said Court. The Supreme Court may appoint its own Clerk, and every Clerk shall hold his office at the pleasure of the Court by which he shall have been appointed. And writs of error and appeals from the final decisions of the said Supreme Court shall be allowed and taken to the Supreme Court of the United States, in the same manner, and under the same regulations, as from the Circuit Courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said District Courts shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States as is vested in the Circuit and District Courts of the United States. And the first six days of every term of the said Courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws. And writs of error, and appeals from the final decisions of the said Courts, in all such cases, shall be made to the Supreme Court of the Territory, in the same manner as in other cases. The said Clerks shall receive, in all such cases, the same fees which the Clerk of the District Court of the United States in the Northern District of the State of New-York, receives for similar services.

"Sec. X. And be it further enacted, That there shall be

an Attorney for the said Territory appointed, who shall continue in office four years, unless sooner removed by the President, and who shall receive the same fees and salary as the Attorney of the United States for the Michigan Territory. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the President, who shall execute all process issuing from the said Courts when exercising their jurisdiction as Circuit and District Courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the Marshal of the District Court of the United States for the Northern District of the State of New-York; and shall, in addition, be paid the sum of two hundred dollars, annually, as a compensation for extra services.

"Sec. XI. And be it further enacted, That the Governor, Secretary, Chief Justice and Associate Judges, Attorney, and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary, to be appointed as aforesaid, shall, before they act, as such respectively take an oath or affirmation before some Judge, or Justice of the Peace in the existing Territory of Michigan, duly commissioned and qualified to administer an oath or affirmation, to support the Constitution of the United States, and for the faithful discharge of the duties of their respective offices; which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken, and such certificate shall be received and recorded by the said Secretary among the Executive proceedings. And, afterwards, the Chief Justice and Associate Judges, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Territory who may be duly commissioned and qualified, which said oath or

affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annually salary of two thousand five hundred dollars for his services as Governor and as Superintendent of Indian affairs. The said Chief Justice and Associate Judges shall each receive an annual salary of eighteen hundred dollars. The Secretary shall receive an annual salary of twelve hundred dollars. The said salaries shall be paid quarter-yearly, at the Treasury of the United States. The members of the Legislative Assembly shall be entitled to receive three dollars each per day, during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually-traveled route. There shall be appropriated, annually, the sum of three hundred and fifty dollars, to be expended by the Governor to defray the contingent expenses of the Territory, and there shall also be appropriated annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws and other incidental expenses; and the Secretary of the Territory shall annually account to the Secretary of the Treasury of the United States for the manner in which the aforesaid sum shall have been expended.

"Sec. XII. And be it further enacted, That the inhabitants of the said Territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the Territory of the United States northwest of the river Ohio, by the articles of the compact contained in the ordinance for the government of the said Territory, passed on the thirteenth day of July, one

thousand seven hundred and eighty-seven; and shall be subject to all the conditions and restrictions and prohibitions in said articles of compact imposed upon the people of the said Territory. The said inhabitants shall also be entitled to all the rights, privileges, and immunities, heretofore granted and secured to the Territory of Michigan, and to its inhabitants, and the existing laws of the Territory of Michigan shall be extended over said Territory, so far as the same shall not be incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed, by the Governor and Legislative Assembly of the said Territory of Wisconsin; and further, the laws of the United States are hereby extended over, and shall be in force in, said Territory, so far as the same, or any provisions thereof may be applicable.

"Sec. XIII. And be it further enacted, That the Legislative Assembly of the Territory of Wisconsin shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said session, or as soon thereafter as may by them be deemed expedient, the said Governor and Legislative Assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible, which place, however, shall thereafter be subject to be changed by the said Governor and Legislative Assembly. And twenty thousand dollars, to be paid out of any money in the Treasury, not otherwise appropriated, is hereby given to the said Territory, which shall be applied by the Governor and Legislative Assembly to defray the expenses of erecting public buildings at the seat of government.

"Sec. XIV. And be it further enacted, That a Delegate to the House of Representatives of the United States, to serve for the term of two years, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as have been grant-

ed to the Delegates from the several Territories of the United States to the said House of Representatives. The first election shall be held at such time and place or places, and be conducted in such manner, as the Governor shall appoint and direct. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given to the person so elected.

"Sec. XV. And be it further enacted, That all suits, process, and proceedings, and all indictments and informations which shall be undetermined on the third day of July next, in the courts held by the additional Judge for the Michigan Territory, in the counties of Brown and Iowa; and all suits, process, and proceedings, and all indictments and informations which shall be undetermined on the said third day of July, in the County Courts of the several counties of Crawford, Brown, Iowa, Dubuque, Milwalke [Milwaukie], and Des Moines, shall be transferred to be heard, tried, prosecuted, and determined, in the District Courts hereby established, which may include the said counties.

"Sec. XVI. And be it further enacted, That all causes which shall have been or may be removed from the courts held by the additional judge for the Michigan Territory, in the counties of Brown and Iowa, by appeal or otherwise, into the Supreme Court for the Territory of Michigan, and which shall be undetermined therein on the third day of July next, shall be certified by the Clerk of the said Supreme Court, and transferred to the Supreme Court of said Territory of Wisconsin, there to be proceeded in to final determination, in the same manner that they might have been in the said Supreme Court of the Territory of Michigan.

"Sec. XVII. And be it further enacted, That the sum of five thousand dollars be, and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, to be expended by and under the direction of the Legislative Assembly of said Territory, in the purchase of a library for

the accommodation of said Assembly, and of the Supreme Court hereby established.*

III. AN ACT TO ENABLE THE PEOPLE OF WISCONSIN TERRITORY TO FORM A CONSTITUTION AND STATE GOVERNMENT, AND FOR THE ADMISSION OF SUCH STATE INTO THE UNION. APPROVED AUGUST 6, 1846.

"Sec. I. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the people of the Territory of Wisconsin be and they are hereby authorized to form a Constitution and State Government, for the purpose of being admitted into the Union on an equal footing with the original States in all respects whatsoever, by the name of the State of Wisconsin, with the following boundaries, to wit: Beginning at the northeast corner of the State of Illinois—that is to say, at a point in the centre of Lake Michigan, where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence, running with the boundary line of the State of Michigan, through Lake Michigan, Green Bay, to the mouth of the Menomonie River; thence up the channel of said last mentioned river to Lake Brule river; thence up said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule in a direct line to the centre of the channel between Middle and South islands, in the Lake of the

*By an act of Congress, approved June 12, 1838, all that part of the Wisconsin Territory situate west of the Mississippi, and which belonged to the Louisiana purchase, was set off into a territory called Iowa, and which has since become a State. [Sess. Laws, 1838.]

On the 3d of March, 1839, an act was passed defining the eastern boundary of Wisconsin. [Sess. Laws, 1839.]

On the 3d of March, 1841, an act was passed providing for a survey and examination of the country between the mouths of the Menomonie and Montreal rivers, and for the purpose of designating and marking the boundary line between the State of Michigan and the Territory of Wisconsin. [Vide Sess. Laws, 1841.]

The emigration to Wisconsin, since the organization of this Territory has been unexampled; and the fertility of its soil, the salubrity of its climate, and its advantages for agriculture, have more than realized the most sanguine expectations.

Desert; thence in a direct line to the head waters of the Montreal river, as marked upon the survey made by Captain Cramm; thence down the main channel of the Montreal river to the middle of Lake Superior; thence through the centre of Lake Superior to the mouth of the St. Louis river; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicollet's map; thence due south to the main branch of the river St. Croix; thence down the main channel of said river to the Mississippi; thence down the centre of the main channel of that river to the northwest corner of the State of Illinois; thence due east with the northern boundary of the State of Illinois to the place of beginning, as established by "An act to enable the people of the Illinois Territory to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States. Approved April eighteen, eighteen hundred and eighteen."

"Sec. II. And be it further enacted, That to prevent all disputes in reference to the jurisdiction of islands in the said Brule and Menomonie rivers, the line be so run as to include within the jurisdiction of Michigan all the islands in the Brule and Menomonie rivers, (to the extent in which said rivers are adopted as a boundary,) down to, and inclusive of, the Quinnesec falls of the Menomonie; and from thence the line shall be so run as to include within the jurisdiction of Wisconsin all the islands in the Menomonie river, from the falls aforesaid, down to the junction of said river with Green Bay; provided, that the adjustment of boundary, as fixed in this act, between Wisconsin and Michigan shall not be binding on Congress, unless the same shall be ratified by the State of Michigan on or before the first day of June, one thousand eight hundred and forty-eight.

"Sec. III. And be it further enacted, That the said State of Wisconsin shall have concurrent jurisdiction on the Missis-

sippi, and all other rivers and waters bordering on the said State of Wisconsin, so far as the same shall form a common boundary to said State and any other State or States now or hereafter to be formed or bounded by the same; and said river and waters, and the navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said State as to all other citizens of the United States, without any tax, duty, impost or toll therefor.

"Sec. IV. And be it further enacted, That from and after the admission of the State of Wisconsin into the Union, in pursuance of this act, the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the State of Wisconsin as elsewhere within the United States; and said State shall constitute one district, and be called the district of Wisconsin; and a District Court shall be held therein, to consist of one Judge, who shall preside in the said district, and be called a District Judge. He shall hold at the seat of government of said State two sessions of said court annually, on the first Mondays in January and July, and he shall in all things have and exercise the same jurisdiction and powers which were by law given to the Judge of the Kentucky District, under an act entitled "An act to establish the Judicial Courts of the United States." He shall appoint a Clerk for said District, who shall reside and keep the records of said Court at the place of holding the same; and shall receive for the services performed by him the same fees to which the Clerk of the Kentucky District is by law entitled for similar services. There shall be allowed to the Judge of said District Court the annual compensation of fifteen hundred dollars, to commence from the date of his appointment, to be paid quarterly at the Treasury of the United States.

"Sec. V. And be it further enacted, That there shall be appointed in said District a person learned in the law, to act

as Attorney of the United States, who, in addition to the stated fees, shall be paid the sum of two hundred dollars annually by the United States, as a full compensation for all extra services; the said payment to be made quarterly, at the treasury of the United States. And there shall also be appointed a Marshal for said District, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees as are prescribed and allowed to Marshals in other districts; and shall, moreover, be allowed the sum of two hundred dollars annually, as a compensation for all extra services.

"Sec VI. And be it further enacted, That, until another census shall be taken and apportionment made, the State of Wisconsin shall be entitled to two Representatives in the Congress of the United States.

"Sec. VII. And be it further enacted, That the following propositions are hereby submitted to the Convention which shall assemble for the purpose of forming a Constitution for the State of Wisconsin, for acceptance or rejection; and if accepted by said Convention, and ratified by an article in said Constitution, they shall be obligatory on the United States:

First. That section numbered sixteen, in every township of the public lands in said State, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State, for the use of Schools.

Second. That the seventy-two sections, or two entire townships of land set apart and reserved for the use and support of a university by an act of Congress, approved on the twelfth day of June, eighteen hundred and thirty-eight, entitled "an act concerning a seminary of learning in the Territory of Wisconsin," are hereby granted and conveyed to the State, to be appropriated solely to the use and support of such university, in such manner as the Legislature may prescribe.

Third. That ten entire sections of land, to be selected,

located under the direction of the Legislature, in legal divisions of not less than one-quarter section, from any of the unappropriated lands belonging to the United States within the said State, are hereby granted to the said State, for the purpose of completing the public buildings of the said State, or for the erection of others at the seat of government, under the direction of the Legislature thereof.

Fourth. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the State for its use; the same to be selected by the Legislature thereof, within one year after the admission of said State; and when so selected, to be used or disposed of on such terms, conditions and regulations as the Legislature shall direct: provided, that no salt spring or land, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State.

"Fifth. That five per cent of the net proceeds of sales of all public lands lying within the said State, which have been or shall be sold by Congress, from and after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making public roads and canals in the same, as the Legislature shall direct: provided, that the foregoing propositions herein offered are on the condition that the said Convention which shall form the Constitution of said State shall provide by a clause in said Constitution, or an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States;

and that in no case shall non-resident proprietors be taxed higher than residents.*

IV. THE CONSTITUTION OF WISCONSIN.

An organic law for the State of Wisconsin was framed and adopted at a Convention held at Madison, on the fourteenth day of December, 1846. That document declared the consent of the people to the boundaries of the State, as the same were prescribed in the act to enable them to form a constitution and State government, yet suggested their preference for a boundary that should leave the rapids in the St. Louis river, and run thence southwardly to a point fifteen miles east of the most easterly point on Lake St. Croix; thence due south to the main channel of the Mississippi, and thence down the same to the boundary prescribed in said act of Congress. It accepted the terms proposed by Congress concerning taxation and the primary disposal of the soil, and expressly ordained that the State should never interfere with the primary disposal of such soil by the United States, nor with any regulations Congress might find necessary for securing the title in such soil to bona fide purchasers thereof; that no tax should be imposed on land belonging to the United States; and that in no case should non-resident proprietors be taxed higher than residents. It declared that the State should have concurrent jurisdiction on the river Mississippi, and on every other river and lake bordering on the said State so far as any river or lake should form a common boundary to the same, and any other State or States, Territory or Territories then or thereafter to be formed and bounded by the same; and that the Mississippi and the navigable waters leading into the same, and that

* In 1847, an act amendatory of the above was passed, in and by which the northwestern boundary of Wisconsin was adjusted, and brought to the line which demarked the old northwestern territory. Wisconsin now covers none of the Ildefonso, or Louisiana purchase, but deduces her entire title from the cession of Virginia, although it is very questionable whether the ancient charter of Virginia, in fact, covered any part of Wisconsin.

the St. Lawrence, and the carrying places between the same should be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor; that no law should be passed to take away or abridge the rights of owners to the riparian soil, unless in the same law provision be made for full compensation to the riparian owners; that lands and other property which had accrued to the Territory of Wisconsin by grant, gift, purchase, forfeiture, escheat, or otherwise, should vest in the State; and that the people, in their right of sovereignty, should be deemed to possess the ultimate property in and to all lands within the jurisdiction of the State; and further, that all lands, the title to which should fail from a defect of heirs, should revert or escheat to the people. It however remains unadopted by the people, and until the same shall be ratified, its provisions will not have effect.*

V. LAND TITLES GENERALLY, IN WISCONSIN.

It has been observed that Wisconsin was constructively colonized by the French at an early day; that it was capitulated by the Marquis De Vandreuil to Gen. Amherst, and confirmed to Great Britain by treaty, in 1763; that it was claimed to have been included in the chartered limits of Virginia, over which jurisdiction was relinquished by Great Britain in 1783; and that the title to the soil vested in the United States under the cession of Virginia. [Ante 140.]

The valid and subsisting title, therefore, to all lands within the State rests either in the United States, or was derived from the General Government by the State or individuals.

* Although Wisconsin may be regarded as a State, she will have a territorial organization until a Constitution for a State government shall have been adopted by the people. The provisions in the instrument adopted by the Convention in December last, concerning banks and exemptions, proved unsatisfactory to the people, and will doubtless occasion its rejection. If, however, it be adopted, the document will be inserted in the Appendix.

As to the nature and divisions of estates in land, the Legislative Assembly have patterned after Michigan, of which Wisconsin was formerly a portion. For information in that behalf, therefore, reference may be had to antecedent pages 298, and 347.

All persons of lawful age, residing in Wisconsin, are authorized and permitted to convey real estate; and all not residing in, but owning lands therein, may convey, according to the laws of Wisconsin, or of the State or Territory where such persons reside. The common law rule governs as to capacity.*

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* The Indians have not entirely removed from Wisconsin, yet in the more settled portions of the State, but few remain. Most of them have accepted other lands in lieu of their Wisconsin possessions, and have actually gone beyond the Mississippi, to take possession of the same. Lapham, in his Sketches of Wisconsin, published in 1846, observes that the Menomonies frequently take up their winter quarters on the head branches of the Rock river, and other places in that vicinity, and continue to bring their peltries to Milwaukie for sale. On the borders of Lake Superior, the Chippewas are the most numerous. The Sioux or Dacotas, tribes inhabiting the western shores of the Mississippi, often cross over and range in the northern parts of Wisconsin. Some Winnebagoes and Pottawattamies also, yet remain within the State.

It is worthy of remark, that there are other Indians, who removed from New-York in 1833, with the Oneidas, who have been admitted to all the rights and privileges of citizens of the United States. They are Stockbridges, and Brothertowns, and reside on the east side of Lake Winnebago, in Calumet county. The history of our government records no other case of the kind; yet the experiment is thought to promise vast benefits to that unfortunate portion of our race. In character and habits, they are said to be conformed to the whites. They are temperate, upright, and industrious farmers, managing their temporal affairs with ordinary skill, and seem to be rewarded with a fair degree of thrift and comfort. They have been represented in the Legislature, by one of their own people, and seem to manifest a watchful anxiety for the welfare and perpetuity of our government.

They hold their lands generally by a special grant, made to them in exchange for their former possessions in New-York, yet some have title under individual purchase.

For the disposal of the unsold lands of the General Government, in this State, land offices are kept open at Milwaukee, Mineral Point, and Green Bay.

The Milwaukee Land District covers all land from range number nine, east to the Lake; and from the Illinois line to town ten, inclusive; and also towns eleven and twelve, in the ranges number twenty, twenty-one and twenty-two.

The Green Bay Land District covers all the region lying north of that of Mil-

VI. THE EXECUTION OF DEEDS AND MORTGAGES IN WISCONSIN.

The Statutes of Wisconsin provide that no conveyance shall be effectual to pass the title to real estate, unless the same shall be in writing, and shall be subscribed and sealed by the grantor or grantors, or by his, her, or their lawful agent. [Stat. Wisconsin T., 178.]

Most of the enactments concerning conveyances, now in force, were derived from those of Michigan, and are found to be, in most respects, literal transcripts therefrom. The statutes impose but few restraints upon alienation, the people being averse to all superfluity and complication in the forms and methods of consummating bargains and sales. Yet, from the greater dignity of a freehold, in the eye of the law, as well as in the accepted judgment of the people, more form and solemnity are required in the conveyance of land than in the transfer of chattels alone. Whilst personal estate of small value may be safely transferred by oral declarations of the sale, and larger amounts by mere memoranda, or equivalent acts, deeds are required to be formally indicted on paper, parchment, or some similar substance, susceptible of being delivered and recorded, and to be solemnly subscribed and sealed by the party or parties making the grant. No rule less stringent would be compatible with the true interests of individuals, or the public.

Deeds must be signed. The statute requires them to be subscribed by the grantor or grantors, or by his, her, or their lawful agent. A lawful agent is defined to be, one who has been appointed to perform the act of conveyance for the

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waukee; and the Mineral Point District lies west of the Milwaukee District, extending to the Mississippi river, and including the mineral region in that quarter.

The Reports of the Commissioner of the General Land Office at Washington, show that three millions of acres of land in Wisconsin have been already sold. [Lapham's Wisconsin.]

owner, by an instrument in writing, executed, attested and acknowledged by such owner, in all respects as the deed to be executed by virtue of such appointment, is required to be. The signature may be by any mark that the grantor is accustomed to use for a sign manual; yet, if he or she have the ability to write his or her name, he or she should subscribe the same at the bottom of the deed.

They must be sealed. Unsealed documents are not deeds within the statute. Hence as real estate cannot be conveyed except by a deed or deeds, executed by and between parties able and competent to contract, it follows that a seal is requisite to all conveyances. According to the common law, a seal is wax, having thereon an impression—"sigillum est cera impressa, quia cera sine impressione non est sigillum;" and although the solemnity and dignity of deeds are measurably destroyed by any relaxation of the rule, impressions upon wax have been so long in disuse, that in the States west of Pennsylvania, the courts allow a scroll as a valid substitute for a seal. This, in effect, destroys the sacred character of deeds; for by permitting mere flourishes with a pen to suffice for seals, all distinction between writings sealed and unsealed is virtually abolished.*

They must be attested. Not only must the grantor or grantors subscribe and seal a deed, but the same is required to be done in the presence of two or more competent witnesses, "who shall at the same time attest the same by their signatures. [Id., 179.]

Such witnesses should not be persons, who, on account of infamy of character, of having been convicted of infamous crimes, or of interest, are incompetent to testify in a court of

* The usages of antiquity are the foundation of the common law requirements concerning seals. See Genesis, 38, 18; Exodus, 28, 11; Esther, 8. 8 and 10; Jeremiah, 32, 10 and 11; Cicero Acad., 2; Lucul, 4, 26; Heinecc. Elem. Jur. Civ, 497. Whether land should be conveyed by parol, as was the case in the early periods of English history, is not now a question; yet it is suggested that the abolition of seals is a relapse toward parol conveyances.

justice at the time of their attesting any deed; yet if such witnesses shall be competent at the time, their subsequent incompetency from any cause will not affect or impair the validity of the writing so attested.

They must be delivered. This is not in terms required; yet as deeds take effect only from the time of delivery it is an incident essential to their due execution. Deeds may be delivered to the party grantees, or to any other person authorized by them to receive the same. But until delivered to the grantees, or to some one for their benefit, the estate in the land intended to be conveyed does not pass, but remains in the grantor. The same rule obtains in respect to defeasible, that controls indefeasible conveyances. Mortgages of real estate, therefore, are required to be executed in the same manner as deeds.

VII. THE PROOF AND ACKOWLEDGMENT OF DEEDS AND MORTGAGES IN WISCONSIN.

By the territorial statutes, (being the only regulations in force,) it is provided that all deeds of real estate shall be acknowledged by the party or parties executing the same, or proved by one or more of the subscribing witnesses thereto, before a Judge, Notary Public, or Justice of the Peace, within the territory; and that it is the duty of the Judge, Notary, or Justice taking any acknowledgment or proof of any deed, mortgage, or other conveyance of real estate, to endorse thereon a certificate of such proof or acknowledgment. [Stat. Wis. T., 178.]

The provisions concerning acknowledgments by married women who join with their husbands in the conveyance of land of which the latter shall be seized during coverture, are somewhat ambiguous; yet they may acknowledge deeds as if they were sole, and release their rights of dower without their husbands' joining in the deed or release. [Id., 179.]

But the acknowledging officer is required to set forth, in

his certificate of proof or acknowledgment, every act done by him in the taking of such acknowledgment. If he know the grantor or grantors to be the person or persons described in, and who executed the conveyance in hand, such knowledge is a material fact, and the same should appear in his certificate. If the grantor or grantors shall be unknown to him, and proof of his or their identity be taken, the name of the witness by whom such proof shall be made, the place of his or their residence, and the facts testified to by him, or them, should be set forth. So also when a deed shall be proved by a subscribing witness, the name of such witness, the fact of his being sworn, his residence, his attestation of the deed with another witness, in the presence of, and at the request of the grantor, should be embodied in his certificate. To such certificate, when written, should be subscribed not only the proper name of the acknowledging officer, but his official title at length. If the officer be a Judge, it should appear of what court; if a Notary Public, or Justice of the Peace, it should appear of what county.

Concerning deeds and mortgages of land in Wisconsin, which are executed in another State or territory, it is provided that they shall be executed in such a manner, and before such officer as would entitle them to record in the State or territory where they are executed, had the land conveyed been located therein. [Id., 180.]

In every other respect, the statutes concerning acknowledgments and the authentication thereof, are substantially the same as those in Michigan. [See Ante, 309, 310.]

VIII. THE RECORDING OF DEEDS AND MORTGAGES IN WISCONSIN, AND THE EFFECT THEREOF.

Registers of Deeds are required, by the territorial statutes of Wisconsin, to be elected annually, in the counties organized, who shall reside and keep their offices at the county seats of the same respectively. They hold their offices for

one year, and until their successors are qualified. Their terms commence on the first day of January. [Sess. Laws of 1840 and 1841, 35.]

All deeds and mortgages affecting the title to real estate in Wisconsin are required to be recorded in the Register's office of the county in which the land so conveyed or affected shall be situated.

Unrecorded deeds and mortgages are presumed fraudulent and void as against subsequent bona fide purchasers, and mortgagees for a valuable consideration, without notice of such unrecorded deeds and mortgages.

But to entitle any deed or mortgage to be recorded, it must be executed in all respects according to law, and duly attested, proven or acknowledged; and when executed in a foreign State, the certificate of proof or acknowledgment must be authenticated, as indicated, ante 311.* [Stat. Wis. T., 180.]

IX. THE EXECUTION OF WILLS OF REAL ESTATE IN WISCONSIN.

The Statutes of Wisconsin provide that all wills of real estate shall be in writing, and shall be signed by the testator or testatrix, or by some one for him or her, in his or her

* Non-residents are informed, that on the first of January, 1847, there were the following counties, or recording districts in Wisconsin, of which those having county seats annexed, are organized for county purposes. The statement is given on the authority of Gen. Rufus King, of the Milwaukie Sentinel and Gazette, and George W. Foster, Esq., Counsellor, at Port Washington, and may be relied upon. The name of each county is presented in small capital letters, and the county seats of such as are organized, thereto annexed, in Roman letters, viz: BROWN, Green Bay; CALUMET, ———; CHIPPEWA, ———; COLUMBIA, Columbus; CRAWFORD, ———; DANE, Madison; DODGE, Oak Grove; FOND DU LAC, Fond du Lac; GRANT, ———; GREENE, Monroe; IOWA, Mineral Point; JEFFERSON, Jefferson; LAPOINT, ———; MANITOWOC, ———; MARQUETTE, ———; MILWAUKEE, Milwaukee; PORTAGE, ———; RACINE, Racine; RICHLAND, ———; ROCK, Janesville; SHEBOYGAN, Sheboygan; ST. CROIX, ———; SAUK, Prairie du Sac; WALWORTH, Elk Horn; WASHINGTON, Grafton; WAUKESHA, Prairieville; WINNEBAGO, ———. The counties of CRAWFORD, RICHLAND and LAPOINT are attached at present to GRANT; the counties of WINNEBAGO and CALUMET to FOND DU LAC.

presence, and by his or her direction. No prescription exists concerning the form of wills of real estate, wherefore the general rule on that subject prevails. They must be legible, intelligible, and clearly indicative of the purpose of the testator, in respect to the disposition to be made of his real estate, after his decease. They must not create trusts unknown to, or prohibited by law, or suspend the power of alienation for a period longer than shall be warranted by the statutes.

They must be signed—signed by the testator, or testatrix, or by some one for him or her, in his or her presence, and by his or her direction. The signature should be the writing of his or her name at length, at the bottom of the instrument; but if the testator or testatrix be unable to write his or her name, he or she may make his or her mark thereto, in such form as he or she has been accustomed to do, or as he or she shall choose to adopt for a signature.

They must be attested. Not only do the statutes require wills to be in writing, and signed by the testator or testatrix, as the case may be, or by some one for him or her, in his or her presence, and by his or her direction; but that such signing shall be attested by three or more credible witnesses, who shall subscribe their names thereto, in the presence of the testator or testatrix, as subscribing witnesses. The witnesses should be persons who are competent to understand the nature of the act performed, and whether the testator or testatrix, at the time of executing the will, possesses a sound mind and memory, and whether the will is the free and voluntary act of the person executing it. They should be also legally competent to testify of the facts, in the Probate Court, before which the will is required to be proved.

Wills may be altered or revoked by a codicil or writing, executed and attested in the same manner as wills are required to be executed and attested; or by burning, tearing, cancelling, or obliterating the same by the testator

or testatrix, or by some other person in his or her presence, and by his or her direction. [Stat. Wis. T., 296.]

For other regulations concerning the execution of wills of real estate, see ante, 314.

X. THE PROBATE OF WILLS IN WISCONSIN.

By the Session Laws of Wisconsin, passed in 1843, it was provided, that there shall be elected in each of the counties organized for judicial purposes, and the counties attached to them for judicial purposes, at the general election in said counties biennially, commencing in 1844, a Judge of Probate, whose term of service shall commence on the first of January next after his election.

Such Judge is invested with the usual powers of Probate Judges, to issue all necessary process to witnesses, and to parties, and to take the probate of wills, and to record the same in books, to be provided for that purpose, and to issue letters testamentary or of administration with the will annexed, thereon. [Stat. Wis. T., 296.]

As these statutes are about to undergo a revision, any further mention of them is omitted.*

XI. THE LEVY AND COLLECTION OF LAND TAXES IN WISCONSIN.

That the reader may apprehend the method adopted in Wisconsin for the imposition and collection of taxes, without a recital of all the enactments bearing upon that subject, it is necessary to observe that some counties are only "organ-

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* The statute of descents in Wisconsin is substantially the same as in the State of Michigan, as may be seen ante 322. Both were grounded on the ordinance of 1787, and do not vary essentially from the regulations in that behalf, contained in that instrument. As Wisconsin is about entering upon the condition of a sovereign State, it is believed that her Legislature will cause a revision of her laws, most of which are ambiguous or imperfect.

If this volume meet with such favor as to warrant a further publication, the Revised Statutes may be looked for in a future edition.

ized counties," whilst others are "organized counties for town government"—that the supervisory power in the former is conferred upon a Board of County Commissioners, and in the latter, upon a Board of Supervisors, one of whom is elected in each town.

Such Boards, wherever they exist, respectively, are invested with the power to audit the public accounts in their counties, and to determine the amount of taxes to be levied.

The statute provides that "it shall be the duty of County Assessors of the several counties which have not adopted the provisions of an act to provide for the government of the several towns in this territory, and for the revision of county government, and of town Assessors of the several towns in those counties which have adopted the provisions of the said act, to assess all lands, town lots, and out lots, at their cash value, which are not exempt from taxation by the laws of the United States, or this territory, not including any improvements made thereon, in building or otherwise, but including all merchandize and stock actually paid in any incorporated company, separately from other property, and to enter the valuation of the same separately on their assessment rolls." [Sess Laws 1845, 1, Sec. 1,]

It is the duty of Assessors, after completing their assessment rolls of the property in their districts or towns, to return the same, so that they may come before, and be considered by, the Board of Commissioners, or Supervisors, as the case may be, to the end that a tax may be determined.

In cases where the county is organized only, "the Commissioners shall, at their regular session, in July, or as soon thereafter as the assessment roll is filed, levy a per centage on the real estate and personal property (not exempt) sufficient, when added to the amount that will probably be received by the county from other sources of revenue, to defray the current expenses of such county, and to liquidate its debts for the year." [Stat. Wis. T., 44, Sec. 2.]

Whereupon the Clerk of the Board of County Commissioners of each county so organized, is required to calculate and to carry out the amount of taxes upon the roll, including the territorial tax to be raised, and deliver the same to the County Treasurer, and to deliver a duplicate thereof, with a warrant, under the seal of the Board, to the Collector of the county, commanding him to collect all the taxes charged in such transcript, by demanding payment of the persons charged therein; and to make return of his doings, and pay over the money by him collected, by virtue of said warrant, to said Clerk, on or before the first day of January next ensuing the date of the precept. [Id., 47, Sec. 13.

All persons in possession of any land charged with such tax are primarily liable to pay the same; but they have a remedy over against the owner, or other person, who ought to pay the said taxes, with twenty per cent damages. [Id., Sec. 14.]

If such taxes are not paid to the Collector on or before the first Monday of November, he may proceed to collect the same by distress and sale of the goods and chattels of the person charged, or of the person found in possession of the lands or town lots charged with such unpaid taxes, giving at least six days notice of the time and place of such sale, by written notices, posted in three of the most public places in said county. But if no goods nor chattels can be found, whereof to make the amount of such taxes, he is required to give notice in some weekly newspaper published in his county, or if no such newspaper be there published, then in some paper published in the county nearest thereto; also, by posting up four written notices, one on the court house door, and the others in three of the most public places in said county, for four weeks preceding the second Monday in December next thereafter, notifying all whom it may concern, that he will, on the second Monday in December next ensuing the date of said notice, commence selling, at the court

house door, or at the most public place in the county, the said lands on which the taxes due are not paid on that day, and that such sale will be continued from day to day, between the hours of nine o'clock in the forenoon and four in the afternoon of each day, until all are offered for sale. [Id., Sec. 20.]

At which time it is his duty to begin the sale according to the terms of said notice; and when any lots or tracts of land, or any part thereof, shall be sold for the non-payment of taxes and costs, and the charges thereon, the Collector is required to give to the purchaser a certificate in writing, describing the same with specific certainty, the sum paid therefor, and the time when the purchaser will be entitled to a deed; which certificate is by statute assignable, and transferrable, by endorsement on the same.

Such assignment is declared to have the same force and effect as the assignment of other bonds, for the conveyance of lands; and if the owner or claimant of the lot or tract of land described in such certificate shall not, within three years from the date thereof, pay to the purchaser, his heirs and assigns, or to the Clerk of the Board of Commissioners of the county in which such land shall be situated, for the use of such purchaser, his heirs or assigns, the sum mentioned in such certificate, with the interest thereon, at the rate of twenty-five per centum per annum, with such other taxes, costs and charges thereon as may have accrued, and have been paid by the purchaser or his assigns, then the said Collector, or his successor in office, at the expiration of said three years, is required to execute to said purchaser, his heirs or assigns, a conveyance therefor; which conveyance is declared to vest the person to whom it shall be given, with an absolute estate in fee simple thereof, subject to the claims of the county, for all taxes, costs and charges accruing subsequent to the sale, remaining unpaid. [Id., Sec. 23. Also Sess. Laws 1844, 22, Sec. 11.]

But where a county has been organized for town purposes, and has a Board of Supervisors, it is provided that such Board of Supervisors shall, at their annual meeting, examine the assessment rolls of the several Town Assessors, (who in such cases make assessments,) for the purpose of ascertaining whether the valuations in one town or ward bear a just relation to the valuation in all the towns and wards in the county; and after equalizing the same, a copy thereof, together with a statement of the amount to be raised in each town, shall be delivered to the Supervisors respectively, to be by him delivered or transmitted to the Clerk of his town. [Stat. Wis. T., 37, Sec. 2.

It is further provided that "it shall be the duty of the Town Clerk, on the reception of the corrected assessment roll, and the amount of county tax to be paid by his town, forthwith to calculate and carry out the amount of taxes, including town and county taxes, in an additional column, for that purpose prepared in the assessment roll, opposite to the several sums set down as the valuation of real and personal estate." [Id., Sec. 3.]

"Immediately after completing such assessment, he shall make out a duplicate or transcript of the same, together with a precept, in the name of the Territory, under his hand and seal, directed to the Collector of the town, commanding him to collect the charges contained in such transcript, by demanding payment of the persons charged therein, if within his town, and making sale of their goods and chattels, according to law; and the Town Clerk shall in like manner require of the Collector to pay over to the County and Town Treasurers the amount by him so collected at such times, and in such sums as shall be expressed therein, according to law; and to make return of such transcript and precept, with his doings thereon, to the Town Clerk, on or before the first Monday of December next following." [Id., Sec. 4.]

Every Collector, upon receiving the transcripts and pre-

cept of the Town Clerk, shall proceed to collect the taxes therein mentioned, according to the command of the precept." Id., 39, Sec. 1.]

"If no goods nor chattels can be found, out of which to make the taxes charged upon any lands or town lots, the Collector shall, on or before the first day in December, in each year, return his transcript roll, together with the precept, and his doings thereon, to the Town Clerk's office. The return shall specify all lands upon which the taxes are unpaid, and the name of the owner thereof, if known." [Id., Sec. 6.]

"Having received and approved the Collector's return, as aforesaid, the Town Clerk shall, before the first day of January, in every year, make out and forward to the County Treasurer a certificate, under his hand, describing the delinquent lands and town lots, and the taxes thereon. [Id. 40, Sec. 10.]

After the several Town Clerks in each county so organized have forwarded their returns of unpaid taxes, as above required, and shall have paid over such as shall have been collected for county and State purposes, it is the duty of the County Treasurer to give notice in a newspaper published in his county, if any there be, and if there be none, then in a newspaper published at the seat of government; also by posting up three written notices, in the most public places in such county, for at least four weeks preceding the second Tuesday in April, annually, notifying all whom it may concern, that he will, on the second Tuesday next ensuing such notice, commence selling at some of the most public places in the county, to be described therein, all and singular the lands and town lots in such county, on which the taxes due for the year or years for which he is authorized to collect, shall not have been paid at the day of such sale; and that such sale will be continued from day to day, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon of each day, until all shall be offered for sale; and it is made

the duty of the County Treasurer to describe in one of his written notices, which shall be posted in the office of the Clerk of the Board of Supervisors, each tract of land intended to be sold. [Id., 43, Sec. 19.]

On the day and at the place mentioned in such notice, (that is, the second Tuesday in April,) the County Treasurer is required to expose to public sale each tract on which the taxes shall remain unpaid, or so much thereof as will sell for the amount due and chargeable thereon. The manner of the division, if a part be sold, must be declared by the Treasurer, at the time of such sale; and such sale is required to be continued from day to day, until all the lands returned delinquent shall have been duly offered. [Id., Sec. 20.]

When any lots or tracts of land, or parts thereof, shall be sold for the non-payment of taxes and the costs and charges thereon, it is the duty of the County Treasurer to give to the purchaser or purchasers a certificate in writing, describing the same with specific certainty, the sum paid therefor, and the time when the purchaser or purchasers will be entitled to a deed therefor; which certificate may be assigned and transferred by endorsement; and if the owner or claimant of the lot or tract of land so sold shall not, within three years from the date thereof, pay to the purchaser or purchasers, his or their heirs, or assigns, or to the Clerk of the Board of Supervisors of his county, for the use of such purchaser or purchasers, his or their heirs, or assigns, the sums mentioned in such certificate, with interest thereon, at the rate of twenty-five per centum per annum, together with such other taxes, costs and charges upon the lot or tract of land as may have accrued under the laws of this Territory, or been paid by the purchaser, his heirs or assigns, vouchers of payment being produced to such Clerk or claimant.

At the expiration of the time allowed for redemption, it is the duty of the said Clerk, or his successor in office, to execute

to the said purchaser or purchasers, his or their heirs or assigns, in the name of the Territory of Wisconsin, a conveyance of the lot or tract of land so sold and described in said certificate; and which conveyance is declared to vest in the grantee an absolute estate in fee simple of the land conveyed, subject to the claims for all taxes, costs, and charges, that may have accrued subsequent to the sale. And every such conveyance executed by the Clerk of the Board of Supervisors, and duly acknowledged before any officer authorized to take acknowledgments of deeds, may be recorded, and have like force and effect as other conveyances acknowledged and recorded. [Sess. Laws 1844, 22, Sec. 11; Id., 44, Sec. 21.]

It is provided that for the purpose of raising a territorial revenue, there shall be annually levied in each of the counties of the territory, by the proper county authorities, upon the property subject to taxation for county purposes in each county, a territorial tax equal in amount to a sum which would be raised by a tax of one and a half mills on the dollar, on the assessed value of the property; which tax is required to be levied and embraced in the tax rolls, and collected and paid into the county treasuries in the same manner as county taxes, except that county scrip cannot be received for the same. [Sess. Laws 1845, Sec. 2.]

The County Treasurers are required to pay over the amount of the territorial tax by them received to the Treasurer of the Territory, and take his receipt therefor; and the Auditor of the Territory, upon the presentation of such receipts, is required to credit the counties respectively with the amount. [Id., Sec. 4.]

XII. THE REDEMPTION OF LANDS SOLD FOR TAXES.

Within three years next after any sale of land for delinquent and unpaid taxes assessed thereon, the owner or claim-

ant may redeem the same. [Sess. Laws 1844, 22, Sec. 11.] Idiots, femmes covert, and insane persons owning lands sold for taxes, may redeem the same within five years after the sale thereof, in the manner provided in other cases. [Id., Sec. 24.] And whenever the land of minors shall be sold for taxes, the same may be redeemed within one year after said minor attains majority. [Id., Sec. 25.]

In counties where the Collector shall sell land for delinquent taxes, the method provided for redemptions is, to pay to the purchaser or purchasers, his or their heirs or assigns, or to the Clerk of the Board of County Commissioners, for the use of such purchaser or purchasers, or his or their heirs or assigns, the amount of the bid and the interest thereon, at the rate of twenty-five per centum per annum, together with such other taxes, costs, and charges thereon, as may have accrued subsequent to the sale. When the sale shall be made by the County Treasurer, the owner or claimant may redeem within three years, by paying the amount of the bid and interest, at the rate of twenty-five per centum per annum, to the purchaser or purchasers his or their heirs or assigns, or to the Clerk of the Board of Supervisors for his or their benefit.

XIII. LIMITATION OF REAL ACTIONS IN WISCONSIN.

The statutes of Wisconsin provide that all suits for the recovery of lands shall be brought within twenty years after seizure and possession, unless the person or persons entitled to bring the action labor under some legal disability, such as imprisonment for crime for a term less than for life, infancy, insanity, or the like; and where any such legal disability exists at the time of the accruing of the right, or where it shall happen during said twenty years, the right of action survives for the period of ten years after the removal of such disability.

But this provision does not extend to land sold for taxes.

Claimants in such cases have but three years in which to bring suit for the recovery of such lands. Yet, if such claimant be a lunatic, infant, imprisoned for a term less than for life, or a femme covert, within said three years, the statute does not run during the existence of such disability.

All actions for dower are required to be brought within twenty years after the accruing of the right.*

XIV. REAL ESTATE EXEMPTIONS IN WISCONSIN.

The statutes of Wisconsin do not protect from levy and sale on execution, any real estate, or property of the nature of real estate, of a debtor, except a pew in a church, or place of public worship, and grounds used and occupied as burial places and tombs.†

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* All actions upon contract not under seal, and all actions upon judgments, in a court not of record, are required to be brought within three years after the same shall have accrued; all actions upon other contracts and judgments are required to be brought within twenty years. [Stat. Wis. T., 261.]

† The Constitution adopted in Convention in December, 1846, exempted the property of married women, and the homestead, to the extent of forty acres of land, from levy and sale on execution. But as the same remains unratified by the people, those provisions have been omitted.

The following property of a debtor is exempt from levy and sale on execution, viz: All spinning wheels, weaving looms, stoves in use in any dwelling; the family library, not exceeding in value one hundred dollars; the family bible, pictures, school books, a seat or pew in a church; ten sheep, with their fleeces; the cloth and yarn manufactured from the same; one cow, five swine, and necessary food for them; all pork, beef, fish, flour and vegetables, actually provided for family use, and necessary for six months support; fuel for one year, all wearing apparel; beds, bedsteads and bedding for the family; necessary cooking utensils, one table, six chairs, six knives and six forks; the same number each of plates, tea-cups, saucers and spoons; one sugar dish, milk-pot and tea-pot; one crane and appendages, one pair andirons, shovel and tongs; other household furniture, necessary for the debtor and family, not to exceed in value fifty dollars; the tools of any mechanic, not to exceed in value one hundred dollars; all utensils for carrying on a farm, where the debtor is a farmer, not exceeding in value ——— dollars; one horse, worth not over forty dollars, or one yoke of oxen, worth not more than sixty dollars; the military uniform of any militia man, and his arms and accoutrements; all rights of burial and tombs, used as repositories of the dead; the libraries of lawyers, physicians, and clergymen, and surgical instruments, not exceeding in value two hundred dollars. [Statement furnished by G. W. F., Esq., of Port Washington.]

XV. THE INTEREST OF MONEY AND USURY IN WISCONSIN.

The statutes of Wisconsin provide that the rate of interest upon the loan or forbearance of any money, goods, or things in action, for one year, shall not exceed twelve per centum per annum. Yet, not exceeding seven per cent will be allowed, unless a greater rate, not exceeding twelve per cent, shall be agreed upon by the parties, at the time of the making of the loan. In all cases where the rate shall not be agreed upon, it shall be reckoned at seven per cent.

Banking houses and corporations are not allowed to receive over seven per cent, nor may a rate exceeding seven per cent be charged upon any simple contract debt, or account, where no agreement, as to the interest, exists.

Wherever a greater rate of interest shall, in any contract, agreement, bond, note, or other obligation, be reserved or taken, than is allowed by law, the usurious contract, agreement, bond, note, or other obligation, is not thereby void, except for the usury. Yet the usurer thereby forfeits to the person paying the usury, three times the amount of the usury paid. A suit for the recovery thereof, however, is required to be brought within one year after such payment. [Stat. Wis., 56.]

☞ The Constitution adopted in Convention in December, 1846, has been rejected by the people, leaving Wisconsin in a "transition state," in respect to her organization. She was, at the head of this chapter, termed a State; yet, whilst without a Constitution, she remains for all practical purposes, a territory. It is believed, however, that the people will call another Convention, which will follow the public sentiment, as the same has been expressed, in framing an organic law that will enable Wisconsin to perfect its State organization.

THE STATE OF IOWA.

As a documentary history of land titles in this State would swell the size and augment the cost of this volume beyond the limits designed, it has been reserved for another volume.

Iowa is a portion of the Louisiana purchase, and was embraced within the cession of St. Ildefonso. In 1756, the French were in the undisputed possession of Louisiana, lying on both sides of the Mississippi, about its mouth, and embracing an immense region on the western branch of its upper waters. At that time Spain was in the possession of Florida, the two provinces being separated by the Perdido river.

On the 10th of February, 1763, France ceded to Great Britain the river and port of Mobile, and all her possessions on the left side of the Mississippi, except the town of New-Orleans, and to Spain the residue shortly after. On the first of October, 1801, a secret treaty was concluded between France and Spain, at St. Ildefonso, the third article of which is in these words: "His Catholic Majesty promises and engages on his part to retrocede to the French Republic, six months after the full and entire execution of the conditions and stipulations relative to his Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and the other States."

On the 30th of April, 1803, the United States acquired Louisiana from France. The treaty, after reciting the above third article of that of St. Ildefonso, proceeds to state "that the first Consul of the French Republic doth hereby cede to the United States, in the name of the French Republic, forever, and in full sovereignty, the said Territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above mentioned treaty, concluded with his Catholic Majesty." The fourth article stipulates "that there shall be sent by the government of France, a Commissary to Louisiana, to the end that he may do every act necessary, as well to receive from the officers of his Catholic Majesty, the said country and its dependencies, in the name of

the French Republic, if it has not been already done, so as to transmit it in the name of the French Republic, to the Commissary or Agent of the United States."

On the 30th of November, 1803, the powers given to the Commissioner of the French Republic were by him presented to Don Manuel Salcedo, the Governor of Louisiana, and to the Marquis De Casa Calvo, the Spanish Commissioner, who had powers for the surrender, dated October 15, 1802, at Barcelona: whereupon the surrender was made in the words following: "Don Manuel Salcedo, and the Marquis De Casa, Calvo, &c., put from this moment the said French Commissioner, the citizen Lausatt, in possession of the Colony of Louisiana and its dependencies, as also of the town and island of New-Orleans, in the same extent which they now have, and which they had in the hands of France, when she ceded them to the royal crown of Spain, and such as they should be after the treaties subsequently entered into between the States of his Catholic Majesty and those of other powers."

On the 21st of October, 1803, Congress passed an act, enabling the President of the United States to take possession of the Territory of Louisiana, as ceded by France; in pursuance of which the President appointed Commissioners, to whom Mons. Lausatt, for his Republic, on the 20th of December, 1803, surrendered the aforesaid Territory, in general terms. [Ch. J. Marshall; 3 Peters, 302.]

It will be seen, therefore, that the United States became vested with a title to the lands embraced in the treaty aforesaid, subject to the Indian right of occupancy. For a long time, that part of Louisiana comprehended within the limits of Iowa, remained in the possession of the natives; yet upon the establishment of the territorial government of Wisconsin, its ægis was extended over this domain, and the same was gathered in, as a portion of Wisconsin. [U. S. Stat., by Peters, vol. 5, 10.]

But in 1838, its settlers, on the western shores of the Mississippi, demanded a government of their own, independently of their eastern neighbors: whereupon an act was passed, dividing the Territory of Wisconsin, and establishing the territorial government of Iowa.

On the 3d of March, 1845, Congress passed an act for the admission of Iowa into the Union, with a Constitution, which may be found in the Appendix.

The statutes of Iowa in general were framed after those of Michigan, to which, with Wisconsin she was formerly attached. In respect to the estates in or conveyances of land in Iowa, the statutes in Michigan may be safely followed, although two attesting witnesses are not now required. They are required to be recorded in the office of Recorders, who are obliged to keep an office at the county seat of their respective counties, and to record all conveyances at length.

Wills require three attesting witnesses, and cannot legally suspend alienation beyond two lives. A Probate Court, having ample jurisdiction over testamentary and intestate estates, exists in every county.

Taxes are levied by County Commissioners, and warrants for their collection are issued to Collectors, who make the amount from personal estate, if possible, and in

default of personal, they sell real estate. All land sold for taxes may, however, be redeemed by the owners or their heirs, within two years after the sale, by paying the amount of the bid, subsequent taxes, and fifty per cent interest thereon.

Concerning the interest of money, it is provided that but six per cent can be charged on demands, where no greater rate has been agreed upon; but ten per cent may be stipulated for, in any note or agreement. There is no penalty nor punishment for usury; yet any excess over ten per cent paid, may be recovered back, provided suit therefor be brought within one year. [G. W. Fitch, Esq., of Bloomington.]

APPENDIX.

CONSTITUTION

OF

THE STATE OF NEW-YORK.

ADOPTED NOVEMBER 3, 1846.

WE, THE PEOPLE of the State of New-York, grateful to Almighty God for our freedom: in order to secure its blessings, do establish this Constitution:

ARTICLE I.

SECTION I. No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

SEC. II. The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever. But a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law.

SEC. III. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

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

SEC. V. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

SEC. VI. No person shall be held to answer for a capital or otherwise infamous crime, (except in cases of impeachment, and in cases of the militia, when in actual service; and the land and naval forces in time of war, or which this State may keep with the consent of Congress, in time of peace; and in cases of petit larceny, under

the regulation of the Legislature,) unless on presentment or indictment of a grand jury; and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SEC. VII. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three Commissioners, appointed by a Court of Record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefitted.

SEC. VIII. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury, that the matter charged as libellous is true, and was published with good motives, and for justifiable ends, the party shall be be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. IX. The assent of two-thirds of the members elected to each branch of the Legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

SEC. X. No law shall be passed, abridging the right of the people peaceably to assemble and to petition the government, or any department thereof, nor shall any divorce be granted, otherwise than by due judicial proceedings, nor shall any lottery hereafter be authorized, or any sale of lottery tickets allowed within this State.

SEC. XI. The People of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands, the title to which shall fail from a defect of heirs, shall revert, or escheat, to the people.

SEC. XII. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

SEC. XIII. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners according to the nature of their respective estates.

SEC. XIV. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

SEC. XV. All fines, quarter sales, or other like restraints upon alienation, reserved in any grant of land, hereafter to be made, shall be void.

Sec. XVI. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made, of, or with the Indians, shall be valid, unless made under the authority and with the consent of the Legislature.

Sec. XVII. Such parts of the common law, and of the acts of the Legislature of the Colony of New-York, as together did form the law of the said Colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said Colony, and of the Convention of the State of New-York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated; and the Legislature, at its first session after the adoption of this Constitution, shall appoint three Commissioners, whose duty it shall be to reduce into a written and systematic code, the whole body of the law of this State, or so much and such parts thereof as to the said Commissioners shall seem practicable and expedient. And the said Commissioners shall specify such alterations and amendments therein as they shall deem proper, and they shall at all times make reports of their proceedings to the Legislature, when called upon to do so; and the Legislature shall pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of the said Commissioners; and shall also provide for the publication of the said code, prior to its being presented to the Legislature for adoption.

Sec. XVIII. All grants of land within this State, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void: but nothing contained in this Constitution shall affect any grants of land within this State, made by the authority of the said King, or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority, or shall impair the obligation of any debts contracted by this State, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

ARTICLE II.

Section 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ten days, and an inhabitant of this State one year next preceding any election, and for the last four months a resident of the county where he may offer his vote, shall be entitled to vote at such election, in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; but such citizen shall have been for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers his vote. But no man of color, unless he shall have been for three years a citizen of this State, and for one year next preceding

any election shall have been seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election. And no person of color shall be subject to direct taxation unless he shall be seized and possessed of such real estate as aforesaid.

SEC. II. Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, of larceny, or of any infamous crime; and for depriving every person who shall make, or become directly or indirectly interested in any bet or wager depending upon the result of any election, from the right to vote at such election.

SEC. III. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms house, or other asylum, at public expense; nor while confined in any public prison.

SEC. IV. Laws shall be made for ascertaining by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established.

SEC. V. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

ARTICLE III.

SECTION I. The Legislative power of this State shall be vested in a Senate and Assembly.

SEC. II. The Senate shall consist of thirty-two members, and the Senators shall be chosen for two years. The Assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

SEC. III. The State shall be divided into thirty-two Districts, to be called Senate Districts, each of which shall choose one Senator. The Districts shall be numbered from one to thirty-two, inclusive.

District number one shall consist of the counties of Suffolk, Richmond, and Queens. District number two shall consist of the county of Kings. District number three, number four, number five, and number six, shall consist of the city and county of New-York; and the Board of Supervisors of said city and county shall, on or before the first day of May, one thousand eight hundred and forty-seven, divide the said city and county into the number of Senate Districts to which it is entitled, as near as may be, of an equal number of inhabitants, excluding aliens and persons of color not taxed, and consisting of convenient and contiguous territory; and no Assembly District shall be divided in the formation of a Senate District. The Board of Supervisors, when they shall have completed such division, shall cause certificates thereof, stating the number and boundaries of each District and the population thereof, to be filed in the office of the Secretary of State, and of the Clerk of the said city and county. District number seven shall consist of the counties of Westchester, Putnam, and Rockland. District number eight shall consist of the counties of Dutch-

ess and Columbia. District number nine shall consist of the counties of Orange and Sullivan. District number ten shall consist of the counties of Ulster and Greene. District number eleven shall consist of the counties of Albany and Schenectady. District number twelve shall consist of the county of Rensselaer. District number thirteen shall consist of the counties of Washington and Saratoga. District number fourteen shall consist of the counties of Warren, Essex, and Clinton. District number fifteen shall consist of the counties of St. Lawrence and Franklin. District number sixteen shall consist of the counties of Herkimer, Hamilton, Fulton, and Montgomery. District number seventeen shall consist of the counties of Schoharie and Delaware. District number eighteen shall consist of the counties of Otsego, and Chenango. District number nineteen shall consist of the county of Oneida. District number twenty shall consist of the counties of Madison and Oswego. District number twenty-one shall consist of the counties of Jefferson and Lewis. District number twenty-two shall consist of the county of Onondaga. District number twenty-three shall consist of the counties of Cortland, Broome, and Tioga. District number twenty-four shall consist of the counties of Cayuga and Wayne. District number twenty-five shall consist of the counties of Tompkins, Seneca, and Yates. District number twenty-six shall consist of the counties of Steuben and Chemung. District number twenty-seven shall consist of the county of Monroe. District number twenty-eight shall consist of the counties of Orleans, Genesee, and Niagara. District number twenty-nine shall consist of the counties of Ontario and Livingston. District number thirty shall consist of the counties of Allegany and Wyoming. District number thirty-one shall consist of the county of Erie. District number thirty-two shall consist of the counties of Chautauque and Cattaraugus.

Sec. IV. An enumeration of the inhabitants of the State shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and the said Districts shall be so altered by the Legislature, at the first session after the return of every enumeration, that each Senate District shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and persons of color not taxed; and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate District, except such county shall be equitably entitled to two or more Senators.

Sec. V. The members of Assembly shall be apportioned among the several counties of this State, by the Legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and persons of color not taxed, and shall be chosen by single Districts.

The several boards of supervisors in such counties of this State, as are now entitled to more than one member of Assembly, shall assemble on the first Tuesday of January next, and divide their respective counties into Assembly Districts equal to the number of members of Assembly to which such counties are now severally entitled by law, and shall cause to be filed in the offices of the Secretary of State and the Clerks of their respective counties, a description of such Assembly Dis-

tricts, specifying the number of each District and the population thereof, according to the last preceding State enumeration, as near as can be ascertained. Each Assembly District shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and persons of color not taxed, and shall consist of convenient and contiguous territory; but no town shall be divided in the formation of Assembly Districts.

The Legislature, at its first session after the return of every enumeration, shall re-apportion the members of Assembly among the several counties of this State, in manner aforesaid, and the Boards of Supervisors in such counties as may be entitled, under such re-apportionment, to more than one member, shall assemble at such time as the Legislature making such re-apportionment shall prescribe, and divide such counties into Assembly Districts, in the manner herein directed; and the apportionment and Districts so to be made, shall remain unaltered until another enumeration shall be taken under the provisions of the preceding section.

Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the Assembly, and no new county shall be hereafter erected, unless its population shall entitle it to a member.

The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, be entitled to a member.

Sec. VI. The members of the Legislature shall receive for their services, a sum not exceeding three dollars a day, from the commencement of the session; but such pay shall not exceed in the aggregate three hundred dollars for per diem allowance, except in proceedings for impeachment. The limitation as to the aggregate compensation, shall not take effect until the year one thousand eight hundred and forty-eight. When convened in extra session by the Governor, they shall receive three dollars per day. They shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting, on the most usual route. The Speaker of the Assembly shall, in virtue of his office, receive an additional compensation equal to one third of his per diem allowance as a member.

Sec. VII. No member of the Legislature shall receive any civil appointment within this State, or to the Senate of the United States, from the Governor, the Governor and Senate, or from the Legislature, during the term for which he shall have been elected; and all such appointments, and all votes given for any such member, for any such office or appointment, shall be void.

Sec. VIII. No person being a member of Congress, or holding any judicial or military office under the United States, shall hold a seat in the Legislature. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Sec. IX. The elections of Senators and members of Assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the Legislature.

Sec. X. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns, and qualifications of its own members, shall choose its own officers; and the Senate shall choose a temporary president, when the Lieutenant Governor shall not attend as president, or shall act as Governor.

Sec. XI. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Sec. XII. For any speech or debate in either house of the Legislature, the members shall not be questioned in any other place.

Sec. XIII. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

Sec. XIV. The enacting clause of all bills shall be "The people of the State of New-York represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

Sec. XV. No bill shall be passed unless by the assent of a majority of the members elected to each branch of the Legislature, and the question upon the final passage shall be taken immediately on its last reading, and the yeas and nays entered on the journal.

Sec. XVI. No private or local bill which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title.

Sec. XVII. The Legislature may confer upon the Boards of Supervisors of the several counties of the State, such further powers of local legislation and administration, as they shall from time to time prescribe.

ARTICLE IV.

Sec. I. The executive power shall be vested in a Governor, who shall hold his office for two years: a Lieutenant-Governor shall be chosen at the same time, and for the same term.

Sec. II. No person, except a citizen of the United States, shall be eligible to the office of Governor, nor shall any person be eligible to that office, who shall not have attained the age of thirty years, and who shall not have been five years next preceding his election, a resident within this State.

Sec. III. The Governor and Lieutenant Governor shall be elected at the times and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor, shall be elected; but in case two or more have an equal and the highest number of votes for Governor, or for Lieutenant-Governor, the two houses of the Legislature, at its next annual session, shall, forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor, or Lieutenant Governor.

Sec. IV. The Governor shall be commander-in-chief of the military and naval

forces of the State. He shall have power to convene the Legislature (or the Senate only) on extraordinary occasions. He shall communicate by message to the Legislature at every session, the condition of the State, and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services a compensation to be established by law, which shall neither be increased nor diminished after his election and during his continuance in office.

Sec. V. The Governor shall have the power to grant reprieves, commutations, and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted; stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Sec. VI. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the State.

Sec. VII. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be President of the Senate, but shall only have a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor, until the vacancy be filled, or the disability shall cease.

Sec. VIII. The Lieutenant-Governor shall, while acting as such, receive a compensation which shall be fixed by law, and which shall not be increased or diminished during his continuance in office.

Sec. IX. Every bill which shall have passed the Senate and Assembly, shall, before it becomes a law, be presented to the Governor: if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated; who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration, two-thirds of the members

present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of all the members present it shall become a law, notwithstanding the objections of the Governor. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

ARTICLE V.

SEC. I. The Secretary of State, Comptroller, Treasurer and Attorney-General, shall be chosen at a general election, and shall hold their offices for two years. Each of the officers in this Article named (except the Speaker of the Assembly,) shall at stated times, during his continuance in office, receive for his services, a compensation, which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive, to his use, any fees or perquisites of office, or other compensation.

SEC. II. A State Engineer and Surveyor shall be chosen at a general election, and shall hold his office two years, but no person shall be elected to said office who is not a practical engineer.

SEC. III. Three Canal Commissioners shall be chosen at the general election which shall be held next after the adoption of this Constitution, one of whom shall hold his office for one year, one for two years, and one for three years. The Commissioners of the Canal Fund shall meet at the Capitol on the first Monday of January, next after such election, and determine by lot which of said Commissioners shall hold his office for one year, which for two, and which for three years; and there shall be elected annually, thereafter, one Canal Commissioner, who shall hold his office for three years.

SEC. IV. Three Inspectors of State Prisons shall be elected at the general election which shall be held next after the adoption of this Constitution, one of whom shall hold his office for one year, one for two years, and one for three years. The Governor, Secretary of State, and Comptroller, shall meet at the Capitol on the first Monday of January next succeeding such election, and determine by lot which of said Inspectors shall hold his office for one year, which for two, and which for three, years; and there shall be elected annually thereafter one Inspector of State Prisons, who shall hold his office for three years. Said Inspectors shall have the charge and superintendence of the State Prisons, and shall appoint all the officers therein. All vacancies in the office of such Inspector shall be filled by the Governor, till the next election.

SEC. V. The Lieutenant Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney General, and State Engineer and Surveyor, shall be the Commissioners of the Land Office.

The Lieutenant Governor, Secretary of State, Comptroller, Treasurer, and Attorney General, shall be the Commissioners of the Canal Fund.

The Canal Board shall consist of the Commissioners of the Canal Fund, the State Engineer and Surveyor, and the Canal Commissioners.

SEC. VI. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are, or hereafter may be prescribed by law.

SEC. VII. The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular, violated his duty. The Governor shall appoint a competent person to discharge the duties of the office, during such suspension of the Treasurer.

SEC. VIII. All officers for the weighing, guaging, measuring, culling, or inspecting any merchandize, produce, manufacture or commodity, whatever, are hereby abolished, and no such office shall hereafter be created by law; but nothing in this section contained, shall abrogate any office created for the purpose of protecting the public health or the interests of the State in its property, revenue, tolls, or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purpose hereafter.

ARTICLE VI.

SECTION I. The Assembly shall have the power of impeachment, by the vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators, or a major part of them, and the Judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor, the Lieutenant Governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment, according to evidence; and no person shall be convicted, without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment, according to law.

SEC. II. There shall be a Court of Appeals, composed of eight Judges, of whom four shall be elected by the electors of the State for eight years, and four selected from the class of the Justices of the Supreme Court having the shortest time to serve. Provision shall be made by law for designating one of the number elected as Chief Judge, and for selecting such Justices of the Supreme Court, from time to time, and for so classifying those elected, that one shall be elected every second year.

SEC. III. There shall be a Supreme Court, having general jurisdiction in law and equity.

SEC. IV. The State shall be divided into eight judicial districts, of which the city of New-York shall be one; the others to be bounded by county lines, and to be compact and equal in population, as nearly as may be. There shall be four Justices of the Supreme Court in each district, and as many more in the district composed of the city of New-York, as may from time to time be authorized by law, but not to exceed in the whole such number in proportion to its population, as shall be in conformity with the number of such Judges in the residue of the State, in proportion to its population. They shall be classified so that one of the Justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

SEC. V. The Legislature shall have the same powers to alter and regulate the jurisdiction and proceedings in law and equity, as they have heretofore possessed.

SEC. VI. Provision may be made by law for designating from time to time, one or more of the said Justices, who is not a Judge of the Court of Appeals, to preside at the general terms of the said court to be held in the several districts. Any three or more of the said Justices, of whom one of the said Justices so designated shall always be one, may hold such general terms. And any one or more of the Justices may hold special terms and circuit courts, and any one of them may preside in courts of Oyer and Terminer in any county.

SEC. VII. The Judges of the Court of Appeals and Justices of the Supreme Court shall severally receive at stated times, for their services, a compensation to be established by law, which shall not be increased or diminished during their continuance in office.

SEC. VIII. They shall not hold any other office or public trust. All votes for either of them, for any elective office (except that of Justice of the Supreme Court, or Judge of the Court of Appeals,) given by the Legislature or the people, shall be void. They shall not exercise any power of appointment to public office. Any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this State.

SEC. IX. The classification of the Justices of the Supreme Court; the times and place of holding the terms of the Court of Appeals, and of the general and special terms of the Supreme Court, within the several districts, and the Circuit Courts, and Courts of Oyer and Terminer within the several counties, shall be provided for by law.

SEC. X. The testimony in equity cases shall be taken in like manner as in cases at law.

SEC. XI. Justices of the Supreme Court and Judges of the Court of Appeals, may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to the Assembly, and a majority of all the members of the Senate, concur therein. All judicial officers, except those mentioned in

this section, and except Justices of the Peace, and Judges and Justices of inferior courts, not of record, may be removed by the Senate, on the recommendation of the Governor; but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of, shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defence. On the question of removal, the ayes and noes shall be entered on the journals.

SEC. XII. The Judges of the Court of Appeals shall be elected by the electors of the State, and the Justices of the Supreme Court by the electors of the several judicial districts, at such times as may be prescribed by law.

SEC. XIII. In case the office of any Judge of the Court of Appeals, or Justice of the Supreme Court, shall become vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor, until it shall be supplied at the next general election of Judges, when it shall be filled by election for the residue of the unexpired term.

SEC. XIV. There shall be elected in each of the counties of this State, except the city and county of New-York, one County Judge, who shall hold his office for four years. He shall hold the County Court, and perform the duties of the office of Surrogate. The County Court shall have such jurisdiction in cases arising in Justices' Courts, and in special cases, as the Legislature may prescribe; but shall have no original civil jurisdiction, except in such special cases.

The County Judge, with two Justices of the Peace, to be designated according to law, may hold Courts of Sessions, with such criminal jurisdiction as the Legislature shall prescribe, and perform such other duties as may be required by law.

The County Judge shall receive an annual salary, to be fixed by the Board of Supervisors, which shall be neither increased nor diminished during his continuance in office. The Justices of the Peace, for services in Courts of Sessions, shall be paid a per diem allowance out of the county treasury.

In counties having a population exceeding forty thousand, the Legislature may provide for the election of a separate officer to perform the duties of the office of Surrogate.

The Legislature may confer equity jurisdiction in special cases upon the County Judge.

Inferior local courts, of civil and criminal jurisdiction, may be established by the Legislature in cities; and such courts, except for the cities of New-York and Buffalo, shall have an uniform organization and jurisdiction in such cities.

SEC. XV. The Legislature may, on application of the Board of Supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of County Judge and of Surrogate, in cases of their inability or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

SEC. XVI. The Legislature may re-organize the judicial districts at the first session after the return of every enumeration under this Constitution, in the manner

provided for in the fourth section of this article, and at no other time; and they may, at such session, increase or diminish the number of districts, but such increase or diminution shall not be more than one district at any one time. Each district shall have four Justices of the Supreme Court; but no diminution of the district shall have the effect to remove a Judge from office.

Sec. XVII. The electors of the several towns, shall, at their annual town meeting, and in such manner as the Legislature may direct, elect Justices of the Peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the Peace and Judges or Justices of inferior courts, not of record, and their clerks, may be removed, after due notice, and an opportunity of being heard in their defence by such county, city or State courts as may be prescribed by law, for causes to be assigned in the order of removal.

Sec. XVIII. All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the Legislature may direct.

Sec. XIX. Clerks of the several counties of this State shall be Clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. A Clerk for the Court of Appeals, to be ex-officio Clerk of the Supreme Court, and to keep his office at the seat of government, shall be chosen by the electors of the State; he shall hold his office for three years, and his compensation shall be fixed by law and paid out of the public treasury.

Sec. XX. No judicial officer, except Justices of the Peace, shall receive to his own use, any fees or perquisites of office.

Sec. XXI. The Legislature may authorize the judgments, decrees and decisions of any local inferior Court of Record of original civil jurisdiction, established in a city, to be removed for review directly into the Court of Appeals.

Sec. XXII. The Legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

Sec. XXIII. Tribunals of conciliation may be established, with such powers and duties as may be prescribed by law, but such tribunals shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto, in the presence of such tribunal, in such cases as shall be prescribed by law.

Sec. XXIV. The Legislature, at its first session after the adoption of this Constitution, shall provide for the appointment of three Commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the Court of Record of this State, and to report thereon to the Legislature, subject to their adoption and modification from time to time.

Sec. XXV. The Legislature, at its first session after the adoption of this Constitution, shall provide for the organization of the Court of Appeals, and for trans-

ferring to it the business pending in the Court for the Correction of Errors, and for the allowance of writs of error and appeals, to the Court of Appeals, from the judgments and decrees of the present Court of Chancery and Supreme Court, and of the courts that may be organized under this Constitution.

ARTICLE VII.

SECTION I. After paying the expenses of collection, superintendence and ordinary repairs, there shall be appropriated and set apart in each fiscal year, out of the revenues of the State canals, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of one million and three hundred thousand dollars, until the first day of June, one thousand eight hundred and fifty-five, and from that time the sum of one million and seven hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest, and redeem the principal of that part of the State debt called the canal debt, as it existed at the time first aforesaid, and including three hundred thousand dollars, then to be borrowed, until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

SEC. II. After complying with the provisions of the first section of this article, there shall be appropriated and set apart out of the surplus revenues of the State canals, in each fiscal year, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of three hundred and fifty thousand dollars, until the time when a sufficient sum shall have been appropriated and set apart, under the said first section, to pay the interest and extinguish the entire principal of the canal debt; and after that period, then the sum of one million and five hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the State debt called the general fund debt, including the debt for loans of the State credit to railroad companies which have failed to pay the interest thereon, and also the contingent debt on State stocks loaned to incorporated companies which have hitherto paid the interest thereon, whenever and as far as any part thereof may become a charge on the treasury or general fund, until the same shall be wholly paid; and the principal and income of the said last mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the moneys to the said sinking fund shall at any time be deferred, by reason of the priority recognized in the first section of this article, the sum so deferred, with quarterly interest thereon, at the then current rate, shall be paid to the last mentioned sinking fund, as soon as it can be done consistently with the just rights of the creditors holding said canal debt.

SEC. III. After paying the said expenses of superintendence and repairs of the canals, and the sums appropriated by the first and second sections of this Article, there shall be paid out of the surplus revenues of the canals, to the Treasury of the State, on or before the thirtieth day of September, in each year, for the use and benefit of the General Fund, such sum, not exceeding two hundred thousand dollars, as may be required to defray the necessary expenses of the State; and the remainder of the revenues of the said canals shall, in each fiscal year, be applied, in such

manner as the Legislature shall direct, to the completion of the Erie Canal Enlargement, and the Genesee Valley and Black River canals, until the said canals shall be completed.

If at any time after the period of eight years from the adoption of this Constitution, the revenues of the State, unappropriated by this article, shall not be sufficient to defray the necessary expenses of the government, without continuing or laying a direct tax, the Legislature may, at its discretion, supply the deficiency, in whole or in part, from the surplus revenues of the canals, after complying with the provisions of the first two sections of this article, for paying the interest and extinguishing the principal of the Canal and General Fund debt; but the sum thus appropriated from the surplus revenues of the canals, shall not exceed annually three hundred and fifty thousand dollars, including the sum of two hundred thousand dollars, provided for by this section for the expenses of the government, until the General Fund debt shall be extinguished, or until the Erie Canal Enlargement and Genesee Valley and Black River Canals shall be completed, and after that debt shall be paid, or the said canal shall be completed, then the sum of six hundred and seventy-two thousand five hundred dollars, or so much thereof as shall be necessary, may be annually appropriated to defray the expenses of the government.

SEC. IV. The claims of the State against any incorporated company to pay the interest and redeem the principal of the stock of the State loaned or advanced to such company, shall be fairly enforced, and not released or compromised; and the moneys arising from such claims shall be set apart and applied as part of the sinking fund provided in the second section of this article. But the time limited for the fulfillment of any condition of any release or compromise heretofore made or provided for, may be extended by law.

SEC. V. If the sinking funds, or either of them, provided in this article, shall prove insufficient to enable the State, on the credit of such fund, to procure the means to satisfy the claims of the creditors of the State as they become payable, the Legislature shall, by equitable taxes, so increase the revenues of the said funds as to make them, respectively, sufficient perfectly to preserve the public faith. Every contribution or advance to the canals, or their debt, from any source, other than their direct revenues, shall, with quarterly interest, at the rates then current, be repaid into the Treasury, for the use of the State, out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt.

SEC. VI. The Legislature shall not sell, lease or otherwise dispose of any of the canals of the State; but they shall remain the property of the State and under its management, forever.

SEC. VII. The Legislature shall never sell or dispose of the salt springs belonging to this State. The lands contiguous thereto, and which may be necessary and convenient for the use of the salt springs, may be sold by authority of law and under the direction of the commissioners of the land office, for the purpose of investing the moneys arising therefrom in other lands alike convenient; but by such sale and purchase the aggregate quantity of these lands shall not be diminished.

SEC. VIII. No moneys shall ever be paid out of the Treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

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

SEC. X. The State may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts, but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts, shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

SEC. XI. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

SEC. XII. Except the debts specified in the tenth and eleventh sections of this article, no debt shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by a law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof.

No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it, at such election.

On the final passage of such bill in either house of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

The Legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted, in pursuance of such law, shall remain in force, and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision herein before specified to pay and discharge the interest and principal of such debt and liability.

The money arising from any loan or stock creating such debt or liability, shall be applied to the work or object specified in the act authorising such debt or liability, or for the re-payment of such debt or liability, and for no other purpose whatever.

No such law shall be submitted to be voted on, within three months after its passage, or at any general election, when any other law, or any bill, or any amendment to the Constitution, shall be submitted to be voted for or against.

SEC. XIII. Every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

SEC. XIV. On the final passage, in either house of the Legislature, of every act which imposes, continues, or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges, or commutes any claim or demand of the State, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and three-fifths of all the members elected to either house, shall, in all such cases, be necessary to constitute a quorum therein.

ARTICLE VIII.

SECTION I. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section, may be altered from time to time or repealed.

SEC. II. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. III. The term corporations as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

SEC. IV. The Legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

SEC. V. The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation issuing bank notes of any description.

SEC. VI. The Legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

SEC. VII. The stockholders in every corporation and joint-stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, after the first day of January, one thousand eight hundred and fifty, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind, contracted after the said first day of January, one thousand eight hundred and fifty.

SEC. VIII. In case of the insolvency of any bank or banking association, the bill-

holders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

SEC. IX. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.

ARTICLE IX.

SECTION I. The capital of the Common School Fund; the capital of the Literature Fund, and the capital of the United States Deposit Fund, shall be respectively preserved inviolate. The revenue of the said Common School Fund shall be applied to the support of common schools; the revenues of the said Literature Fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States Deposit Fund shall each year be appropriated to and made a part of the capital of the said Common School Fund.

ARTICLE X.

SECTION I. Sheriffs, Clerks of counties, including the Register and Clerk of the city and county of New-York, Coroners, and District Attorneys, shall be chosen by the electors of the respective counties, once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law, to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the Sheriff.

The Governor may remove any officer in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

SEC. II. All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the Boards of Supervisors, or other county authorities, as the Legislature shall direct. All city, town, and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns, and villages, or of some division thereof, or appointed by such authorities, thereof, as the Legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SEC. III. When the duration of any office is not provided by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

SEC. IV. The time of electing all officers named in this article shall be prescribed by law.

SEC. V. The Legislature shall provide for filling vacancies in office, and in case

of elective officers, no person appointed to fill a vacancy shall hold his office, by virtue of such appointment, longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Sec. VI. The political year and Legislative term, shall begin on the first day of January; and the Legislature shall every year assemble on the first Tuesday in January, unless a different day shall be appointed by law.

Sec. VII. Provisions shall be made by law for the removal for misconduct or malversation in office of all officers (except judicial) whose powers and duties are not local or Legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal.

Sec. VIII. The Legislature may declare the cases in which any office shall be deemed vacant, where no provision is made for that purpose in this Constitution.

ARTICLE XI.

Section I. The militia of this State shall at all times hereafter, be armed and disciplined, and in readiness for service; but all such inhabitants of this State of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, shall be excused therefrom, upon such conditions as shall be prescribed by law.

Sec. II. Militia officers shall be chosen, or appointed, as follows: captains, subalterns, and non-commissioned officers, shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions; brigadier-generals and brigade inspectors, by the field officers of their respective brigades; major-generals, brigadier-generals, and commanding officers of regiments or separate battalions, shall appoint the staff officers to their respective divisions, brigades, regiments, or separate battalions.

Sec. III. The Governor shall nominate, and with the consent of the Senate, appoint all major generals, and the commissary general. The adjutant general, and other chiefs of staff departments, and the aids-de-camp of the commander-in-chief shall be appointed by the Governor, and their commissions shall expire with the time for which the Governor shall have been elected. The commissary general shall hold his office for two years. He shall give security for the faithful execution of the duties of his office, in such manner and amount as shall be prescribed by law.

Sec. IV. The Legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their elections to the Governor.

Sec. V. The commissioned officers of the militia shall be commissioned by the Governor; and no commissioned officer shall be removed from office, unless by the Senate, on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the decision of a court martial, pursuant to law. The present officers of the militia shall hold their commissions subject to removal, as before provided.

Sec. VI. In case the mode of election and appointment of militia officers hereby

directed, shall not be found conducive to the improvement of the militia, the Legislature may abolish the same, and provide by law for their appointment and removal, if two-thirds of the members present in each House shall concur therein.

ARTICLE XII.

SECTION I. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of New-York; and that I will faithfully discharge the duties of the office of according to the best of my ability."

And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

ARTICLE XIII.

SECTION I. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature, to be chosen at the next general election of Senators, and shall be published for three months previous to the time of making such choice, and if in the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature, voting thereon, such amendment or amendments shall become part of the Constitution.

SEC. II. At the general election to be held in the year eighteen hundred and sixty-six, and in each twentieth year thereafter, and also at such time as the Legislature may by law provide, the question, "Shall there be a Convention to revise the Constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the Legislature; and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a Convention for such purpose, the Legislature at its next session shall provide by law for the election of Delegates to such Convention.

ARTICLE XIV.

SECTION I. The first election of Senators and Members of Assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-seven.

The Senators and Members of Assembly, who may be in office on the first day

of January, one thousand eight hundred and forty-seven, shall hold their offices until and including the thirty-first day of December following, and no longer.

SEC. II. The first election of Governor and Lieutenant Governor under this Constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-eight; and the Governor and Lieutenant Governor in office when this Constitution shall take effect, shall hold their respective offices until and including the thirty-first day of December of that year.

SEC. III. The Secretary of State, Comptroller, Treasurer, Attorney General, District Attorney, Surveyor General, Canal Commissioners, and Inspectors of State Prisons, in office when this Constitution shall take effect, shall hold their respective offices until and including the thirty-first day of December, one thousand eight hundred and forty-seven, and no longer.

SEC. IV. The first election of Judges and Clerk of the Court of Appeals, Justices of the Supreme Court, and County Judges, shall take place at such time between the first Tuesday of April and the second Tuesday of June, one thousand eight hundred and forty-seven, as may be prescribed by law. The said courts shall respectively enter upon their duties, on the first Monday of July, next thereafter; but the term of office of said Judges, Clerk and Justices as declared by this Constitution, shall be deemed to commence on the first day of January, one thousand eight hundred and forty-eight.

SEC. V. On the first Monday of July, one thousand eight hundred and forty-seven, jurisdiction of all suits and proceedings then pending in the present Supreme Court and Court of Chancery, and all suits and proceedings originally commenced and then pending in any Court of Common Pleas, (except in the city and county of New-York,) shall become vested in the Supreme Court hereby established. Proceedings pending in Courts of Common Pleas, and in suits originally commenced in Justices' Courts, shall be transferred to the County Courts provided for in this Constitution, in such manner and form, and under such regulation as shall be provided by law. The Courts of Oyer and Terminer hereby established, shall, in their respective counties, have jurisdiction, on and after the day last mentioned, of all indictments and proceedings then pending in the present Courts of Oyer and Terminer, and also of all indictments and proceedings then pending in the present Courts of General Sessions of the Peace, except in the city of New-York, and except in cases of which the Courts of Sessions hereby established may lawfully take cognizance; and of such indictments and proceeding the Courts of Sessions hereby established shall have jurisdiction on and after the day last mentioned.

SEC. VI. The Chancellor, and the present Supreme Court, shall, respectively, have power to hear and determine any of such suits and proceedings ready on the first Monday of July, one thousand eight hundred and forty-seven, for hearing or decision, and shall, for their services therein, be entitled to their present rates of compensation, until the first day of July, one thousand eight hundred and forty-eight, or until all such suits and proceedings shall be sooner heard and determined. Masters in Chancery may continue to exercise the functions of their office in the

Court of Chancery, so long as the Chancellor shall continue to exercise the functions of his office under the provisions of this Constitution.

And the Supreme Court hereby established shall also have power to hear and determine such of said suits and proceedings as may be pescribed by law.

SEC. VII. In case any vacancy shall occur in the office of Chancellor or Justice of the present Supreme Court, previously to the first day of July, one thousand eight hundred and forty-eight, the Governor may nominate, and by and with the advice and consent of the Senate, appoint a proper person to fill such vacancy. Any Judge of the Court of Appeals or Justice of the Supreme Court, elected under this Constitution, may receive and hold such appointment.

SEC. VIII. The offices of Chancellor, Justice of the existing Supreme Court, Circuit Judge, Vice Chancellor, Assistant Vice Chancellor, Judge of the existing county courts of each county, Supreme Court Commissioner, Master in Chancery, Examiner in Chancery and Surrogate, (except as herein otherwise provided,) are abolished from and after the first Monday of July, one thousand eight hundred and forty-seven.

SEC. IX. The Chancellor, the Justices of the present Supreme Court, and the Circuit Judges are hereby declared to be severally eligible to any office at the first election under this Constitution.

SEC. X. Sheriffs, Clerks of counties, (including the Register and Clerk of the city and county of New-York) and Justices of the Peace, and Coroners, in office when this Constitution shall take effect, shall hold their respective offices until the expiration of the term for which they were respectively elected.

SEC. XI. Judicial officers in office when this Constitution shall take effect, may continue to receive such fees and perquisites of office as are now authorized by law, until the first day of July, one thousand eight hundred and forty-seven, notwithstanding the provisions of the twentieth section of the sixth article of this Constitution.

SEC. XII. All local courts established in any city or village, including the Superior Court, Common Pleas, Sessions and Surrogate's Courts of the city and county of New-York, shall remain, until otherwise directed by the Legislature, with their present powers and jurisdictions; and the judges of such courts and any clerks thereof in office on the first day of January, one thousand eight hundred and forty-seven, shall continue in office until the expiration of their terms of office, or until the Legislature shall otherwise direct.

SEC. XIII. This Constitution shall be in force from and including the first day of January, one thousand eight hundred and forty-seven, except as is herein otherwise provided.

Done, in Convention, at the Capitol, in the city of Albany, the ninth day of October, in the year one thousand eight hundred and forty-six, and of the Independence of the United States of America the seventy-first.

CONSTITUTION

OF

THE STATE OF OHIO.

WE, THE PEOPLE of the eastern division of the territory of the United States northwest of the river Ohio, having the right of admission into the General Government, as a member of the Union, consistent with the Constitution of the United States, the ordinance of Congress of one thousand seven hundred and eighty-seven, and of the law of Congress entitled "An act to enable the people of the eastern division of the territory of the United States, 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": in order to establish justice, promote the welfare, and secure the blessings of liberty to ourselves and posterity, do ordain and establish the following Constitution a form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Ohio.

ARTICLE I.

SECTION I. The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both to be elected by the people.

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

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

SEC. IV. No person shall be a representative who shall not have attained the

age of twenty-five years, and be a citizen of the United States, and an inhabitant of this State; shall also have resided within the limits of the county in which he shall be chosen, one year next preceding his election, unless he shall have been absent on the public business of the United States or of this State, and shall have paid a State or county tax.

SEC V. The Senators shall be chosen biennially by the qualified voters for representatives; and on their being convened in consequence of the first election, they shall be divided by lot, from their respective counties or districts, as near as can be, into two classes: the seats of the Senators of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year: so that one-half thereof, as near as possible, may be annually chosen forever thereafter.

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

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

SEC. VIII. The Senate and House of Representatives, when assembled, shall each choose a Speaker and its other officers; be judges of the qualifications and elections of its members, and sit upon its own adjournments; two-thirds of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members.

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

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

SEC. XI. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the Legislature of a free and independent State.

SEC. XII. When vacancies happen in either House, the Governor, or the person exercising the power of the Governor, shall issue writs of election, to fill such vacancies.

SEC. XIII. Senators and Representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the

General Assembly, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

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

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

Sec XVI. Bills may originate in either House, but may be altered, amended or rejected by the other.

Sec. XVII. Every bill shall be read on three different days in each House, unless in case of urgency, three-fourths of the House, where such bill is so depending, shall deem it expedient to dispense with this rule; and every bill having passed both Houses shall be signed by the Speakers of their respective Houses.

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

Sec. XXI. The Legislature of this State shall not allow the following officers of government greater annual salaries than as follows, until the year eighteen hundred and eight, to wit: The Governor not more than one thousand dollars; the Judges of the Supreme Court, not more than one thousand dollars each; the Presidents of the Courts of Common Pleas, not more than eight hundred dollars each; the Secretary of State, not more than five hundred dollars; the Auditors of Public accounts, not more than seven hundred and fifty dollars; the Treasurer not more than four hundred and fifty dollars; no member of the Legislature shall receive more than two dollars per day, during his attendance on the Legislature, nor more for every twenty-five miles he shall travel, in going to and returning from the General Assembly.

Sec. XX. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this State, which shall have been created, or the emoluments of which shall have been increased during such time.

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

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

Sec. XXIII. The House of Representatives shall have the sole power of impeaching, but a majority of all the members must concur in an impeachment. All impeachments shall be tried by the Senate; and when sitting for that purpose, the Senators shall be upon oath or affirmation, to do justice according to law and evidence. No person shall be convicted, without the concurrence of two-thirds of all the Senators.

Sec. XXIV. The Governor, and all other civil officers under this State shall be liable to impeachment for any misdemeanor in office; but judgment in such case, shall not extend further than removal from office and disqualification to hold any office of honor, profit or trust, under this State. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment, according to law.

Sec. XXV. The first session of the General Assembly shall commence on the first Tuesday of March next; and forever after, the General Assembly shall meet on the first Monday of December, in every year, and at no other period, unless directed by law, or provided for by this Constitution.

Sec. XXVI. No Judge of any Court of Law or Equity, Secretary of State, Attorney General, Register, Clerk of any Court of Record, Sheriff, or Collector, Member of either House of Congress, or person holding any office under the authority of the United States, or any lucrative office under the authority of this State, (provided that appointments in the militia, or Justices of the Peace, shall not be considered lucrative offices,) shall be eligible as a candidate for, or have a seat in, the General Assembly.

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

Sec. XXVIII. No person, who heretofore hath been, or hereafter may be, a Collector or holder of public moneys, shall have a seat in either House of the General Assembly, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable or liable.

ARTICLE II.

Section I. The Supreme Executive power of this State shall be vested in a Governor.

Sec. II. The Governor shall be chosen by the electors of the members of the General Assembly, on the second Tuesday of October, at the same places, and in the same manner, that they shall respectively vote for members thereof. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the Speaker of the Senate, who shall open and publish them, in the presence of a majority of the members of each House of the General Assembly: the person having the highest number of votes shall be Governor; but if two or more shall be equal and highest in votes, one of them shall be chosen Governor by joint ballot of both Houses of the General Assembly. Contested elections for Governor shall be determined by both Houses of the General Assembly, in such manner as shall be prescribed by law.

Sec. III. The first Governor shall hold his office until the first Monday of December, one thousand eight hundred and five, and until another Governor shall be

elected and qualified to office; and forever after the Governor shall hold his office for the term of two years, and until another Governor shall be elected and qualified; but he shall not be eligible more than six years, in any term of eight years. He shall be at least thirty years of age, and have been a citizen of the United States twelve years, and an inhabitant of this State four years next preceding his election.

SEC. IV. He shall, from time to time, give to the General Assembly, information of the state of the Government, and recommend to their consideration such measures as he shall deem expedient.

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

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

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

SEC. VIII. When any officer, the right of whose appointment is, by this Constitution, vested in the General Assembly, shall during the recess die, or his office by any means become vacant, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the Legislature.

SEC. IX. He may, on extraordinary occasions, convene the General Assembly, by proclamation, and shall state to them, when assembled, the purposes for which they shall have been convened.

SEC. X. He shall be Commander-in-Chief of the army and navy of this State, and of the militia, except when they shall be called into the service of the United States.

SEC. XI. In case of disagreement between the two Houses, with respect to the time of adjournment, the Governor shall have the power to adjourn the General Assembly to such time as he thinks proper; provided it be not a period beyond the annual meeting of the Legislature.

SEC. XII. In case of the death, impeachment, resignation or removal of the Governor from office, the Speaker of the Senate shall exercise the office of Governor until he be acquitted, or another Governor shall be duly qualified. In case of the impeachment of the Speaker of the Senate, or his death, removal from office, resignation, or absence from the State, the Speaker of the House of Representatives shall succeed to the office, and exercise the duties thereof, until a Governor shall be elected and qualified.

SEC. XIII. No member of Congress, or person holding any office under the United States, or this State, shall execute the office of Governor.

SEC. XIV. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of Ohio."

SEC. XV. All grants and commissions shall be in the name and by the authority

of the State of Ohio, sealed with the seal, signed by the Governor, and countersigned by the Secretary.

SEC. XVI. A Secretary of State shall be appointed by joint ballot of the Senate and House of Representatives, who shall continue in office three years, if he shall so long behave himself well; he shall keep a fair register of the official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before either branch of the Legislature; and shall perform such other duties as shall be assigned him by law.

ARTICLE III.

SECTION I. The Judicial power of this State, both as to matters of law and equity, shall be vested in a Supreme Court, in Courts of Common Pleas for each county, in Justices of the Peace, and in such other courts as the Legislature may, from time to time, establish.

SEC. II. The Supreme Court shall consist of three Judges, any two of whom shall be a quorum. They shall have original and appellate jurisdiction, both in common law and chancery, in such cases as shall be directed by law; provided that nothing herein contained shall prevent the General Assembly from adding another Judge to the Supreme Court, after the term of five years, in which case the Judge may divide the State into two circuits, within which any two of the Judges may hold a Court.

SEC. III. The several Courts of Common Pleas shall consist of a President and Associate Judges. The State shall be divided by law into three circuits. There shall be appointed in each circuit, a President of the Courts, who, during his continuance in office, shall reside therein. There shall be appointed in each county, not more than three nor less than two Associate Judges, who, during their continuance in office, shall reside therein. The President and Associate Judges, in their respective counties, any three of whom shall be a quorum, shall compose the Court of Common Pleas, which Court shall have common law and chancery jurisdiction in all such cases as shall be directed by law: provided that nothing herein contained shall be construed to prevent the Legislature from increasing the number of circuits and Presidents, after the term of five years.

SEC. IV. The Judge of the Supreme Court and Courts of Common Pleas, shall have complete criminal jurisdiction in such cases and in such manner as may be pointed out by law.

SEC. V. The Court of Common Pleas in each county shall have jurisdiction of all probate and testamentary matters, granting administration, the appointment of guardians, and such other cases as shall be prescribed by law.

SEC. VI. The Judges of the Court of Common Pleas shall, within their respective counties, have the same powers with the Judges of the Supreme Court, to issue writs of certiorari to the Justices of the Peace, and to cause their proceedings to be brought before them, and the like right and justice to be done.

SEC. VII. The Judges of the Supreme Court shall, by virtue of their offices, be

conservators of the peace throughout the State. The Presidents of the Courts of Common Pleas shall, by virtue of their offices, be conservators of the peace in their respective circuits; and the Judges of the Court of Common Pleas shall, by virtue of their offices, be conservators of the peace in their respective counties.

SEC. VIII. The Judges of the Surpeme Court, the Presidents and the Associate Judges of the Courts of Common Pleas, shall be appointed by joint ballot of both Houses of the General Assembly, and shall hold their offices for the term of seven years, if so long they behave well. The Judges of the Supreme Court, and the Presidents of the Courts of Common Pleas, shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust, under the authority of this State or the United States.

SEC. IX. Each court shall appoint its own Clerk, for the term of seven years; but no person shall be appointed Clerk, except pro tempore, who shall not produce to the court appointing him, a certificate from a majority of the Judges of the Supreme Court, that they judge him to be well qualified to execute the duties of the office of Clerk to any court of the same dignity with that for which he offers himself. They shall be removable for breach of good behavior, at any time, by the Judges of the respective courts.

SEC. X. The Supreme Court shall be held once a year, in each county, and the Court of Common Pleas shall be holden in each county, at such times and places as shall be prescribed by law.

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

SEC. XII. The style of all process shall be "The State of Ohio;" all prosecutions shall be carried on in the name and by the authority of the State of Ohio; and all indictments shall conclude "against the peace and dignity of the same."

ARTICLE IV.

SEC. I. In all elections, all white male inhabitants above the age of twenty-one years, having resided in the State one year next preceding the election, and who have paid or are charged with a State or county tax, shall enjoy the right of an elector; but no person shall be entitled to vote, except in the county or district in which he shall actually reside at the time of the election.

SEC. II. All elections shall be by ballot.

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

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

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

ARTICLE V.

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

SEC. II. Majors shall be elected by the captains and subalterns of the battalion.

SEC. III. Colonels shall be elected by the majors, captains and subalterns of the regiment.

SEC. IV. Brigadiers general shall be elected by the commissioned officers of their respective brigades.

SEC. V. Majors general and quarter-masters general shall be appointed by joint ballot of both Houses of the Legislature.

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

SEC. VII. The captains and subalterns of the artillery and cavalry shall be elected by the persons enrolled in their respective corps; and the Majors and Colonels shall be appointed in such manner as shall be directed by law. The colonels shall appoint their regimental staff; and the captains and subalterns their non-commissioned officers and musicians.

ARTICLE VI.

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

SEC. II. The State Treasurer and Auditor shall be triennially appointed by a joint ballot of both Houses of the Legislature.

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

SEC. IV. The appointment of all civil officers not otherwise directed by this Constitution shall be made in such manner as may be directed by law.

ARTICLE VII.

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

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

SEC. III. No new county shall be established by the General Assembly which shall reduce the county or counties, or either of them, from which it shall be taken, to less contents than four hundred square miles; nor shall any county be laid off of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it is taken, until entitled by numbers to the right of representation.

SEC. IV. Chillicothe shall be the seat of government, until the year one thousand eight hundred and eight. No money shall be raised until the year one thousand eight hundred and nine, by the Legislature of this State, for the purpose of erecting public buildings for the accommodation of the Legislature.

SEC. V. That after the year one thousand eight hundred and six, whenever two-thirds of the General Assembly shall think it necessary to amend or change this Constitution, they shall recommend to the electors, at the next election for members to the General Assembly, to vote for or against a Convention, and if it shall appear that a majority of the citizens of the State, voting for representatives, have voted for a Convention, the General Assembly shall, at their next session, call a Convention, to consist of as many members as there be in the General Assembly, to be chosen in the same manner, at the same place, and by the same electors that choose the General Assembly, who shall meet within three months after the said election for the purpose of revising, amending, or changing the Constitution. But no alteration of the Constitution shall ever take place so as to introduce slavery or involuntary servitude into the State.

[Here follows the boundary of the State.]

ARTICLE VIII.

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

SECTION I. That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety; and every free republican government,

being founded on their sole authority, and organized for the great purpose of protecting their rights and liberties, and securing their independence: to effect these ends, they have at all times a complete power to alter, reform or abolish their government, whenever they may deem it necessary.

SEC. II. There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crime, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of twenty-one years, or female person, arrived at the age of eighteen years, be held to serve any person as a servant, under the pretense of indenture, or otherwise, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a bona fide consideration, received or to be received for their service, except as before excepted. Nor shall any indenture of any negro or mulatto hereafter made and executed out of the State, or if made in the State, where the term of service exceeds one year, be of the least validity, except those given in the case of apprenticeships.

SEC. III. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of conscience; that no human authority can, in any case whatever, control or interfere with the rights of conscience; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent; and that no preference shall ever be given by law to any religious society or mode of worship, and no religious test shall be required as a qualification to any office of trust or profit. But religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by Legislative provision, not inconsistent with the rights of conscience.

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

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

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

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

SEC. VIII. That the right of trial by jury shall be inviolate.

SEC. IX. That no power of suspending laws shall be exercised, unless by the Legislature.

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

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

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

SEC. XIII. Excessive bail shall not be required; excessive fines shall not be imposed; nor cruel and unusual punishment inflicted.

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

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

SEC. XVI. No expost facto law, nor any law impairing the validity of contracts, shall ever be made, and no conviction shall work corruption of blood or forfeiture of estate.

SEC. XVII. That no person shall be liable to be transported out of this State, for any offence committed within the State.

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

SEC. XIX. That the people have a right to assemble together in a peaceable

manner, to consult for their common good, to instruct their representatives, and to apply to the Legislature for a redress of grievances.

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

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

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

SEC. XXIII. That the levying taxes by the poll is grievous and oppressive; therefore, the Legislature shall never levy a poll tax for county or State purposes.

SEC XXIV. That no hereditary emoluments, privileges, or honors shall ever be granted or conferred by this State.

SEC. XXV. That no law shall be passed to prevent the poor in the several counties and townships within this State from an equal participation in the schools, academies, colleges and universities within this State, which are endowed, in whole or in part, from the revenue, arising from donations made by the United States for the support of schools and colleges; and the doors of the said schools, academies, and universities, shall be open for the reception of scholars, students and teachers of every grade, without any distinction or preferenee whatever, contrary to the intent for which said donations were made.

SEC. XXVI. That laws shall be passed by the Legislature which shall secure to each and every denomination of religious societies in each surveyed township which now is, or may hereafter be, formed in this State, an equal participation, according to their number of adherents, of the profit arising from the land granted by Congress for the support of religion, agreeably to the ordinance or act of Congress making the appropriation.

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

SEC. XXVIII. To guard against the transgression of the high powers, which we have delegated, we declare that all powers not hereby delegated, remain with the people.

[Here follows Schedule, which is omitted.]

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

CONSTITUTION

OF

THE STATE OF INDIANA.

WE, THE REPRESENTATIVES of the people of the territory of Indiana, in Convention met at Corydon, on Monday, the tenth day of June, in the year of our Lord one thousand eighteen hundred and sixteen, and of the independence of the United States the fortieth, having the right of admission into the general government, as a member of the Union, consistent with the Constitution of the United States, the ordinance of Congress of one thousand seven hundred and eighty-seven, and the law of Congress entitled "An act to enable the people of Indiana territory to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States," in order to establish justice, promote the welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the following Constitution or form of government; and do mutually agree with each other to form ourselves into a free and independent State, by the name of THE STATE OF INDIANA.

ARTICLE I.

SECTION I. That the general, great, and essential principles of liberty and free government may be recognized, and unalterably established: We declare, that all men are born equally free and independent, and have certain natural, inherent, and unalienable rights; among which are, the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

SEC. II. That all power is inherent in the people; and all free governments are founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends, they have, at all times, an unalienable and indefeasible right to alter or reform their government in such manner as they may think proper.

SEC. III. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. That no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent. That no human authority can, in any case

whatever, control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship, and no religious test shall be required as a qualification to any office of trust or profit.

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

SEC. V. That in all civil cases, where the value in controversy shall exceed the sum of twenty dollars, and in all criminal cases, except in petit misdemeanors, which shall be punished by fine only, not exceeding three dollars, in such manner as the Legislature may prescribe by law, the right of trial by jury shall remain inviolate.

SEC. VI. That no power of suspending the operation of the laws shall be exercised, except by the Legislature, or its authority.

SEC. VII. That no man's particular services shall be demanded, or property taken or applied to public use, without the consent of his representatives, or without a just compensation being made therefor.

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

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

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

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

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

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

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

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

Sec. XVI. All penalties shall be proportioned to the nature of the offence.

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

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

Sec. XIX. That the people have a right to assemble together, in a peaceable manner, to consult for their common good, to instruct their representatives, and to apply to the Legislature for redress of grievances.

Sec. XX. That the people have a right to bear arms for the defence of themselves and the State; and that the military shall be kept in strict subordination to the civil power.

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

Sec. XXII. That the Legislature shall not grant any title of nobility, or hereditary distinctions, nor create any office, the appointment to which shall be for a longer term than good behavior.

Sec. XXIII. That emigration from the State shall not be prohibited.

Sec. XXIV. To guard against any encroachments on the rights herein retained, we declare, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolable.

ARTICLE II.

The powers of the government of Indiana, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another; and no person or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

ARTICLE III.

Section I. The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both to be elected by the people.

Sec. II. The General Assembly may, within two years after their first meeting,

and shall, in the year eighteen hundred and twenty, and every subsequent term of five years, cause an enumeration to be made of all the white male inhabitants above the age of twenty-one years. The number of representatives shall at the several periods of making such enumeration, be fixed by the General Assembly, and apportioned among the several counties according to the number of white male inhabitants above twenty-one years of age in each, and shall never be less than twenty-five nor greater than thirty-six, until the number of white male inhabitants above twenty-one years of age shall be twenty-two thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-six, nor exceed one hundred.

SEC. III. The representatives shall be chosen annually by the qualified electors of each county respectively, on the first Monday of August.

SEC. IV. No person shall be a representative unless he shall have attained the age of twenty-one years, and shall be a citizen of the United States, and an inhabitant of this State; and shall also have resided within the limits of the county in which he shall be chosen, one year next preceding his election, if the county shall have been so long erected; but if not, then within the limits of the county or counties out of which it shall have been taken, unless he shall have been absent on the public business of the United States or of this State, and shall have paid a State or county tax.

SEC V. The Senators shall be chosen for three years, on the first Monday in August, by the qualified voters for representatives; and on their being convened, in consequence of the first election, they shall be divided by lot, from their respective counties or districts, as near as can be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year, and the second class at the expiration of the second year, and of the third class at the expiration of the third year; so that one-third thereof, as near as possible, may be annually chosen, forever thereafter.

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

SEC. VII. No person shall be a Senator, unless he shall have attained the age of twenty-five years, and shall be a citizen of the United States; and shall, next preceding the election, have resided two years in the State, the last twelve months of which in the county or district in which he may be elected, if the county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken; unless he shall have been absent on the public business of the United States, or of this State; and shall, moreover, have paid a State or county tax.

SEC. VIII. The House of Representatives, when assembled, shall choose a

Speaker and its other officers; and the Senate shall choose its officers, except the President; and each shall be judges of the qualifications and elections of its members, and sit upon its own adjournments. Two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

Sec. IX. Each House shall keep a journal of its proceedings, and publish them; the yeas and nays of the members, on any question, shall, at the request of any two of them, be entered on the journals.

Sec. X. Any one member of either House shall have liberty to dissent from, and protest against, any act or resolution which he may think injurious to the public, or any individual or individuals, and have the reason of his dissent entered on the journals.

Sec. XI. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the Legislature of a free and independent State.

Sec. XII. When vacancies happen in either branch of the General Assembly, the Governor, or the person exercising the power of Governor, shall issue writs of election, to fill such vacancies.

Sec. XIII. Senators and Representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

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

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

Sec XVI. Bills may originate in either House, but may be altered, amended or rejected by the other.

Sec. XVII. Every bill shall be read on three different days in each House, unless in case of urgency, two-thirds of the House, where such bill may be depending, shall deem it expedient to dispense with this rule: and every bill having passed both Houses shall be signed by the President and Speaker of their respective Houses.

Sec. XVIII. The style of the laws of this State shall be "Be it enacted, by the General Assembly of the State of Indiana."

Sec. XIX. All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject, as in other bills.

Sec. XX. No person, holding any office under the authority of the President of

the United States, or of this State, militia officers excepted, shall be eligible to a seat in either branch of the General Assembly, unless he resign his office previous to his election; nor shall any member of either branch of the General Assembly, during the time for which he is elected, be eligible to any office, the appointment of which is vested in the General Assembly: provided, that nothing in this Constitution shall be so construed as to prevent any member of the first session of the General Assembly from accepting any office that is created by this Constitution, or the Constitution of the United States, and the salaries of which are established.

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

SEC. XXII. An accurate statement of the receipts and expenditures of the public money shall be attached to, and published with, the laws, at every annual session of the General Assembly.

SEC. XXIII. The House of Representatives shall have the sole power of impeaching; but a majority of all the members elected must concur in such impeachment. All impeachments shall be tried by the Senate; and when sitting for that purpose, the Senators shall be upon oath or affirmation, to do justice according to law and evidence. No person shall be convicted without the concurrence of a majority of all the Senators elected.

SEC. XXIV. The Governor, and all civil officers of the State, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, profit, or trust, under this State. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

SEC. XXV. The first session of the General Assembly shall commence on the first Monday of November next; and forever after, the General Assembly shall meet on the first Monday in December, in every year, and at no other period, unless directed by law, or provided for by this Constitution.

SEC. XXVI. No person, who hereafter may be a Collector or holder of public money, shall have a seat in either House of the General Assembly, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

ARTICLE IV.

SECTION I. The Supreme Executive power of this State shall be vested in a Governor, who shall be styled the Governor of the State of Indiana.

SEC. II. The Governor shall be chosen by the qualified electors on the first Monday in August, at the places where they shall respectively vote for representatives. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them, in the presence of both Houses of the General Assembly: the person having the highest number of votes shall be Governor; but if

two or more shall be equal and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both Houses. Contested elections shall be determined by a committee to be selected from both Houses of the General Assembly, and formed and regulated in such manner as shall be directed by law.

SEC. III. The Governor shall hold his office during three years, from and after the third day of the first session of the General Assembly next ensuing his election, and until a successor shall be chosen and qualified, and shall not be capable of holding it longer than six years, in any term of nine years.

SEC. IV. He shall be at least thirty years of age, and shall have been a citizen of the United States ten years, and have resided in the State five years next preceding his election, unless he shall have been absent on the business of the State, or of the United States; provided, that this shall not disqualify any person from the office of Governor, who shall be a citizen of the United States, and shall have resided in the Indiana territory two years next preceding the adoption of this Constitution.

SEC. V. No member of Congress, or person holding any office under the United States, or this State, shall exercise the office of Governor or Lieutenant Governor.

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

SEC. VII. He shall be Commander-in-Chief of the army and navy of this State, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised so to do by a resolution of the General Assembly.

SEC. VIII. He shall nominate, and by and with the advice and consent of the Senate, appoint and commission all officers, the appointment of which is not otherwise directed by this Constitution; and all offices which may be created by the General Assembly, shall be filled in such manner as may be directed by law.

SEC. IX. Vacancies that may happen in offices, the appointment of which is vested in the Governor and Senate, or in the General Assembly, shall be filled by the Governor, during the recess of the General Assembly, by granting commissions that shall expire at the end of the next session.

SEC. X. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachments.

SEC. XI. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

SEC. XII. He shall, from time to time, give to the General Assembly, information of the affairs of the State, and recommend to their consideration such measures as he shall deem expedient.

SEC. XIII. He may, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if that shall have become since their last adjournment, dangerous from an enemy, or from contagious disorders,

and in case of a disagreement between the two Houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the time of their next annual session.

SEC. XIV. He shall take care that the laws be faithfully executed.

SEC. XV. A Lieutenant Governor shall be chosen at every election for a Governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for Governor and Lieutenant Governor, the electors shall distinguish whom they vote for as Governor, and whom as Lieutenant Governor.

SEC. XVI. He shall, by virtue of his office, be President of the Senate, have a right, when in committee of the whole, to debate, and vote on all subjects, and when the Senate are equally divided, to give the casting vote.

SEC. XVII. In case of impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the Lieutenant Governor shall exercise all the powers and authority appertaining to the office of Governor, until another be duly qualified, or the Governor absent or impeached, shall return, or be acquitted.

SEC. XVIII. Whenever the government shall be administered by the Lieutenant Governor, or he shall be unable to attend as President of the Senate, the Senate shall elect one of their own members as President for that occasion. And if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the President of the Senate pro tem. shall, in like manner, administer the government, until he shall be superseded by a Governor, or Lieutenant Governor. The Lieutenant Governor, while he acts as President of the Senate, shall receive for his services the same compensation which shall, for the same period, be allowed to the Speaker of the House of Representatives, and no more: and during the time he administers the government, as Governor, shall receive the same compensation which the Governor would have received and been entitled to, had he been employed in the duties of his office, and no more.

SEC. XIX. The President pro tempore of the Senate, during the time he administers the government, shall receive, in like manner, the same compensation which the Governor would have received, had he been employed in the duties of his office, and no more.

SEC. XX. If the Lieutenant Governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the State, during the recess of the General Assembly, it shall be the duty of the Secretary of State, for the time being, to convene the Senate for the purpose of choosing a President pro tempore.

SEC. XXI. A Secretary of State shall be chosen by the joint ballot of both Houses of the General Assembly, and be commissioned by the Governor for four years, or until a new Secretary be chosen and qualified. He shall keep a fair register, and attest all the official acts and proceedings of the Governor, and shall, when required,

lay the same, and all papers, minutes and vouchers relative thereto, before either House of the General Assembly; and shall perform such other duties as may be enjoined him by law.

Sec. XXII. Every bill which shall have passed both Houses of the General Assembly, shall be presented to the Governor: if he approve, he shall sign it; but if not, he shall return it with his objections, to the House in which it shall have originated, who shall enter the objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that House, it shall be a law; but, in such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journals of each House respectively. If any bill shall not be returned by the Governor within five days. (Sundays excepted,) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it, unless the general adjournment prevents its return; in which case it shall be a law, unless sent back within three days after their next meeting.

Sec. XXIII. Every resolution to which the concurrence of both Houses may be necessary, shall be presented to the Governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be re-passed by a majority of all the members elected to both Houses, according to the rules and limitations prescribed in case of a bill.

Sec. XXIV. There shall be elected, by joint ballot of both Houses of the General Assembly, a Treasurer and Auditor, whose powers and duties shall be prescribed by law, and who shall hold their offices for three years, and until their successors be appointed and qualified.

Sec. XXV. There shall be elected in each county, by the qualified electors thereof, one Sheriff and one Coroner, at the times and places of holding elections for members of the General Assembly. They shall continue in office two years, and until successors shall be chosen and duly qualified: provided, that no person shall be eligible to the office of Sheriff more than four years, in any term of six years.

Sec. XXVI. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Seal of the State of Indiana."

ARTICLE V.

Section I. The Judiciary power of this State, both as to matters of law and equity, shall be vested in one Supreme Court, in Circuit Courts, and in such other inferior courts as the General Assembly may, from time to time, direct and establish.

Sec. II. The Supreme Court shall consist of three Judges, any two of whom shall form a quorum, and shall have appellate jurisdiction only, which shall be co-

extensive with the limits of the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law: provided, nothing in this article shall be so construed as to prevent the General Assembly from giving the Supreme Court original jurisdiction in capital cases, and cases in chancery where the President of the Circuit Court may be interested or prejudiced.

SEC. III. The Circuit Courts shall each consist of a President and two Associate Judges. The State shall be divided by law into three circuits, for each of which a President shall be appointed, who, during his continuance in office, shall reside therein. The President and Associate Judges, in their respective counties, shall have common law and chancery jurisdiction, as also complete criminal jurisdiction, in all such cases, and in such manner as may be prescribed by law. The President alone, in the absence of the Associate Judges, or the President and one of the Associate Judges, in the absence of the other, shall be competent to hold a court, as also the two Associate Judges, in the absence of the President, shall be competent to hold a court, except in capital cases, and cases in chancery: provided, that nothing herein contained shall prevent the general Assembly from increasing the number of circuits and Presidents, as the exigencies of the State may, from time to time, require.

SEC. IV. The Judges of the Supreme Court, the Circuit and other inferior courts, shall hold their offices during the term of seven years, if they shall so long behave well; and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.

SEC. V. The Judges of the Supreme Court shall, by virtue of their offices, be conservators of the peace throughout the State, as also the Presidents of the Circuit Courts in their respective circuits, and the Associate Judges in their respective counties.

SEC. VI. The Supreme Court shall hold its sessions at the seat of government, at such times as shall be prescribed by law; and the Circuit Courts shall be held in the respective counties as may be directed by law.

SEC. VII. The Judges of the Supreme Court shall be appointed by the Governor, by and with the advice and consent of the Senate. The Presidents of the Circuit Courts shall be appointed by joint ballot of both branches of the General Assembly; and the Associate Judges of the Circuit Courts, shall be elected by the qualified electors in the respective counties.

SEC. VIII. The Supreme Court shall appoint its own Clerk, and the Clerks of the Circuit Court, in the several counties, shall be elected by the qualified electors in the several counties; but no person shall be eligible to the office of Clerk of the Circuit Court in any county, unless he shall first have obtained, from one or more of the Judges of the Supreme Court, or from one or more of the Presidents of the Circuit Courts, a certificate that he is qualified to execute the duties of the office of Clerk of the Circuit Court: provided, that nothing herein contained shall prevent the Circuit Courts, in each county, from appointing a Clerk *pro tem.*, until a quali-

fied Clerk may be duly elected: and provided, also, that the said Clerks respectively, when qualified and elected, shall hold their offices seven years, and no longer, unless re-appointed.

SEC. IX. All Clerks shall be removable by impeachment, as in other cases.

SEC. X. When any vacancies happen in any of the courts, occasioned by the death, resignation, or removal from office of any Judge of the Supreme or Circuit Courts, or any of the Clerks of the said courts, a successor shall be appointed in the same manner as herein before prescribed, who shall hold his office for the period which his predecessor had to serve, and no longer, unless re-appointed.

SEC. XI. The style of the process shall be "The State of Indiana." All prosecutions shall be carried on in the name and by the authority of the State of Indiana; and all indictments shall conclude "against the peace and dignity of the same."

SEC. XII. A competent number of Justices of the Peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office five years, if they shall so long behave well; whose powers and duties shall from time to time be regulated and defined by law.

ARTICLE VI.

SECTION I. In all elections, not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who has resided in the State one year immediately preceding such election, shall be entitled to vote in the county where he resides, except such as shall be enlisted in the armies of the United States or their allies.

SEC. II. All elections shall be by ballot: provided that the General Assembly may, (if they deem it more expedient) at their session in eighteen hundred and twenty-one, change the mode, so as to vote *viva voce;* after which time it shall remain unalterable.

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

SEC. IV. The General Assembly shall have full power to exclude from electing, or being elected, any person convicted of any infamous crime.

SEC. V. Nothing in this article shall be so construed as to prevent citizens of the United States, who were actual residents at the time of adopting this Constitution, and who, by the existing laws of this territory, are entitled to vote, or persons who have been absent from home on a visit, or necessary business, from the privilege of electors.

ARTICLE VII.

SECTION I. The militia of the State of Indiana shall consist of all free, able bodied male persons; negroes, mulattoes, and Indians excepted, resident in the

said State, between the ages of eighteen and forty-five years; except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this State and shall be armed, equipped, and trained, as the General Assembly may provide by law.

SEC. II. No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do militia duty: provided, such person or persons shall pay an equivalent for such exemption; which equivalent shall be collected annually by a civil officer, and be hereafter fixed by law, and shall be equal, as near as may be, to the lowest fines assessed on those privates in the militia, who may neglect or refuse to perform militia duty.

SEC. III. Captains and subalterns shall be elected by those persons in their respective company districts, who are subject to perform militia duty; and the captain of each company shall appoint the non-commissioned officers to said company.

SEC. IV. Majors shall be elected by those persons, within the bounds of their respective battalion districts, subject to perform militia duty; and colonels shall be elected by those persons, within the bounds of their respective regimental districts, subject to perform militia duty.

SEC. V. Brigadier generals shall be elected by the commissioned officers within the bounds of their respective brigades; and major generals shall be elected by the commissioned officers within the bounds of their respective divisions.

SEC. VI. Troops and squadrons of cavalry, and companies of artillery, riflemen, grenadiers, or light infantry, may be formed in the said State, in such manner as shall be prescribed by law: provided, however, that every troop or squadron of cavalry, company of artillery, riflemen, grenadiers, or light infantry, which may hereafter be formed within the said State, shall elect their own officers.

SEC. VII. The Governor shall appoint the adjutant general and quarter-master generals, as also his aids-de-camp.

SEC. VIII. Major generals shall appoint their aids-de-camp, and all other division staff officers: brigadier generals shall appoint their brigade majors, and all other brigade staff officers; and colonels shall appoint their regimental staff officers.

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

SEC. X. The General Assembly shall, by law, fix the method of dividing the militia of the said State into divisions, brigades, regiments, battalions, and companies, and shall also fix the rank of all staff officers.

ARTICLE VIII.

SECTION I. Every twelfth year after this Constitution shall have taken effect, at the general election held for Governor, there shall be a poll opened, in which the qualified electors of the State, shall express, by vote, whether they are in favor of

calling a Convention or not; and if there should be a majority of all the votes given at such election, in favor of a Convention, the Governor shall inform the next General Assembly thereof, whose duty it shall be, to provide by law for the election of the members to the convention, the number thereof, and the time and place of their meeting; which law shall not be passed, unless agreed to by a majority of all the members elected to both branches of the General Assembly; and which Convention, when met, shall have it in their power to revise, amend, or change the Constitution. But as the holding any part of the human creation in slavery, or involuntary servitude, can only originate in usurpation and tyranny, no alteration of this Constitution shall ever take place so as to introduce slavery or involuntary servitude in this State; otherwise than for the punishment of crimes whereof the party shall have been duly convicted.

ARTICLE IX.

SECTION I. Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country being highly conducive to this end, it shall be the duty of the General Assembly, to provide by law for the improvement of such lands as are, or hereafter may be, granted by the United States to this State, for the use of schools, and to apply any funds which may be raised from such lands, or from any other quarter, to the accomplishment of the grand object for which they are or may be intended: but no lands granted for the use of schools and seminaries of learning shall be sold, by the authority of this State, prior to the year eighteen hundred and twenty; and the moneys which may be raised out of the sale of any such lands, or otherwise obtained for the purposes aforesaid shall be and remain a fund for the exclusive purpose of promoting the interest of literature and the sciences, and for the support of seminaries and public schools. The General Assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientifical, and agricultural improvements, by allowing rewards and immunities for the promotion and improvement of arts, sciences, commerce, manufactures, and natural history; and to countenance and encourage the principles of humanity, honesty, industry and morality.

SEC. II. It shall be the duty of the General Assembly, as soon as circumstances will permit, to provide by law for a general system of education, ascending in a regular gradation from township schools to a State University, wherein tuition shall be gratis, and equally open to all.

SEC. III. And for the promotion of such salutary end, the money which shall be paid as an equivalent by persons exempt from militia duty, except in times of war, shall be exclusively, and in equal proportion, applied to the support of county seminaries; also, all fines assessed for any breach of the penal laws, shall be applied to said seminaries, in the counties wherein they shall be assessed.

SEC. IV. It shall be the duty of the General Assembly, as soon as circumstances

will permit, to form a penal code, founded on the principles of reformation, and not of vindictive justice: and, also, to provide one or more farms, to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and beneficence of society, on such principles that such persons may therein find employment and every reasonable comfort, and lose, by their usefulness, the degrading sense of dependence.

SEC. V. The General Assembly, at the time they lay off a new county, shall cause at least ten per cent. to be reserved out of the proceeds of the sale of town lots, in the seat of justice of such county, for the use of a public library for such county; and, at the same session, they shall incorporate a library company, under such rules and regulations as will best secure its permanence, and extend its benefits.

ARTICLE X.

SECTION I. There shall not be established or incorporated, in this State, any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer: provided, that nothing herein contained shall be so construed as to prevent the General Assembly from establishing a State bank and branches, not exceeding one branch for any three counties, and be established at such place within such counties, as the directors of the State bank may select: provided, there be subscribed and paid, in specie, on the part of individuals, a sum equal to thirty thousand dollars: provided, also, that the bank at Vincennes, and the farmers and mechanics bank of Indiana, at Madison, shall be considered as incorporated banks, according to the true tenor of the charters granted to said banks, by the Legislature of the Indiana territory: provided, that nothing herein contained shall be so construed as to prevent the General Assembly from adopting either of the aforesaid banks as the State bank; and in case either of them shall be adopted as the State bank, the other may become a branch, under the rules and regulations hereinbefore prescribed.

ARTICLE XI.

SECTION I. Every person who shall be chosen or appointed to any office of trust or profit, under the authority of this State, shall, before entering on the duties of said office, take an oath or affirmation, before any person lawfully authorized to administer oaths, to support the Constitution of the United States, and the Constitution of this State, and also an oath of office.

SEC. II. Treason against this State shall consist only in levying war against it, in adhering to its enemies, or giving them aid and comfort.

SEC. III. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. IV. The manner of administering an oath or affimation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God.

SEC. V. Every person shall be disqualified from serving as Governor, Lieutenant Governor, Senator, or Representative, for the term for which he shall have been elected, who shall have been convicted of having given or offered any bribe, treat, or reward, to procure his election.

SEC. VI. All officers shall reside within the State; and all district, county, or town officers, within their respective districts, counties, or towns, (the trustees of the town of Clarksville excepted,) and shall keep their respective offices at such places therein as may be directed by law; and all militia officers shall reside within the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong.

SEC. VII. There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. Nor shall any indenture of any negro or mulatto hereafter made and executed out of the bounds of this State, be of any validity within the State.

SEC. VIII. No act of the General Assembly shall be in force, until it shall have been published in print, unless in cases of emergency.

SEC. IX. All commissions shall be in the name, and by the authority, of the State of Indiana, and sealed with the State seal, and signed by the Governor, and attested by the Secretary of State.

SEC. X. There shall be elected in each county, a Recorder, who shall hold his office during the term of seven years, if he shall so long behave well: provided, that nothing herein contained shall prevent the Clerks of the Circuit Courts from holding the office of Recorder.

SEC. XI. Corydon, in Harrison county, shall be the seat of government of the State of Indiana, until the year eighteen hundred and twenty-five, and until removed by law.

SEC. XII. The General Assembly, when they lay off any new county, shall not reduce the old county or counties, from which the same shall be taken, to a less content than four hundred square miles.

SEC. XIII. No person shall hold more than one lucrative office at the same time, except as in this Constitution is expressly permitted.

SEC. XIV. No person shall be appointed as a county officer, within any county, who shall not have been a citizen and an inhabitant therein, one year next preceding his appointment, if the county shall have been so long erected; but if the county shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

SEC. XV. All town and township officers shall be appointed in such manner as shall be directed by law.

SEC. XVI. The following officers of government shall not be allowed greater annual salaries, until the year eighteen hundred and nineteen, than as follows: The Governor, one thousand dollars; the Secretary of State, four hundred dollars; the Auditor of public accounts, four hundred dollars; the Treasurer, four hundred dol-

lars: the Judges of the Supreme Court, eight hundred dollars each; the Presidents of the Circuit courts, eight hundred dollars each; and the members of the General Assembly, not exceeding two dollars per day each, during their attendance on the same; and two dollars for every twenty-five miles they shall severally travel, on the most usual route in going to, and returning from, the General Assembly; after which time, their pay shall be regulated by law. But no law, passed to increase the pay of members of the General Assembly, shall take effect, until after the close of the session, at which such law shall have been passed.

Sec. XVII. In order that the boundaries of the State of Indiana may more certainly be known and established, it is hereby ordained and declared, that the following shall be, and forever remain, the boundaries of the said State, to wit: Bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south, by the Ohio river, from the mouth of the great Miami river to the mouth of the river Wabash; on the west, by a line drawn along the middle of the Wabash river, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the north-western shore of the said Wabash river; and from thence, by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; on the north, by the said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.

ARTICLE XII.

Section I. That no evils or inconveniences may arise from the change of a territorial government to a permanent State government, it is declared by this Constitution, that all rights, suits, actions, prosecutions, recognizances, contracts and claims. both as it respects individuals and bodies corporate, shall continue as if no change had taken [place] in this government.

Sec. II. All fines, penalties, and forfeitures, due and owing to the territory of Indiana, or any county therein, shall inure to the use of the State or county. All bonds executed to the Governor, or any other officer, in his official capacity, in the territory, shall pass over to the Governor, or other officers of the State or county, and their successors in office, for the use of the State or county, or by him or them to be respectively assigned over to the use of those concerned, as the case may be.

Sec. III. The Governor, Secretary, and Judges, and all other officers, both civil and military, under the territorial government, shall continue in the exercise of the duties of their respective departments, until the said officers are superseded under the authority of this Constitution.

Sec. IV. All laws and parts of laws now in force in this territory, not inconsistent with this Constitution, shall continue and remain in full force and effect, until they expire or be repealed.

Sec. V. The Governor shall use his private seal, until a State seal be procured.

Sec. VI. The Governor, Secretary of State, Auditor of Public Accounts, and Treasurer, shall severally reside, and keep all the public records, books and papers, in any manner relating to their respective offices, at the seat of government: provided, notwithstanding, that nothing herein contained shall be so construed as to affect the residence of the Governor for the space of six months, and until buildings suitable for his accommodation shall be procured, at the expense of the State.

Sec. VII. All suits, pleas, plaints, and other proceedings, now depending in any Court of Record, or Justice's Courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, injunction, or other proceedings whatsoever, shall progress, and be carried on, in the respective court or courts, in the same manner as is now provided by law, and all proceedings had therein, in as full and complete a manner as if this Constitûtion were not adopted. And appeals and writs of error may be taken from the Circuit Court and General Court, now established in the Indiana territory, to the Supreme Court, in such manner as shall be provided for by law.

Sec. VIII. The President of this Convention shall issue writs of election, directed to the several Sheriffs of the several counties, requiring them to cause an election to be held for a Governor, Lieutenant Governor, a Representative to the Congress of the United States, members of the General Assembly, Sheriffs and Coroners, at the respective election districts in each county, on the first Monday in August next; which election shall be conducted in the [manner] prescribed by the existing election laws of the Indiana territory; and the said Governor, Lieutenant Governor, members of the General Assembly, Sheriffs and Coroners, then duly elected, shall continue to exercise the duties of their respective offices for the time prescribed by this Constitution, and until their successor or successors are qualified, and no longer.

Sec. IX. Until the first enumeration shall be made, as directed by this Constitution, the county of Wayne shall be entitled to one Senator and three Representatives; the county of Franklin, one Senator and three Representatives; the county of Dearborn, one Senator and two Representatives; the county of Switzerland, one Representative; and the counties of Jefferson and Switzerland, one Senator, and the county of Jefferson, two Representatives; the county of Clark, one Senator and three Representatives; the county of Harrison, one Senator and three Representatives; the counties of Washington, Orange, and Jackson, one Senator; and the county of Washington, two Representatives; the counties of Orange and Jackson, one Representative each; the county of Knox one Senator and three Representatives; the county of Gibson, one Senator and two Representatives; the counties of Posey, Warrick, and Perry, one Senator, and each of the aforesaid counties of Posey, Warrick, and Perry, one Representative.

Sec. X. All books, records, documents, warrants and papers, appertaining and belonging to the office of the territorial Treasurer of the Indiana territory, and all moneys therein, and all papers and documents in the office of the Secretary of said territory, shall be disposed of as the General Assembly of this State may direct.

SEC. XI. All suits, actions, pleas, plaints, prosecutions, and causes whatsoever; and all records, books, papers and documents now in the General Court, may be transferred to the Supreme Court, established by this Constitution; and all causes, suits, actions, pleas, plaints, and prosecutions whatsoever, now existing or pending in the Circuit Courts of this territory, or which may be therein at the change of government; and all records, books, papers, and documents, relating to the said suits, or filed in the said courts, may be transferred over to the Circuit Courts established by this Constitution, under such rules and regulations as the General Assembly may direct.

Done in Convention at Corydon, on the twenty-ninth day of June, in the year of our Lord eighteen hundred and sixteen, and of the Independence of the United States, the fortieth.

CONSTITUTION

OF

THE STATE OF ILLINOIS.

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

ARTICLE I.

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

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

ARTICLE II.

SECTION I. The Legislative authority of this State shall be vested in a General Assembly, which shall consist in a Senate and House of Representatives, both to be elected by the people.

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

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

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

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

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

SEC. VII. The Senate and House of Representatives, when assembled, shall each choose a Speaker and other officers: (the Speaker of the Senate excepted:)

each House shall judge of the qualifications and elections of its members, and sit upon its own adjournments. Two-thirds of each House shall constitute a quorum, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

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

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

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

SEC. XI. When vacancies happen in either House, the Governor, or the person exercising the powers of Governor, shall issue writs of election to fill such vacancies.

SEC. XII. Senators and Representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest, during the session of the General Assembly, and in going to, and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

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

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

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

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

SEC. XVII. The style of the laws of this State shall be: "Be it enacted by the People of the State of Illinois, represented in the General Assembly."

SEC. XVIII. The General Assembly of this State shall not allow the following officers of government greater or smaller annual salaries than as follows, until the year one thousand eight hundred and twenty-four: the Governor, one thousand dollars; and the Secretary of State, six hundred dollars.

SEC. XIX. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this State, which shall have been created, or the emoluments of which shall have been increased during such time.

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

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

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

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

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

SEC. XXV. No Judge of any court of law or equity, Secretary of State, Attorney General, Attorney for the State, Register, Clerk of any Court of Record, Sheriff or Collector, member of either House of Congress, or person holding any lucrative office under the United States or this State, (provided that appointments in the militia, Postmasters, or Justices of the Peace shall not be considered lucrative ffices,) shall have a seat in the General Assembly: nor shall any person holding any office of honor or profit under the government of the United States, hold any office of honor or profit under the authority of this State.

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

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

SEC. XXVIII. All votes shall be given *viva voce*, until altered by the General Assembly.

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

SEC. XXX. The General Assembly shall have full power to exclude from the

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

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

SEC. XXXII. All bills for raising a revenue shall originate in the House of Representatives, subject, however, to amendment or rejection, as in other cases.

ARTICLE III.

SECTION I. The executive power of the State shall be vested in a Governor.

SEC. II. The first election of Governor shall commence on the third Thursday of September next, and continue for that and the two succeeding days; and the next election shall be held on the first Monday of August, in the year of our Lord one thousand eight hundred and twenty-two. And forever after, elections for Governor shall be held once in four years, on the first Monday of August. The Gov ernor shall be chosen by the electors of the members of the General Assembly, at the same places and in the same manner that they shall respectively vote for members thereof. The returns for every election for Governor shall be sealed up and transmitted to the seat of government by the returning officers, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of a majority of the members of each House of the General Assembly. The person having the highest number of votes shall be Governor; but if two or more be equal and highest in votes, then one of them shall be chosen Governor by joint ballot of both Houses of the General Assembly. Contested elections shall be determined by both Houses of the General Assembly, in such manner as shall be prescribed by law.

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

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

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

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

SEC. VII. He may require information in writing from the officers in the ex-

ecutive department, upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.

Sec. VIII. When any officer, the right of whose appointment is, by this Constitution, vested in the General Assembly, or in the Governor and Senate, shall, during the recess, die, or his office by any means become vacant, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly.

Sec. IX. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to them when assembled, the purpose for which they shall have been convened.

Sec. X. He shall be Commander-in-Chief of the army and navy of this State, and of the militia, except when they shall be called into the service of the United States.

Sec. XI. There shall be elected in each and every county in the said State, by those who are qualified to vote for members of the General Assembly, and at the same times and places where the election for such members shall be held, one Sheriff and one Coroner, whose election shall be subject to such rules and regulations as shall be prescribed by law. The said Sheriffs and Coroners respectively, when elected, shall continue in office two years, be subject to removal and disqualification, and such other rules and regulations as may be from time to time prescribed by law.

Sec. XII. In case of disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly, to such time as he thinks proper, provided it be not a period beyond the next constitutional meeting of the same.

Sec. XIII. A Lieutenant Governor shall be chosen at every election for Governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for Governor and Lieutenant Governor, the electors shall distinguish whom they vote for as Governor, and whom as Lieutenant Governor.

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

Sec. XV. Whenever the government shall be administered by the Lieutenant Governor, or he shall be unable to attend as Speaker of the Senate, the Senators shall elect one of their own members as Speaker for that occasion; and if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, or resign, or die, or be absent from the State, the Speaker of the Senate shall in like manner administer the government.

Sec. XVI. The Lieutenant Governor, while he acts as Speaker of the Senate, shall receive for his services the same compensation, which shall, for the same period, be allowed to the Speaker of the House of Representatives and no more; and during the time he administers the government as Governor, he shall receive

the same compensation which the Governor would have received had he been employed in the duties of his office.

SEC. XVII. If the Lieutenant Governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the State during the recess of the General Assembly, it shall be the duty of the Secretary for the time being, to convene the Senate for the purpose of choosing a Speaker.

SEC. XVIII. In case of an impeachment of the Governor, his removal from office, death, refusal to qualify, resignation or absence from the State, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor, until the time pointed out by this Constitution for the election of Governor shall arrive, unless the General Assembly shall provide by law for the election of a Governor to fill such vacancy.

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

SEC. XX. The Governor shall nominate, and by and with the advice and consent of the Senate, appoint a Secretary of State, who shall keep a fair register of the official acts of the Governor, and when required, shall lay the same and all papers, minutes and vouchers relative thereto, before either branch of the General Assembly, and shall perform such other duties as shall be assigned him by law.

SEC. XXI. The State Treasurer and Public Printer, or Printers for the State,

shall be appointed biennially by the joint vote of both branches of the General Assembly: provided, that during the recess of the same, the Governor shall have power to fill such vacancies as may happen in either of said offices.

Sec. XXII. The Governor shall nominate, and by and with the advice and consent of the Senate. appoint all officers whose offices are established by this Constitution, or shall be established by law, and whose appointments are not herein other wise provided for: provided, however, that Inspectors, Collectors, and their deputies, Surveyors of the Highways, Constables, Jailors, and such inferior officers whose jurisdiction may be confined within the limits of the county, shall be appointed in such manner as the General Assembly shall prescribe.

ARTICLE IV.

Section I. The judicial power of this State shall be vested in one Supreme Court, and such inferior courts as the General Assembly shall, from time to time, ordain and establish.

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

Sec. III. The Supreme Court shall consist in a Chief Justice and three Associates, any two of whom shall form a quorum. The number of Justices may, however, be increased by the General Assembly, after the year one thousand eight hundred and twenty-four.

Sec. IV. The Justices of the Supreme Court, and the Judges of the inferior courts, shall be appointed by joint ballot of both branches of the General Assembly, and commissioned by the Governor, and shall hold their offices during good behavior until the end of the first session of the General Assembly which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-four, at which time their commissions shall expire: and until the expiration of which time, the said Justices, respectively, shall hold Circuit Courts in the several counties, in such manner and at such times, and shall have and exercise such jurisdiction as the General Assembly shall by law prescribe. But ever after the aforesaid period, the Justices of the Supreme Court shall be commissioned during good behavior, and the Justices thereof shall not hold Circuit Courts, unless required by law.

Sec. V. The Judges of the inferior courts shall hold their offices during good behavior, but for any reasonable cause, which shall not be sufficient ground for impeachment, both the Judges of the Supreme and inferior courts, shall be removed from office on the address of two-thirds of each branch of the General Assembly: provided always, that no member of either House of the General Assembly, nor any person connected with a member by consanguinity, or affinity, shall be appointed to fill the vacancy occasioned by such removal. The said Justices of the Supreme Court, during their temporary appointments, shall receive an annual salary of one

thousand dollars, payable quarter-yearly out of the public treasury. The Judges of the inferior courts, and the Justices of the Supreme Court who may be appointed after the end of the first session of the General Assembly which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-four, shall have adequate and competent salaries, which shall not be diminished during their continuance in office.

SEC. VI. The Supreme Court, or a majority of the Justices thereof, the Circuit Courts, or the Justices thereof, shall, respectively, appoint their own Clerks.

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

SEC. VIII. A competent number of Justices of the Peace shall be appointed in each county, in such manner as the General Assembly may direct, whose time of service, power, and duties shall be regulated and defined by law. And Justices of the Peace, when so appointed, shall be commissioned by the Governor.

ARTICLE V.

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

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

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

SEC. IV. Brigadier and Major Generals, shall be elected by the officers of their brigades and divisions respectively.

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

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

ARTICLE VI.

SECTION I. Neither slavery nor involuntary servitude shall hereafter be introduced into this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of twenty-one years, nor female person, arrived at the age of eighteen years, be held to serve any person as a servant, under any indenture hereafter made, unless

such person shall enter into such indenture while in a state of perfect freedom, and on condition of a bona fide consideration received or to be received for their service. Nor shall any indenture of any negro or mulatto hereafter made and executed out of this State, or if made in this State, where the term of service exceeds one year, be of the least validity, except those given in cases of apprenticeship.

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

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

ARTICLE VII.

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

ARTICLE VIII.

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

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

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

SEC. III. That all men have a natural and indefeasible right to worship Al-

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

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

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

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

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

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

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

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

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

SEC. XII. Every person within this State ought to find a certain remedy in the

laws, for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

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

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

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

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

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

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

SEC. XIX. That the people have a right to assemble together, in a peaceable manner, to consult for their common good, to instruct their Representatives, and to apply to the General Assembly for redress of grievances.

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

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

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

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

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

CONSTITUTION

OF

THE STATE OF MICHIGAN.

We, the People of the Territory of Michigan, as established by the act of Congress of the eleventh of January, eighteen hundred and five, in conformity to the fifth article of the ordinance providing for the government of the territory of the United States north-west of the river Ohio, believing that the time has arrived when our present political condition ought to cease, and the right of self-government be asserted; and availing ourselves of that provision of the aforesaid ordinance of the Congress of the United States, of the thirteenth day of July, seventeen hundred and eighty-seven, and the acts of Congress passed in accordance therewith, which entitled us to admission into the Union, upon a condition which has been fulfilled, do, by our delegates in Convention assembled, mutually agree to form ourselves into a free and independent State, by the style and title of "The State of Michigan," and do ordain and establish the following Constitution for the government of the same:

ARTICLE I.

Section I. All political power is inherent in the people.

Sec. II. Government is instituted for the protection, security, and benefit of the people; and they have the right at all times to alter or reform the same, and to abolish one form of government and establish another, whenever the public good requires it.

Sec. III. No man or set of men are entitled to exclusive or separate privileges.

Sec. IV. Every person has a right to worship Almighty God according to the dictates of his own conscience; and no person can of right be compelled to attend, erect, or support, against his will, any place of religious worship, or pay any tithes, taxes, or other rates for the support of any minister of the gospel, or teacher of religion.

Sec. V. No money shall be drawn from the treasury for the benefit of religious societies, or theological or religious seminaries.

SEC. VI. The civil and political rights, privileges and capacities of no individual shall be diminished or enlarged on account of his opinions or belief concerning matters of religion.

SEC. VII. Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no laws shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. VIII. The person, houses, papers, and possessions of every individual shall be secure from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them, nor without probable cause, supported by oath or affirmation.

SEC. IX. The right of trial by jury shall remain inviolate.

SEC. X. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of the vicinage; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defence; and in all civil cases, in which personal liberty may be involved, the trial by jury shall not be refused.

SEC. XI. No person shall be held to answer for a criminal offience. unless on the presentment or indictment of a Grand Jury, except in cases of impeachment, or in cases cognizable by Justices of the Peace, or arising in the army or militia when in actual service in time of war or public danger.

SEC. XII. No person for the same offence shall be twice put in jeopardy of punishment; all persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it.

SEC. XIII. Every person has a right to bear arms for the defence of himself and the State.

SEC. XIV. The military shall, in all cases and at all times, be in strict subordination to the civil power.

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

SEC. XVI. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. XVII. No bill of attainder, ex post facto law, or law imparing the obligation of contracts. shall be passed.

SEC. XVIII. Excessive bail shall not be required; excessive fines shall not be imposed; and cruel and unjust punishments shall not be inflicted.

SEC. XIX. The property of no person shall be taken for public use, without just compensation therefor.

SEC. XX. The people shall have the right freely to assemble together, to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances.

SEC. XXI. All acts of the Legislature, contrary to this or any other article of this Constitution, shall be void.

ARTICLE II.

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

SEC. II. All votes shall be given by ballot, except for such township officers as may, by law, be directed to be otherwise chosen.

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

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

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

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

ARTICLE III.

SECTION I. The powers of the government shall be divided into three distinct departments; the legislative, the executive, and the judicial; and one department shall never exercise the powers of another, except in such cases as are expressly provided for in this Constitution.

ARTICLE IV.

SECTION I. The legislative power shall be vested in a Senate and House of Representatives.

SEC. II. The number of the members of the House of Representatives shall never be less than forty-eight, nor more than one hundred: and the Senate shall, at all times, equal in number one-third of the House of Representatives, as nearly as may be.

SEC. III. The Legislature shall provide by law for an enumeration of the inhabitants of this State in the years eighteen hundred and thirty-seven, and eighteen hundred and forty-five, and every ten years after the last mentioned time: and at their first session after each enumeration so made as aforesaid, and also after each enumeration made by the authority of the United States, the Legislature shall apportion anew the Representatives and Senators among the several counties and districts, according to the number of white inhabitants.

SEC. IV. The Representatives shall be chosen annually on the 1st Tuesday of November, by the electors of the several counties or districts into which the State shall be divided for that purpose. Each organized county shall be entitled to at least one Representative; but no county hereafter organized shall be entitled to a separate Representative, until it shall have attained a population equal to the ratio of representation hereafter established.

SEC. V. The Senators shall be chosen for two years, at the same time and in the same manner as the Representatives are required to be chosen. At the first session of the Legislature under this Constitution, they shall be divided by lot from their respective districts, as nearly as may be, into two equal classes; the seats of the Senators of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year: so that one-half thereof, as nearly as may be, shall be chosen annually thereafter.

SEC. VI. The State shall be divided, at each new apportionment, into a number of not less than four, nor more than eight, senatorial districts, to be always composed of contiguous territory, so that each district shall elect an equal number of senators annually, as nearly as may be; and no county shall be divided in the formation of such districts.

SEC. VII. Senators and Representatives shall be citizens of the United States, and be qualified electors in the respective counties and districts which they represent; and a removal from their respective counties or districts shall be deemed a vacation of their seats.

SEC. VIII. No person holding any office under the United States, or of this State, officer of the militia, Justices of the Peace, Associate Judges of the Circuit and County Courts, and Postmasters excepted, shall be eligible to either house of the Legislature.

SEC. IX. Senators and Representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process, during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. X. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may provide. Each house shall choose its own officers.

SEC. XI. Each House shall determine the rules of its proceedings, and judge of the qualifications, elections, and returns of its own members; and may, with the

concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause, nor for any cause known to his constituents antecedent to his election.

Sec. XII. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the request of one-fifth of the members present, be entered on the journal. Any member of either house shall have liberty to dissent from, and protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journal.

Sec. XIII. In all elections by either or both houses, the votes shall be given *viva voce;* and all votes on nominations made to the Senate shall be taken by yeas and nays, and published with the journals of its proceedings.

Sec. XIV. The doors of each house shall be open, except when the public welfare shall require secrecy; neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the Legislature may then be in session.

Sec. XV. Any bill may originate in either house of the Legislature.

Sec. XVI. Every bill passed by the Legislature shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it originated, who shall enter the objections at large upon their journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members present agree to pass the bill, it shall be sent, with the objections, to the other house, by whom it shall likewise be reconsidered; and if approved also by two-thirds of all the members present in that house, it shall become a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journals of each house respectively. And if any bill be not returned by the Governor within ten days, Sundays excepted, after it has been presented to him, the same shall become a law, in like manner as if he had signed it, unless the Legislature, by their adjournment, prevent its return, in which case it shall not become a law.

Sec. XVII. Every resolution to which the concurrence of the Senate and House of Representatives may be necessary, except in cases of adjournment, shall be presented to the Governor, and, before the same shall take effect, shall be proceeded upon in the same manner as in the case of a bill.

Sec. XVIII. The members of the Legislature shall receive, for their services, a compensation to be ascertained by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either house shall have been elected; and such compensation shall never exceed three dollars a day.

Sec. XIX. No member of the Legislature shall receive any civil appointment

from the Governor and Senate, or from the Legislature, during the term for which he is elected.

Sec. XX. The Governor shall issue writs of election to fill such vacancies as may occur in the Senate and House of Representatives.

Sec. XXI. The Legislature shall meet on the first Monday in January in every year, and at no other period, unless otherwise directed by law, or provided for in this Constitution.

Sec. XXII. The style of the laws of this State shall be—"Be it enacted by the Senate and House of Representatives of the State of Michigan."

ARTICLE V.

Section I. The supreme executive power shall be vested in a Governor, who shall hold his office for two years; and a Lieutenant Governor shall be chosen at the same time and for the same term.

Sec. II. No person shall be eligible to the office of Governor or Lieutenant Governor, who shall not have been five years a citizen of the United States, and a resident of this State two years next preceding the election.

Sec. III. The Governor and Lieutenant Governor shall be elected by the electors at the times and places of choosing members of the Legislature. The persons having the highest number of votes for Governor and Lieutenant Governor shall be elected; but in case two or more have an equal and the highest number of votes for Governor or Lieutenant Governor, the Legislature shall by joint vote choose one of the said persons, so having an equal and the highest number of votes, for Governor or Lieutenant Governor.

Sec. IV. The returns of every election for Governor and Lieutenant Governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the President of the Senate, who shall open and publish them in the presence of the members of both houses.

Sec. V. The Governor shall be Commander-in-Chief of the militia, and of the army and navy of this State.

Sec. VI. He shall transact all executive business with the officers of government, civil and military; and may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

Sec. VII. He shall take care that the laws be faithfully executed.

Sec. VIII. He shall have power to convene the Legislature on extraordinary occasions. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters to them as he shall deem expedient.

Sec. IX. He shall have power to adjourn the Legislature to such time as he may think proper, in case of a disagreement between the two houses with respect to the time of adjournment, but not to a period beyond the next annual meeting.

Sec. X. He may direct the Legislature to meet at some other place than the seat

of government, if that shall become, after its adjournment, dangerous from a common enemy or a contagious disease.

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

SEC. XII. When any office, the appointment to which is vested in the Governor and Senate, or in the Legislature, becomes vacant during the recess of the Legislature, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the succeeding session of the Legislature.

SEC. XIII. In case of the impeachment of the Governor, his removal from office, death, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor until such disability shall cease, or the vacancy be filled.

SEC. XIV. If, during the vacancy of the office of Governor, the Lieutenant Governor be impeached, displaced, resign, die, or be absent from the State, the President of the Senate, pro tempore, shall act as Governor, until the vacancy be filled.

SEC. XV. The Lieutenant Governor shall, by virtue of his office, be President of the Senate; in committee of the whole, he may debate on all questions; and, when there is an equal division, he shall give the casting vote.

SEC. XVI. No member of Congress, nor any other person holding office under the United States, or this State, shall execute the office of Governor.

SEC. XVII. Whenever the office of Governor or Lieutenant Governor becomes vacant, the person exercising the powers of Governor for the time being, shall give notice thereof, and the electors shall, at the next succeeding annual election for members of the Legislature, choose a person to fill such vacancy.

SEC. XVIII. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he has been elected.

SEC. XIX. The Lieutenant Governor, except when acting as Governor, and the President of the Senate, pro tempore, shall each receive the same compensation as shall be allowed to the Speaker of the House of Representatives.

SEC. XX. A great seal for the State shall be provided by the Governor, which shall contain the device and inscriptions represented and described in the papers relating thereto, signed by the President of the Convention, and deposited in the office of the Secretary of the Territory. It shall be kept by the Secretary of State; and all official acts of the Governor, his approbation of the laws excepted, shall be thereby authenticated.

SEC. XXI. All grants and commissions shall be in the name, and by the authority, of the people of the State of Michigan.

ARTICLE VI.

SECTION I. The judicial power shall be vested in one Supreme Court, and in such other courts as the Legislature may from time to time establish.

SEC. II. The Judges of the Supreme Court shall hold their offices for the term of

seven years; they shall be nominated, and by and with the advice and consent of the Senate, appointed by the Governor. They shall receive an adequate compensation, which shall not be diminished during their continuance in office. But they shall receive no fees nor perquisites of office, nor hold any other office of profit or trust under the authority of this State, or of the United States.

SEC. III. A Court of Probate shall be established in each of the organized counties.

SEC. IV. Judges of all County Courts, Associate Judges of Circuit Courts, and Judges of Probate shall be elected by the qualified electors of the county in which they reside, and shall hold their office for four years.

SEC. V. The Supreme Court shall appoint their Clerk or Clerks; and the electors of each county shall elect a Clerk, to be denominated a County Clerk, who shall hold his office for the term of two years, and shall perform the duties of Clerk to all the Courts of Record to be held in each county, except the Supreme Court and Court of Probate.

SEC. VI. Each township may elect four Justices of the Peace, who shall hold their offices for four years; and whose powers and duties shall be defined and regulated by law. At their first election they shall be classed and divided by lot into numbers one, two, three, and four, to be determined in such manner as shall be prescribed by law, so that one Justice shall be annually elected in each township thereafter. A removal of any Justice from the township in which he was elected shall vacate his office. In all incorporated towns, or cities, it shall be competent for the Legislature to increase the number of Justices.

SEC. VII. The style of all process shall be "In the name of the People of the State of Michigan;" and all indictments shall conclude "against the peace and dignity of the same."

ARTICLE VII.

SECTION I. There shall be a Secretary of State, who shall hold his office for two years, and who shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall keep a fair record of the official acts of the Legislative and executive departments of the government; and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature; and shall perform such other duties as shall be assigned him by law.

SEC. II. A State Treasurer shall be appointed by a joint vote of the two houses of the Legislature, and shall hold his office for the term of two years.

SEC. III. There shall be an Auditor General and an Attorney General for the State, and a Prosecuting Attorney for each of the respective counties, who shall hold their offices for two years, and who shall be appointed by the Governor, by and with the advice and consent of the Senate, and whose powers and duties shall be prescribed by law.

SEC. IV. There shall be a Sheriff, a County Treasurer, and one or more Coroners, a Register of Deeds, and a County Surveyor, chosen by the electors in each of the

several counties once in every two years, and as often as vacancies shall happen. The Sheriff shall hold no other office, and shall not be capable of holding the office of Sheriff longer than four in any term of six years; he may be required by law to renew his security from time to time, and in default of giving such security, his office shall be deemed vacant; but the county shall never be made responsible for the acts of the Sheriff.

ARTICLE VIII.

SECTION I. The House of Representatives shall have the sole power of impeaching all civil officers of the State, for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall be necessary to direct an impeachment.

SEC. II. All impeachments shall be tried by the Senate. When the Governor or Lieutenant Governor shall be tried, the Chief Justice of the Supreme Court shall preside. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try and determine the charge in question according to the evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office; but the party convicted shall be liable to indictment and punishment according to law.

SEC. III. For any reasonable cause, which shall not be sufficient ground for the impeachment of the Judges of any of the courts, the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature; but the cause or causes for which such removal may be required shall be stated at length in the address.

SEC. IV. The Legislature shall provide by law for the removal of Justices of the Peace, and other county and township officers, in such manner and for such cause as to them shall seem just and proper.

ARTICLE IX.

SECTION I. The Legislature shall provide by law for organizing and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the Constitution and laws of the United States.

SEC. II. The Legislature shall provide for the efficient discipline of the officers, commissioned and non-commissioned, and musicians, and may provide by law for the organization and discipline of volunteer companies.

SEC. III. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor.

SEC. IV. The Governor shall have power to call forth the militia, to execute the laws of the State, to suppress insurrections, and repel invasions.

ARTICLE X.

SECTION I. The Governor shall nominate, and by and with the advice and consent of the Legislature in joint vote, shall appoint a Superintendent of Public Instruction, who shall hold his office for two years, and whose duties shall be prescribed by law.

SEC. II. The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientifical and agricultural improvements. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, for the support of schools, which shall hereafter be sold or disposed of, shall be and remain a perpetual fund; the interest of which, together with the rents of all such unsold lands, shall be inviolably appropriated to the support of schools throughout the State.

SEC. III. The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each school district, at least three months in every year; and any school district neglecting to keep up and support such a school, may be deprived of its equal proportion of the interest of the public fund.

SEC. IV. As soon as the circumstances of the State will permit, the Legislature shall provide for the establishment of libraries; one at least in each township; and the money which shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines assessed in the several counties for any breach of the penal laws, shall be exclusively applied to the support of said libraries.

SEC. V. The Legislature shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States to this State for the support of a university; and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be and remain a permanent fund for the support of said university, with such branches as the public convenience may hereafter demand for the promotion of literature, the arts and sciences, and as may be authorized by the terms of such grant. And it shall be the duty of the Legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said university.

ARTICLE XI.

SECTION I. Neither slavery nor involuntary servitude shall ever be introduced into this State, except for the punishment of crimes of which the party shall have been duly convicted.

ARTICLE XII.

SECTION I. Members of the Legislature, and all officers, executive and judicial except such inferior officers as may by law be exempted, shall, before they enter on

the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, or affim, (as the case may be,) that I will support the Constitution of the United States, and the Constitution of this State, and that I will faithfully discharge the duties of the office of
according to the best of my ability." And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

SEC. II. The Legislature shall pass no act of incorporation, unless with the assent of at least two-thirds of each house.

SEC. III. Internal improvement shall be encouraged by the government of this State; and it shall be the duty of the Legislature, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals, and navigable waters; and it shall also be their duty to provide by law for an equal, systematic, and economical application of the funds which may be appropriated to these objects.

SEC. IV. No money shall be drawn from the treasury but in consequence of appropriations made by law; and an accurate statement of the receipts and expenditures of the public moneys shall be attached to, and published with, the laws annually.

SEC. V. Divorces shall not be granted by the Legislature; but the Legislature may by law authorize the higher courts to grant them, under such restrictions as they may deem expedient.

SEC. VI. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

SEC. VII. No county now organized by law shall ever be reduced, by the organization of new counties, to less than four hundred square miles.

SEC. VIII. The Governor, Secretary of State, Treasurer, and Auditor General, shall keep their offices at the seat of Government.

SEC. IX. The seat of government for this State shall be at Detroit, or at such other place or places as may be prescribed by law, until the year eighteen hundred and forty-seven, when it shall be permanently located by the Legislature.

SEC. X. The first Governor and Lieutenant Governor shall hold their offices until the first Monday of January eighteen hundred and thirty-eight, and until others shall be elected and qualified; and thereafter, they shall hold their offices for two years, and until their successors shall be elected and qualified.

SEC. XI. When a vacancy shall happen, occasioned by the death, resignation, or removal from office of any person holding office under this State, the successor thereto shall hold his office for the period for which his predecessor had to serve, and no longer, unless again chosen or re-appointed.

ARTICLE XIII.

SECTION I. Any amendment or amendments, to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed

amendment or amendments shall be entered on their journals, with the ayes and nays taken thereon, and referred to the Legislature then next to be chosen; and shall be published for three months previous to the time of making such choice. And if in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature, voting thereon, such amendment or amendments shall become part of the Constitution.

SEC. II. And if at any time two-thirds of the Senate and House of Representatives shall think it necessary to revise or change this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to vote for or against a Convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall at its next session provide by law for calling a Convention to be holden within six months after the passage of such a law: and such Convention shall consist of a number of members not less than that of both branches of the Legislature.

CONSTITUTION

OF

THE STATE OF IOWA.

ARTICLE I.

We, the People of the Territory of Iowa, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuance of those blessings, do ordain and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows:

Beginning in the middle of the main channel of the Mississippi river, at a point due east of the middle of the mouth of the main channel of the Des Moines river, thence up the middle of the main channel of the said Des Moines river, to a point on said river where the northern boundary line of the State of Missouri, as established by the Constitution of that State, adopted June 12, 1820, crosses the said middle of the main channel of the said Des Moines river; thence westwardly, along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of the main channel of the Missouri river; thence up the middle of the main channel of the said Missouri river, to a point opposite the middle of the main channel of the Big Sioux river, according to Nicollett's map; thence up the main channel of the said Big Sioux river, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersects the middle of the main channel of the Mississippi river; thence down the middle of the main channel of said Mississippi river, to the place of beginning.

ARTICLE II.

Section I. All men are by nature free and independent, and have certain unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

SEC. II. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people; and they have the right at all times, to alter or reform the same, whenever the public good may require it.

SEC. III. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates, for building or repairing places of worship, or for the maintenance of any minister or ministry.

SEC. IV. No religious test shall be required as a qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

SEC. V. Any citizen of this State who may hereafter be engaged, either directly or indirectly, in a duel, either as principal or accessory, before the fact, shall forever be disqualified from holding any office under the Constitution and laws of this State.

SEC. VI. All laws of a general nature shall have a uniform operation.

SEC. VII. Every person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appear to the jury that the matter charged as libelous was true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

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

SEC. IX. The right of trial by jury shall remain inviolate, but the General Assembly may authorize trial by a jury of a less number than twelve men, in inferior courts.

SEC. X. In all criminal prosecutions, the accused shall have a right to a speedy trial by an impartial jury, to be informed of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for his own witnesses, and to have the assistance of counsel.

SEC. XI. No person shall be held to answer for a criminal offence, unless on presentment, or indictment by a Grand Jury, except in cases cognizable by Justices of the Peace, or arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

SEC. XII. No person shall after acquittal be tried for the same offence. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, where the proof is evident or the presumption great.

SEC. XIII. The writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety require it.

SEC. XIV. The military shall be subordinate to the civil power. No standing army shall be kept up by the State in time of peace, and in time of war no appropriation for a standing army shall be for a longer time than two years.

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

SEC. XVI. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open court.

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

SEC. XVIII. Private property shall not be taken for public use without just compensation.

SEC. XIX. No person shall be imprisoned for debt in any civil action on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

SEC. XX. The people have the right freely to assemble together to consult for the common good, to make known their opinions to their Representatives, and to petition for redress of grievances.

SEC. XXI. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

SEC. XXII. Foreigners who are, or who may hereafter become residents of this State, shall enjoy the same rights, in respect to the possession, enjoyment, and descent of property, as native born citizens.

SEC. XXIII. Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State.

SEC. XXIV. This enumeration of rights shall not be construed to impair or deny others, retained by the people.

ARTICLE III.

SECTION I. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county in which he claims his vote twenty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

SEC. II. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to, and returning therefrom.

SEC. III. No elector shall be obliged to perform militia duty on the day of election, except in time of war, or public danger.

SEC. IV. No person in the military, naval or marine service of the United States,

shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place or station within this State.

SEC. V. No idiot or insane person, or persons convicted of any infamous crime, shall be entitled to the privileges of an elector.

SEC. VI. All elections by the people shall be by ballot.

ARTICLE IV.

The powers of the government of Iowa shall be divided into three separate departments, the Legislative, the Executive, and Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

SECTION I. The legislative authority of this State shall be vested in a Senate and House of Representatives, which shall be designated the General Assembly of the State of Iowa, and the style of their laws shall commence in the following manner: "Be it enacted by the General Assembly of the State of Iowa."

SEC. II. The sessions of the General Assembly shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members; unless the Governor of the State shall, in the interim, convene the General Assembly by proclamation.

SEC. III. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the first Monday in August, whose term of office shall continue two years from the day of the general election.

SEC. IV. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years; be a free white male citizen of the United States, and have been an inhabitant of this State or territory one year next preceding his election; and at the time of his election, have an actual residence of thirty days in the county or district he may be chosen to represent.

SEC. V. Senators shall be chosen for the term of four years, at the same time and place as Representatives, they shall be twenty-five years of age, and possess the qualifications of Representatives, as to residence and citizenship.

SEC. VI. The number of Senators shall not be less than one-third nor more than one-half the representative body, and at the first session of the General Assembly after this Constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the Senators of the first class shall be vacated at the expiration of the second year, so that one-half shall be chosen every two years.

SEC. VII. When the number of Senators is increased, they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

SEC. VIII. Each House shall choose its own officers and judge of the qualifica-

tion, election and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

SEC. IX. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

SEC. X. Each House shall sit upon its own adjournments; keep a journal of its proceedings, and publish the same; determine its rules of proceedings; punish members for disorderly behavior, and with the consent of two-thirds, expel a member, but not a second time for the same offence; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

SEC. XI. Every member of the General Assembly shall have the liberty to dissent from or protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either House, on any question, shall, at the desire of any two members present, be entered on the journals.

SEC. XII. Senators and Representatives, in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

SEC. XIII. When vacancies occur in either House, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

SEC. XIV. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

SEC. XV. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. XVI. Bills may originate in either House, except bills for revenue, which shall always originate in the House of Representatives, and may be amended, altered, or rejected by the other, and every bill having passed both Houses, shall be signed by the Speaker and President of their respective Houses.

SEC. XVII. Every bill which shall have passed the General Assembly shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, but if not, he shall return it with his objections, to the House in which it originated, and shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration, it again pass both Houses, by yeas and nays, by a majority of two-thirds of the members of each House present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return.

SEC. XVIII. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

SEC. XIX. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. XX. The Governor, Secretary of State, Auditor, Treasurer, and Judges of the Supreme and District Courts, shall be liable to impeachment for any misdemeanor in office: but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust or profit under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office, in such manner as the General Assembly may provide.

SEC. XXI. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

SEC. XXII. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to the General Assembly: provided, that officers in the militia, to which there is attached no annual salary, or the office of Justice of the Peace, or Postmasters whose compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

SEC. XXIII. No person who may hereafter be a Collector or holder of public moneys, shall have a seat in either House of the General Assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid into the treasury, all sums for which he may be liable.

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

SEC. XXV. Each member of the General Assembly shall receive a compensation, to be fixed by law, for his services, to be paid out of the treasury of the State. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session: when convened in extra session by the Governor, they shall receive such sum as shall be fixed for the first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they shall travel, in going to and returning from their place of meeting, on the most usual route: provided, however, that the members of the first General Assembly under this Constitution shall receive two dollars per day for their services during the entire session.

SEC. XXVI. Every law shall embrace but one object, which shall be expressed in the title.

SEC. XXVII. No law of the General Assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this State, by authority. If the General Assembly shall deem any law of imme-

diate importance, they may provide that the same shall take effect by publication in newspapers in the State.

SEC. XXVIII. No divorce shall be granted by the General Assembly.

SEC. XXIX. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

SEC. XXX. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: I do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability. And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

SEC. XXXI. Within one year after the ratification of this Constitution, and within every subsequent term of two years, for the term of eight years, an enumeration of all the white inhabitants of this State shall be made, in such manner as shall be directed by law. The number of Senators and Representatives shall, at the first regular session of the General Assembly after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each, and shall, also, at every subsequent regular session, apportion the House of Representatives, and every other regular session the Senate for eight years; and the House of Representatives shall never be less than twenty-six, nor greater than thirty-nine, until the number of white inhabitants shall be one hundred and seventy-five thousand; and after that event, at such ratio that the whole number of Representatives shall never be less than thirty-nine, nor exceeding seventy-two.

SEC. XXXII. When a Congressional, Senatorial, or Representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a Congressional, Senatorial or Representative district.

SEC. XXXIII. In all elections by the General Assembly, the members thereof shall vote viva voce, and the votes shall be entered on the journal.

SEC. XXXIV. For the first ten years after the organization of the government, the annual salary of the Governor shall not exceed one thousand dollars; Secretary of State, five hundred dollars; Treasurer, four hundred dollars; Auditor, six hundred dollars; Judges of the Supreme and District Courts, each one thousand dollars.

ARTICLE V.

SECTION I. The Supreme Executive Power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Iowa.

SEC. II. The Governor shall be elected by the qualified electors, at the time and place of voting for members of the General Assembly, and shall hold his office

four years from the time of his installation, and until his successor shall be qualified.

SEC. III. No person shall be eligible to the office of Governor, who has not been a citizen of the United States, and a resident of the State two years next preceding the election, and attained the age of thirty years at the time of said election.

SEC. IV. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session, open and publish them in the presence of both Houses of the General Assembly. The person having the highest number of votes shall be Governor; but in case any two or more have an equal and the highest number of votes, the General Assembly shall, by joint vote, choose one of said persons so having an equal and the highest number of votes, for Governor.

SEC. V. The Governor shall be Commander-in-Chief of the militia, the army and navy of this State.

SEC. VI. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

SEC. VII. He shall see that the laws are faithfully executed.

SEC. VIII. When any office shall from any cause become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

SEC. IX. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both Houses, when assembled, the purpose for which they shall have been convened.

SEC. X. He shall communicate by message to the General Assembly, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

SEC. XI. In case of disagreement between the two Houses, with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he may think proper, provided it be not beyond the time fixed for the meeting of the next General Assembly.

SEC. XII. No person shall, while holding any other office under the United States, or this State, execute the office of Governor, except as hereinafter expressly provided.

SEC. XIII. The Governor shall have power to grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment.

SEC. XIV. The Governor shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the time for which he shall have been elected.

SEC. XV. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

SEC. XVI. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the great seal of this State, signed by the Governor, and countersigned by the Secretary of State.

SEC. XVII. A Secretary of State, Auditor of Public Accounts, and Treasurer, shall be elected by the qualified electors, who shall continue in office two years. The Secretary of State shall keep a fair register of all the official acts of the Governor, and shall, when required, lay the same, together with all papers, minutes, and vouchers relative thereto, before either branch of the General Assembly, and shall perform such other duties as shall be assigned him by law.

SEC. XVIII. In case of the impeachment of the Governor, his removal from office, death, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Secretary of State, until such disability shall cease, or the vacancy be filled.

SEC. XIX. If, during the vacancy of the office of Governor, the Secretary of State shall be impeached, displaced, resign, die, or be absent from the State, the powers and duties of the office of Governor shall devolve upon the President of the Senate; and should a vacancy occur by impeachment, death, resignation, or absence from the State, of the President of the Senate, the Speaker of the House of Representatives shall act as Governor till the vacancy be filled.

ARTICLE VI.

SECTION I. The judicial power shall be vested in a Supreme Court, District Courts, and such inferior courts, as the General Assembly may from time to time establish.

SEC. II. The Supreme Court shall consist of a Chief Justice and two Associates, two of whom shall be a quorum to hold court.

SEC. III. The Judges of the Supreme Court, shall be elected by joint vote of both branches of the General Assembly, and shall hold their courts at such time and place as the General Assembly may direct, and hold their offices for six years, and until their successors are elected and qualified, and shall be ineligible to any other office during the term for which they may be elected. The Supreme Court shall have appellate jurisdiction only in all cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the General Assembly may by law prescribe. The Supreme Court shall have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals, and the Judges of the Supreme Court shall be conservators of the peace throughout the State.

SEC. IV. The District Court shall consist of a Judge who shall be elected by the qualified voters of the district in which he resides, at the township election, and hold his office for the term of five years, and until his successor is duly elected,

and qualified, and shall be inelligible to any other office during the term for which he may be elected. The District Court shall be a court of law and equity; and have jurisdiction in all civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law. The Judges of the District Courts shall be conservators of the peace in their respective districts. The first session of the General Assembly shall divide the State into four districts, which may be increased as the exigencies require.

Sec. V. The qualified voters of each county, shall at the general election, elect one Prosecuting Attorney and one Clerk of the District Court, who shall be residents therein, and who shall hold their several offices for the term of two years and until their successors are elected and qualified.

Sec. VI. The style of all process shall be "the State of Iowa" and all prosecutions shall be conducted in the name and by the authority of the same.

ARTICLE VII.

Section I. The Militia of this State shall be composed of all able bodied white male citizens between the ages of eighteen and forty-five years, except such as are or may hereafter be exempt by the laws of the United States or of this State, and shall be armed, equipped, and trained, as the General Assembly may provide by law.

Sec. II. No person or persons conscientiously scrupulous of bearing arms, shall be compelled to do militia duty in time of peace; provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

Sec. III. All commissioned officers of the militia, (staff officers excepted,) shall be elected by the persons liable to perform military duty, and shall be commissioned by the Governor.

ARTICLE VIII.

Section I. The General Assembly shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object, or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrepealable until the principal and the interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election, and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall

be published in at least one newspaper in each judicial district, if one is published therein, throughout the State, for three months preceding the election at which it is submitted to the people.

ARTICLE IX.

SECTION I. No corporate body shall hereafter be created, renewed, or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The General Assembly of this State shall prohibit, by law, any person or persons, association, company or corporation, from exercising the privileges of banking, or creating paper to circulate as money.

SEC. II. Corporations shall not be created in this State by special laws, except for political or municipal purposes, but the General Assembly shall provide, by general laws, for the organization of all other corporations, except corporations with banking privileges, the creation of which is prohibited. The stockholders shall be subject to such liabilities and restrictions as shall be provided by law. The State shall not directly or indirectly, become a stockholder in any corporation.

ARTICLE X.

SECTION I. The General Assembly shall provide for the election, by the people, of a Superintendent of Public Instruction, who shall hold his office for three years, and whose duties shall be prescribed by law, and shall receive such compensation as the General Assembly may direct.

SEC. II. The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, for the support of schools, which shall hereafter be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under an act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved, A. D. 1841, and all estates of deceased persons, who may have died without leaving a will, or heir; and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SEC III. The General Assembly shall provide for a system of common schools, by which a school shall be kept up and supported in each school district, at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

SEC. IV. The money which shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, shall be exclusively applied, in the

several counties in which such money is paid or fine collected, among the several school districts of said counties, in the proportion to the number of inhabitants in such districts, to the support of common schools, or the establishment of libraries, as the General Assembly shall, from time to time, provide by law.

SEC. V. The General Assembly shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this State, for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said University, with such branches as the public convenience may hereafter demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the General Assembly, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

ARTICLE XI.

SECTION I. If at any time, the General Assembly shall think it necessary to revise or amend this Constitution, they shall provide for a vote of the people for or against a Convention, at the next ensuing election for members of the General Assembly. In case a majority of the people vote in favor of a Convention, said General Assembly shall provide for an election of Delegates to a Convention, to be held within six months after the vote of the people in favor thereof.

ARTICLE XII.

SECTION I. The jurisdiction of Justices of the Peace shall extend to all civil cases, (except cases in chancery and cases where the question of title to any real estate may arise,) where the amount in controversy does not exceed one hundred dollars, and by the consent of parties may be extended to any amount not exceeding five hundred dollars.

SEC. II. No new county shall be laid off hereafter, nor old county reduced, to less contents than four hundred and thirty-two square miles.

SEC. III. The General Assembly shall not locate any of the public lands, which have been or may be granted by Congress to this State, and the location of which may be given to the General Assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant so exempted shall not exceed three hundred and twenty acres.

Done in Convention, at Iowa City, on the 18th day of May, in the year of our Lord, one thousand eight hundred and forty-six, and of the Independence of the United States of America the seventieth.

ERRATA.

For "*orthographical*," in twenty-eighth line, of page twenty-six, "*etymological*."
For "*Sir*," in twenty-first line, thirty-third page, read "*Com.*"
For "*Acadie*," in sixth line, page one hundred and twenty-nine, "*Acadia.*"
For "*are*," in seventeenth line, page one hundred and twenty-three, "*is.*"
For "*Colonial*," in seventh line, page one hundred and thirty-one, "*manorial.*"
For "*buffalos*," in second line, page two hundred and thirty-seven, "*buffaloes.*"
For "*ports*," in twenty-fourth line, page two hundred and thirty-eight, "*posts.*"
For "*State*," in second line, page three hundred and thirty-five, "*Territory.*"

GENERAL INDEX.