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VOLUME XXVIII

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LAW SERIES
VOLUME III

POPE'S DIGEST
1815
VOL. I

COLLECTIONS OF THE ILLINOIS STATE HISTORICAL LIBRARY
VOLUME XXVIII

LAW SERIES, VOLUME III

POPE'S DIGEST
1815
VOL. I

EDITED WITH INTRODUCTION BY
FRANCIS S. PHILBRICK
PROFESSOR OF LAW, UNIVERSITY OF PENNSYLVANIA

PUBLISHED BY THE TRUSTEES OF THE
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PREFACE

In the introduction to volume 21 of the series in which the present volume is issued, the laws of Indiana Territory (1801-1809), and to a considerable extent those of the Northwest Territory (1788-1800), have already been critically examined. In a later volume of the *Collections* the statutes of Illinois Territory (1809-1818) will be considered. The present work, volume two of which will appear subsequently, selects for special study one chapter in the statutory history of the last named territory. In the later complete study of that legislation the matters now discussed will, to a large degree, not again be dealt with. On the other hand, a number of important matters are now barely referred to, a fuller treatment being postponed for the later volume, where the Digest will merely supply illustrations in an account of the entire legislative process of which it was but a phase.

The footnotes in the present introduction contain various references to manuscript sources in county offices. In more than a dozen of these an examination has been made of substantially all the records which seemed likely to yield data that would be useful in understanding the statutory development of Illinois Territory and the administration of justice therein. In the later volume full acknowledgment will be made for the friendly aid received by me in my examination of these local records. As their utilization for the present volume has been only casual, no further acknowledgment is now made.

I must, however, here most gratefully repeat the acknowledgments made in the introduction to my earlier volume to Professor Theodore C. Pease, the general editor of these *Collections,* and to Miss Ernestine Jenison and Miss Mildred Eversole of the editorial staff of the Library. The latter have again checked every citation to printed sources, every statement of fact, every judgment. For their extreme accuracy, which has saved me from several most egregious blunders and from very many more of a minor nature, I am immeasurably indebted. Miss Catherine Gregory, Miss Marybel

Eversole, Miss Natalia Belting and Miss Olive Lilly have assisted in seeing the volume through the press.

I also owe particular acknowledgments to the University of Pennsylvania, whose Research Committee granted one hundred dollars to aid me in the preparation of the present volume. This money was expended in payment for the assistance of Mr. Harry Levin, a member of the Pennsylvania bar, and Mr. Herbert Shenkin, a student in the University of Pennsylvania Law School; each of whom examined the various revisions of Illinois Statutes from 1815 to 1845, with reference to certain topics and certain questions, for the purpose of checking my conclusions respecting the relation of the later revisions to that of 1815. I acknowledge with much appreciation their coöperation, and the generous assistance of the University.

In setting up the current volume the general style of the original edition has been followed as nearly as possible. Original pages have been reproduced line for line, including running heads and page numbers. Typographical errors in the copy have also been included. For numbering the text as a whole the drop folio has been used. Index and bibliography will appear in the second volume.

FRANCIS S. PHILBRICK

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Special Introduction

SPECIAL INTRODUCTION
POPE'S DIGEST AND ITS SUCCESSORS

Nathaniel Pope[1] is assured of the enduring gratitude of Illinois for the service he rendered in enlarging its boundaries as originally set by Congress. Nevertheless, aside from that act, and notwithstanding that his name is on the map of the state and cannot be erased from any complete story of its past, his historical importance is negligible. As a federal judge, also, he is one of the great number who do their work well, yet are individually forgotten, their services only collectively important.

He was born in Louisville, Kentucky, on January 5, 1784—a brother of Senator John Pope of that state (and father of Major General John Pope of the Civil War), under whom he studied law —and removed to Missouri when barely over twenty years of age. It was while a resident of Ste. Genevieve that he practiced in Randolph County in the courts of Indiana Territory, and almost certainly only after his appointment as secretary of Illinois Territory, certainly not long before this,[2] that he removed to Kaskaskia.[3] From the first his outstanding abilities were evident.[4] March 7, 1809, was

[1]See note 90 in biographical appendix to introduction to the statutes of Indiana Territory, *Illinois Historical Collections,* vol. 21. In addition to authorities cited below see John Reynolds, *Pioneer History of Illinois* (the edition of 1887 is always the one cited hereafter), 393-395, and *My Own Times* (edition 1879, always), 86, 104, 106, 128-129, 134, 154; E. B. Washburne, *Edwards Papers* (Chicago Historical Society's *Collection,* vol. 3), 122-123 n., 245, 249; S. J. Buck, *Illinois in 1818 (Centennial History of Illinois,* introductory volume), index; Newton Bateman and Paul Selby, *Historical Encyclopedia of Illinois,* 1:428; J. L. McDonough, *History of Randolph, Monroe and Perry Counties,* 40; Louis Houck, *History of Missouri,* 3:12-13, 67 n.; *Biographical Directory of the American Congress, 1774-1927,* 1422.

[2]C. W. Alvord, *Illinois Country (Centennial History of Illinois,* vol. 1), 428, says he had been a resident of Illinois about a year. But he had for several earlier years resided at Ste. Genevieve, he took the oath of office there, and his commission describes him as "of the Louisiana Territory."

[3]It seems probable that Kaskaskia remained his home throughout life (though necessarily he spent much time in Springfield). His home was there in 1825 and in 1841. C. W. Alvord, *Governor Edward Coles (I. H. C.,* 15), 191; U. F. Linder, *Reminiscences of the Early Bench and Bar of Illinois,* 124. The *Biographical Directory of the American Congress, 1774-1927,* 1422, says he removed to Springfield.

[4]See Philbrick, *Laws of Indiana Territory (I. H. C.,* 21), cxciii-iv, n. 4; cxcvii, n. 4.

the date of his appointment as secretary.[1] At Kaskaskia he issued on April 28, 1809, his proclamation[2] declaring the counties of Randolph and St. Clair, theretofore of Indiana Territory, to be counties of the Illinois Territory, and before the arrival of the governor (June 11) proceeded far in the organization of the territory.

Some relationship with Michael Jones,[3] the incorruptible and unrelenting land commissioner whose investigations of fraudulent Kaskaskia titles were so fatal to several of the Edgar-Morrison faction,[4] and also marriage with Lucretia Backus, daughter of the other land commissioner, Elijah Backus,[5] made him necessarily, in those days of virulent personal politics, an enemy of that group of local magnates who had for years dominated the politics and monopolized the honors and profits of office in Randolph County. They knew and respected him for his abilities, and many times he had served them in litigation; William Morrison, in particular, had taken him up as soon as his initial appearances in the courts attested his superior competence. But they feared such abilities in the service of Michael Jones, and greatly dreaded his own possible elevation to the governorship. Alvord states that Pope had been advanced by Michael Jones as the rival of Rice Jones.[6] To sustain the remarkable reputation gained by the latter (before his murder in December, 1808) no tangible evidence remains;[7] to substantiate Pope's solid powers evidence is abundant. Very likely he was inferior to the other in natural bril-

[1]U. S. Senate, *Executive Journal*, 2:119, 120; N. W. Edwards, *History of Illinois, from 1778 to 1833; and Life and Times of Ninian Edwards*, 28. The commission appears in E. J. James, *Territorial Records of Illinois* (Illinois State Historical Library, *Publications*, no. 3), 3. He took the oath of office on April 25, at Ste. Genevieve. *Ibid.*

[2]James, *Territorial Records of Illinois*, 3-4.

[3]Alvord, *Illinois Country*, 428. I do not know what the relation was.

[4]See Philbrick, *Laws of Indiana Territory* (*I. H. C.*, 21), lxxxiii *et seq.*

[5]Randolph County Clerk, *Marriage Record, 1809-1822*, 205; Randolph Circuit Clerk, *Court Record, 1814-1824*, 61. The former says he was "married to one of the Children and Heirs" of Backus; the latter speaks (September 18, 1815) of Pope and Lucretia (named) as "the Heirs."

[6]*Illinois Country*, 428.

[7]See Philbrick, *Laws of Indiana Territory* (*I. H. C.*, 21), ccliii-iv. Details on the murder (*ibid.*, index) and of the political conditions of which it was part, will appear in the introduction to another volume of the *Illinois Historical Collections* dealing with the statutes of Illinois Territory.

liance, audacity, and magnetism. The fear of Pope harbored by the Edgar-Morrison faction appears from a letter written in May, 1809, to Matthew Lyon, of Kentucky,[1] who had been their friend in promoting in Congress the separation of the Illinois country from Indiana Territory. They besought Lyon to prevent Pope's appointment as governor, "an event he is very sanguine of taking place."

"Pope," they continued, "is a *perfect Boy*—destitute of stability experience or Judgment & from his conduct since his appointment as Secretary we are sorry to add (from our respects to his Brother) deficient in candor propriety & Justice. He is son-in-law of E Backus consequently violently vindictive against all who oppose the destructive politics of that man.—United to which is the strong disposition he betrays in every act to shield his conduct from the investigation it merits—young Pope is a Boy without the talents to assume the reins of Government, as the violent partizan of a sinking faction, engagd by the ties of consanguinity to its leader and desirous of propping its declin'g power—is altogether an unfit Character to become our Governor, and we assure you with truth that if a measure of that kind is taken by the Genl Government, the evident dislike of the people to any one tinctured with the politics of the murdering faction (as they are called) will drive them instantly to arms. . . We request you, Sir, to take into consideration the contents of this letter and strain every nerve to prevent the appointment of Nathl Pope to the Governt of the territory, for which event we understand a petition has gone on signed by the secretarys new officers a Pack of mercenaries created for that purpose. . . Oppose uniformly all home appointments. . . . [Such] appointments will be not only disagreeable in a great degree but productive of civil commotion."

Such freedom of reference to the "murdering faction" was ended by Michael Jones's libel suits against Edgar and the two Morrisons. Whether Pope was in fact an active candidate for the governorship,

[1]May 12, 1809. There are various copies of this letter at Chester, in the Miscellanies Box in the office of the clerk of the Circuit Court. No two are identical. They emanated from Judge Backus, to whom Lyon loaned the original in Washington. It was an exhibit in the libel suits brought by Michael Jones against Edgar and the two Morrisons; see Philbrick, *Laws of Indiana Territory (I. H. C.,* 21), xciv, n. 2.

or, if so, whether he had any chance whatever of appointment, does not appear from available sources of information.

Though he was not selected, the governor named—Ninian Edwards of Kentucky—was a protégé of his brother, Senator Pope; and Daniel P. Cook, soon to be powerful in the state and the son-in-law of Governor Edwards, was his nephew.[1] Probably politics did not seriously affect his professional relations with those who had so strongly opposed him—in the effervescent politics of that day there was a vast amount of the same emotionalism that characterized the contemporaneous poetry of romanticism. It is true that for some time in 1809 Pope and William Morrison did not speak,[2] and that autumn John Rice Jones represented Morrison in the Randolph court;[3] but as early as June of the next year Pope again appeared as counsel for John Edgar.[4] His practice was continuous and active (mainly in the Randolph courts) despite his secretarial position. In 1813 he was reappointed secretary,[5] but resigned after his election on September 5, 1816 as delegate of the territory in Congress,[6] where he took his seat on December 2.

Historians have recognized his exceptional services in this office to the state. By the argument that extension of its northern boundary from a little above the latitude of Lake Michigan's southern tip[7] to its present position would attach the future state's commerce to Ohio and Indiana and make for the perpetuity of the Union,[8] he secured a great addition to the area of the state. Upon his own initiative and responsibility—but, according to Governor Ford, with the "unqualified approbation" of the people of Illinois—he also induced Congress to divert to the schools three-fifths of the amount

[1]Alvord, *Illinois Country,* 429; T. C. Pease, *Frontier State (Centennial History of Illinois,* vol. 2), 93.

[2]Pope to Edwards, November 9, 1809. Washburne, *Edwards Papers,* 40.

[3]Randolph County, Circuit Clerk, *Court Record 1810-1811,* 489.

[4]*Ibid.,* 494. Usually the names of counsel are not given.

[5]June 1—U. S. Senate, *Executive Journal,* 2:347, 348.

[6]Washburne, *Edwards Papers,* 126.

[7]About ten miles north. Pope added (Alvord's calculations, *Illinois Country,* 459) about 8,000 square miles, including Chicago.

[8]*Annals,* 15 Congress, 1 session, 1677; Thomas Ford, *History of Illinois,* 22-24.

originally appropriated for roads.[1] Under current standards it seems indubitable that Illinois needed schools more than roads in 1818; yet it seems strange that a circuit-rider of the southern counties should have asserted that their roads needed no betterment, being excellent by the generosity of nature! Probably Pope, fearing that his fellows in Congress and the citizens of the state might not appraise with the same enlightenment as himself the relative handicaps of mud and illiteracy, tactfully pointed his argument with this appeal to local pride.

Appointed late in 1818 as register of the land office at Edwardsville,[2] he had occupied that office less than five months when he turned it over to Edward Coles. This followed Pope's appointment on March 3 as United States district judge for Illinois,[3] which position he filled with great credit until his death on January 22, 1850.[4]

It required some years for him to rid himself of the political ambitions that beset all the judges of his time; ambitions which prematurely ended the promising judicial careers of some, and which marked others—as in the case of Sidney Breese—with an unbecoming restlessness that embarrasses one in estimating their characters. His family connections[5] and his prominence would have made it difficult—indeed, until the local slavery issue was settled, impossible—for him to escape from the personal groupings that dominated politics. Though, like many others, not drawn to Governor Coles, he seems

[1]That is, 3/5 of 5 per cent of the proceeds of United States lands within its borders. In the case of Ohio and Indiana this road fund of 5 per cent had been devoted, according to Ford, to the improvement of roads leading to those states. See Ford, *History of Illinois,* 20; Buck, *Illinois in 1818,* 226; Alvord, *Illinois Country,* 460.

[2]Appointed November 30, 1818. U. S. Senate, *Executive Journal,* 3:143, 150. Whereas he was described in 1809 as "of the Louisiana Territory" and in 1813 as "of Kentucky" (*ante,* x, n.1; xii, n.5), he was now identified as "of Illinois."

[3]U. S. Senate, *Executive Journal,* 3:184.

[4]*Illinois State Journal,* January 23, 1850. Five adult children, two sons and three daughters, who survived him are named in a petition of November, 1850, for the sale of realty belonging to his estate—Madison County, Probate Clerk, (Land) *Record A,* 16. He registered three indentured blacks in Randolph County in 1810, and two others in 1819 and 1821, at least the first three for long terms (seventeen to twenty-three years)—County Clerk, *Marriage Record, 1809-1822,* 1-25; *Register of Negroes: B,* 31-32.

[5]In addition to those noted *ante,* xi, xii, he was an uncle of Alexander P. Field. Linder, *Reminiscences,* 215.

to have been decidedly of the antislavery party.[2] In 1824 and 1828 he was an unsuccessful aspirant for nomination as United States senator.[2] In 1826 he seems to have been desirous of appointment to the Supreme Court of the United States, when the creation of a new circuit was under consideration.[3] He had probably been on the bench a score of years before he clearly withdrew from politics.[4]

Aside from the turbulent campaign of 1822-1824 over the slavery issue, party principles and party divisions were nonexistent in Illinois politics until about 1830. Elections turned upon combinations of the personal followings of one and another leader, united by family connections or by a community of animosities or ambitions. Leadership rested upon personality, and sometimes this was remarkable in its qualities, good or ill; but demagoguery, low and crude, was its habitual, almost its invariable, manifestation in politics. The only vital force therein revealed is an appetite, seemingly universal and insatiable, for office. It was an appetite natural, indeed inevitable, in a community that saw men of meager years, and less experience, placed in some of the most exalted offices, political and judicial, of the new state, either simply for lack of better men or because no higher qualification was deemed requisite than the good-fellowship characteristic of, and therefore dear to, the frontier. It is perhaps not too unjust to infer from the political correspondence of the day[5] that Pope's politics rose little or not at all above that of the crowd in point of principle. In success he fell below many men of seemingly smaller gifts. He profited by family connections—as the Edwards group lost influence he passed from politics. He could not, however, capitalize his personality. In view of his early prominence, one may indeed probably safely assume that it was not unpleasing,[6] but even those most friendly to him convey no impression that he was of the expansive and convivial type adapted to frontier politics;

[1]Alvord, *Governor Edward Coles (I. H. C.*, 15), 346, 362-363.

[2]Pease, *Frontier State*, 125, 126-127.

[3]Washburne, *Edwards Papers*, 245, 248 n., 249.

[4]See Pease, *Frontier State*, 126, 136, 148.

[5]See *ibid.*, index, and the letters cited in the *Edwards Papers*.

[6]General Orendorff, in the address cited, *post*, xv, n.4, refers to it as "delightful."

and certainly he had no whit of the charm and oratory that made Daniel P. Cook and John McLean giants for a day.[1]

According to "General" Linder, almost our sole repository of small talk about the bench and bar, "he was pretty severe upon the lawyers who practiced in his court, and was not very choice as to the words he used when he saw fit to reprimand them."[2] We have the same authority for a statement that Stephen T. Logan once said that Judge Pope possessed "the finest legal mind he ever knew."[3] At least there is no doubt, for that is the tradition of the bar, that he displayed good sense, dignity, and ability as a judge. His absolute probity was never questioned even by violent political enemies. Very few of his opinions survive.[4]

Judge Pope kept an executive register, by no means perfect, as secretary of the territory.[5] He also compiled the first digest of the statutes of Illinois, volume one of which is reprinted in the present work.

THE REVISED LAWS OF 1815

The laws of the Northwest Territory were necessarily part of the laws of its offspring by partition, Indiana Territory; [6] and those of the latter, so far as not peculiarly local, similarly remained in force in Illinois until, and except in so far as, modified—though the governor and judges of Illinois Territory ventured only an

[1]Linder, who says he was, when a young man, "a sort of pet" of the judge, tells only one anecdote that indicates such qualities: *Reminiscences*, 126, 216.

[2]*Ibid.*, 215.

[3]"And this is entitled to the more respect from the fact that Judge Pope never showed Logan much favor in his court." *Ibid.*, 217.

[4]On June 2, 1905, portraits of several federal judges were unveiled in the rooms of the federal court in Springfield. In a characterization of Judge Pope made on this occasion by General Alfred Orendorff, he states that "Judge Drummond, on his appointment as Circuit Judge, removed the court papers covering the time of Judge Pope's service to Chicago, where they were all destroyed in the great fire"; and that he had been able to find only two decisions, published in McLean's *Reports*. Details regarding the judge's descendants are given by General Orendorff. See also Judge J. M. Scott's characterization, *Supreme Court of Illinois*, 266.

[5]Accessible, in print, only in James, *Territorial Records of Illinois*, of which one (pp. 3-61) is this "Executive Register, 1809-1818."

[6]See Philbrick, *Laws of Indiana Territory (I. H. C.*, 21), c, cii-iii, civ-vii, and other passages there referred to.

"opinion" to that effect as their first legislative act.[1] It is, indeed, generally stated[2] that the Indiana statutes were "adopted," by this expression of opinion, in 1809. It may appear pedantic to remark that, strictly speaking, such laws could not have been "adopted" under the terms of the Ordinance of 1787, since that restricted legislative power to the selection and adoption of statutes of the original thirteen states. However, that restriction had been repeatedly violated in both of the older territories and in Michigan[3] (and was to cause further trouble in Illinois); sometimes of absolute necessity, sometimes—as in the constant adoption of Kentucky laws—under the dictates of good sense. In view of this experience it is clear that, had the Indiana legislation not necessarily remained positive law in Illinois, it would have been absurd to deny to the latter the privilege of adopting statutes originally framed precisely for the inhabitants of that district while under a different government.[4] But "adoption" was unnecessary: the continued vitality of the Indiana legislation was not dependent thereon. The first Assembly of the territory, under the second and representative stage of government, had of course full power to adopt any foreign statute, or to declare what laws were in force without adoption, within the territory, and it exercised this power by a law of December 13, 1812. This act, again quite unnecessarily, declared to be then in force in Illinois all enactments of Indiana Territory, of a general nature, that were in force in the latter territory when Illinois Territory came into existence, together with legislation for the latter by its governor and judges during its first stage of government.[5] Not content with this

[1]June 13, 1809—Alvord, *Laws of the Territory of Illinois, 1809-1811* (Illinois State Historical Library, *Bulletin*, vol. 1, no. 2), 1. In a similar case the governor and judges of Indiana Territory had "resolved" to be, and then "declared" they were, governed by an enactment of the Northwest Territory that had itself been "adopted" in violation of the Ordinance—Philbrick, *Laws of Indiana Territory* (*I. H. C.*, 21), cxxiii, n. 5.

[2]So, for example, by Alvord, *Laws of the Territory of Illinois, 1809-1811*, xi; and by myself, *Laws of Indiana Territory* (*I. H. C.*, 21), cv.

[3]See Pease, *Laws of the Northwest Territory* (*I. H. C.*, 17), xx-xxii, xxiv-xxx; Philbrick, *Laws of Indiana Territory* (*I. H. C.*, 21), cvi-x.

[4]As noted in a similar case in Indiana Territory, work last cited, cxxiii, n. 5.

[5]*Post*, 33. Here and elsewhere references are to original page numbers of *Pope's Digest*, reproduced page for page in this and a forthcoming volume of the *Collections*.

general pronouncement they repeated it with respect to ferries, specifically, later in the same month.[1]

Aside from the confusion respecting legal facts that this legislation exhibited, it is of course not to be criticized. Imperfect as was the adjustment of the earlier legislation to the peculiar situation of the Illinois country, it had either worked reasonably well or had been ignored;[2] and at any rate it was all the law there was. The first Assembly of the state was to show less good sense.

More exactly, the act of 1812 just cited, declared effective in Illinois all laws "passed by the Legislature of the Indiana Territory, which were in force" therein on March 1, 1809, and had not been repealed by the governor and judges of Illinois Territory. And here Pope had much reason to thank his predecessors in codification, John Johnson[3] and John Rice Jones,[4] who prepared the revised laws of Indiana Territory of 1807. For when those sound lawyers were instructed to "reduce into one code" the laws in force in Indiana,[5] they went to the Assembly for further powers, proceeding under new instructions to "revise and reduce," and "make the said laws . . . as complete as the nature of the case will admit of."[6] Not alone did inconsistencies and gaps abound in the statutes with which they had to deal. Above all there was the perplexing fact that among the laws then effective in Indiana were various enactments of the Northwest Territory—some of them very fundamental —that had never been modified, repealed, or reënacted by the Indiana legislature, yet were actually operative; and others of apparently identical status that were ignored.[7] If they did not solve all of the resulting puzzles they did solve most of them; their work was enacted by the Assembly, all laws theretofore of authority were repealed, and their revisal declared to be of exclusive authority.[8] Had their labors not intervened, the Illinois act of 1812 would have

[1] *Post*, 260, act of December 25, 1812.
[2] See Philbrick, *Laws of Indiana Territory (I. H. C.*, 21), cxv-vii, cxxvi, clxxv-ix, clxxxiv, ccxxiii.
[3] *Ibid.*, cxii.
[4] *Ibid.*, xvii, ccxxxviii-xlii.
[5] *Ibid.*, 153—August 26, 1805.
[6] *Ibid.*, 217—December 4, 1806.
[7] *Ibid.*, ciii (with passages cited in n. 1), cvi.
[8] *Ibid.*, 608—September 19, 1807; *post*, 35.

been very insufficient to cover the law effective in Indiana, and therefore in Illinois, and Pope would have been confronted with the baffling problems that had beset them.

Altogether the Indiana contribution constitutes well over two-thirds of Pope's work. Most of this Indiana matter is from the revision of 1807; a little from the legislation of 1807-1809. And of course very much of the Indiana contribution goes back to the Northwest Territory.

The Indiana revision, though in the main a mere selection and physical rearrangement of matter, deserves much praise,[1] even aside from the great difficulties of inclusion and exclusion above referred to. According to the title-page of Pope's work the laws were therein "revised and digested," and of course, to a degree, they were; but his revision as compared with that of 1807, is more mechanical, harmonizing less, by rearrangement and excisions, original inconsistencies, inadvertencies, and errors. It is regrettable that neither he nor the Assembly took note of the difficulties encountered by the Indiana revisers and the consequent action of the legislature in conferring upon them powers adequate to overcome those difficulties. Pope might have asked for such, and possibly he did. Had his digest been an official work, prepared under adequate powers of revision and then enacted by the Assembly, it should have been more satisfactory. Under the circumstances he cannot be held responsible for most of its defects; and even if he could be, a severe judgment of his labors would be unjustified; for even today we have progressed, in the art of statutory compilation, so very little toward the ideals of authenticity, clarity, and accessibility that the defects of Pope's work are still characteristic of similar compilations in most of our states.[2] Nothing appears in the acts of the Assembly save a belated resolution of December 24, 1814, when the work must have been substantially completed, that whereas the laws should be printed for public information, and a revision thereof would greatly lessen the expense of publication, it was expedient "to procure some person"

[1]See Judge Gross's opinion, quoted in Philbrick, *Laws of Indiana Territory (I. H. C.,* 21), cxii, n. 5.

[2]See the remarks of F. J. Stimson, probably of all men the one best qualified to speak on this subject, in his *Popular Law-Making,* 353 *et seq.*

to make such revision, prepare an index, and provide marginal notes. A statute of the same date recited that "whereas this Legislature have contracted with Nathaniel Pope Esq for revising the laws of this Territory making an index to the same, and superintending the printing thereof," he should be paid $300 as soon as the work should be completed.[1] We shall see that Governor Ford followed a similar course in procuring a reviser, whose work was nearly done before action of the legislature, in 1844. Who actually engaged Pope, without authority despite the recital of the statute, does not appear. His revision was, then, printed by authority and at the expense of the Assembly;[2] but it was not enacted into law, nor were inconsistent statutes repealed.

Whatever his powers, his problem was to present the law as it existed at the date of his compilation. This presented some constitutional difficulties, which, of course, no powers could have enabled him to avoid; and also involved consideration of a great number of cases of legislative inadvertency or ineptness with which, in general, he seems to have felt equally unable to deal. Both problems are illustrated by comparing the laws of September 17, 1807 and December 19, 1812, regulating the courts of Common Pleas, the acts of December 19 and 24, 1814, regulating county courts, and the federal statute of March 3, 1815, all printed in the revision.[3] A comparison of the last cited act with the territorial statutes of December 13 and 22[4] preceding, which assumed power in the territorial legislature to define, and regulate the performance of, the duties of the judges appointed for the territory by the United States, is still more interesting, since it reveals a constitutional problem that caused much feeling and difficulty at the time. This is not, however, the place to discuss in detail such matters. This digest of 1815 is only a stage in the development of the territory's law from 1809

[1]December 24, 1814—*Laws of 1814* (1921 edition), 86, 99.

[2]It was printed some time before December 18, 1815, for see the act of that date in *Laws of 1815-1816,* 10.

[3]*Pope's Digest,* 2: 305, 311, 345, 348, compared with 2: xvii, particularly § 14.

[4]*Pope's Digest,* 2: 333, 343; compare J. M. Palmer, *Bench and Bar of Illinois,* 1:9, 10.

to 1818, and, as such, its relation to what preceded it and followed it in the territorial period can best be considered elsewhere.[1]

Sufficiently illustrative of the narrowness with which Pope construed his duties are the two statutes just cited dealing with the county courts; one of December 19 and the other, "supplemental" thereto, passed only five days later "to remove all doubts" regarding the meaning of the first! Pope simply reprinted them. Of course, his work not being enacted by the Assembly, he could not properly correct the error in one section of the first act which the supplemental act left uncorrected.[2] Such an example of original obscurity, hasty after-thought, and final error is not to be imagined unique in the legislation of the territory; on the contrary various similar instances could be given, some of them of great importance. The great majority of defects in the statutes of the territory illustrate merely the haste and carelessness of the Assembly's action (or the printer's labors). As these are simply reproduced by Pope when present in the enactments included in his digest, and many others are in laws not so included, this subject, also, seems preferably reserved for discussion in its entirety elsewhere.

On the other hand Pope did not by any means, in all cases, confine himself to mere reproduction of the laws as they were passed by the Assembly. For example he omitted entirely the curious, and historically important, preamble to a statute of December 25, 1812, relating to ferries,[3] properly omitted portions of that act repealed by a subsequent act of 1814,[4] retained its unnecessary declaration that ferries established by the legislature of Indiana Territory remained "established ferries in the Illinois Territory unless repealed," but omitted one section of the amending act of 1814 (§2) that seems to be an essential part of the law of the territory at the date of his compilation. His understanding of his powers therefore remains somewhat baffling. If he had the power to deal with enactments

[1]In a later volume of this series, which will deal with the statutes of Illinois Territory.

[2]In § 2, *Pope's Digest*, 2: 346, the first Monday of September is set for the beginning of term in both Gallatin and Madison counties; for the latter it should have been October.

[3]*Laws of 1812* (1920 edition), 40, and *post*, 260.

[4]*Laws of 1814* (1921 edition), 50.

as he dealt with the one just cited by way of example, he could and should have produced a digest far more nearly perfect than was his actual performance.

The first thing that anyone will notice who opens this volume is that Pope began the practice of topical-alphabetical arrangement to which the lawyers of Illinois have now been accustomed for more than a hundred years. At the time of its appearance the work's importance was increased by the fact that it collected, so far as deemed consistent and still in force, the laws of 1812, 1813, and 1814. These enactments—though presumably all accessible in manuscript, for a time, at the county seats,[1] and many in newspapers[2]—had not all appeared in book form; nor did they so appear until fifteen years ago.[3]

[1]Alvord's complete collection of the laws of 1809-1811, cited *ante,* xvi, n. 1, was based upon prints in the *Louisiana* (formerly *Missouri) Gazette* of 1810-1811, in which all the laws appeared, and manuscript copies of all save five laws that were still preserved (1905) in the office of the circuit clerk at Chester. On the difficulties that arose in early years from the absence of printing presses, and the methods used to make the statutes known, see Philbrick, *Laws of Indiana Territory (I. H. C.,* 21), cxiii-xiv.

[2]I have not checked these, to determine the completeness and accuracy of their publication.

[3]All were printed in 1920-1921 by the Boston Book Company and Chipman Law Publishing Company of Boston, from original manuscript records in Springfield. A law of May 21, 1810 provided for newspaper publication of advertisements required by statutes—Alvord, *Laws of the Territory of Illinois, 1809-1811,* 27. No law required similar publication of the statutes themselves, though doubtless many did thus appear in print (including all of those of 1809-1811—*ibid.,* xiii). A law of December 10, 1813 fixing temporary places for holding courts in certain counties provided that members of the legislature should carry home with them copies thereof, to insure its knowledge by the judges and others concerned—*Laws of 1813,* 48. "Distribution" and printing of the statutes of 1812 were provided for by law *(Laws of 1812,* 55, 56; *Laws of 1813,* 62), and they were published in Russellville, Kentucky, in 1813. Though printing of the statutes of 1813 was provided for (*Laws of 1813,* 63, 69), in fact they were never separately printed until 1920. No provision was made for printing completely the statutes of 1814, but only for their inclusion (so far as proper) in Pope's work —*ante,* xix, n. 1; and they were first completely printed in 1921. One act only, that establishing the supreme court, was published (with accompanying non-statutory documents) in 1814 at Kaskaskia. An act of December 18, 1815 (*Laws of 1815-1816,* 10, cited *ante,* xix, n. 2) relieved of ineligibility for office persons who had violated the anti-dueling act of April 7, 1810 (Alvord, *Laws of the Territory of Illinois, 1809-1811,* 25) prior to the date of the supplementary act on the ground that, having first been published in Pope's revision, many had remained in ignorance of it. It is hard to believe this of the dueling law, but easy to believe it of many other statutes.

Little information is readily accessible relative to the early statutory revisions. The occasional source citations in the notes to the revision of 1874 are restricted to the revised statutes of 1845. It may be that some account of still earlier compilations, and a slight attempt to indicate their relation to the work of Pope, may interest those who examine this volume.

STATUTORY REVISIONS FROM 1815 TO 1845

The constitution of 1818 made the governor and judges of the Supreme Court a council of revision,[1] but only to the extent that the judges shared the duty of vetoing new enactments. The first judges elected were, as Governor Reynolds said, "all young men, and had not that long practise at the bar that was necessary to give standing and character to their decisions"[2]—or, still less, reliability to their revisal of the statutes of the state. The first Assembly of the state, however, was to entrust them with this responsibility.

Governor Reynolds also says, apparently referring to them, that "the *material* for the bench was not as good as it might be."[3] This was preëminently true of William P. Foster, who had never studied law, never held his court, was a swindler and worse, and disappeared after collecting his first year's salary.[4] It was likewise true of

[1]Article III, section 19.

[2]*My Own Times,* 137.

[3]*Ibid.,* 135.

[4]Ford, *History of Illinois,* 28-29. Reynolds' silence on this, *op. cit.,* 137, is typical of him and of American politics. All other accounts rest, as regards his character, on Ford: Palmer, *Bench and Bar,* 1:20; W. L. King, "A Pioneer Court of Last Resort," *Illinois Law Review,* 20:573, 574, 580. He had, when elected, been in Illinois only about two months: Buck, *Illinois in 1818,* 305. He was elected an associate justice on the first ballot (over, among other rivals, William Wilson and Charles R. Matheny)—*Senate Journal,* 1818, pp. 18-19, October 8. According to *1 Illinois (Breese),* xvi, he resigned on June 22, 1819; according to *2 Illinois (1 Scammon),* vii, on July 7. The former is correct—E. B. Greene and C. W. Alvord, *Governors' Letter-Books 1818-1834 (I. H. C.,* 4), 17-18—the latter date being that of Wilson's appointment as his successor. I find in the county records of Crawford County that on June 12, 1819, he signed the writ for a special Circuit Court of July 7, over which, in fact, Thomas C. Browne presided—Circuit Clerk, *Circuit Court Record, 1817-1818,* 7; and a copy of his appointment of Jesse B. Browne, on April 19, 1819, as clerk of the Circuit Court is in the records of Edwards County—Circuit Clerk, *Circuit Court Record, A* (1815-1827), 52. His registration of a slave in Randolph County on August 14, 1818 appears in *Marriage Record, 1809-1822,* 19, and is the evidence by which Mr. Buck corrected the earlier belief that he had not been in Illinois even that long before his election to the Supreme Court, October 8, 1818.

Thomas C. Browne, though fortunately to a vastly less degree, and more as regards professional attainments than personal character; though in the latter respect he compared poorly with Reynolds and with his later colleagues, Lockwood and Chief Justice Wilson. He was generally regarded as knowing so little law that according to a tradition of the bar he never wrote an opinion for the court during his thirty years of service. This, however, is incorrect. The judgment passed upon him by Palmer is, however, certainly sound: "he delivered no opinion upon any important subject and did no act worthy of being remembered . . . he did nothing for the reform of the law or the improvement of the statutes."[1] He had the

[1]For a discussion of the tradition referred to, see Scott, *Illinois Supreme Court,* 82. Palmer's judgment is in *Bench and Bar,* 15. The name is Browne; always so signed by him in the records of the circuit courts over which he presided. In December, 1826 a committee of the Senate was appointed to report upon the work of the Supreme Court since its reorganization in January, 1825. They reported 13 cases dismissed, 50 otherwise disposed of with opinions. Of these last Lockwood had written the opinion in 23, Smith in 10, Wilson in 1, Browne in 1, and 15 were *per curiam. Senate Journal,* 1826-1827, pp. 98, 104. The estimates of Judge Browne expressed by Judges Caton, Scott, and Cartwright, and by Palmer and Trumbull are collected by Mr. King, *op. cit.,* 575. Governor Ford characterized him thus: "Brown was a fine, large, affable, and good-looking man, [with] a tolerable share of tact and good sense, a complimentary, smiling and laughing address to all men, and had been elected and continued in office upon the ground that he was believed to be a clever fellow." *History of Illinois,* 213. See also, for biographical data, Reynolds, *My Own Times,* 158, and *Pioneer History,* 368 n., 390, 392-393. Governor Reynolds says he had studied law in Kentucky, and was one of the first settlers in Shawneetown. He represented Gallatin County in the lower house of the General Assembly in 1814, and the upper house from 1816 to 1818; an act granting him full pay for the session of 1817-1818, despite his late arrival, being passed by the Assembly—*Laws of 1817-1818,* 50.

He first appeared as an attorney in the Common Pleas of Gallatin County in June, 1813—Circuit Clerk, *Order Book, 1813-1818,* 1 *et seq.,* and Circuit Clerk, *Order Book, 1813,* 1 *et seq.;* and also in the Common Pleas of Johnson County in June, 1813—County Clerk, *Commissioners' Record, A:* 3. He was not, however, formally admitted to the bar, in Gallatin at least, until later—Circuit Clerk, *Order Book, 1813,* 1, July 26, 1813. On December 24, 1814, Governor Edwards appointed him district attorney for the eastern circuit of Johnson, Edwards, and Gallatin counties—James, *Territorial Records of Illinois,* 36 (and reappointed him on January 13, 1817—*ibid.,* 44). He produced his commission to the circuit courts of the three counties in the following summer—Johnson County Clerk, *Commissioners' Record, A:* 163, June 26; Gallatin Circuit Clerk, *Order Book, 1813,* 150, July 5; Edwards Circuit Clerk, *Circuit Court Record, A* (1815-1827), 1, July 11; and in White County (created in December, 1815) the next winter—County Clerk, *County Record, A:* 4, February 13, 1816. At the same time, in White, he was admitted to practice in all courts—*ibid.* In May, 1816 we find him

"good sense" which is frequently ascribed, and probably quite justifiably, to public men of the frontier period whose successes were

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practicing in Pope—County Clerk, *County Court Record, A:* 4; and in June he was admitted to the circuit bar of St. Clair—Circuit Clerk, *Order Book, A* (1815-1816), 55, June 9—though he seems never actually to have practiced there, or in any other of the western counties. He was admitted in Crawford February 26, 1817—County Clerk, *Order Book, 1817,* 1.

Some of the county courts, at least, having created the "office of County attorney or Council for the Court"—Gallatin County Clerk, *Order Book, A (1813-1820),* 34, January 17, 1814—we find the County Court of Johnson in June, 1816 allowing him $10 as salary as prosecuting attorney and legal adviser for the preceding year "agreeably to law"—*Commissioners' Record, A:* 70; and in Gallatin he evidently held a similar office and salary—County Clerk, *Order Book, A (1813-1820),* 139, November 20, 1816. If he had the common sense attributed to him by Reynolds and Ford he must surely have learned considerable law before his election to the Supreme Court in 1818.

His services, as a member thereof, on the circuit were performed in Randolph and in the various eastern counties.

Just before he began to serve as district (circuit) attorney he was fined $7 by the Gallatin County Court for contempt—County Clerk, *Order Book, A (1813-1820),* 79, May 2, 1815; and there is no evidence that it was remitted (Jephthah Hardin, fined $10 at the same time, did pay at least part of his—*ibid.,* 178).

In the election of judges of the Supreme Court by the legislature in 1818 he received four votes for the office of chief justice (out of forty-one, Joseph Philips receiving thirty-four); and was elected an associate justice on the first ballot by the highest vote given any candidate elected—*Senate Journal,* 1818, pp. 18-19, October 8. In the reconstitution of the court by the Assembly in 1824, he was reëlected an associate justice, again by the highest vote received by any candidate—*House Journal,* 1824-1825, p. 170, December 30.

For some comparisons with John Reynolds on circuit, see *post,* xxvii, n. In *Order Book, A* (1819-1822) of the Gallatin Circuit Court (Circuit Clerk) there are six bills of exception (311, 325, 403, 435, 492, 559) to his rulings; in *Circuit Court Record, A,* of Pope (Circuit Clerk) there are others (June, November of 1819). An attentive consideration of these certainly does not reveal manifest incompetence, though the docket papers (if in existence, difficult of access) were not examined. The records are often so inadequate as to suggest questions without supporting even inferences, as where we find the simple entry: "The Judgment rendered on yesterday in this cause is set aside and the cause reinstated" (Pope Circuit Clerk, *Circuit Court Record, A:* 7, April 7, 1818).

In 1827, when the General Assembly was considering the act regulating the Supreme and Circuit courts which was embodied in the code of that year, it was moved to strike his name from the circuit assignments; but this was possibly merely politics. One of the three who voted for it (against fifteen) was Joseph A. Beaird, John Reynolds' relative, business partner, and constant supporter. *Senate Journal,* 1826-1827, pp. 116-117. An attempt to impeach him in 1842-1843 for "want of capacity" failed—*House Journal* and *Senate Journal,* 1842-1843, index *s.v.* "Thomas C. Browne." He served until the provision of the constitution of 1848 making the judges elective by popular vote went into effect (December 4, 1848).

manifestly far beyond the deserts of their other and more pertinent qualifications and low professional standards; though probably no lower than those of the bar, generally. Linder, certainly an eminently competent judge in such matters, characterizes him as the "Falstaff of the bench."[1]

Compared with these colleagues Reynolds himself was good material. He is not to be considered merely as "a presumptuous ignoramus," as Jesse B. Thomas appraised him—far from it; nor even as uniquely—perhaps not even as particularly—illiterate, for his day.[2] At least in his later years he was a widely read and rather well-informed man; though his reading was probably desultory, and his information correspondingly superficial.[3] He is another of the men whose careers must be explained, in large part, by the possession of

[1]*Reminiscences,* 73. When Linder desired to secure admission to the bar of a friend (who had been a butcher—and, so far as Linder thought worth mentioning, nothing else), he simply used Browne, a private room, and a bottle of whisky to attain that result. *Ibid.,* 74-75.

[2]Possibly he was a presumptuous ignoramus in 1818, when he disputed with Thomas election to the Constitutional Convention, or in 1822, when he aspired to nomination for the federal Senate, in rivalry with Thomas. From these incidents doubtless dated the latter's life-long contempt for him—J. F. Snyder, *Adam W. Snyder and his Period in Illinois History 1817-1842,* 34, 167, 309. The problem of his illiteracy is difficult. Bad grammar and orthography can, of course, be illustrated by the letters and writings of Governor Coles (long private secretary to President Madison), not to mention other contemporaries more eminent. These are accepted by everyone as mere slips. The question is, did Reynolds' speech and writings truly represent his attainments in English? His speech, private and public, rank with frontier barbarisms and vulgarity, was apparently only stage "business," as even unfriendly critics have admitted—Ford, *History of Illinois,* 105; compare Snyder, *Adam W. Snyder,* 313-314; Linder, *Reminiscences,* 148-149. His letters of the 1820's and 1830's are studded with crudities of frontier vernacular, undignified and common; but they vary sufficiently to suggest that they, also, may have been more or less adjusted to recipients and purposes—Washburne, *Edwards Papers;* Greene and Alvord, *Governors' Letter-Books 1818-1834 (I. H. C., 4), passim.* It is well-nigh incredible that a man of mature years, in his middle and late thirties, whose attainments in grammar and orthography were truly indicated by these letters, could have written his *Pioneer History* thirty years later, as John M. Peck assures us that he did, "fast as the author could scratch off the sheets, without any clerical corrections." For Peck, see Alvord, *Governor Edward Coles (I. H. C., 15),* 326. Snyder, *Adam W. Snyder,* 319, also says that he "never revised, interlined, erased, or corrected a word or sentence." His books, though utterly disorderly and undistinguished, are nothing worse.

[3]See Snyder, *Adam W. Snyder,* 304, 318 (his library), 321 (their intimacy).

good sense, judgment, and acute political perceptions.[1] But he had other good qualities. He was obstinate in efforts to improve, as well as to advance, himself; personally strictly honorable; kindly and generous in all social relations; ashamed neither of his lowly origin nor of his pride in rising above it; and genuinely fond of the people. There is no reason whatever to attribute merely to politics the fact that in mingling with them he showed "a continual mirthfulness and pleasantry." He did not cultivate them by imitating the poverty of frontier dress, but dressed simply though immaculately as a gentleman. Nor did he imitate their license or vices, neither drinking liquor nor gambling (after early life) in any form.[2] In his speech, private and public, he did share in full measure the crudities (but so far as appears not the illiteracy) of his uncultured fellows; and it is possible that he did this intentionally, for political ends. Of worse political vices it can at least be said that they did not particularly characterize him. He was no more than most of his prominent contemporaries a truckler or a cunning schemer in the game of factional combinations; and, unlike most, he was never sharp or bitter in political attack. Politics was his life's work, and he devoted himself to it even during his brief service on the bench—because, in his own words, "as to my standing I did not think much of it, as it was nothing,"[3] and other offices promised more of prestige and money. But this was a vice of the time: as much was true of his colleagues Browne, Chief Justice Philips, and Chief Justice Thomas Reynolds; of Lockwood and Theophilus Smith, who immediately followed them; of Pope, Breese, Ford, and many others who similarly gave politics preferment over their professional ambitions.

In all his political offices John Reynolds seems to have acquitted himself reasonably well, and competent judges have characterized

[1]Governor Ford, always a strict critic, says: "He was a man of remarkably good sense and shrewdness for the sphere in which he chose to move." *History of Illinois,* 106.

[2]Snyder, *Adam W. Snyder,* 299, 306, 314; Reynolds, *My Own Times,* 165.

[3]Reynolds to Cook, December 30, 1824, in Edwards Papers, Chicago Historical Society MSS., 50: 352.

his performance of judicial duties as in no way discreditable.[1] We may safely assume that his legal attainments were meager and completely undistinguished. Nevertheless, his talents were certainly respectable, though perhaps no more. It is poor psychology to say, because the recollections in his hastily scribbled books are repetitious and amazingly rambling, that his mind was necessarily of the same incoherent character. Our recollections of the past are prone to leap and veer erratically among facts seemingly disparate and unrelated, though in fact united in time or by mental associations—as the governor's jumped from Nathaniel Pope to the manufacture of molasses, to a pest of green prairie flies, and then to Daniel P. Cook. But such a characterization of his mind would nevertheless, in point of fact, do it no injustice. The vice lay, not in the disorder of his recollections but in his indifference to the necessity of presenting

[1]Whether or not a candidate, he received no vote for the office of chief justice, and none on the first ballot cast for associate justices. He appeared on the second, and was elected on the third—*Senate Journal,* 1818, pp. 18-19, October 8. In the Assembly's reconstitution of the court in 1824 his vote on the first ballot fell little short of the requirement for election, but fell rapidly thereafter—*House Journal,* 1824-1825, p. 170, December 30. See *post,* xliii-xliv, n., on the cause. See the statements of Judge Scott, who knew him well: *Supreme Court,* 115, 141, 142, 150; Palmer, whose acquaintance with him extended over thirty years: *Bench and Bar,* 1:19; Snyder, *Adam W. Snyder,* 306, 310, 312; the statements of the last being important as those of a fellow-townsman whose father, an able lawyer, was very critical of Reynolds in some respects. Their judgments rest, in part on Reynolds' printed opinions, and doubtless in part on the tradition of the bar, which is of the greatest importance. An examination of the records of the Circuit Court in various counties justifies, I think, the following statements. The fines imposed by Judge Reynolds upon prisoners found guilty of batteries (or pleading guilty—and, unlike most judges, he made a sensible distinction between the two), and likewise his fines for contempt, were decidedly heavier than those imposed in the same counties by Judges Wilson and Browne. He was more punctilious than some colleagues (Judges Browne and Smith) in certifying by signature the clerk's daily record of proceedings. The record was better kept under him than under Browne in the same counties. The business he disposed of was in some cases notably greater, and not, as compared with the showing of any colleague, slight. No more under him than under others do we find that the court, not being fully advised, took time to consider. Motions in arrest of judgment and for new trials, and bills of exceptions, do not particularly characterize the terms at which he presided, and were certainly less numerous than in the case of Judge Browne. No special vacillation is discernible in the face of chancery bills and demurrers, for example, one by E. K. Kane—Madison Circuit Clerk, *Circuit Court Record, B* (1816-1819), 394. In short, so far as the court records show on their face (as to the docket files see *ante,* xxiv, n.), there is no evidence of special weakness.

them in ordered form. His conversation and speeches were of precisely the same undigested character.[1] All his productions bore the imprint of an undisciplined, slovenly, unsystematic mind. No man could have been less fitted for the duties of a codifier of the law.

The chief justice, Joseph Philips, was the only member of the first court to whom we can confidently ascribe real ability and legal knowledge.[2]

Participation in the vetoing of legislation must inevitably have placed the judges, though probably to their entire satisfaction, in the very center and eddy of politics.[3] Moreover to approve acts as a council, and later, possibly, consider their constitutionality as a court, involved great dangers of embarrassment.[4]

As already indicated, the first General Assembly, very likely largely as a result of the urgings of John Reynolds, undertook a complete revision of the statute-book and its replacement by new enactments. On January 25, 1819, a joint committee was appointed "to examine into the now existing laws, passed by the Legislature of the Illinois Territory, and report such as in their opinion may suit our condition; and also to report such amendments and alterations as

[1]Snyder, *Adam W. Snyder,* 304, 313-314.

[2]See Reynolds, *My Own Times,* 158; Ford, *History of Illinois,* 29; Palmer, *Bench and Bar,* 1:13; Hooper Warren, in Alvord, *Governor Edward Coles* (*I. H. C.,* 15), 321, 345. The name was always signed by him as Philips. (In the records of the circuit courts the judges' signatures regularly occur at the end of each day's proceedings, to certify the record's accuracy.) He was appointed secretary of the territory on December 17, 1816, to succeed Pope—James, *Territorial Records of Illinois,* 47. As Palmer says, all writers agree that he "was an admirable selection" for the Supreme Court. Hooper Warren, a man of strong likes and dislikes, admired him "for his great talents and the urbanity of his manners." He was elected by the General Assembly, as chief justice of the court, on October 8, 1818 by thirty-four out of forty-one votes cast on the first ballot—*Senate Journal,* 1818, pp. 18-19. He resigned his judgeship July 4, 1822—*1 Illinois (Breese),* xvi, to become a candidate for governor. After his defeat he returned, according to Hooper Warren and Governor Ford, to Tennessee. In Breese's *Reports* there are a few cases decided during his term of office. A captain in the regular army, he had served in the War of 1812. Davidson and Stuvé, *History of Illinois,* 300. On May 27, 1817 he registered in Randolph County a black servant, indentured for forty years—County Clerk, *Marriage Record, 1809-1822,* 19.

[3]Mr. King, *op. cit.,* 579 n., quotes one of their messages. Others, of 1826-1827, are referred to *post,* lx, n. 3.

[4]Governor Reynolds simply says that it "was found, on experience, to be unwise," and he regarded it as one of two notable imperfections of the constitution of 1818—*My Own Times,* 134.

may be necessary to give them operation under the state government." Within three days eleven important bills had been "examined" and recommended for enactment. The House dispensed with second and third readings of the lot, passing the bills on first reading. The Senate, at first, was a trifle less precipitate. And so the matter proceeded during two months. The result was the *Laws* ("Code" is the usual name) *of 1819*. There could have been no research, no critical consideration, no revision, that justified the title of the work, or complied with the duties put upon the committee. Doubtless the little it did was the best of which it was capable. The members were Abraham Prickett, Edward Humphreys, and Risdon Moore of the House, and Thomas Roberts and Joseph Kitchell of the Senate. Only Moore and Prickett had had even the slight experience of serving as county judges. None, so far as appears, had the slightest legal attainments.[1]

Reynolds' account of the undertaking and its accomplishment is as follows: "The whole statutory code of laws was revised, reenacted, and printed in a volume. The members worked day and night, and procured the assistance of able and learned men to aid them in remodeling the old statutes. Mr. Kane . . . rendered valuable services on this important subject. The judges of the supreme court [who] by the constitution were required to attend the sessions of the legislature, being, in fact, a component part of that body, were also present,[2] and assisted all in their power in this work.

[1]*House Journal,* 1819, pp. 16, 17, 22; *Senate Journal,* 1819, pp. 13, 19-20, 21. The first eleven bills, so precipitately reported, dealt with the sources of law in Illinois (see *post,* 33 *et seq.*), abatements, aliens, apprentices, arbitrations, promissory notes and inland bills of exchange, foreign attachments, absconding debtors, attorneys and counsellors at law, authentication of the acts and records of federal courts, and the enclosure and cultivation of common fields.

[2]The "attend" and "present" must be understood as meaning that, in order to exercise their veto powers (*ante,* xxii, n. 1) it was a practical necessity that the judges be near at hand. But one is safe in assuming that dozens of leading citizens came to town every court-week and at every session of the Assembly, and equally likely that the judges (who really had little to do) were actual listeners to the debates of the legislature. The proof, either of the incompetency or of the indifference of the members of the Council, is ascertained by the results and by the absence of veto messages; compare those of 1827, *post,* lviii *et seq.* Ninian Edwards, Lockwood, Smith, and Wilson were, as a group, far stronger in legal talent than Shadrach Bond, Philips, and John Reynolds; and quite as much stronger in appreciation of the difficulties of the problem.

"I had an intimate acquaintance with the statute laws, and found them scattered through many years, and in many detached and separate books, so that it was with much difficulty and research that any one knew what were the laws in force; they were also often contradictory and conflicting. I had become friendly and intimate with the members of the General Assembly, and urged on them the propriety and necessity of a revision of all the statutes of the Territory, and to repeal all laws not found in the revised code. Many good men considered the revision too great a task, during the session of the legislature—but labor then, to me, was the best amusement. The General Assembly agreed to it, and accomplished the work with honor and credit to themselves, and benefit and advantage to the public."[1]

The end—the preparation of an official digest, and the repeal of all other laws—was excellent. But neither in the Assembly nor the Supreme Court were there men as competent for the performance of such a task as were those who made the revision of 1827-1829. We may safely minimize, if not the zeal of Judge Reynolds, at least his individual contributions as an author, since, despite the largeness of his intimations, he explicitly claims the authorship of but one title—that on juries. His innovations in that, however, were highly desirable, and permanent.[2] We may also confidently believe that the judges (Browne and Reynolds are supposed always to have done this in performing their judicial duties) procured the assistance of members of the bar. Whatever was Kane's contribution,

[1] *My Own Times,* 136-137. "Many," as applied to the statute-books to be consulted, is of course an exaggeration.

[2] He wrote of it in 1855: "This act has been revised and improved, but the substance of it remains the law to this day. I witnessed, in my practice in the courts before this act was passed, that the sheriffs possessed the power to summon what jurors they pleased. This gave these officers unbounded power in the administration of the laws, and on many occasions good jurors could not be summoned on the spur of the occasion.

"The act of 1819 required the county court to select from the tax-book twenty-four petit jurors to attend the court, and also a grand jury of twenty-three good and lawful men. This method enables the county courts to select the proper jurors." *Ibid.,* 176.

it cannot add to his reputation as an exceptionally able lawyer.[1] There are no further clues to the authorship of the enactments that make up the code. There seems to be no good reason to believe that Reynolds' statement of his excessive labors upon it is an exaggeration, or to minimize the result of his zeal in bringing about its preparation. His claim to an intimate acquaintance with the statutes may also be safely conceded. All lawyers then studied the statute-book,

[1]Governor Ford says that "his talents were both solid and brilliant"—*History of Illinois,* 24; Governor Reynolds, that "he was a profound lawyer and an agreeable and eloquent speaker"—*Pioneer History,* 410; Snyder, who doubtless gives his father's estimate, that "he was a fluent and able writer and eloquent speaker, a profound lawyer of brilliant talents, and a courtly gentleman of amiable disposition"—*Adam W. Snyder,* 69. The last two books cited give biographical details; his political career can be traced in Pease, *Frontier State.* He left so few personal records that Mr. Pease characterizes him as "the enigma of early Illinois politics" (*ibid.,* 94). F. B. Dexter states that he left Yale in his senior year (1812-1813), studied law in New York, settled in Nashville, Tennessee, in 1815, and "very soon" removed to Kaskaskia—*Biographical Sketches of the Graduates of Yale College, 1805-1815,* 6:578-579, following Oneida Historical Society's *Transactions,* 1881-1884, no. 2, p. 90; and Governor Reynolds gives the same course of migration, but 1814 for the date of his arrival in Illinois. The dates of both are wrong, and the time for legal study in New York or Tennessee was certainly most limited. He was born June 7, 1796, not 1786, as sometimes stated (the *Biographical Directory of the American Congress* says 1794); and Governor Ford is therefore correct in remarking that he was only twenty-three when the "principal member" of the Constitutional Convention.

A few data not to be found in print may be given here. According to the clerk's record, he appeared in the Randolph Common Pleas in September, 1813—Circuit Clerk, *Court Record, 1813-1819,* 126; and also on March 2, 1814, *ibid.,* 90, and June 22, 1814, *Court Record, 1814-1824,* 17. In March, 1814, he was entered on the roll of attorneys in the Johnson Common Pleas (County Clerk, *Commissioners' Record, A:* 119), and on March 28 he was admitted to the same court in Gallatin (Circuit Clerk, *Order Book, 1813,* 40). From that time onward he appeared occasionally in Union and Johnson, of the eastern counties, but was particularly active in Randolph and all the western counties northward, practicing both in the inferior and higher courts. In the letters for administration of his estate (Randolph County Clerk, *Wills Record, A:* 144) his death is stated to have occurred "on or about" (the almost invariable official formula) December 11, 1835; Dexter, Reynolds, Snyder, and the *Biographical Directory of the American Congress* (1928) all give it as December 12. He left four children, all under fourteen years of age when his widow was appointed guardian in April, 1837: Charles D., Elizabeth K., John R., and Louis McClane—Randolph County Clerk, *Probate Record, 1832-1841,* 165. On December 6, 1816 he registered in Randolph one negro indentured servant, for forty years—County Clerk, *Marriage Record, 1809-1822,* 17.

whatever their attainments in the common law or lack of facilities to study it; and he had had a year in which to apply it as a judge, after several years of practice.[1] His capacity to improve the statutes in general, might, however, well be doubted; and is proved by the volume so far as we assume his responsibility therefor. Had there been time for a thorough revision for which anyone could be deemed responsible, certainly some of its characteristics—its defective ar-

[1]My own inclination was, at one time, to adopt the general depreciatory opinion of him, and to assume that he represented only poor clients who could procure no other counsel. In December, 1816 he advertised that he would handle such cases gratuitously; and Dr. Snyder alleges that his services were "largely" rendered to the poor, or to political friends unable and unwilling to pay fees—Snyder, *Adam W. Snyder,* 306. But I have found him extremely active in the courts, both before and after that date, and constantly as counsel for clients certainly not paupers. Suffice, here, to specify that in the Monroe Circuit Court of July, 1817 (Circuit Clerk, *Circuit Court Record, I*: 78) he represented William Morrison in a foreclosure proceeding; that at the November term he was appointed by Jesse B. Thomas to act as prosecuting attorney in the absence of Charles R. Matheny (*ibid.,* 86); and that in the St. Clair Circuit Court he was similarly appointed by Judge Thomas in October, 1815 and October, 1816—Circuit Clerk, *Order Book, A* (1815-1816), 10, 99. In the Monroe circuit records of April, 1818, there is a simple but very acceptable bill for specific performance, drawn by "Reynolds"; probably by John, rather than Thomas, who, though admitted to the Madison bar in November, 1817, nowhere appears in the Monroe records unless here, whereas John very frequently does. Daniel P. Cook decreed performance of the contract. Circuit Clerk, *Circuit Court Record, I*: 88, 104, 105, 106, 108, 109.

Reynolds says that in 1814 he established a law office in Cahokia; "had a press of business all the time from 1814" onward; and that, by being "exceedingly industrious and active" he attained, after "repeated efforts and many failures," to "less pain and more success" in practice. *My Own Times,* 109, 110; compare 165. These statements are certainly accurate. He appears as an attorney in the St. Clair Common Pleas as early as August, 1814—Probate Clerk, *Orphans' Court, I* (1796-1817), 115; though his formal admission was not discovered. Only William Mears was more active in the lower courts of that county in 1816-1817—Museum, *County Record, I* (1798-1817) and *County Record, II* (1817-1821), *passim.* In Randolph he was admitted to the bar on October 16, 1815—Circuit Clerk, *Court Record, 1815-1823,* 22. He was rather active in that county in the Circuit Court, and in Monroe in all courts; the Madison records have been lost by their custodians.

Though perhaps evident from the text, I may explicitly state that as my data for testing the man and his books have grown, so has my respect for him. Without desiring to be dogmatic, I am inclined to believe that the stories attached to him as an eccentric character, in political campaigns, have led historians to do him much less than justice.

rangement, the gross incompleteness of many of its chapters—might seem independent evidence of his predominant influence in its compilation. But that time was lacking. Such defects must be regarded as the sins of omission of all concerned, though they did not lessen Reynolds' satisfaction with the volume. One may safely conclude that not only the authorship of Judge Reynolds but also the benefits derived from his labors were very limited; the latter opinion being based upon the general character of the product. Anyone who compares it with the code of 1827 must appreciate the vastly greater merits of the later volume.

Reynolds' characterization of the confused and contradictory state of the laws is justified. But the same might be said of the task that always confronts revisers; and with increasing justice as the bulk of the law increases with which they must deal. As Brayman said, in 1845, in commenting upon the task that had confronted him:

"It were to be expected, that the early enactments which proceeded, first from the Territorial, then from the State Government, would be crude, imperfect and inharmonious. They were not adopted together, as a distinct body of statute law, nor with any view to their connexion or consistency with each other; but hastily produced . . . as they *needed* them."[1]

But this ignores the successive efforts to introduce such consistency, notably those of 1827. Of these efforts, under the state, the code of 1819 was first. The work[2] never gave satisfaction, and is of slight significance in the evolution of the Illinois statute-book.

The main facts regarding Illinois legislation are plain enough. The line of evolution runs from the enactments of the Northwest and Indiana territories through the "Revision" of 1807, Pope's "Digest" of 1815, the "Codes" of 1827-1829, the "Revised Laws"

[1]*Revised Statutes of 1845,* ix. Governor Ford said much the same thing of conditions in 1827—*History of Illinois,* 32. I believe he was right, rather than his critic in Palmer, *Bench and Bar,* 1:23. Of course it is always a matter of degree. The problem was more complicated in 1874 than in 1845, and is still greater today.

[2]An excessively rare volume. The original edition (Kaskaskia, 1819) contained 388 pages, an index of 58, a list of errata, 2, and the constitution of the state, 22.

of 1833, and the "Revised Statutes" of 1845, into the statute-book of today. The code of 1819 appears as a collateral and abandoned effort, though a close examination might possibly reveal that the labors of its compilers were to a slight—but assuredly not to any large —extent useful to the compilers of its successors. That the present statutes (of course, with great additions of new subjects, and vast expansion of the old titles) derive in large part from the code of 1827-1829 is generally known. Nevertheless the statements of Judge William L. Gross, the most thorough student of the old books, respecting the volumes of 1807 and 1815 are strictly accurate. Of the former he wrote, in 1869: "Very many sections in this old book will be instantly recognized as a part of the law as it is in force to-day, and sometimes whole pages appear almost word for word as we have them now." And of the work of Judge Pope:

"The similarity of this book to the present statutes is much more striking than the resemblance in Jones' Revision . . . the entire plan and arrangement of the statutes of Illinois—taken as a whole—remain at this moment in the shape that Judge Pope impressed upon them."[1]

To return, then, to the code of 1819. The main sources of its contents, according to Governor Ford, but quite incorrectly,[2] were

[1]Introduction to Eugene L. Gross and William L. Gross, *Index to All the Laws of the State of Illinois* (Springfield, 1869), v, vi.

[2]*History of Illinois,* 31. Of course the statement would almost certainly be true if taken as a reference to the ultimate sources of the territorial statutes. Of thirteen of the laws adopted by the governor and judges from 1809 to 1811, for example, six were taken from Kentucky and two from Virginia, three from Georgia, one from South Carolina, and one from Pennsylvania.

Otherwise it is incorrect. An examination of seventy-four instances, chosen haphazardly and occupying half the volume shows that thirty-one may be excluded from Ford's category of "general" legislation—namely, acts appropriating funds for the year (344), and authorizing a loan (16); creating counties (113, 267, 268), altering their boundaries (320), or fixing their governmental seats (74); authorizing a special term of a particular court (102); granting authority to specific officers in special cases (12, 266); fixing the salaries of certain officials (347); declaring certain streams navigable (25, 73); leasing a saline (7); authorizing a specific lottery (310), a specific ferry (104), the establishment of certain toll bridges (80, 86, 298), the damming of a certain stream (296), the improvement of particular roads (297); granting corporate franchises (103, 116, 299, 305); granting immunity or aid to particular individuals, communities, or in-

the legislation of Kentucky and Virginia. Ninian W. Edwards states, on the contrary—and on that precise point, with substantial

stitutions (75, 115, 122, 297, 298, 300). Of the remaining forty-three "general" acts, twenty-three are reprints of earlier territorial enactments (almost all of these from the Indiana revision of 1807) with few alterations. These acts declared the basic English common-law of the state (3); regulated apprentices (4); authorized aliens to hold land (6); regulated abatement of suits (6), licensing of attorneys (9), dower (12); authorized affirmations by Quakers (13); dealt with frauds and perjuries (14); regulated depositions (17), registration of deeds (18), fencing of lands (23), stallions running at large (26), marriages (26), perpetuation of testimony (69), arbitration (71), taverns (77), timber trespasses (84), vagrants (88), interest on money (106), vice and immorality (123), paupers (127), practice in the higher courts (139), and grist mills (264). Only very rarely is there an alteration that is notable—as where the recording act omits a provision of earlier statutes that declared valid, deeds of Illinois land executed outside the state in conformity to local requirements. Of the other twenty general acts, eight dealt with subjects of which there was abundant local experience, and most of which had been repeatedly dealt with in the prior legislation of the territory—discovery and development of salines (114), elections (90), appointment of justices of the peace (22), valuation of taxable property (313), official fees (321), and salaries (349), duties of sheriffs and coroners (109), organization of the militia (270). There was no need to borrow such laws in 1819; and they were probably, in fact, merely thorough reconsiderations of the local laws, rarely presenting fundamental substantive alterations, though such were present in the first two laws named. Foreign legislation may have affected the revisers, but they certainly did not borrow the acts, bodily, from the Kentucky or Virginia statutory compilations that would most likely have been accessible to them: namely, the *Acts of the General Assembly of Virginia of a Public and Permanent Nature* (2 volumes) of 1803-1808, the Virginia *Revised Code* of 1814, or William Littell's *Statute Law of Kentucky,* 1792-1817 (5 volumes). A second batch of the twenty acts, nine in number, dealt with new subjects: the election of presidential electors (101); the mode of filling a vacancy in the office of governor (74); the duties of the secretary of state (87); provision of official seals (16); suppression of counterfeit bank notes (81); remission of Illinois statutes to the governors of other states (105); regulation of school lands (107); grants of authority to clerks of courts to administer oaths (348); and to county commissioners to license toll bridges and turnpikes (300). Upon some of these (the first five, particularly—local experience was probably an ample source for the others) the legislators might well have consulted the enactments of other states; but what laws were actually copied, if any—and no such source was found in Virginia or Kentucky—seems of little interest, because the statutes were probably much alike in all the states. This leaves only three enactments of general character, real interest, and widely variable treatment elsewhere, that were not wholly or substantially reproductions of earlier Illinois legislation. They dealt with the subjects of the negotiability of bills and notes (3), the support of illegitimate children (261), and relief of insolvent debtors (301). Of these no literal source was discovered in the Virginia and Kentucky compilations above cited.

It is assumed that the rest of the volume would show substantially similar results.

accuracy—that the Assembly, in this revision, "re-adopted, with but few exceptions, the acts at that time in force, adapting them to the provisions of the State Constitution; and,"—but this last statement is quite incorrect—"as a system, the laws thus modified continued, with but few alterations, until" after 1830.[1] The statement in Palmer's *Bench and Bar*[2] is, simply, that "an attempt was made in 1819 to revise the laws of the state." This is unexceptionably correct. Governor Ford tells us, further, that the attempt (in his belief one of substitution, and not revision) was so unsatisfactory that: "For many sessions afterwards, in fact until the new revision in 1827, all the standard laws were regularly changed and altered every two years, to suit the taste and whim of every new legislature. . . . A session of the legislature was like a great fire in the boundless prairies of the State; it consumed everything. And again, it was like the genial breath of spring, making all things new."[3] Though great dissatisfaction undoubtedly existed, and though doubtless Governor Ford knew this as a memory of the bar, these statements, like the other one just quoted, are nevertheless very inaccurate.

The statutes in the code were printed chronologically; the easiest, and by old practice the traditional, method of arrangement. That is to say, there was no arrangement except through the index. As that was far from perfect,[4] this must have been one cause of the bar's dissatisfaction. Worse than that, the chapters were scrappy and inadequate in content. The character of the work, its general

[1] *History of Illinois,* 168. Ninian W. Edwards was a son of Ninian Edwards, sole governor of the territory and third governor of the state; himself a lawyer of high standing, once attorney-general of Illinois.

[2] 1:231.

[3] *History of Illinois,* 31-32.

[4] For example, of the first ten laws (they will suffice), one relating "making promissory notes, bonds, bills and writings obligatory, negotiable" was indexed under "notes," "bonds," and "negotiable"; though in the records of the time "writing obligatory" was infinitely commoner than "bond" or "sealed obligation"; one authorizing the sale, for taxes, of lands in Randolph County owned by nonresidents, was indexed under "Randolph County," but not under "taxes" or "revenue" or "nonresidents"; one relieving of militia duties Dunkards, Quakers and other religious persons "conscientiously scrupulous" (this form came down from colonial statutes) of bearing arms, was indexed under "Dunkards" and "Quakers," but not under "religion," "arms," "militia," or "military service."

fate, its relation to its several successors up to 1845, can best—indeed only—be made clear by concrete examples. It will suffice to consider with some care the first thirty-four enactments.

Three of these (relative to a loan, a toll bridge which presumably was never built, and a soon defunct academy)[1] may be put aside. Of the remaining thirty-one, three were partially repealed prior to 1827; thus illustrating the exaggeration in Governor Ford's statements, above quoted, since many of the laws under consideration were most certainly "standard laws," as will immediately appear. Of these three, one was a bit of liberalism conceding exemption to persons "scrupulous of bearing arms." It was repealed by title but reënacted in even more liberal form in 1821, reënacted again in 1823, and once more in 1827.[2] Of a second law, relating to divorce, repeal was only partial; being completed, after superseding legislation, in 1827.[3] A third law, on ejectment, distress, and tenants holding over, was affected by legislation of 1823 and 1825, and repeal was consummated in 1827.[4] Eleven other statutes were superseded by new legislation and expressly repealed by the code of 1827[5] —the question of the relation, otherwise, of the new to the old legislation we may for the moment postpone.

Of the remaining seventeen laws, six[6] dealt with subjects on which

[1] *Code of 1819,* 16, 44, 48.

[2] *Code of 1819,* 13; *Laws of 1821,* 13; *Laws of 1823,* 46. Reinstated in militia act of *Code of 1827,* 296; retained in the volume of 1829, p. 107 (§5), in the *Laws of 1831,* 96, etc.

[3] *Code of 1819,* 35; *Laws of 1825,* 169; *Code of 1827,* 183.

[4] *Code of 1819,* 53; *Laws of 1823,* 177, and *Laws of 1825,* 160; *Code* of *1827,* 280.

[5] On promissory notes, etc., *Code of 1819,* 3; *Code of 1827,* 323. On aliens, *Code of 1819,* 6; *Code of 1827,* 49. On abatements, *Code of 1819,* 6; *Code of 1827,* 46. On dower, *Code of 1819,* 12; *Code of 1827,* 187. On depositions, *Code of 1819,* 17; *Code of 1827,* 179. On justices of the peace, *Code of 1819,* 22; *Code of 1827,* 255. On marriages, *Code of 1819,* 26; *Code of 1827,* 290. On ferries, *Code of 1819,* 28; *Code of 1827,* 227. On authentication of foreign public acts and records, *Code of 1819,* 30; *Code of 1827,* 200. On dueling, *Code of 1819,* 32; *Code of 1827,* 168. On change of venue, *Code of 1819,* 46; *Code of 1827,* 384.

[6] On apprentices, *Code of 1819,* 4; *Code of 1827,* 59. On saline of Gallatin County, *Code of 1819,* 7; *Code of 1827,* 360. On sales for taxes, *Code of 1819,* 12; *Code of 1827,* 325. On frauds and perjuries, *Code of 1819,* 14; *Code of 1827,* 230. On estrays, *Code of 1819, s.v.* "horses," 26; *Code of 1827, s.v.* "estrays," 192. On foreign attachment, *Code of 1819,* 33; *Code of 1827,* 78.

there were statutes in the code of 1827, of which four contained a general clause repealing inconsistent legislation and one specifically repealed enumerated enactments.[1] There is involved herein a defect which is not to be forgotten in connection with the later discussion of that work's merits and weaknesses. For it is to be noted that with respect to all statutes such as the six just referred to (eighteen per cent of the volume as tested by our sample), the bar remained under the burden of consulting the volume of 1819; and not less—perhaps more—when warned that only "inconsistent" legislation was repealed. That is to say, the fundamental purpose of the code of 1827 (or later revisions retaining the same indefiniteness) was defeated.

There remained, then, eleven laws of 1819 (a third of all those under consideration) wholly outside any possible effect of the code of 1827-1829, which was the work of the judges of the Supreme Court supplemented by that of the legislature. It is interesting to note (prior to considering the traditional statements relative to the judges' work) just what were these statutes of 1819 left wholly undealt with in 1827. Since all purport to be general, the bar was, here again, bound to hold them in remembrance. On notaries the code of 1827 was silent; the volume of 1829 introduced an act on the subject and repealed the act of 1819.[2] The same was true of county recorders.[3] Four other very important laws of 1819, omitted in 1827, were simply reënacted in 1829: one declaring the sources of law in Illinois;[4] one providing for state seals;[5] one regulating enclosures of common fields;[6] one dealing with the interests of claimants of lands.[7] Nothing beyond this was done in 1829; in other words, five of the acts of 1819 were still left unprovided for in 1829, and because of them the code of 1819, not

[1]General clauses are found in the laws on apprentices, *Code of 1827*, 54; salines, 360; estrays, 189; foreign attachments, 66. That on sales for taxes, p. 325, specifically repealed various acts.

[2]*Code of 1819*, 31; *Code of 1829*, 112.

[3]*Code of 1819*, 18; *Code of 1829*, 116.

[4]*Code of 1819*, 3; *Code of 1829*, 102. This is important because of its reference to English law and statutes.

[5]*Code of 1819*, 16; *Code of 1829*, 155.

[6]*Code of 1819*, 37; *Code of 1829*, 69.

[7]*Code of 1819*, 40; *Code of 1829*, 98.

being repealed in toto, was still to be taken account of. Of these five acts one declared the Kaskaskia River to be a navigable stream;[1] for obvious reasons its neglect by the revisers did no harm. Another required official reports to be made by state executive officers to the General Assembly;[2] again the omission was proper and harmed nobody. But this was not true of the act regulating attorneys, which was first taken up again, and thoroughly revised, in 1833;[3] nor of the act dealing with boundary and division fences (duty to fence, specifications of a sufficient fence, etc.) which was reënacted in 1833 and revised in 1845;[4] nor of that, finally, dealing with the removal of fences mistakenly placed, which was reënacted in 1833.[5]

This analysis of the first thirty-four enactments of the code clearly shows that neither the code of 1827-1829 (for the two volumes are, in reality, only parts of one revision) nor the revised laws of 1833 completely disposed of the earlier volume, by adoption or by rejection. The work on them was too hurriedly performed; perhaps, also, it would be safe to say that there were too many workers, with no one competent person overseeing all.

There remains to be considered—in order further to test the accuracy of Edwards' statements—the question how far the statutes framed by the first Assembly were found sufficient in 1827. The answer can, again, best be given by referring to a few of the statutes already examined for the purpose of testing the contrary statements of Governor Ford. We find that, for the act of 1819 on "promissory notes, bonds, bills and writings obligatory, negotiable," a mass of tangled and dark verbiage, the judges substituted separate acts on bills and notes, infinitely clearer. The act on apprentices, limited in 1819 to whites, was not so limited in 1827, and was made far more complete. The same is true of the subjects of abatement and

[1] *Code of 1819*, 25.

[2] *Code of 1819*, 46.

[3] *Code of 1819*, 9; *Revised Statutes of 1833*, 99.

[4] *Code of 1819*, 23, *s.v.* "enclosures"—which came from Indiana Territory, act of September 17, 1807, Philbrick, *Laws of Indiana Territory (I. H. C.*, 21), 344; *Revised Statutes of 1833*, 261, *s.v.* "inclosures"; *Revised Statutes of 1845*, 277, *s.v.* "inclosures and fences."

[5] *Code of 1819*, 44; *Revised Statutes of 1833*, 419.

dower. Exceedingly great expansion and improvements were made in the enactments on depositions and justices of the peace.[1] Trusts of land were added to the act on frauds and perjuries. An act relating to tax sales of land in Randolph County only was replaced by an enactment of general incidence. It would be wearisome to the reader to go further. These few examples just mentioned tell the story for the entire volume. The effort of the codifiers in 1819 was clumsy. Their work was woefully incomplete in substance. But it was, largely, a revision of the laws of the territory as existing when it became a state.[2] There were some notable revisions and new departures (including Judge Reynolds' contribution on juries), but they were only exceptions. In arrangement, also, great improvements were made in 1827; first, in substituting an alphabetical order of topics for a series of statutes in their order of enactment, and second-

[1]For the acts on bills and notes see *Code of 1819,* 3; *Code of 1827,* 87, 320. The act of 1819 (p. 17), "regulating the manner of taking Depositions," consists of a single section, and that provides merely that it shall be lawful for either party, on giving notice and a copy of the questions, to obtain a commission, etc. The act of 1827 (p. 174), "regulating the mode of taking depositions, and . . . . the perpetuating of testimony," distinguishes between resident and nonresident witnesses, provides for oaths, the mode of return, who may be commissioners, their powers, the compensation of witnesses, informalities in the deposition or in its return, and for the perpetuation of testimony. Similarly, the act of 1819 (p. 22) on the appointment of justices of the peace has three sections, the superseding act of 1827 (p. 255) has thirteen. Only three sections were devoted in 1819 to the "speedy assignment of dower" (p. 12); eighteen, in 1827 (p. 183) to that topic "and Partition of Real Estate" (but see *post,* lxx). By going outside of the first thirty-four enactments various other examples could be given, equally striking, of the differences between the two codes.

[2]In Palmer's *Bench and Bar* there is a chapter (xi, pp. 230 *et seq.)* on "Compilations and Revisions." It is extremely superficial, and is frequently inaccurate or misleading. For example, the writer says (p. 231): "in 1827, certain chapters" of the code of 1819 "relating to some important subjects, were rewritten and improved." This requires, to be accurate and clear, the addition: "and the rest was neither approved nor repealed." See, for other quotations, similarly misleading, *post,* lxv, n. 1. The chapter in Edwards, *History of Illinois,* 155-178, on "Laws of the Territory and State, from 1809 to 1830," is an almost completely undigested and unreadable mass of statutory provisions. Judge W. L. Gross's paper on "The History of Municipal Law in Illinois" (Illinois State Bar Association, *Proceedings,* 1881, 57-101) is distinctly valuable; but it cites no authorities and contains a few notable errors.

ly, in arranging them topically better than they were indexed in 1819.[1]

Governor Coles (1822-1826) took up the problem of revision with vigor. Very likely he had technical advisers in the matter, since he was not a lawyer; but doubtless he drew his general inspiration from his political principles, or from association with Presidents Madison and Jefferson. He was of the cheerful opinion that the digests of some states had made their law so clear "that a plain hard working farmer may in a few minutes ascertain the law on any common question"; and that anybody could afford to buy such a compilation. In his message of 1824 he therefore besought the Assembly to undertake a revision that would have these immense advantages, "incorporating into it as much of the common law as practicable."[2] Of course he was particularly desirous of securing the abolishment of both the strictly legal slavery antedating the organization of the territory and the illegal slavery that was hidden beneath the cover of statutes on indentures and black servants, as well as the extirpation of kidnaping, and importuned the Assembly in all three of his messages (1822, 1824, and 1826) to pass laws for these purposes. But in all he also urged the erection of a penitentiary, a notable reform that enlisted the powerful aid of John Reynolds, whose bill for this purpose (and abolishing whipping and the pillory) became law in 1831—the latter appropriating too exclusively to himself the credit therefor;[3] and in his second and third messages he adjured the legislature to repeal the stay laws,[4] correct injustice in the taxation of non-resident owners of land, and give particular attention to revision of the laws, emphasizing in his valedictory (when the code was in large part ready) the special

[1]See *ante,* xxxvi, n. 4. For example, the general act of 1827, referred to in the text, which replaced the limited act of 1819 indexed under "Randolph County," appears in 1827 under "revenue."

[2]Alvord, *Governor Edward Coles (I. H. C.,* 15), 275-276.

[3]*Ibid.,* 271, 281; Snyder, *Adam W. Snyder,* 78; Reynolds, *My Own Times,* 172-173; Palmer, *Bench and Bar,* 1:19; Ford, *History of Illinois,* 108; *Laws of 1831,* act of February 15, 1831, at p. 103.

[4]Philbrick, *Laws of Indiana Territory (I. H. C.,* 21), cliii, clxxi, for their history.

importance of the statutes on crime.[1] Perhaps he, therefore, was somewhat responsible for the legislative activity that Governor Ford deemed so excessive.

In the session of 1822-1823 a joint committee of the two houses of the Assembly reported adversely to revision pending the establishment of the Supreme Court on a permanent basis[2]—the constitution having provided that the judges elected in October, 1818 should hold office only until the end of the first session of the Assembly held after January 1, 1824. Delay was wise, doubly so because the state was then in the throes of the struggle over a new constitutional convention. The legislature of 1825, however, instructed the judges to digest "all the statutes . . . of a general nature," to arrange under one head all that related to the same subject in an "appropriate order, condensing the matter . . . but preserving the sense; with marginal notes"; and to report what had been repealed, and also report inconsistencies to the Assembly for correction, to the end of procuring "a permanent statuary code." They were also directed "to ascertain what statutes of England are now in force in this state," and to consider the expediency of printing these with the digest.[3] The work was, in part, doubtless

[1]Alvord, *Governor Edward Coles (I. H. C.,* 15), 269-271, 274, 275-276, 280-282, 285-286.

[2]*Senate Journal,* 1822-1823, p. 77. The report, of December 23, 1822, was presented by Theophilus W. Smith, later so active as one of the revisers in 1826-1827, and it is important to note his early acquaintance with the problems involved. The other Senate members were William Kinney and Thomas Sloo, Jr.—*ibid.,* 3, 54. The House members were William Alexander, Alexander P. Field (also active in 1826-1827), Marmaduke S. Davenport, Zadoc Casey, and Abraham Cairns. *House Journal,* 1822-1823, pp. 1, 46. Smith was the only lawyer. The journals reveal nothing of special interest regarding the bill's legislative history. The constitutional provision relative to the reconstitution of the Supreme Court was article IV, section 4.

[3]*Laws of 1825,* 67, act of January 10, 1825. Zadoc Casey, to perfect the work, moved—and the two houses resolved—that the secretary of state "prepare a table comprising all the technical terms used in the acts of the General Assembly . . . . and give a definition thereof; which table shall be printed and attached to the laws passed at the present session." To these instructions George Forquer, the secretary, returned a communication whose contents lawyers can surmise. The joint resolution was rescinded in the expiring days of the session. *Senate Journal,* 1826-1827, pp. 181, 212, 317, 318.

promptly undertaken, for at least some of the court must have fully comprehended its immense difficulties.

William Wilson had followed Foster on the bench in 1819 and was retained, with Browne, when the court was reconstituted in accordance with the constitution in December, 1824; Thomas Reynolds[1] had succeeded Philips in 1822, but was dropped, together with John Reynolds, when the court was reconstituted; and Samuel D. Lockwood and Theophilus W. Smith were elected at that time. Of the four members consequently charged with the duty of preparing the revision, Browne alone was a mediocrity; though Smith, despite ability with which he was generally credited, and a

[1]A Kentuckian, born March 12, 1796. Governor Reynolds does not state when he came to Illinois. The implication in Palmer, *Bench and Bar,* 1:13-14, 18, which gives biographical details, is that it was after (or about) 1817. A Thomas Reynolds who, in March, 1809, bought beehives at an administrator's sale in Kaskaskia (County Clerk, *Probate Record, 1809-1822,* 12) could not have been (unless his father, Robert, was the real purchaser) the governor's youngest brother, with whom the chief justice has sometimes been fatally confused—as by Washburne, *Edwards Papers,* 190. No other Thomas has been noted in Randolph records until in a license of October 29, 1817 to marry Polly McDonough; and again in August, 1822 as administrator of Dr. William L. Reynolds—*Marriage Record, 1809-1822,* 91; *Probate Record, 1809-1822,* 100, 120, 136-137. I have not found him practicing in 1817 in the Randolph courts; and, though the names of attorneys are very often omitted, the admission of new attorneys is usually noted (but see *post,* xlvi, n. 2). On August 25, 1817, he was admitted to practice in the Circuit Court of Gallatin—Circuit Clerk, *Order Book, 1813,* 448; and on November 3, 1817, in the Circuit Court of Madison—Circuit Clerk, *Circuit Court Record, B* (1816-1819), 123. In the latter court, according to the record, he was pleading as an attorney in July, 1817—*ibid.,* 118. Later he is found practicing in various other counties. He was appointed a district (or circuit) attorney by Governor Bond, appearing as such in Randolph and Union counties in April, 1819 and April, 1820, respectively—Randolph, Circuit Clerk, *Court Record, 1813-1829,* 271, *Court Record, 1815-1823,* 184; Union, Circuit Clerk, *Order Book, A* (1818-1822), 33. The latter county, later, had Reynoldses from an early time (with abundant Johns and Thomases), but none so far back. He was chief clerk of the House in the assemblies of 1818 and 1820—*Journal,* 1 General Assembly, 1 session, 3-4, 2 session, 3; 2 General Assembly, 4; the "Thomas Reynolds" therein listed was the later judge: Hooper Warren, in Alvord, *Governor Edward Coles (I. H. C.,* 15), 322; Palmer, *op.cit.,* 13—when Governor Bond appointed him to succeed Philips, first as associate justice on August 31, 1822, and then as chief justice on January 14, 1823—*2 Illinois (1 Scammon),* vii. Palmer says of his opinions reported by Breese that they "exhibit much more finish than those reported before," and that according to all accounts "he was a very able and learned lawyer and

notable acuteness, was in every other way undesirable.[1] Of the other two Governor Ford justly says: "Wilson and Lockwood were

[1]Born in New York, September 28, 1784, and in youth a sailor, he came to Illinois in 1816, and was an enrolled attorney in 1817—*3 Illinois (2 Scammon),* vii. According to Linder, "many" or "most" lawyers "considered Smith the great light on the bench, as many more thought Wilson the great light"—*Reminiscences,* 73, 260, 263. Perhaps friendship, for Linder and Smith were warm friends, and also politics colored the judgment. Palmer, *Bench and Bar,* 1:24, characterizes him as "a man of talent, a good lawyer"; and Judge Gillespie thought he "would have figured preeminently if he had kept aloof from politics"—Alvord, *Governor Edward Coles (I. H. C.,* 15), 100. No reference to him has been found in the legal records of any county preceding his election to the Supreme Court. This is a very extraordinary fact. In the election of the associate judges by the General Assembly in 1824, he ranked second in strength on the first and second ballots, and was elected on the third—*House Journal,* 1824-1825, p. 170, December 30. Primarily, he was, as Governor Ford says, "a laborious and ingenious schemer in politics": *History of Illinois,* 220. Judge Gillespie recounts a common story that Smith, while cashier of the Edwardsville Bank, filled kegs with old iron covered with coin in order to deceive the bank examiners—Gillespie to Ninian Wirt Edwards, March 28, 1880, in Edwards Papers, Chicago Historical Society MSS., 49: 695. Governor Edwards' charges of mismanagement and corruption being directed particularly against him (Davidson and Stuvé, *History of Illinois,* 339; Ford, *History of Illinois, 65*), this was probably the occasion for Smith's drawing a pistol on Edwards, who snatched it away and with it

made a good judge," *op.cit.,* 18; see also Ford, *History of Illinois,* 85-86. In the election of the judges by the Assembly in December, 1824, he received on the first ballot nineteen votes for the chief justiceship against thirty-five received by William Wilson, but though he showed greater strength in the balloting for associate justices he failed of election—*House Journal,* 1824-1825, p. 170. John Reynolds attributed the unseating of both himself and Thomas Reynolds in 1824 to their proslavery politics; *My Own Times,* 160; but Mr. Pease, *Frontier State,* 125, is of the opinion that John Reynolds was probably displaced by the intrigues of Theophilus Smith. Both were probably less extreme proslavery leaders than Philips and Browne, then, or Smith later: Reynolds, *op.cit.,* 154; Ford, *History of Illinois,* 53, 54; Alvord, *Governor Edward Coles (I. H. C.,* 15), 313 on Ford's account; 83, 319, on the disorderly procession in which Judges Philips, Smith, and T. Reynolds were all prominent. When Hooper Warren says that "he was a talented man, but not over-nice and scrupulous in his moral deportment," that his "'rowdyism' was not endurable, even in Illinois," and that his defeat for reëlection was "very much to the satisfaction of the friends of good order and moral reform"—Alvord, *Governor Edward Coles (I. H. C.,* 15), 322, 350—it seems very doubtful that he referred solely to his views, or even his conduct, regarding slavery. He remained a few years in Illinois, being a member and speaker pro tem of the Assembly of 1826-1827 (Reynolds, *My Own Times,* 171, 172); but in 1829 he removed to Missouri, where he served as legislator, judge, and governor, committing suicide while occupying the last office and a candidate for the United States Senate (February 9, 1844).

in every respect amiable and accomplished gentlemen in private life, and commanded the esteem and respect of all good men for the purity

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broke Smith's jaw, leaving an ugly scar (Linder, *Reminiscences,* 260). He became a power, apparently, by wily intrigue that made all parties distrust him: see Pease, *Frontier State,* 126. His was the acute mind that suggested prosecution of Governor Coles for failure to give the bond required by law when he emancipated his slaves—Hooper Warren, in Alvord, *Governor Edward Coles (I. H. C.,* 15), 363. His also, according to the same observer, the inspiration that precipitated—as he supposed, in the interests of the proslavery men—the struggle over a convention in 1823-1824, by cunningly praising in a committee report (written by him though he was not a member of the committee) Governor Coles's recommendation that the "French slaves" (the true, pre-Illinois slaves) be freed, which could only be done by a change in the constitution—Alvord, *Governor Edward Coles (I. H. C.,* 15), 313. This could well be so even though Mr. Pease (*Frontier State,* 76-77) be correct in his view that the governor, believing an aggressive attitude on the question to be the wisest policy, also wished to force the issue (for a man so intelligent as Coles must certainly have realized the full implications of his recommendation). He it was who, in the "Galena alien case," made up to test the right of aliens to vote, sitting as an appellate judge after a Whig circuit judge had decided adversely to the claim, privately pointed out to Democratic counsel a flaw in the record that made possible a continuance (in the predominantly Whig Supreme Court) until after the presidential election of 1840, which, with aliens voting, the Democrats won: Ford, *History of Illinois,* 220; Snyder, *Adam W. Snyder,* 345-348. He contemplated resignation in 1829 on account of "physical infirmities"—Breese to Edwards, November 10, 1829, in Edwards Papers, Chicago Historical Society MSS., 50:532. We are told by Linder that in a suit between the United States and one Beaubien (though I cannot find the report), Beaubien having presented lots to the children of the judges of the Supreme Court, Wilson and Lockwood did not sit, "but Smith and Brown had no such scruples"—*Reminiscences,* 263. In January, 1833, he was impeached for malfeasance in office, but narrowly escaped conviction. Brief accounts of the trial (January 9, 1833-February 7, 1833) are given in Snyder, *Adam W. Snyder,* 156-157, and Ford, *History of Illinois,* 166-167. The full proceedings are printed as an appendix to the *Senate Journal* of 1832-1833; the full charges, in the *House Journal,* 292-297. On this occasion, according to Davidson and Stuvé, *History of Illinois,* 368, "the defendant, after each adjournment, had the desks of senators carefully searched for scraps of paper containing scribbling concerning their status upon the respective charges. Being thus advised, his counsel enjoyed peculiar advantages in the management of the defense." If true, this reflects equally upon his counsel, Judges Breese, Ford, and Richard M. Young. A subsequent effort to remove him by address of two-thirds of the legislature also failed. He lost the confidence of his party by opposing the bill reforming the judiciary, which was of the same qualities as the alien-vote maneuver, was consequently defeated for the United States Senate (Ford, *History of Illinois,* 222), and resigned on December 26, 1842. *4 Illinois (3 Scammon),* iv. He died on May 6, 1846. He was the father-in-law of Jesse B. Thomas.

of their conduct and their probity in official station."[1] Like Lockwood, Wilson[2] sometimes aspired to political office, though he had less influence, and probably slighter political qualifications; not before 1830 had either come to hold himself wholly aloof from

[1] *History of Illinois,* 212.

[2] He was born in Virginia in 1795, and there studied law. It is stated by a relative (Stuvé—Davidson and Stuvé, *History of Illinois,* 329) that he came to Illinois in 1817. As he was a candidate before the General Assembly in October, 1818 for election as an associate justice of the Supreme Court, and on the first ballot received fifteen out of a necessary twenty-one votes (*Senate Journal,* 1818, pp. 18-19, October 8), one would suppose he must have been known as a lawyer—did we not know that William P. Foster, elected on that ballot, was none. I have found no reference to him in the Randolph records as admitted or practicing; and he is not among the enrolled attorneys listed in *3 Illinois (2 Scammon),* vii. A William Wilson was appointed clerk and recorder of Jackson County (the records of which, having been largely destroyed by fire in 1843, were not searched by me) in March, 1816—James, *Territorial Records of Illinois,* 40, 41. Mr. Buck states that this was the candidate for the Supreme Court in 1818—*Illinois in 1818,* 305; which cannot be so if Davidson and Stuvé correctly give the date of his arrival in Illinois. In May, 1819, a William Wilson appears in the records of White County (Circuit Clerk, *Circuit Court Record, 1817-1832, A:* 55), and in July in those of Crawford County (Circuit Clerk, *Circuit Court Record, 1817-1828,* 8), as circuit attorney of the then second circuit. Notwithstanding that his writing, as I noted in examining the records, was not much like that of the later chief justice when on circuit, it seems safe to assume an identity of person. Brink, McDonough, *History of Jackson County,* 13, indicates that William Wilson, later the chief justice, had come from Randolph County to serve as first clerk, and this fact leads us to a tentative conclusion that clerk and recorder, circuit attorney and judge were all one person. If two persons, the clerk and recorder of Jackson County may have been the surveyor noted in Philbrick, *Laws of Indiana Territory (I. H. C.,* 21), cclxxiv. The judge seems always to have felt a predilection for the eastern counties, choosing them during many years for circuit service while he was chief justice. When Foster resigned, he was appointed associate justice in his place (July 7, 1819 and February 6, 1821), and later was elected by the legislature (December 30, 1824; assuming office January 19, 1825) as chief justice—*2 Illinois (1 Scammon),* vii; receiving thirty-five votes on the first ballot against nineteen for Thomas Reynolds—*House Journal,* 1824-1825, p. 170, December 30. This position he occupied until December 4, 1848. He died on April 29, 1857. His retention on the court in 1824, still more his election as chief justice, sufficiently evidence the impression made by him in six years of service. According to Davidson and Stuvé, *History of Illinois,* 329-330, he was well read and cultured, a man of innocent character, devoid of political arts. Governor Ford characterizes Wilson as "a Virginian of the old sort, a man of good education, sound judgment, and an elegant writer, as his published opinions will show"—*History of*

politics.[1] Among his contemporaries he evidently enjoyed a repute equal to his colleague's, but in professional retrospect it is Lockwood who appears as one of the great judges of the state.[2]

[1]See Washburne, *Edwards Papers,* index *s.v.* "Wilson," "Lockwood"; Pease, *Frontier State,* index, same titles.

[2]He was born in New York, August 2, 1789, began in 1803 to live with an uncle who was a lawyer, and in 1811 was licensed to practice. Late in 1818 he moved to Illinois, excellently recommended to Governor Harrison of Indiana and to Benjamin Stevenson. He was admitted to the bar in Randolph County on April 27 (on a license of February 10 from judges of the Supreme Court—always required, Philbrick, *Laws of Indiana Territory* [*I. H. C.,* 21], 340, §1)—Circuit Clerk, *Court Record 1815-1823,* 183. At a special term of the Pope Circuit Court held in July, 1820 to try a murder case, Lockwood appears as deputy of the prosecuting attorney—Circuit Clerk, *Circuit Court Record, A:* 108-110. Appearances were also noted (in 1821-1822) in Edwards and White counties. The rarity of these appearances, compared with the activity of many others of the leading lawyers, is an anomaly almost as singular as that presented by the case of Judge Smith (*ante,* xliv, n. 1). From February 6, 1821 to December 28, 1822—*1 Illinois (Breese),* xvi; but Palmer, *Bench and Bar,* 1:23, says December 22—he was attorney-general of the state, and by his successful prosecution of Bennett for the murder of Stewart in a duel not only rendered a great service to the state (Ford, *History of Illinois,* 48-49) but undoubtedly much enhanced his reputation. He resigned when commissioned secretary of state (December 18, 1822), only to resign that office in turn, presumably, when appointed receiver of the Edwardsville land office (January 28, 1823, U. S. Senate, *Executive Journal,* 3:325, 328); though the *Blue Book of the State of Illinois* (1917-1918, p. 397) indicates that he did not resign until April 2, 1823. Meanwhile he had received, in the election of a United States senator in January, 1823, the votes of only two uncompromising antislavery men, out of perhaps a score of that party in the General Assembly, so much did personal relations still outweigh convictions on that question—Alvord, *Governor Edward Coles (I. H. C.,* 15), 318-319; Washburne, *Edwards Papers,* 192 *et seq.;* had aided the anticonvention party in the struggle of 1823-1824, editing in 1824 one of the antislavery papers, though his name did not appear and he wrote little

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Illinois, 212. Agreement is general as respects his ability. Palmer, *Bench and Bar,* 1:21; Scott, *Supreme Court,* 39.

Linder, *Reminiscences,* 101, says that he had a "Munchausen disposition to magnify," almost unparalleled within Linder's observation, which was doubtless of ample opportunities. Assuming this statement to be accurate, it is of course possible that among the members of a bar in which professional success and political preferment seemed to go largely to men of large body, with talents for hard drinking, gross anecdotes, and florid argument, a modest and quiet man who presided over them might have been tempted to develop some comparable talent, within their comprehension, by which to impress them. But it would be a more reasonable assumption that the judge was merely accustomed to deflate, by this jocular method, the bombast of Linder in particular.

In his last message (1826), the report of the Council being nearly completed, Governor Coles referred to the "great interest felt in the proceedings of the present General Assembly, from the circumstance of its having to pass upon the Digest of the Laws, which has been prepared by order of the Legislature," adjuring this again to provide for a state prison, abolish capital punishment, repeal the stay laws, and, in general, give to the revision the attention necessary to simplify and render more prompt, efficient, and economical, and "as perfect as the people have a right to expect," the legal system of the state.[1] It was not until December 7, 1826, that the judges made their report under the act of January, 1825. They had not found it feasible to carry out the Assembly's suggestion respecting the English statutes, since there was no set of them in Illinois; and they added the opinions that to attempt to make a selection might be undesirable, and that the effects of the laws adopted en masse by the code of 1819 "were not, most probably, critically considered." To adopt them, even in an attempted selection, would be to subject the people "to the operation of Laws, the real character of which, neither the citizens, nor the Judges who are to administer them, have the means of ascertaining." This view was very likely wise, notwithstanding that in various other states such a selection

[1]December 5, 1826, in *Senate Journal,* 1826-1827, pp. 18-28; Alvord, *Governor Edward Coles* (*I. H. C.,* 15), 280-281.

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himself for that or other papers—F. W. Scott, *Newspapers of Illinois (I. H. C., 6),* 340; Alvord, *Governor Edward Coles (I. H. C.,* 15), 314, 315; Ford, *History of Illinois,* 53-54; was again a candidate in November, 1824, for the United States Senate, but defeated on the tenth ballot by Kane, who received twenty-eight votes to his twenty-one—*Senate Journal,* 1824-1825, p. 51; *House Journal,* 1824-1825, pp. 55-56; and on December 30, 1824, was elected by the Assembly as associate justice of the Supreme Court on the sixth ballot, and after the election of both Browne and Smith—*House Journal,* 1824-1825, p. 170. He was commissioned January 19, 1825—*2 Illinois (1 Scammon),* xi—and served until December 4, 1848, preferring not to seek election by the people under the new constitution, though he was a delegate to, and active in, the convention that framed it. He died on April 23, 1874. All authorities concur in their testimony to his excellent character, sound judgment, and high attainments as a lawyer. See Ford, *History of Illinois,* 213; Linder, *Reminiscences,* 264-265; Palmer, *Bench and Bar,* 1:21-23; Scott, *Supreme Court,* 291; *Biographical Encyclopaedia of Illinois of the Nineteenth Century* (Philadelphia, 1876), 398-399; Pease, *Frontier State,* index.

has been made. They also pointed out that a literal compliance with the Assembly's act—digesting all laws, even though repealed, superseded, or wholly undesirable—was impracticable; and they had therefore deemed it best to prepare a collection of laws "to embrace such parts of all our present statutes, of a general and public nature as were deemed necessary and useful, and to incorporate therewith, the substance of such British statutes, as were conformable to the genius and spirit of our institutions." In doing this, they assured the Assembly, they had rejected or modified the laws only when "conclusive reasons" compelled such action. Assuming a performance vastly better than the attempt of 1819—and such it proved to be—this was doubtless another wise decision. The judges, however, realizing the magnitude of the task assigned them and the research and reflection that should precede action, felt a deep sense of responsibility, and urged the Assembly to delay action until something could be learned of the new Livingston codes of Louisiana, the New York revision then several years in progress, and the great changes in the criminal laws just begun in England. Specifically, they asked the Assembly to express its desires on the revenue and execution acts.[1]

The portions of Governor Coles's last message which related to the criminal law and to the preparation of a general digest were referred by the two houses of the Assembly, immediately following the receipt of the judges' report with the drafted enactments by them prepared, to two separate (and large joint) committees;[2] but it was not until these had under consideration for the greater part of a month the problem of revision, and after a third joint committee had reported favorably upon the feasibility of immediate

[1]*House Journal,* 1826-1827, pp. 58-65. It is dated Vandalia, December 6, and signed by Wilson, Smith, Browne, and Lockwood in that order.

[2]The subject of a criminal code was referred by the Senate to its Judiciary Committee (December 7, 1826, *Senate Journal,* 13), and, then, upon request of the House, to their judiciary committees jointly (December 9, 1826, *Senate Journal,* 17). The Senate having referred to its Judiciary Committee various other problems of revision, it again, upon request of the House, joined in a joint committee of eleven to consider all of the judges' work except the criminal code, which committee was consummated on December 12 (*ibid.,* 17, 28, 30-31).

revision,[1] that the enterprise was definitively embarked upon. By that time, however, many bills were under way, and some acts had even gone to the Council and been returned with its approval. This alone would seem to indicate that without the judges' drafts the undertaking would have been incapable of realization. Nevertheless, the journals show the extraordinary interest of the Assembly, and its extreme activity in the performance of the task. Thenceforward this was left in the main to a joint committee of six consisting of Joseph Duncan and William B. Archer of the Senate and David Blackwell, John Reynolds, Alexander P. Field, and Thomas Reynolds of the House of Representatives.[2] The committee was empowered "to employ four persons, learned in the law, to assist them." Doubtless they had specific individuals in mind, and one may well hazard the assumption that the contributions (specified *infra*) by Samuel McRoberts,[3] John York Sawyer,[4] and Richard M. Young[5]—all of whom were then circuit judges—were thus secured. The committee used the room of the Supreme Court when not needed by the court, and received possession of the statutory collection gathered by the judges to aid in the preparation of their

[1]This joint committee (of fourteen, later of fifteen members) was formed on December 19, and reported on January 8—*Senate Journal,* 1826-1827, pp. 42, 44, 136-137; *House Journal,* 1826-1827, pp. 111, 112.

[2]*Senate Journal,* 1826-1827, pp. 138, 140; and (for more complete identification of members) *Blue Book of the State of Illinois.*

[3]No reference to him has been found in the court records antedating May, 1819, when he was clerk of the Circuit Court in Monroe County—Circuit Clerk, *Circuit Court Record, I:* 122. See Reynolds, *Pioneer History,* 301 n., 371-372, and *My Own Times,* 155, 185; Snyder, *Adam W. Snyder,* 217, 294, 366-367; Linder, *Reminiscences,* 94-98; *Edwards Papers* and Pease, *Frontier State,* indexes.

[4]He was admitted to the bar in Madison County on July 7, 1817—Circuit Clerk, *Circuit Court Record, B* (1816-1819), 73. See Snyder, *Adam W. Snyder,* 194-195; Linder, *Reminiscences,* 152-154; Palmer, *Bench and Bar,* 1094.

[5]He was admitted to the bar in Union County on September 13, 1819—Circuit Clerk, *Order Book, A* (1818-1822), 13. See Snyder, *Adam W. Snyder,* 217 n., 278.

drafts.[1] The joint committee on the criminal law, though in fact it had little to do, apparently continued to function;[2] nor were all bills referred exclusively to the joint committee on the digest.[3] Also, aside from digesting old law, questions of important innovations arose, and these could not go to the digest committee.[4]

The first result of these joint labors of the court and the legislators was *The Revised Code of Laws of Illinois . . . enacted . . . 1827* by the fifth General Assembly, a small but exceedingly significant volume.[5] Its individual statutes, about seventy of a general nature, were approved between December 26 and February 19, all going into effect—the criminal code last of all—on or before August 1, 1827.

At the beginning of the sixth Assembly John Reynolds moved a joint resolution for a committee to complete the revision of the laws. In fact, not all the bills drafted by the judges and debated in the fifth Assembly, or initiated by it, had been included in the volume of 1827.[6] And the judges had made no provision for various enactments which, though not part of a system for the administration of justice, are yet indispensable among the general statutes of a state.[7] The members of the new committee were

[1]*Senate Journal,* 1826-1827, pp. 145, 146. Eugene L. Gross informs us, in his preface to the *Digest of the Criminal Laws of Illinois* (1868), that Lockwood had no access to any law books when preparing his draft of the chapter on criminal jurisprudence, "except a volume of the laws of New York passed in 1802, and a volume of the laws of Georgia." This is hard to believe. Coffin, who was Lockwood's son-in-law, quotes Gross, and there is no other evidence.

[2]Since the committee of six is repeatedly referred to as that appointed "to digest the remaining statute laws" of the state, as was the original committee of eleven to which were referred all drafts except that on the criminal code.

[3]Thus we find the Senate referring to its own Judiciary Committee bills on abatements and mechanics' liens (both being included among the judges' drafts, though the second did not get into the volume of 1827)—*Senate Journal,* 1826-1827, pp. 86, 105-106.

[4]Such, for example, as a bill from the House for extending the jurisdiction of justices of the peace, which apparently contained very radical changes (with respect to divorce, among other things), and was very much debated. Compare last group of cases cited below, n. 6.

[5]Vandalia, pp. iv, 406.

[6]They are enumerated in the text, *post,* lvi, lvii; and cited *post,* lvi, n. 2; lvii, n. 1, 2.

[7]They are indicated in the text, *post,* lxii.

Samuel McRoberts, Samuel Alexander, and Wickliffe Kitchell of the Senate, and William L. May, George Churchill, John Turney, Gilbert T. Pell, and John Reynolds, as chairman, of the House of Representatives.[1] It had the same power as the former committee to employ outside aid, and, according to Reynolds, did so.[2] The result of the labors of the committee was *The Revised Code of Laws of Illinois,*—consisting of statutes enacted in 1828-1829 by the sixth Assembly and of certain older statutes which were by it ordered republished—an even slighter volume than that of 1827.[3]

The title of the second volume was unfortunate. It was not an independent code, but a mere supplement to that of 1827, and should have been so designated. The two together constitute one code, of 1827-1829.

It is evident, then, that in some sense the Assembly is to be regarded as sharing in the authorship of the code. But to what extent, is a question to which various answers have been given. On one hand is the plausible suggestion that the judges, "appreciating the magnitude of such a work, fraught with such great interests, to the perfection of which great and uninterrupted re-search should be brought, . . . had not completed many chapters."[4] Governor Reynolds, naturally, refers to the code as "the result of the joint labors of the judges and the General Assembly." He says:

"I recollect the labor that was expended on the revision of these laws. Messrs. David Blackwell, Pugh, Thomas Reynolds, George Churchill, myself, and many others of the House of Representatives, worked day and night on these laws. If nothing more, this effort of the General Assembly leaves a lasting monument of the talents and energy of that body.

"It is due also to truth to record that Judges Lockwood and Smith contributed greatly to the result of this excellent revised

[1]*Senate Journal,* 1828-1829, p. 48; *House Journal,* 1828-1829, p. 60. Reynolds in *My Own Times,* 180, lists Bell for Pell.

[2]*My Own Times,* 180.

[3]Shawneetown, 1829, pp. 278. The title-page describes the contents as "passed by the sixth General Assembly. . .; and those enacted previous thereto, and ordered . . . . re-published." For those republished, see the text, *post,* lxi-lxii.

[4]Davidson and Stuvé, *History of Illinois,* 343.

code. Many private individuals, who were sound lawyers and statesmen, also added much to the work, but it was at last the General Assembly that possessed the sound and discreet judgment to enact this code of laws."[1]

This minimizes the contribution of Lockwood and Smith—nobody has ever credited Judge Browne or even Chief Justice Wilson with any important part in the judges' work. On the other hand, lawyers have generally ascribed authorship to them without reference to the legislature. Palmer merely declares that "most of the labor was done by Judge Lockwood."[2]

Governor Ford is very precise in stating the authorship of the code's various chapters.[3] Neither he nor Reynolds credits Judge Browne with any title. To Lockwood and Smith, Ford credits the drafting of thirty titles, though making the statement as one of belief, only; namely, in addition to the criminal code, those on jails and jailers, sheriffs and coroners, apprentices, bills of exchange, promissory notes, conveyances, "right of property" (i. e. the trial of such when disputed under an execution), dower, limitations, detinue, replevin, forcible entry, chancery, account, ne exeat and injunctions, courts, attorneys, practice, evidence, depositions, bail, abatements, amendments and jeofails, attachments, oaths and affirmations, mandamus, minors and orphans, habeas corpus, and fugitives from justice. To Samuel McRoberts he ascribes the act on frauds and perjuries; to John York Sawyer that on insolvent debtors; to Richard

[1] *My Own Times,* 175.

[2] *Bench and Bar,* 1:23. In their report to the Assembly, *ante,* xlix, n. 1, the judges explained that the necessity of frequent personal consultation, and the great distances between their homes, had eventually led them to the conclusion that two, "whose places of residence were contiguous to each other, should be entrusted with the execution of the work, subject to the future examination, revision and approval of the others." And the report speaks of the revisers as two. One, moreover, was compelled to be long absent from the state, for which reason the code was incomplete. William Coffin, *Life and Times of Hon. Samuel D. Lockwood,* 49, states that the judges turned over most of the work to Lockwood and Smith; but that as Smith was absent from the state for several months an undue share of the work fell on Lockwood. I have no doubt that Palmer's statement quoted in the text is correct. Compare *ante,* xxiii, n., at beginning.

[3] *History of Illinois,* 60.

M. Young that on wills;[1] to Henry Starr that on judgments and executions; these four ascriptions being stated as facts.

Everybody agrees that Judge Lockwood drafted the long statute on the criminal law, which was enacted without alteration, and its great merits were not only recognized at the time but fully proved by its history.[2] Palmer's comment upon it is as follows (1899): "Lockwood prepared the criminal code, and, though whipping and other cruel punishments were retained, it is apt in its definitions of crimes and misdemeanors, and is still in a large measure the law of the state.

"It is a model of clearness and precision, and fully justifies all that is claimed for it. Judge Craig said . . . 'Our criminal code, with but few amendments, has been in existence since the revision of our laws in 1827 . . . We had a constitutional convention in 1847, and again in 1870 . . . Again since 1870 the legislature has revised our statutes, but . . . the criminal code was found to need but few amendments, and hence was left substantially as originally prepared.'

"The alteration in the criminal code prepared by Judge Lockwood has relation to the methods of punishment rather than to the definitions of crime, which are still retained in the subsequent revisions of the statutes."[3]

Of course the statute was based upon earlier attempts—Judge Scott states that "it was copied in a large part from a Kentucky statute on the same subject which had itself been taken from the criminal codes of Virginia, North Carolina, and Tennessee";[4] but, of course, that does not in the least affect the merits emphasized by Palmer.

[1]Reynolds, *My Own Times,* 180, says the same, and that up to the time he wrote (1855) it had remained "without any material alteration or amendment."

[2]Reynolds gives it the utmost praise. According to him, the Assembly passed it, so far as he could recollect, "without any alteration or amendment whatever"—*ibid.,* 175. In fact, the Senate read it fifty sections at a time, after it came from the House, to which it fell in an original apportionment of the judges' drafts.

[3]*Bench and Bar,* 1:23.

[4]*Supreme Court,* 291. The same could be said of almost all the old legislation of the state.

On its face, Governor Ford's list seems open to suspicion; for one reason, because there is no enactment on attorneys at law in the code of 1827-1829—though the judges did submit a draft on that subject to the Assembly; and, for another, because the statute on judgments and executions, credited to Henry Starr, is a reënactment of one of 1825.[1] It is unfortunate that the report of the judges,[2] with which—as is evident from the journals of the Assembly—they transmitted their drafts, does not state the number of these nor list their titles. However, a list—probably partial, possibly complete—can be compiled from the legislature's proceedings. This list contains only fifteen acts, positively stated in the journals of one or both houses to have accompanied the judges' report, that are in Governor Ford's list—namely those on the criminal code, jails and jailers, apprentices, bills of exchange, promissory notes, conveyances, detinue, account, evidence, bail, abatements, amendments and jeofails, oaths and affirmations, (one act) on minors, orphans and guardians, and habeas corpus. There are ten others, also positively identifiable, but not on Ford's list; namely, acts regulating the publication of advertisements, on arbitration, authentication of laws becoming such over the Council's veto, attorney-general and circuit attorneys, constables,[3] costs, maintenance of illegitimate children, apprehension of offenders, gaming, and quo warranto. It is to be remembered that Ford's list purports to be one of acts in the code of 1827 that originated with the judges; and the list just given is similarly limited. He did enumerate one act as prepared by the judges, that on attorneys, which was enacted neither in 1827 nor in 1829, but his inclusion of that act was merely an error; such acts—for in fact there were several—are not now in question. Beyond these twenty-five acts—or more precisely, in view of the peculiar case presented by the act on constables, twenty-four and a half—one cannot go with complete certitude.

[1] *Code of 1829*, 85; *Laws of 1825*, 151. Henry Starr was admitted to the bar in Randolph County on April 27, 1819—Circuit Clerk, *Court Record, 1815-1823*, 183. His appearance was noted in the Madison records of the following month.

[2] *Ante*, xlix, n. 1.

[3] Assuming that this was embodied in the act concerning justices of the peace and constables (*Code*, 259), which apparently did not, otherwise, originate with the judges.

We may, however, feel very sure of some additional ascriptions. In their report to the Assembly the judges explicitly referred to but three topics—crimes and punishments, and "practice in the courts of justice,—particularly in the courts of chancery." Bearing this in mind, also that Lockwood had been a master in chancery in New York, and that "account" is among the certitudes, it seems wholly safe to add to our list three titles: practice, chancery, ne exeat and injunctions.[1] These three are on Governor Ford's list.

In addition to the laws in the 1827 volume that were based on bills submitted by the judicial revisers there were two others that were printed in 1829; namely, those on mechanics (liens) and on courts of county commissioners, neither on Ford's list.[2] Adding these two titles to those of the volume of 1827, we may say very definitely that at least thirty enactments (or only twenty-nine and a half if, more precisely, the law on constables be credited to the revisers as only a half title) originated in bills framed by the judges[3]—of which eighteen are on the list given by Governor Ford. This is less than half of the enactments of a general nature (sixty-eight as I judge them) in the 1827 volume alone. Less

[1]It is clear that speculation would soon lead us astray; for if we were to add to the general act on practice such auxiliary acts as seemed particularly likely to have accompanied the main enactment, we should certainly include the act on limitations—yet the veto of that act by the judges (*post,* lix, n. 2) indicates clearly that it originated with the Assembly, for it is inconceivable that the Assembly would have stricken out the correct provision that the judges' draft would have contained.

[2]Mechanics: *Senate Journal,* 1826-1827, pp. 87, 99; *Code of 1829,* 106. Courts of county commissioners: *Senate Journal,* 102; *Code of 1829,* 33.

[3]Lists of bills explicitly attributed to the judges by the journals are found in the *Senate Journal,* 1826-1827, on pages 29 (8 bills), 81 (3 bills), 85 (2 bills), 87 (7 bills), 99 (6 duplicates of p. 87), 102 (7 bills), 137 (1 bill). Five of these are also identified explicitly as drafts of the judicial revisers in the *House Journal,* 1826-1827, p. 75. All of these twenty-eight save three (of pp. 29 and 102) are printed in either the volume of 1827 or that of 1829. Three additional bills submitted by the judges are positively identified by the *House Journal,* 58, 75; of which two only appear in one or other volume of the code. One thus reaches the total of twenty-seven drafts positively identified by the journals and appearing in the code. Three others, so fundamental that the judges explicitly referred to them in their report to the Assembly, are identified thereby (see text above); though, remarkably enough, these cannot be identified through the journals. Thus we reach the total of thirty (or twenty-nine and a half) given in the text.

definitely, since the language of the journal is not explicit, we may add one act of 1829 on county buildings (apparently only in part followed), and three acts of 1827 on the incorporation of counties, mandamus, and fugitives from justice.[1] Of these the last two are in Ford's list. The remainder must be attributed to the initiative of the legislature. Not only is evidence to the contrary lacking; there is much evidence in the journals of the two houses that directly supports such an attribution. The great and independent activity of the Assembly in preparing the volume of 1827 is manifest. As respects the volume of 1829 its authorship is almost exclusive.

But the bills drafted by the judicial revisers as above identified did not constitute their entire contribution. Some of their bills were not printed in either 1827 or 1829. Of such there were at least four, dealing with proceedings against concealed, absconding, or nonresident debtors, providing for proceedings against corporations, requiring petitioners to the General Assembly to give certain notices before such petitions might be finally acted upon, and regulating attorneys, solicitors, and counsellors at law.[2] The last is on Ford's list.

[1]The language of the journals in the case of the twenty-seven acts referred to in the preceding note is definite: "reported by the revisors of the laws," "part of the report of the Judges," "accompanying the revisors report," bills submitted as "another portion of the report of the Judges." In the case of the four bills here in question the language *(House Journal,* 1826-1827, pp. 109, 113, 139) is less clear; the bills are reported from a joint committee to which were referred "the revised laws, submitted by the Judges," or "to which was referred, the report"—or "a portion of the report"—"of the Judges." Unfortunately (cp. *ante,* xlix, n. 2) it cannot be stated that to that committee were referred only bills received from the judges. When a select committee received a bill (as e. g. that on limitations) it is clearly unjustifiable to assume that the bill originated with the judges.

The act of 1829 (p. 53) on county jails and courthouses deals only with their erection. It may be assumed to rest upon the judges' broader bill *(House Journal,* 110) on the erection and repair of county buildings (which may possibly, though this is very unlikely, have contemplated buildings other than jails and courthouses, such as poorhouses).

[2]Debtors: *House Journal,* 1826-1827, p. 75. Petitions: *Senate Journal,* 1826-1827, p. 29. Proceedings against corporations: *ibid.,* 102. Attorneys: *ibid.,* 102.

The final result would be a list of thirty-eight drafts from the judges, published and unpublished, twenty-one of them being included in the list given by Governor Ford.

Nothing, however, can tell us how much the drafts were altered. Governor Ford, as a lawyer, naturally thought it "probable that all these laws were more perfect when they came from the hands of their authors, than after they were amended, somewhat out of shape and system, by the legislature."[1] It is clear that the governor speaks of the published laws as thus distorted by the legislature. One is naturally tempted to accept his assumption, notwithstanding that there were several lawyers on the Assembly's committees, who, presumably, felt proper respect for the judges.[2] But had both been lacking, and had the result of legislative revision been even worse than the governor intimates—still, he forgot, rather inexcusably, a bit of history; namely, that the judges had a last word as the Council of Revision. It must be confessed that the Assembly's lawyers do not show to advantage in the light thrown upon them by the Council; though their fault lay, doubtless, in neglect of their responsibilities rather than in ignorance. The Council found it necessary to correct

[1]*History of Illinois,* 61.

[2]Including David Blackwell, Alexander P. Field, Wickliffe Kitchell, Samuel McRoberts, John Reynolds, and Thomas Reynolds. John McLean (speaker) and Robert K. McLaughlin were also in the House. David Blackwell was admitted to the bar in Randolph on April 27, 1819—Circuit Clerk, *Court Record, 1815-1823,* 183. The next month John Reynolds appointed him prosecuting attorney in Washington County—Circuit Clerk, *Circuit Court Docket, 1818-1837,* 12; and in October he appears in the same capacity in Madison, *vice* William Mears—Circuit Clerk, *Circuit Court Record, C* (1819-1820), 1. His appearance was also noted in St. Clair. John McLean was admitted in Gallatin County on July 1, 1816—Circuit Clerk, *Order Book, 1813,* 189; though he is earlier indicated as an attorney in the County Court—County Clerk, *Order Book, A,* 102 (February 20). A later appearance was noted in Edwards County. Robert K. McLaughlin's first appearance noted was in the Common Pleas of Randolph, February 20, 1815—Circuit Clerk, *Court Record, 1815-1823,* 43, when he moved the admission of Daniel P. Cook; and thereafter he appears frequently in St. Clair and Madison records. No trace of Field and Kitchell has been discovered.

ineptitudes in the acts on depositions,[1] limitations,[2] landlords and tenants,[3] frauds and perjuries,[4] attorney-general and state's attorneys.[5] In each of these cases the acts were amended to meet the objections, repassed, and were then approved by the Council.

[1]For the veto message see *Senate Journal,* 1826-1827, pp. 219-220. The Assembly had provided for taking depositions in chancery quite differently than in the other act, just passed, prescribing the mode of proceeding in chancery; and the differences being irreconcilable, both acts could not have validity.

[2]For the veto message see *House Journal,* 1826-1827, pp. 351-352. The Assembly, forgetting that such acts are always construed as prospective only in operation, had made the mistake of wholly repealing the existing statute, instead of continuing it in force as to causes of action already accrued and upon which, therefore, the old statute had begun to run. This was the basis of the veto; but the judges also suggested certain additions—no provision had been made for debt on simple contract, none for actions on sealed instruments payable in property or for the performance of covenants; etc.

[3]For the veto message see *House Journal,* 1826-1827, pp. 388-389. The Assembly had made "under tenants" liable for the whole rent and for past breaches. It seems incredible, but the judges found it necessary to explain that a sub-lessee holds only part of the term and may hold only part of the premises, and that, "if an under tenant should only rent one room of a large house, and for a single month, this section is broad enough to make him not only liable for the rent of the whole house, but for a series of years before he occupied" the room. The legislature was asked to substitute "assignee" for "under tenant," and to limit liability to breaches occurring after the assignment.

[4]For the veto message see *House Journal,* 1826-1827, p. 446. From the code of 1819 came the absurd language in the statute of frauds, some of it obscure verbiage going back to the original of 1677—the judges tactfully referred to it as due to clerical errors. For "contract or sale" (this came from 1677) they substituted "contract for the sale," and various other improvements in terminology—essential to meet the purposes of the statute—were made.

[5]For the veto message see *House Journal,* 1826-1827, p. 484. They had theretofore been appointed by the governor, and were now to be elected by the Assembly. The Council objected, first, that no evils had been experienced under the prior practice; secondly, it was by tradition an executive function; and thirdly, they believed the new act unconstitutional. On the last point, involving the provision of the constitution on one hand and of the schedule thereto on the other, see Pease, *Frontier State,* 278-279, Ford, *History of Illinois,* 213-214, for another case of great political importance that involved the same problem.

To the act on wills the Council particularly objected,[1] and it was consequently held over, and only printed in 1829; but the Council still had the veto power, and the final act conformed to their views.[2] It is quite clear that they gave minute attention to all legislation. They were abundantly free in vetoing various acts where only (or primarily) differences of opinion with respect to public policy existed,[3] none of these acts having been drafted by

[1]"It contains numerous objectionable features, and in some cases has made such a total change in some of our existing laws, as to overturn some of the long settled, and as we believe, highly approved principles of the common law. The Council particularly refer to the 21st section of the bill; that section, the Council believe, would be productive of highly injurious consequences to the peace and harmony of the married state, by introducing separate and conflicting interests between husband and wife. The Council also object to the introduction of the 'civil law' as any portion of our law, because . . . . entirely unknown to the people, and in general they would not have it in their power to ascertain what the law is, which is to govern their conduct, in so important a branch of domestic policy, as that which regulates the law of baron and feme covert.

"The Council have, also, objections to the 18th section of the bill. They think it ought to be so amended as to give the wife her share of the personal property, after the debts of the deceased shall be paid." *Senate Journal,* 1826-1827, p. 328. No doubt section 21 would have taken some step toward the reform of the property rights of married women consummated by later legislation. Judge Smith did not join his colleagues in this veto. We can be very sure that John Reynolds would have gladly introduced some modifications of our law (as respects disinheritance of children, the rights of the wife, etc.) in the direction of the rules of the civil law; for he later expressed the opinion that Illinois had (in 1855) "as equitable and just a system of statute-laws as is found in perhaps any other of the States, except Louisiana"—*My Own Times,* 180. In this view he was ahead of the judges, and of his time. Their use of the old black-letter phrase "baron and feme covert" is in itself significant. Many of our great judges have been extremely conservative—Chancellor Kent, at times, appallingly so.

[2]There are no sections in the act of 1829—*Code,* 191—that would be subject to the animadversions of the judges. And the journals of the Assembly throw no light on the matter.

[3]See the vetoes of the bills respecting inns and taverns (Senate), establishing certain post roads (Senate), making appropriations for certain bridges (House), and for the benefit of William A. Beaird (Senate), in the *Senate Journal,* 1826-1827, pp. 126, 239-240, 253, 256, 260-261. And of the House bills "to ascertain and survey the northern boundary of the state," to provide for publication "of the revised, and other laws," and relative to disbursements by the treasury, in the *House Journal,* 1826-1827, pp. 430-431, 493-494, 498. Some of these were repassed over the veto. There were legal difficulties involved in the roads and disbursement acts, as well as matters of policy; in the other cases, the latter only. The ob-

them. It is therefore fair to assume that they acted with at least equal freedom in protecting their own drafts. We must therefore put aside Governor Ford's surmise as merely expressing a lawyer's prejudices.

The volume of 1829 contains some statutes whose subjects were fully debated in the preceding Assembly without resulting in an enactment; a few that received final form but were vetoed in 1827; a few revisions of statutes in the volume of 1827; various enactments of the territorial period; and a considerable number of wholly new titles.

In it were reprinted nine statutes of the code of 1819, all of them of a general nature and important, including the subjects of ejectment, timber trespasses, sureties, the enclosure of common fields, the establishment of courts of county commissioners, and a declaration of the British sources (statutes antedating 1606) that should constitute the basic common law of the state. Fifteen other acts of the second, third, and fourth assemblies were likewise reprinted, ten of which affected in a general way the administration of justice, and treated, among other subjects: slander, persons mentally incompetent, paupers, mechanics' liens (the judges' draft evidently being abandoned, if different), the non-revival of repealed

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jections in all cases were certainly persuasive; but to illustrate the Council's freedom in opposing the Assembly's will, suffice it to say that Governor Edwards and Judges Smith and Browne objected to the bridges act because of past waste on other bridges, and strongly attacked the policy of internal improvements (Judges Lockwood and Wilson merely finding the act insufficiently explicit); that all save Judge Smith joined in vetoing the taverns act because they believed that licenses to sell liquor in quantities less than a quart had "a direct tendency to encourage drunkenness and immorality" and render the criminal laws "unavailing, to restrain and check the vicious propensities of the frequenters of taverns"; that Lockwood, Browne, and Wilson objected to the boundary act because it was left to some future Assembly to provide compensation for the commissioner, and because, in their opinion it was then too late in the session for the Assembly to select a commissioner of competent attainments; and that the publication act was vetoed because it proposed to reprint various documents (the Declaration of Independence, etc.) that had been printed with the statutes of 1823.

On the other hand, despite the judges' belief that it was undesirable to declare old British statutes (antedating 1606) to be law in Illinois, they did not attempt to block the Assembly's will when the act of 1819 was republished in the code of 1829.

statutes upon repeal of a first repealing statute, the power of chancery courts to decree conveyances by the personal representatives of dead vendors, and judgments and executions. Eleven new enactments dealt with estrays (under the title "horses"),[1] negroes, notaries, the establishment of courts of probate, bonds to be given by public officers, denial of salaries to defaulting public officers, the establishment of a record office in every county—as in the legislation of the Indiana Territory period, the code of 1827 providing only for one state recorder's office—for the recording of conveyances (and effect of certain words therein), suits by and against the state, the creation of the office of county surveyor, insolvent debtors, and wills. Less essential to a system of jurisprudence, but of course absolutely essential to the compiled statutes of a state, were various other acts dealing with courthouses (this alone not new), elections, the surveying of the northern boundary of the state, etc. So also the older enactments that were republished included acts relating to state seals, fixing a legal rate of interest, regulating weights and measures, requiring clerks to keep their offices at the county seats, establishing the boundary between Illinois and Indiana, and providing for the recording of town plats. The mere enumeration of these titles indicates the importance of the legislative supplement to the labor of the judges.

Included in the volume of 1829 there are, also, various acts that are revisions of enactments in the code of 1827. The more important titles amended were those dealing with attachments, conveyances, practice, courts, justice of the peace and constables. The alterations in the first—with reference to the lien of the attachment, foreign or domestic, and of the judgment rendered thereon (remembering that the title of judgments and executions appears only in the 1829 supplement)—seem proper. The alterations in the second were necessitated by the new enactment on county recorders.

[1]The code of 1827 contained an elaborate statute on estrays, of all varieties; seemingly adequate. The act on horses, added in 1829, went back to legislation of Indiana Territory. Inasmuch as there was also included in 1829, under the title "estrays," an amendment to the act of 1827 on that subject, there resulted two titles dealing with the same subject matter.

Those made in the third—repealing the authorization of original process directed to the sheriff of other counties than that in which suit was begun, and forbidding the bringing of suits out of the county of defendant's residence except when the debt or other cause of action arose in the plaintiff's county or was there specifically made performable—harked back to legislation and disputes of the Indiana territorial period,[1] with reference to which, evidently, the legislators had formed strong opinions. The alterations in the title on justices of the peace were in the nature of simplification of a very detailed and artificial statute, and seem desirable. The changes in the three acts of 1827 on courts involved important questions of policy, particularly with reference to circuit courts, which remained vital political issues until after 1841, but the discussion of this exceedingly interesting chapter in our legal history is scarcely pertinent here.[2] In addition, there were various minor amendments—as, for example, the introduction into the criminal code of the old dead-letter laws against sabbath breaking, whose inclusion Lockwood, austere churchman though he was but knowing the country and its habits, would have considered hypocritical. Possibly, however unduly Reynolds may have magnified the work of the Assembly on the codes of 1827 and 1829 at the expense of the judges, he was measurably correct as to the labor bestowed by the Assembly on the task, and to a lesser extent as to its independent contribution.

It was a great misfortune that the absence of Judge Smith prevented complete realization of the plans entertained by him and Judge Lockwood for a complete revision of the statutes. So far as we can discover the judges did not deal fully with property, either personal or real, with persons, laws affecting the state, or with practice. The criminal law alone received complete and unified development, and chancery the next fullest treatment; both probably by Lockwood.

[1]Compare Philbrick, *Laws of Indiana Territory (I. H. C.,* 21), cliii.

[2]On this see: message of the governor, 1824, Alvord, *Governor Edward Coles (I. H. C.,* 15), 276-277; Ford, *History of Illinois,* 56-58, 212-222; Snyder, *Adam W. Snyder,* 178, 348-357, 367-372; Palmer, *Bench and Bar,* 1:31, 33.

It is noteworthy that in their report to the Assembly they stated, with regard to the last subject, that they had deliberately refrained from stating many traditional rules, considering it preferable that such matters should be dealt with by rules of court.[1] It is undoubtedly also regrettable that the incompleteness of their work invited—indeed, compelled—intervention therein by the legislature. But for that intervention there would not have been, for example, four statutes on justices of the peace in the volume of 1827. There can be little doubt that, given time, Judge Lockwood would have insured the production of a code that would have given him greater fame than he enjoys. The greatest of all the code's defects was that it did not, even after the inclusion in the second volume of various enactments from the laws of 1819 and later session laws, realize the only proper ideals of revision—inclusiveness of content and exclusiveness of authority. The judges had proceeded upon the assumption that these were the ideals of the legislature, and had asked for time in which to realize them.[2] But the Assembly acted precipitately, as in 1819 and again in 1833. The mere republication in the volume of 1829 of some statutes of earlier years, without exhaustive selection, and without repeal of all other enactments, resulted in merely adding two volumes—predominant as might be their utility—to the body of laws with which the bar must be familiar.

Whatever its defects, the code of 1827-1829, as a digest in the only proper sense of that word—involving the working over and interadjustment of all statutes for the administration of justice—is probably the best piece of statutory revision yet produced in Illinois, notwithstanding that in one respect, that of arrangement, it was considerably improved upon (as will later be seen) by Mason Brayman in 1845. In all respects it was an immense step forward beyond its predecessors. This praise applies particularly to the volume of 1827, in which most of the judges' work is embodied, and

[1] *Ante,* xlix, n. 1.
[2] *Ibid.*

less to the supplementary volume, indispensable in content as much of that volume was.[1]

Of the revised statutes of 1833 little need be said. It was in part necessitated by the near exhaustion of copies of the code of 1827-1829 and succeeding session laws.[2] John Reynolds, then governor, in his message of December 4, 1832, stated that the adaptation of the criminal code to the penitentiary system was still exceedingly imperfect, and recommended that the Assembly consider carefully the reform of the judicial system.[3] Within the month various members of the two houses gave notice of bills to reform the laws on ferries, attachments, executions, interest, fees, jurors, the recording system, circuit and probate judges, compulsory attendance of prosecuting attorneys, exoneration of sureties, compulsory residence of the attorney-general at the capital, contempts, enclosures, redemption of land sold under execution; and proposing various alterations in the office of justice of the peace (as respects jurisdiction, fees, jury trial, etc.). The Senate committee on the judiciary, acting under instructions of inquiry given it at the beginning of the session, reported, naturally, that there were "many acts and parts of acts of considerable importance" to which amendments were desirable and of which compilation was needed, and recommended that the enterprise be extended to include "all the laws of a public nature" which should be in force at the termination of the session.[4] While the above manifestations of discontent were multiplying, a joint resolution was thereafter moved in the lower house that a joint committee

[1]It is said of the volume of 1829 in Palmer, *Bench and Bar,* 1:231: "This volume contains many titles and gives the date of approval of the laws therein published." So did the revision of 1807, the laws of 1819, the code of 1827, the revised laws of 1833. It gave the date of original enactment of laws merely republished therein; but so did the revised laws of 1833. In stating that the volume (which is referred to as an independent code) "has but little claim to be regarded as a revision of the statutes"—that is, by itself, a revision of all the statutes—the writer is of course quite correct. But nobody could ever have suggested such a claim.

[2]See report by the secretary of state, December 31, 1832, in *Senate Journal,* 1832-1833, p. 192. When county officers resigned, or were removed they "never" turned their copies over to their successors. Applications to supply county deficiencies already exceeded the available supply.

[3]*Ibid.,* 22, 23.

[4]*Ibid.,* 29, 99.

"be appointed and instructed to revise all laws in force in this state, including the territorial as well as other laws that are not embraced in the three volumes of revised laws of this state"[1]—that is, of 1819, 1827, and 1829. In the end the undertaking was given the broader scope of the Senate committee's recommendation, and entrusted to the judiciary committees of the two houses.[2]

Their membership included several lawyers of marked ability,[3] but the attention given by the Assembly to the work was very perfunctory. Alexander P. Field was responsible for the form of the revised laws, being, as secretary of state, instructed to prepare the statutes for publication and cause them to be "arranged under the proper heads with marginal notes, &c."[4]

Governor Reynolds passes over in silence this product of his administration, while lauding, as has been seen, the earlier code of 1827-1829. It is possible (as his critics would be prone to say) that this contrast was due merely to his own more active participation in the preparation of the earlier work. It is also possible, however, that it was intended to express his indifference to the results realized by the later revision. They were certainly not great; and the same may be said of the efforts of the legislature. We shall see that in details of arrangement some improvements were made; but again the fatal defect is present—notwithstanding the ideal expressed in the resolution under which the committee acted—of realizing neither completeness nor exclusiveness in the compilation; and that was inevitable, such was the haste with which the labor was performed. In each revision since 1815 the bulk of material that must be dealt with had increased, but the task of dealing with it had been undertaken in the hurry of part of a single session.

[1]*House Journal,* 1832-1833, p. 194 (December 24, 1832).

[2]*Senate Journal,* 1832-1833, pp. 159, 160, 162, 167; *House Journal,* 1832-1833, pp. 207, 213.

[3]The House members were Benjamin Mills, John T. Stuart, William A. Minshall, Murray McConnell (the only ones indexed in Palmer's *Bench and Bar),* and three others; those of the Senate included Adam W. Snyder, George Forquer, James M. Strode, and two others. Inclusion in the index of Palmer's work is a test of little significance; it does not, for example, include Adam W. Snyder.

[4]*Senate Journal,* 1832-1833, p. 261, January 11, 1833. Who actually performed these important duties does not appear.

The preparation of the revised statutes of 1845 was marked by the innovation of entrusting the work to a single lawyer, unconnected with the legislature. Unfortunately, Governor Ford, at whose suggestion the work was begun, and whose competence to judge it was unquestionable, has no word upon it in his *History of Illinois.* We know that he had great confidence in the compiler, Mason Brayman —since he entrusted to him not only this work, but delicate duties during the Mormon troubles of his administration;[1] and that Brayman was a man of great and versatile abilities is evidenced not only by his work on the statutes but by his entire career.[2] He began the work as a private enterprise, presumably at the governor's suggestion. Thereafter the latter, in his message of December 2, 1844, pressed the problem upon the attention of the legislature.

"There has been," he said, "no revision, or republication of the general statute laws of the State, since the year 1833. Since that time one-third of the State, which was then a wilderness, has been populated. This portion of the people has never been supplied with the statutes, and in many of the older counties the copies of the revision of 1833, are becoming scarce, and almost out of print. There is, perhaps, nothing more imperatively demanded of the legislature than a thorough revision and republication of the statute laws. Most of the standard laws, I apprehend, will require but little revision. They were drawn by the judges of the supreme court, with great care, and are as near perfection as they could probably be brought during the hurry of a session of the legislature. There are, however, occasional laws passed since, which might be amended

[1] *History of Illinois,* 416-417.

[2] Born in Buffalo, New York, May 23, 1813. After being a farmer and a newspaper editor, he was admitted to the bar in 1836, practiced law in Michigan and edited a paper in Kentucky until 1842, when he opened a law office in Springfield, Illinois. Governor Ford appointed him a commissioner to adjust the Mormon difficulties in 1843. After his work in revising the statutes (1844-1845) he continued practice; was attorney for the Illinois Central, 1851-1855, became a brevet major general in the Civil War; engaged in railroad enterprises in Illinois before, and in the South after, the war; edited the *Illinois State Journal,* 1872-1873, served as governor of the territory of Idaho, 1876-1880; lived in Wisconsin some time before and after that appointment; and died in Kansas City, February 27, 1895. Bateman and Selby, *Historical Encyclopedia of Illinois,* 59.

with advantage; and such amendments would seem to be required before a general republication shall be authorized."[1]

It was thereupon resolved that the governor be asked whether a revision had already been begun or planned, and whether he judged such possible during the session; and that he be asked to express his opinion respecting the mode and extent of revision that was needed. His reply is unknown; but its general tenor in all respects can be surmised. It was resolved that revision was indispensably necessary; and it appears that the revision was near completion in mid-January. Its further supervision was entrusted to the two judiciary committees. They were instructed to arrange the statutes alphabetically, make them "full, perfect, and consistent," and the reviser was directed to make such alterations in them as "such committee" should suggest.[2] It is noteworthy that Stephen T. Logan (a member of the Judiciary Committee) and David Davis were among those who opposed the main resolution in the lower house, and that it was carried in the Senate by the narrow margin of twenty-one to seventeen.

The work of the Assembly was rapid and unquestioning.[3] Many chapters were passed after one reading. If the journals are accurate, some were passed more than once, and a few not at all. On the other hand, a considerable number of important topics were the subject of special discussion, and of bills initiated independently in the legislature. That the ultimate result was excellent has always been conceded. Palmer says that:

"The revision did make the law 'plain and intelligible, . . . and did prune away excrescences, reconcile contradictions, and arrange in convenient order all the statutes as were in force at the time.'

[1] *House Journal,* 1844-1845, pp. 12-13; *Senate Journal,* 1844-1845, pp. 12-13.

[2] *House Journal,* 1844-1845, pp. 97, 207, 216; *Senate Journal,* 1844-1845, pp. 194, 199, 201, 202-204, 241. Brayman's draft was required to be ready by February 1, 1845. It appears *(House Journal,* 208) that Gale's *Illinois Statutes* were then competing with the official editions.

[3] "The committee appointed a sub-committee of their own number, but their work did not fully realize the expectations of the legislature"—Palmer, *Bench and Bar,* 1:233. I have not discovered the membership of the sub-committee. That of the full committee is evidently of no significance.

"The older lawyers will remember with satisfaction the publication of the 'Braminical Code,' which afforded them reliable and convenient access to the statutes of the state."[1]

Judge Harker reports that Judge Breese, Judge Treat (of the United States District Court), and Stephen T. Logan, praised highly Brayman and his work, and adds: "It is doubtful whether any work of the kind was ever more favorably received by bench and bar than was the revision of 1845."[2]

Some revision and improvement of the language of earlier enactments, some excisions of obsolete provisions, some removal of inconsistencies, there undoubtedly were. Performance, however, fell far short, in these respects, of what would have been possible under a literal interpretation of the broad powers and instructions above quoted. But no doubt such a literal interpretation was not intended. What the bar wanted and the enactment contemplated was no striving to make the statutes "perfect" by a study of legislation in other states, nor even by a reconsideration of past choices already made in earlier Illinois revisions, nor by an independent inquiry otherwise into the operation of existing laws. These were assumed to be, in substance, sufficiently near perfection. What was sought was to knit them better together, make them more intelligible and more accessible.

Even with reference to this modest ambition it becomes necessary to consider the illogical distribution of matter under different statutory titles. With respect to this it is interesting to compare with Brayman's work the two preceding revisions.

The code of 1827 dealt in separate chapters with bills of exchange and promissory notes; with account, chancery, and ne exeat and injunction; with abatement, limitations, frauds and perjuries, amendments and jeofails, special bail, costs, depositions, evidence, habeas corpus, jurors, oaths and affirmations, and practice. These

[1] *Ibid.*

[2] "When we compare his work with the two previous revisions, and consider the conglomerate matter he had to deal with and the short time within which he finished we must be impressed with the thought that Brayman was a remarkable man." *Illinois Law Bulletin*, 2:52. He then gives some account (52 *et seq.)* of later revisions, mooted and actual, since 1845. Brayman's preface to this volume is interesting.

titles suffered little change. In 1845, however, bills and notes were united in a chapter on negotiable instruments; and depositions were thrown under evidence. The code of 1829 dealt with the subject of estrays under that title and under horses; in 1845 they were still left apart. To the chancery chapters of 1827 another—originally in force in 1824—was added in 1829, being placed under the title of conveyances; this was left unaltered in 1833; in 1845 its matter was incorporated in the chapter on conveyances. In 1829, also, the title, shows and jugglers, making the exhibiting of such without license a misdemeanor, was added to the title of criminal jurisprudence of 1827. In 1845 this title and also gaming were independent. The volume of 1829 dealt separately with the subjects of conveyances, recorders and conveyances, and town plats (and the code of 1827 had the fourth title of state recorder). The 1827 volume had a chapter on executors and administrators; the 1829 supplement put all probate matter into a chapter on wills. This remained unchanged in 1833, but in 1845 a chapter was introduced on probate courts. The 1827 volume had a chapter on right of property—meaning, as noted above, the trial of disputed title incidentally to execution; but the 1829 volume introduced the main title, judgments and executions. They were left apart in 1833 and 1845. Partition had been a separate title in the revision of 1807, and in Pope's; but in 1827 it was treated of, no matter who the parties nor what the origin of their cotenancy, under dower. The revision of 1833 preserved this, but duplicated the subject matter by reproducing unaltered—under the single title "Partitions, joint rights, and obligations,"—a statute of 1821 which, as regards the second subject, permitted any cotenant to use trespass or trover as though no cotenancy existed, abolished survivorship in joint tenancies, and made all joint obligations joint and several. In 1845 this particular confusion was removed. The subject of partition was treated of solely under that title, resurrected; and that of joint right and obligations preserved merely the three reforms of the act of 1821—reforms, be it noted, that were omitted by the judges in 1827. Again, the revision of 1807 and that of Pope had included legislation requiring animals to be marked or branded and the marks or brands to be

recorded, though all these provisions were illogically placed only in the title on crimes, which merely provided punishment for misbranding or altering brands. Lockwood, quite properly, retained only this last in his title on the criminal code, but neither the judges in 1827 nor the legislature in 1829 preserved elsewhere the other provisions, nor did the revised statutes of 1833. The revised statutes of 1845 restored them, under the resurrected title of marks and brands. The chapter on enclosures dealt in earlier law with enclosure and cultivation of common fields, in accord with a tradition of centuries; the code of 1833, which was followed in this respect in 1845 (though with a double title), introduced under that title general regulations of boundaries and fences. The code of 1829 dealt, under the general title of land, and under the specific title of "occupying claimants of land," with the subject matter of ejectment and also with compensation for bona fide improvements.[1] The code of 1833 continued this; but also introduced, under the title of land, an enactment relative to the removal of fences mistakenly erected on the land of others; another to facilitate recovery of damages for breach of contracts for the sale of improvements made on public lands; and still another concerning landlord and tenant, though this had been a distinct title in the code of 1827. The revised statutes of 1845 treated separately of all these matters, leaving the third alone under lands, throwing the first under ejectment (abolishing fictitious parties), the fourth under landlord and tenant, and the second (along with common fields) under inclosures and fences. On the other hand that revision introduced two new titles on warehouses and inspections, though the latter dealt exclusively with warehouses.

These examples sufficiently illustrate the indubitable fact that Brayman made many improvements, in details, upon preceding compilations of the statutes. The merits of his revision were mainly mechanical, of rearrangement; but they were evident and great. Nevertheless the revision of 1845 remained, in its general arrangement, much like its predecessors.

[1]This went back to a law of 1811 adopted from Kentucky—Alvord, *Laws of the Territory of Illinois, 1809-1811,* 29; included in *Pope's Digest,* 2:485.

Of course all this merely illustrates the fact that Illinois has never had either a "logical" (an analytical) statutory classification, or a topical-alphabetical arrangement logically consistent; and the solution of that problem is the greatest one confronting those who prepare the next revision of the statutes.[1]

And now, finally, there remains the question how far the statutes included in the work of Pope had continued life in the later revisions down to 1833 or 1845 or later. The answer is, naturally enough, that—aside from the addition of new titles, and aside from the rewriting of some old titles as a result of a new social spirit regarding them—the statutes in Pope's volumes contain a large permanent contribution to the legal system of the state. Down through 1833, particularly, the changes consist in the main merely in elaboration, and alterations in details. No one save a lawyer very familiar in practice with the present statutory regulations of any given subject could be competent to judge, reading backward through the statute-books, the probable desirability or undesirability of such alterations at the times they were made, or relate them, or their later abandonment or retention, to the peculiar conditions of changing times. Yet a mere reading of the revisions must certainly convince one—though the conclusion would be assumed by any lawyer—that great masses of our law, and many notable features, go straight back to the legislation of the territorial periods of Illinois and Indiana. And no doubt, too, a lawyer of the special competence just indicated would discover in reading the statutes that not a few excellent things have been dropped, for lack of liberality and foresight, by the way.[2]

There are, of course, many other things than arrangement that are of interest in these old codes. By 1829 there had entered our law for example,—some of them going back to origins antedating the separate organization of Illinois—acts for the relief of persons having conscientious scruples against bearing arms, or taking judicial oaths in the regular form; an embryonic law recognizing me-

[1]See the remarks of Judge Oliver A. Harker in the *Illinois Law Bulletin,* 2:59.

[2]As, for example, the act referred to, *ante,* lx, n. 1; and—temporarily—the reforms of joint tenancy and joint obligations, and of actions by any cotenants, referred to, *ante,* lxx.

chanics' liens; laws on crimes, on wills, and on conveyancing (including the abolition of estates tail) very much as they exist today; the abolition of survivorship in joint tenancy, and the conversion of all joint into joint and several obligations; an elaborate recording system; the equivalence to a seal of "a scrawl by way of seal";[1] and the power of a court of equity to act in rem by directing the conveyance of land for a defendant who refuses to do so[2]—in truth a long list of notable improvements upon the common law. Doubtless the revisions contain many noteworthy matters whose significance only an expert in their respective fields would recognize. The laws of 1833, for example, contain an act relating to summary procedure—disappearing only in 1874, after gradually falling into desuetude—upon which Professor Robert W. Millar has recently commented as one of the few experiments with summary procedure to be found in American law until very recent times.[3]

In some fields legislation that had merely begun was soon greatly to increase—as in those of roads and internal improvement. The spirit of legislation was later to change radically in certain fields, and with it all the details of the laws—as on the subjects of negroes, and family relations (in 1845 there appeared new titles on births and deaths, bastardy, etc.). Wholly new fields of legislation were to open up,—notably in those of labor and public utilities—corporations, charitable uses, state library, liens, and drovers being new titles

[1]Compare Philbrick, *Laws of Indiana Territory (I. H. C.,* 21), 39, 452—laws of Indiana Territory, 1803, 1807, to the same effect.

[2]This goes back to 1805—Philbrick, *Laws of Indiana Territory (I. H. C.,* 21), 111, 510, through *Pope's Digest,* 2:327, § 31; the decree itself, under these statutes, passing the title. The law appears in its present form, authorizing the court to direct a commissioner to pass title, in the codes of 1827 (title, chancery, § 30), 1833 (same, § 21), the revised statutes of 1845 (same, § 43), and so today (same, § 46, Cahill, 1929). See C. A. Huston, *Enforcement of Decrees in Equity,* particularly 17 *et seq.,* and compare his appendix of statutes. Judge Lockwood had been a master in chancery in New York before coming to Illinois; it is noteworthy that he disregarded the narrowness of the New York system. The reform began in Maryland with a statute of 1785.

[3]"Three American Ventures in Summary Civil Procedure," *Yale Law Journal,* 38: 193, 210.

of 1845.[1] All this was to make later revisions increasingly bulkier, and in content far more varied than these earlier statutory compilations. But down through the revision of 1845 the change lies for the most part merely in an elaboration and closer integration of ideas and provisions already present in the statute-book.

[1]"Warehouses" was a new title, as such, but in fact the subject-matter was not new. The code of 1829 contained an elaborate act of 1825 establishing warehouses for, and regulating the inspection of, tobacco; and the laws of 1816-1817 (p. 25) had contained "an act to establish Inspections Within the Territory" which provided for the warehousing and inspection of beef, pork, hemp, flour, and tobacco. These tobacco (and hemp) acts attracted ironic comment by Governor Ford, *History of Illinois,* 34, who says there never was any of either in the state. Since a very large percentage of the immigrants into southern Illinois were from Kentucky, there certainly must have been attempts to raise tobacco; legislation based upon unfounded hopes of a great development of the industry was no more deserving of irony than the old laws on salines, canals, and the state bank, or the slightly later laws on saltpetre caves and castor beans. One very noticeable gap—from a modern viewpoint—in the territorial legislation is the almost complete absence of any legislation that has to do with agriculture. The matter is trivial save as illustrating the occasional undue irony or bitterness, and lack of judgment, which weakens Ford's remarkably philosophic and valuable work. The title of inspections in the revised statutes of 1845 dealt mainly with tobacco warehouses.

LAWS

OF THE

ILLINOIS TERITORY.

VOLUME I.

LAWS

OF THE

TERRITORY

OF

ILLINOIS,

REVISED AND DIGESTED

UNDER THE

AUTHORITY

OF THE

LEGISLATURE,

BY NATHANIEL POPE.

VOLUME I.

KASKASKIA:

PRINTED BY

MATTHEW DUNCAN

PRINTER TO THE

Territory.

June, 2nd, 1815.

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AN ORDINANCE.

For the Government of the Territory of the United States, North-west of the River Ohio.

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

N. W territory to be 1 district, but subject to division.

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 of a deceased child in equal parts; the descendants of a deceased child or grand child, to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister

How estates of intestates shall descend

of the intestate, shall have, in equal parts among them, their deceased parents' 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 inhabitans, and other settlers of the Kaskaskies, Saint Vincents and the

Dower saved.

Disposition of estates by will,

Of real est's by deeds.

Wills to be proved and deeds recorded.

Personal estates, how transferred.

neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

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

Governor for what term com'd.

his qualifications

Secretary for what term commissioned.

his qualification &c.

3 territorial judges to be appointed.

Their power and qualification.

jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behaviour.

The gov. & judges to adopt & publish the laws and report them.

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

Powers of the governor

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

Further powers of the governor.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers in each county or township as he shall find necessary for the preservation of the peace and good order in the same. After the general

assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall during the continuance of this temporary government, be appointed by the governor.

Powers and duties of magistrates how to be regulated & defined.

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

Laws adopted or made, their force.

Governor to lay out counties & townships where Indian titles are extinct

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships to represent them in the general assembly; Provided, That for every five hundred free male inhab-

Five thousand free male may elect representatives to a general assembl

In what proportion.

itants, there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the legislature; Provided, That no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; Provided also, That a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold, and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

Qualifications of representatives.

Proviso, for further qualifications.

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

Term of service.

General assembly, how composed.

The general assembly, or legislature, shall consist of the governor, legislative council and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum. And the members of the council shall be nominated and appointed in the following manner, to wit; As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress; five of whom congress shall

How convened.

A council to be appointed &c. and vacancies supplied.

appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever shall be of any force without his assent. The governor shall have power to convene prorogue and dissolve the general assembly, when in his opinion it shall be expedient.

The governor, legislative council and house of representatives to make laws.

Governor's assent required to all laws.

Oaths of fidelity to be taken by officers of government.

Gouncil and house of representatives to elect a delegate to congress &c

The governor, judges, legislative council, secretary and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office; the governor before the president of congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a right of deba-

ting, but not of voting during this temporary government.

Preamble towards the basis of a future government.

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

Declaratory clause.

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

ARTICLE I.

Religious liberty

No person demeaning himself in a peaceable and orderly manner, shall ever be molested on accouut of his

mode of worship or religious sentiments in the said territory.

ARTICLE II.

Benefit of hab. cor. trial by jury, &c.

The inhabitants of the said territory shall always be entitled to the benefits 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.

Fines to be moderate; no cruel or unusual punishment &c.

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 judgement 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

no expost fac to laws to be made.

law ought ever to be made, or have force in said territory, that shall in any manner whatever interfere with, or affect private contracts or engagements, bona fide, and without fraud previously formed.

ARTICLE III.

Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall for ever 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.

Ed cation to be encouraged & good faith to the indians observed.

ARTICLE IV.

The said territory, and the states which may be formed therein shall for ever 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 & settlers in the said territory shall be subject to pay a part of the federal debts contracted,

To remain a part of the union.

Subject to a proportion of the federal debt.

or to be contracted & 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; & the taxes for paying their proportion, shall be laid & levied by the authority and direction of the legislatures of the district or districts or new states, as in the original states, within the time agreed upon by the United States in congress assembled,

Not to interfere with the disposal of land by the U. S.

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.

U. S. land not to be taxed; nor those of non-residents higher than others.

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.

Waters common highways.

The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE V.

Not less than 3 nor more than 5 states to be formed.

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 Oh o 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 & Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio; by the Ohio, by a direct line drawn due north from the mouth of the great Miami, to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line. Provided however, and it is further understood and declared, That the boundaries of these three states shall be subject so far to be altered, that if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east

Their boundaries.

Reservation to congress.

and west line drawn through the southerly bend or extreme of lake Michigan.

When admitted as a state

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.

Proviso.

ARTICLE VI.

No slavery.

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

Persons escaping from other states reclaimed.

Be it ordained by the authority aforesaid, That the resolutions of the twenty-third of April one thousand, seven hundred and eighty four, relative to the subject of this ordinance be, and the same are hereby repealed, and declared null and void.

Resolutions of 23d April 1784 repl'd.

DONE by the United States, in congress assembled, the thirteenth day of July, in the year of our Lord, one thousand, seven hundred and eightyseven, and of their sovereignty and independence the twelfth.

WM. GRAYSON, Chairman,

CHARLES THOMPSON, Secretary.

AN ACT

To provide for the Government of the Territory North-west of the River Ohio.

Recital.

WHEREAS in order that the ordinance of the United States in Congress assembled, for the government of the territory north-west of the river Ohio may continue to have full effect, it is requisite that certain provisions should be made, so as to adapt the same to the present constitution of the United States:

Governor to make communication to president of U. States.

Sec. 1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases in which by the said ordinance, any information is to be given, or communication made by the Governor of the said territory to the United States in Congress assembled, or to any of their officers, it shall be the du y of the said governor to give such information and to make such communication to the President of the United States; and the President shall

Officers how appointed.

nominate, and by and with the advice and consent of the Senate, shall appoint all officers which by the said ordinance were to have been appointed by the United States in congress assembled,

and all officers so appointed, shall be commissioned by him: and in all cases where the United States in Congress assembled, might by the said ordinance, revoke any commission or remove from any office, the President is hereby declared to have the same powers of revocation and removal.

Commissioned and removed.

Sec. 2. And be it further enacted, That in case of the death, removal, resignation, or necessary absence of the governor of the said territory, the Secretary thereof shall be, and he is hereby authorised and required to execute all the powers, and perform all the duties of the governor, during the vacancy occasioned by the removal, resignation or necessary absence of the said governor.

In case of death. removal &c secretary to execute the power of gov.

FREDERICK A. MUHLENBERG.

Speaker of the House of Representatives.

JOHN ADAMS, Vice-President of the United States, and President of the Senate.

Approved,

August the 7th, 1789:

GEORGE WASHINGTON.

President of the United States.

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AN ACT

Respecting the Government of the Territories of the United States North West and South of the River Ohio.

Laws of N. Western territory how to be published, distributed, &c.

Sec. 1. Be it enctd by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the territory north-west of the river Ohio, that have been or hereafter may be enacted by the governor and judges thereof, shall be printed under the direction of the Secretary of State, and two hundred copies thereof, together with ten sets of the laws of the United States, shall be delivered to the said governor and judges, to be distributed among the inhabitants for their information, and that a like number of the laws of the United States shall be delivered to the governor and judges of the territory south-west of the river Ohio.

Power of governor & Judges herein.

Sec. 2. And be it further enacted, That the governor and judges of the territory north-west of the river Ohio shall be, and hereby are authorized to repeal their laws by them made, whensoever the same may be found to be improper.

Sec. 3. And be it further enacted, That the official duties of the secretaries of the said territories shall be under the controul of such laws, as are or may be in force in the said territories.

Power of the secretaries.

Sec. 4. And be it further enacted, That any one of the supreme or superior judges of the said territories, in the absence of the other judges, shall be and hereby is authorized to hold a court.

One supreme Judge may hold court.

Sec. 5. And be it further enacted That the Secretary of State provide proper seals for the several and respective public officers in the said territories.

Seals by whom provided

JONATHAN TRUMBULL,

Speaker of the House of Representatives.

RICHARD HENRY LEE,

President pro-tempore of the Senate.

Approved,

May eighth, 1792:

GEORGE WASHINGTON,

President of the United States.

AN ACT

To divide the territory of the United States northwest of the Ohio, into two separate governments.

boundary and name of the new territory.

Sec. 1. 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 to the westward of a 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 purposes of temporary government, constitute a separate territory and be called the Indiana Territory.

Form of government and privileges of the inhabitants.

Sec. 2. *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 Oh o, and the inhabitants thereof shall be entitled to, & enjoy all and singular the rights, privileges and

advantages granted and secured to the people by the said ordinance

Powers, duties, and compensation of the officers.

Sec. 3. *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 Superintendant 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.

Commissions may be issued in the recess.

Organization of a general assembly.

Sec 4. *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 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 the said territory, agreeably to the number of free males of the age of twenty-one years and upwards which they may respectively contain.

Construction of this act with respect to the government of the n. w. territory.

Sec. 5. *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, and running thence

Eventual change of the boundary.

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

Sec. 6. *And be it further enacted,* That until it shall be otherwise ordered by the legislatures of the said territories respectively, Chilicothe on 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 the government for the Indiana territory.

Seats of the two governments.

THEODORE SEDGWICK.

Speaker of the House of Representatives.

TH, JEFFERSON, *Vice President of the United States and President of the Senate.*

Approved,

May 7th, 1800.

JOHN ADAMS,

President of the United States.

AN ACT

For dividing the Indiana Territory into two separate governments.

Indiana territery divided, and the Illinois formed.

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.

A government similar to that provided for the N. W. territory provided.

Sec. 2. *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, north-west of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, intitled, "An act to provide for the government of the territory north west 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 U. States, north west of the river Ohio, by the said ordinance.

Officers' duties, &c. &c.

Sec. 3. *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 establ shed for similar officers in the Indiana territory. And the duties and emoluments of superintendant 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.

Proviso.

Ordinance for he government of

Sac. 4. *And be it further enacted,* That so much of the ordinance for the government of the territory of the United

the N. W. territory to be in force in the Illinois.

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, when ever 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 the said territory, agreeably to the number of free males of the age of twenty one years and upwards, which they may respectively contain.

Government of Indiana, how affected by this act.

Sec. 5, *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. 6. *And be it further enacted,* That all suits, process and proceedings,

Suits, &c. &c. how disposed of.

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 genera court of the Indiana territory, in consequence of any writ of removal, or ord r 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.

Arrearages of taxes on land in the Illinois territory still to be paid.

Sec. 7. *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.

Kaskaskia to be the seat of government.

Sec. 8. *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.

J. B. VARNUM,

Speaker of the House of Representatives.

JOHN MILLEDGE,

President of the Senate pro tempore,

February 3, 1809,
Approved.

TH: JEFFERSON.

AN ACT

To extend the right of suffrage in the Illinois territory, and for other purposes.

Persons allowed to vote for members of the Legislative Council & House of Representatives.

BE *it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That upon the admission of the Illinois territory into the second grade of territorial government, in conformity with the provisions of the act, entitled "An act for dividing Indiana into two separate governments," each and every free white male person who shall have attained the age of twenty one years, and who shall have paid a county or territo-

rial tax, and who shall have resided one year in said territory previous to any general election, and be at the time, of any such election, a resident thereof, shall be entitled to vote for members of the Legislative Council and House of Representatives for the said territory.

Time of electing members of Legislative Council, &c.

Sec. 2. *And be it further enacted,* That so soon as the governor of the said territory shall divide the same into five districts, the citizens thereof, entitled by this act to vote for representatives to the general assembly, shall, in each of the said districts, elect one, member of the legislative council who shall possess the same powers heretofore granted to the legislative council by the ordinance for the government of the North Western territory, and shall hold their offices four years and no longer any thing in the ordinance to the contrary notwithstanding.

Time of electing a delegate to Congress, & his powers.

Sec. 3. *And be it further enacted,* That the citizens of the said territory, entitled to vote for members of the territorial legislature by this act may, at the time of electing their representatives to the general assembly thereof also elect one deleg te to Congress for the said territory, who shall possess the same powers heretofore granted to the dele-

gates from the several territories of the United States.

Duty of sheriffs and of the governor in relation to election of delegates.

Sec. 4. *And be it further euacted,* That the sheriffs of the several counties which now are, or hereafter may be established in the said territory, respectively shall, within forty days next after an election for a delegate to Congress transmit to the secretary of the said territory a certified copy of the returns from the several districts or townships of their respective counties; and it shall be the duty of the governor, for the time being, to give to the person having the greatest number of votes, a certificate of his election.

Penalty on the sheriff for neglect.

Sec. 5. *And be it further enacted,* That each and every sheriff, in each and every county that now is, or hereafter may be established in said territory, who shall neglect or refuse to perform the duties required by this act, shall forfeit one thousand dollars, to be recovered by an action of debt, in any court of record within the said territory, one half to the use of the territory, and the other half to the use of the person suing for the same.

Sec. 6. *And be it further enacted,* That the general assembly of the said territory shall have power to apportion the

representatives of the several counties, which now are, or hereafter may be established therein, according to the number of free white male inhabitants above the age of twenty-one years, in such counties; *Provided,* That there be not more than twelve, nor less than seven of the whole number of representatives, until there shall be six thousand free male white inhabitants, above the age of twenty-one years in said territory, after which time, the number of representatives shall be regulated agreeably to the ordinance for the government of the territory northwest of the river Ohio.

General assembly empowered to apportion representatives, &c.

H. CLAY,

Speaker of the House of Representatives.

WM. H. CRAWFORD,

President of the Senate pro-tempore.

May 20, 1812.

Approved,

JAMES. MADISON.

LAWS

OF

ILLINOIS TERRITORY.

AN ACT

Declaring what laws are in force in the Illinois Territory,

Passed Dec 13, 1812.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives, and it is hereby enacted by the authority of the same.* That all the laws passed by the Legislature of the Indiana Territory, which were in force on the first day of March, one thousand eight hundred and nine in that territory that are of a general nature, and not local to Indiana Territory, & which are no repea ed by the Governor and Judges of the Illinois Territory, are hereby declared to be

Laws of Indiana Territory in force

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in full force and effect in this territory, and shall so remain until altered or repealed by the legislature of this territory.

Laws of the Governor & Judges in force.

Sec. 2. *Be it further enacted,* That all the laws passed by the Governor and Judges of the Illinois Territory, which remain unrepealed by them, are hereby declared to be in full force and effect within this and so to remain until altered or repealed by the Legislature.

AN ACT

Declaring what laws shall be in force.

Passed Sept. 17 1807.

Com. Law of England.

Statutes in aid thereof prior to 4th James 1st.

Exceptions.

Laws of the Territory.

The common law of England, all statutes or acts of the British Parliament made in aid of the common law, prior to the fourth year of the reign of King James the first excepting the second section of the sixth Chapter of 43 Elizabeth, the 8 Chapter 13 Elizabeth and 9 Chapter, 37 Henry 8 and which are of a general nature and not local to that Kingdom; and also the several laws in force in this territory, shall be the rule of decision and shall be considered as of full force, until repealed by Legislative Athority.

AN ACT

Declaring that the Laws of the Territory as Revised and Reported to the Legislature, shall, with the several additions, amendments, and alterations made to the Original laws have force in the Territory

Passed Sept. 19, 1807.

WHEREAS The whole body of the Laws of this territory, to the beginning of this session, have in pursuance of a resolution passed at the last session of the Legislature entitled "A resolution for revising the Laws of this territory, and for other purposes," been carefully compiled and revised, and the said revisal laid before both houses of this Legislature, and approved of. **Preamble.**

And whereas, Both houses of the Legislature having taken the original Laws, from which the said rivisal was made, into consideration, have made several alterations, additions and amendments thereto.

Sec. 1. BE it therefore enacted by the Legislative council and House of Representatives, and it is hereby enacted by the authority of the same, That all the laws & parts of laws in force in this territory, at the beginning of this ses- **Laws repealed.**

sion of the Legislature, shall be, and the same are hereby repealed, and that the revisal of the said Laws as made by John Johnson and John Rice Jones, shall, with the several additions, alterations and amendments made by the present Legislature, have full force & effect in the territory; and that those laws so revised altered & amended, shall, with the Laws passed at this session of the Legislature, be the only statute Laws in force in this territory.

Laws in force.

Provided always, That all the officers now in commission in the territory, shall hold and exercise the duties of their several offices under the laws heretofore in force, in the territory, in the same manner a if this law had not been made: And provided also, That all suits and prosecutions heretofore instituted, under, or by authority of any of the said laws, may be prosecuted to judgment and execution thereupon.

Officers remain in office.

Suits &c. prosecuted under former Laws.

AN ACT

Concerning the abatement of suits by the death of the parties.

Passed December 1st, 1814:

Sec. 1. Be it enacted by the Legislative Council and House of Representatives of the Illinois Territory, That whenever any writ original or subsequent process, shall be sued out of any of the courts of this territory and after the execution thereof the defendant or defendants shall depart this life before final judgment obtained therein such action shall not abate if the same were originally maintainable against the executors or administrators of such defendant but it shall be lawful for the plff. or plffs. in any such suit to have, after suggesting the death of the defendant on the record, a summons to the executors or administ a o s of the deceased defendant, to come forward and make themselves defendants to the said suit, and if the said executors or administrators shall appear at the court in obedience to the summons and enter themselves, defendants to the action they shall be entitled to a continuance until the next term without costs if they desire it and the suit shall then progress in all respects in the same

Plaintiff to have summons to Exr's and Adms. of Defendant.

Exr's and Adm's to enter themselves Deft.

Have one continuance arbitrarily.

manner as if it had been brought against them in the first instance.—If the said executors or administrators shall fail to appear and enter themselves defendants (being served with the summons as aforesaid, or any one of them being served with the summons) the plaintiff may proceed against them as in cases of default, *Provided* that where judgment is obtained under this act, no execution shall issue until one year from the date of the letters of administration.

No Execution to issue before 1 year from Letters of Admr.

Sec. 2 *Be it further enacted,* That if the plaintiff or plaintiffs in any suit after the execution of the writ therein shall depart this life before final judgment such suit shall not abate, Provided the same were originally maintainable by the executors or administrators of such decedant, but the executors or administrators of such decedant may have a summons to the defendants notifying him her or them that they have entered themselves plaintiffs in said suit and that they intend to prosecute the same; after which summons the suit shall progress to final judgment and execution in the same manner as if the plaintiff were living.

Exors. or Admrs of Ptff. have summons to defendant.

Suit to progress as if Plff. had not died.

Sec. 3. *Be it further enacted,* That if there be two or more plaintiffs or defendants and one or more die and the

cause of action survives to the plaintiff or against the def ndat living it shall not abate, any law or parts of laws to the contrary notwithstanding.—This law to be in force from its passage.

Joint demands survive to surviving Plff. & Agt. surviving Deft.

ALIENS.

AN ACT

To authorise Aliens to Purchase and hold real estates within this Territory.

Passed September 17th, 1807.

From and after the passage of this, act, it shall and may be lawful for any foreigner, or foreigners, alien or aliens, not being the legal subject or subjects of any foreign state or power, which is, or shall be at the time or times of such purchase at war with the United States of America, to purchase lands tenements and hereditaments within this territory, and to have and hold the same, to them, their heirs and assigns forever, as fully to all intents and purposes, as any natural born citizen or citizens may or could do.

Denizen friends may purchase & hold real property.

AN ACT

Respecting Apprentices.

Passed September, 17th, 1817.

Apprentices when bound by father or guardian.

Sec. 1. If any white person within the age of twenty-one years, who now is or shall hereafter be bound by an indenture of his or her own free will and accord, and by and with the consent of his or her father, or in case of the death of his father, with the consent of his or her mother or guardian, to be expressed on such indenture, and signified by such parent or guardian sealing and signing the said indenture, and not otherwise, to serve as apprentices in any art, craft mystery, service, trade employment, manual occupation or labor, until he or she arrives, males till the age of twenty-one, and females till the age of eighteen years (as the case may be) or for any shorter time, than the said apprentice so bound as aforesaid, shall serve accordingly.

Males 21 Females 18

Master ill using apprent.

Sec. 2. If any master or mistress shall be guilty of any misusage, refusal of necessary provision or clothes, unreasonable correction, cruelty or other ill treatment, so that his or her said apprentice, shall have any just cause to complain; or if the said apprentice

Shall absent himself or herself from the service of his or her master or mistress, or be guilty of any misdemeanor, miscarriage or ill behaviour then the said master or mistress or apprentice being aggrieved and having just cause of complaint, shall rep ir to some Justice of the Peace unconnected with either of the parties, within the county where the said mast r or mistress dwell, who having heard the matters in d ff rence, shall have authority to discharge, if he thinks proper, by writing under his hand & seal the said appren ice, of and from his or her apprenticeship; and such writing as afo esaid, shall be a sufficient discharge for the said apprentice, against his or her master or mistress, and his or her executors, or administra ors, the said indentur , or any law to the contrary nothsta ding. And if default shall be found to be in the said apprentice, then the said Justice shall cause such due correction to be administered unto him or her as he shall deem to be just and reasonable, and if any person shall think himself or herself aggrieved by such adjudication of the said justice, he or she may appeal to the next court of Common Pleas in, and for the county where such adjudication shall have been made, such person giving ten day notice of his or her

Apprent neglect service

May complain to Justice not kin.

Justice to hear compit. & discharge apprent.

Or order punishment.

If aggrieved may appeal to C. P.

F

Giving notice of intention &c.

intention of bringing such appeal, & of the cause and matter thereof, to the adverse party, and entering into a recognizance, within five days after such notice, before some justice of the peace of the county, with sufficient surety, conditioned to try such appeal, at and abide the order or judgment of, and pay such costs as shall be awarded by the said court, which said court at their said term, upon due proof upon oath or affirmation, of such notice having been given, and of entering into such recognizance as aforesaid, shall be and are hereby empowered and directed to proceed in, and hear and determine the cause and matter of such appeal, and give and award such judgment therein with costs, to either party, appellant or respondent, as they in their discretion shall judge proper and reasonable.

Enter into recognizance within &c.

Court to hear and decide &c.

No certiorari to issue from g. c. proceedings.

Sec. 3. No writ of *certiorari* or other process shall issue, or be issuable to remove into the General Court any proceeding had in pursuance of this act, before any justice of the peace, or before any court of Common Pleas.

AN ACT

Authorising and regulating arbitrations.

Passed Sept. 17 1807.

Controversies submitted to umpire or arbitration.

Sec. 1. ALL pesons who have any controversy or controversies, for which there is no other remedy, but by personal action, or by suit in equity, & who are desirous of settling or terminating the same; may agree to submit the said controversy or controversies, to the umpirage or arbitration of any persons, to be by them, mutually chosen for that purpose, and that their submission, may be made a rule of any court of record within the Territory.

Parties to enter into bond, &c.

Sec. 2. When any persons have agreed to submit, any matter or matters, in controversy between them, to umpirage or, arbitration, as aforesaid and that the said submission, may be made a rule of court; they shall enter into arbitration bonds, under their hands and seals, duly executed and delivered, with conditions for the faithful performance of the award or umpirage, which condition shall set forth the name or names of the umpire or arbitrators and the matter or matters submitted to his or their determination; and shall also expressly state, their agreement

that the submission may be made a rule of any court, of record within the Territory, or that may be made a rule of such particular court, as they may name or point out in their submission; and when the umpire or arbitrators, is, or are appointed, and the arbitration bonds are duly executed and delivered, as aforesaid, either party may appoint a time and place for the umpire to attend, or the arbitrators to meet, of which he shall give written notice to the opposite party, and to the umpire or arbitrators at least ten days before the time appointed for such meeting; and when the umpire or arbi rators, shall be ready to proceed to the business for which he or they, shall have been appointed, the parties may proceed to exhibit their profs, and the umpire or arbitrators, shall have power to adjourn from time to time, until he is prepared to make his umpirage, or they are prepared to make their award; *Provided,* The same be made up within the time stipulated in the submission.

Umpire &c may adjourn.

Sec. 3. The parties shall have the benfit of legal process to compel the attendance of witness s; wh ch process shall be issued by the Clerk of the court of Common pleas, or by the Clerk of the General court and shall

Subpoena to to compel attendance of witnesses

be returnable before the umpire or arbitrators on a day certain; and any person disobeying such process, shall be deemed guilty of contempt to the court from which such process issued, & shall be subject to the same penalties and forfeitures, as are provided, for disobeying writs of Subpoena in other cases; and the costs of such witnesses, shall be taxed by the umpire or arbitrators, according to the provisions contained in the law, ascertaining the fees of witnesses, which costs together with the sum hereinafter allowed to the umpire or arbitrators, shall be stated in the award or umpirage, and shall be made a part of the rule of court, and all witnesses examined by the umpire or arbitrators, shall be under oath, unless otherwise agreed to by the parties.

Penalty of witnesses not attending.

Sec. 4. The award or final determination of the umpire or arbitrators shall be drawn up in writing, and shall be signed by him or them, or so many of them as agree thereto, and a true copy of the s id award or umpirage, shall without delay be delivered by the umpire or arbitrators, to each of the parties, and if either of the parties shall refuse or neglect to obey the said award or umpirage, the other party may return the same, together with the submission, or arbitration bond to the court

Award to be on of agen- in writing.

Award how enforced.

named in the submission, or if no court be named in the submission, then to the court of Common Pleas or to the General court and the submission and award or umpirage so returned shall be entered on record, and filed by the Clerk, and a rule of court thereupon m de and after such rule is made, the party disobeying the same, shall be liable to be punished as for a contempt of the court; and the court on motion shall issue process accordingly; which process shall not be stayed or impeded, by order of any other court of law or equity, or by the court from whence it issued, until the parties shall in all things obey the award or umpirage, unless it shall be made to appear on oath that the umpire or arbitrators misbehaved, and that such award or umpirage, was obtained by fraud, corruption or other undue means; and no testimony shall be received to impeach or invalidate the said award or umpirage, after the second day of the term, next after the term in which the submission was made a rule in court: *Provided always,* That before any submission be made a rule of court, the party moving for such rule, shall produce to the court satisfactory proof of the due execution of the submission or arbitration bond, and also that the party refusing or neglecting to obey the award or umpirage, hath

Award to be Fnal.

Unless for misbehavior of umpire &c. or for fraud &c.

No testimony to invalidate award.

Award shall be made a rule of court

been furnished with a true copy thereof.

Sec. 5. The umpire or arbitrators shall be entitled to receive each the sum of one dollar per day, for each and every day, which they shall employ in performing the duties of their appointment.

Fees to umpire or arbitrators.

Sec. 6. In all cases where the plaintiff and defendant have accounts to produce one against another, shall, by themselves, or attornies, or agents, consent to a rule of court for referring the adjustment thereof, to certain persons mu tually chosen by them in open cou t, (the award or report of such referees, being made according to the submission of the parties, approved of by the court, and entered upon the record or roll) shall have the same effect, and be deemed and taken to be as available in law, as a verdict given by twelve men; and the party to whom any sum or sums of money are thereby awarded to be paid, shall have judgment, or a *scire facias,* for the recovery thereof, as the case may require, as is directed in the seventeenth section of the act entitled an act to regulate the practice in the G neral court, and court of Common Pleas concerning sums found and settled by a Jury.

Accounts of contending parties referred to arbitration

AN ACT

Making promissory notes bonds and inland bills of exchange negotiable

Passed Sept. 17, 1807.

Notes in writing for the payment of money.

Sec. 1. All notes in writing that shall hereafter be made and signed by any person or persons, body politic, or corporate whereby such person or persons, body politic or corporate promise to pay a y sum of money or a knowledge any sum of money to be due to any other person or persons or his, her or their order, or unto bearer, shall be taken to be due and payable; and the sum of money therein mentioned shall by virtue thereof be due and payable to the person or persons to whom the said note is made; and every such note made payable to any person or persons, his, her or their order, or unto bearer shall be assignable by indorsement thereon under the hand or hands, of such person or persons, and of his, her, or their assignee, or assignees, so as ab olutely to transfer and vest the property thereof in each & every assignee or assignees, successively; and any assignee or assignees, to whom such sum of money is, by such endorsement, or endorsements, made payable, may, in his, her

Is made assignable by indor ement ass gnee may sue in his own name.

or their own name, or names, institute or maintain an action for the recovery thereof, against the person or persons, who made and signed such note, or against him her or them, who endorsed the same, (having first used due diligence to obtain the money from the drawer or maker) & in every such action in which judgment is given for the plaintiff or plaintiffs, he, she, or they, shall recover his her or their damages and costs of suit.

When assigned after day of payment.

§ 2. If any such note shall be endorsed after the day on which the money therein contained becomes du and pa - able, and the endorser shall institute an action thereon, against the m k r and signer of the same, the defendant being maker and signer, shall be allowed to set up the same defence that he might have done, had the said action been instituted in the name, and for the use of the person or persons to whom the said note was originally made due and payable.

Inland bills o exchange negotiable.

Sec. 3 If any such note shall be endorsed before the day the money therein contained becomes due and payable, and the endorsee shall institute an action thereon, the defendant may give in evidence at the trial, any money ac-

tually paid on the said note, before the said note was endorsed or assigned to the plaintiff, on proving that the plaintiff had sufficient notice of the said payment, before he, or she, accepted or received such endorsement.

Bonds &c. assignable.

Sec. 4. And all inland bills of exchange shall be negotiable, by endorsment thereon, in the same manner as is above provided in case of promissory notes.

Assignee may sue in his own name.

Sec. 5. The assignment of bills, bonds, or other writings obligatory for the payment of money, or any specific article, shall be good and effectual in law and an assignee of such, may thereupon maintain an action in his own name, but shall allow all just set offs, discounts and equitable defence, not only against himself, but against the assignor, before notice of such assignment shall have been given to the defendant.

AN ACT

Allowing Foreign Attachments.

Passed Sept. 17 1817.

Real & personal estates non residents may be attached.

Sec. 1. THE lands and tenements, goods, chattels and effects, rights and credits, of every person or persons, non-residents in this territory, shall, and may be attached, for the payment of any just debt, or other demand, by a writ or writs, to be issued out of the General court, or any Circuit court, or court of Common Pleas, and, as early as may be, shall and may be proceeded against in the same manner as is directed against the lands, tenements, hereditaments and estates of absconding debtors, except where otherwise herein directed.

Party applying for writ of attachmt. &c.

Sec. 2. *Provided,* That every person or persons, applying for such writ or writs of attachment, shall, before the issuing thereof, make, oath or affirmation (and which shall be filed in the proper clerk's office,) that he she or they verily believe, that the person or persons, against whose estate or estates, the application is made, is or are not, at that time resident within the Territory, and that such person or persons,

is, or are, justly indebted unto the said plaintiff or plaintiffs, in a certain sum or sums of money, as nearly as may be, to the amount of the debt, or other demand, of such plaintiff or plaintiffs, as the case may admit, and as he, she or they can lawfully swear or affirm to.

Attachments may issue against joint obligors or partners &c.

Sec. 3. Where two or more persons are jointly indebted, either as joint obligors, partners, or otherwise, then the writ or writs of attachment, shall and may be issued against the separate and join est of uch joint debtors, or any of them, either by their proper names, or by, or in the name or style of the partnership, or by whatsoever other name or names such joint debtors shall be generally reputed, known, or distinguished within this Territory, or against the heirs, or executors, or administrators of them, or either or any of them. And the lands, tenements, goods, chattels and effects, or any of them, shall be liable to be seized and taken, for the satisfaction of any just debt or other demand, and may be sold to satisfy the same.

No judgment entered in less than 12 months.

Sec. 4. No judgment shall be entered in any attachment, hereby directed to be issued, until the expiration of twelve months, during which term the

party suing out the attachment, shall, and he hereby is required, to cause notice thereof to be advertised in one of the public news-papers of this Territory, at least three times, which advertisement shall set forth, that a foreign attachment or attachments, have been issued, at whose suit, and against whose estate or estates, the same so issued. And that unless the debtor or debtors, whose estate or estates are so seized, shall appear by himself or attorney, to give special bail, to answer such suit, that then judgment will be entered against such debtor or debtors by default, and the estate or estates attached, be sold for the satisfaction of the plaintiff; *Provided always,* That where any goods or chattels of a perishable nature shall be so seized, it shall and may be lawful for the court, from which such attachment issued, to order the said perishable property, so attached, to be sold by the sheriff, by auction, who shall detain the proceeds of the sale thereof in his hands, subject to the order of the court, until final judgment and execution.

Notice given in some N. Paper.

Proceeds of sale to be detained by shff. until final judgmt.

Sec. 5. No creditor or creditors entitled to any share of estates, sold under this law, shall receive the same, until he, she, or they, shall enter into bond, to the defendant or defendants,

Creditors to give bond.

with good and sufficient security, to be approved of by the court, and also to be filed in the office aforesaid, in double the sum to be received, with condition thereunder written, that the party so receiving, shall appear to any suit or suits, that shall or may be brought, by such defendant or defendants, within the space of twelve months, then next ensuing, and shall pay unto such defendant or defendants, all such sums of money, which on trial to be had thereon, shall appear to have been received, and not justly due and owing to such creditor or creditors, together with costs of suit.

AN ACT

Prescribing the mode of proceeding against absconding Debtors,

Passed September 8th, 1807.

Sec. 1. BE *it enacted by the Legislative Council and House of Representatives, and it is hereby enacted by the authority of the same,* That any judge of the court of common pleas, or justice of the peace, on complaint upon oath, stating the a-

Judge of c. p. or justice to issue atchmt.

mount, or as near as may be, of the debt or demand, and that a debtor is privately moved out of the county, or absconds, so that process cannot be served on him, may grant an attachment against such debtor's estate, or to the value of the creditor's debt and costs, returnable if the demand is above eighteen dollars, to the next court of common pleas having competent jurisdiction, to be directed personally to the Sheriff, under sheriff, or constable, and where the sheriff is interested, to the Coroner of the county, to be served on the goods and chattles, lands and tenements, of the debtor, or in the hands of any person indebted to, or having any effects of such debtor in his hands, and shall summon such garnishee to appear at such next court of Common Pleas, to answer on oath what he or they are indebted to, and what effects of such debtor, they have, or had in their hands, at the time of serving such attachment, which being returned executed, the court may compel such garnishee to appear and answer.

Where returnable.

To whom directed

Summon garnishee. To answer on oath.

Sec. 2. Such Judge or Justice, before granting such attachment, shall take bond and security of the party praying the same, in double the sum to be attached, payable to the defendant for paying all costs to be awarded him,

Judges or justices to take bond.

if the plaintiff be cast in the suit, and also all damages to be recovered against such plaintiff for his suing out such attachment; which bond such Judge or Justice shall return to the said court, on which the defendant may bring suit, and recover agreeably to the tenor thereof; and any attachment issued without such bond taken and returned, shall be dismissed, and held illegal and void.

Deft. may bring suit.

Sec. 3. All attachments shall be replevied by giving appearance bail as in cases of *capias ad respondendum,* & if such bail shall be insufficient, the same remedy shall be had against the Sheriff as if taken on a *capias ad respondendum.*

Where returnable.

Sec. 4. If the plaintiff's demand shall not exceed the sum of eighteen dollars, the Judge or Justice, granting such attachment, shall make it returnable before himself, directed to the Sheriff of the county, or any Constable within his township, and shall require bond and security in like manner as if above eighteen dollars.

Sec. 5 If any attachment returnable to the court of Common Pleas, or before any Judge or Justice of the Peace, be returned executed, and the effects be not replevied by giving ap-

pearance bail, if the demand exceed eighteen dollars, or giving such security if under that sum, as would be demandable by a Justice on a capias against the defendant, the plaintiff shall be entitled to a judgment for his debt, and may take execution thereon, and the effects attached shall be sold, towards satisfying the plaintiff's judgment, as goods taken in execution on a fieri facias. But if the estate taken under an attachment be replevied as aforesaid, the like proceedings shall be taken thereon to obtain judgment, as if the suit had been instituted by *capias ad respondendum*.

Attachment exd. and no bail &c. before justice.

Pltff. to have jdmt. and issue fi fa.

Bail entered &c.

Sec. 6. And where any attachment is returned served in the hands of any garnishee, on his appearance and examination as aforesaid, judgment may be given and execution awarded against him for all money due from him, or property of the defendant in his possession or custody, or a sufficiency thereof to satisfy the plaintiff's debt and costs.

Garnishee appr'ing &c.

Sec. 7. The She iff or other officer who shall make sale of any p operty taken by attachment shall be allowed all reasonable charges for keeping the same by the court.

Officers allowed for keeping.

All law and parts of laws coming within the purview of this law, be and the same are hereby repealed.

Repealing clause.

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This act shall commence, and be in force from and after the first day of January next.

ATTORNIES.

AN ACT

Regulating the admission and practice of Attornies and Counsellors at Law.

Passed Sept. 17 1807.

Attornies & Counsellors, how admitted.

Sec. 1. No person shall be permitted to practise as an Attorney or Cousellor at Law or to commence, conduct, or defend any action, suit or plaint, in which he is not a party concerned, in any Court of Record within this territory, either by using or subscribing his own name or the name of any other person without having previously obtained a license for that purpose from any two of the Judges of the General Court, which license shall constitute the person receiving the same an Attorney

and Counsellor at Law, and shall authorise him to appear in all the Courts of Record within this territory and there to practise as an Attorney and Counsellor at Law according to the laws and customs thereof, for, and during his good behaviour in the said practice, and to demand and receive all such fees as are, or hereafter may be established, for any service which he shall, or may do, as an attorney, and counsellor at law in the said Territory.

Entitled to legal fees.

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

Applicant to produce certificate of character.

Sec. 3. It shall be the duty of the Clerk of the General court, to make and keep a roll or record, on parchment, stating at the head or commencement thereof, that the persons, whose names are thereon written, have been regularly licensed, & admitted to practice as attornies and counsellors at law within this Territory, and that they have duly taken the oath of allegiance to the United States, and also the oath of office, as prescribed by law; which shall be certified and endorsed on the said license.

Clk. of g. c. to keep a roll of all licensed ats.

No person suffered to practise whose name is not written on the roll.

Sec. 4. And no person whose name is not subscribed to, or written on, the said roll, with the day and year when the same was subscribed thereto, or written thereon, shall be suffered or admitted to practise as an attorney, or counsellor at law, within the Territory under the penalty hereinafter mentioned any thing in this law contained, to the contrary notwithstanding; and the Judges of the General court, in open court, shall have power at their discretion, to strike the name of any attorney or counsellor at law, from the roll, for malconduct in his office; *Provided always,* That every attorney before his name is struck off the roll, shall recieve a written notice from the Clerk of the General court, stating distinctly the grounds of complaint, or the charges exhibited against him; and he shall after such notice, be heard in his defence, and be allowed reasonable time, to collect and prepare testimony for his justification.

Judges in open court may strike attorney or counsellor's name from the roll.

Not afterwards to practice till restored.

And every attorney whose name shall be at any time, struck off the roll by order of the court, in manner aforesaid, shall be considered as though his name had never been written thereon, until such time as the said judges in open court, shall authorise him again to sign or subscribe the same.

To be punished for contempt of court.

Sec. 5. The Judges of the General court, and the Judges of the several courts of Common Pleas, within the Territory, shall have power to punish in a summary way, according to the rules of law, and the usages of courts, any, and every attorney, or counsellor at law, who shall be guilty of any contempt in the execution of his office; and every attorney and counsellor at law, receiving money for the use of his client and refusing to pay the same when demanded, may be proceeded against in a summary way on motion. And all attornies, counsellors at law, Judges, Clerks, and Sheriffs, and all other officers of the several courts within the Territory, shall be liable to be arrested and held to bail, and shall be subject to the same legal process and may in all respects be prosecuted, and proceeded against in the same courts, and in the same manner, as other persons are; any law, usage, or custom, or privilege to the contrary notwithstanding.

How to be proceeded against for withholding money from clients.

Subject to arrest.

What persons prohibited from practice.

Sec. 6. No person shall be permitted to practise as an attorney or counsellor at law, by instituting, conducting or defending, any action, suit plea or plaint, in any court within the Territory, who holds a commission as a Judge, of any General or Supreme court, or court of Common Pleas, nor shall any

person who holds a commission as a Justice of the Peace, Coroner or Sheriff or who acts as a deputy Sheriff, jailor or Constable, within the Territory, be permitted to practise as an attorney or counsellor at law, in the county in which he is commissioned or appointed, nor shall any Clerk of the General court, Circuit court or court of Common Pleas, be permitted to practise as an attorney or counsellor at law in the court of which he is Clerk: Provided nevertheless, That nothing herein contained, shall prevent, any such attornies as may heretofore have obtained licenses to practise within this Territory, from continuing to practise as such, notwithstanding they may not be residents thereof.

Attornies to take the oath of allegiance &c.

And no person shall be permitted or suffered to enter his name on the roll or record to be kept, as aforesaid, by the Clerk of the General court, or do any official act appertaining to the office of an

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Note. So much of the 6th Section as prohibits non residents from practising, is repealed by act of 16th of June 1809, and so much as prohibits non-resident judges from practising is repealed by act of March 13, 1810.

attorney or counsellor at law, until he hath taken an oath to support the constitution of the United States, and the person administering such oath, shall certify the same on the license, which certificate shall be a sufficient voucher to the Clerk of the General court, to enter or insert, or permit to be entered or inserted on the roll of attornies and counsellors at law, the name of the person of whom such certificate is made.

The same to be certified on the license.

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

Form of oath of office.

Sec. 8. Any person producing a license or other satisfactory voucher, proving that he hath been regularly admitted an attorney at law in any court of record within the United States, and that he is of a good moral character, may be admitted to an examination for the degree of an attorney and counsellor at law; and any attorney or counsellor at law, residing in any of the United States, who is of a good moral character, may at any time, on applica-

Persons licensed to practice law in any court of record in U. S. admitted to practice.

tion be admitted an examination for the degree of an attorney and counsellor at law within the Territory.

Penalty for attempting to practice without license.

Sec. 9. If any person or persons, not licensed as aforesaid, shall receive any money, or any species of property, as a fee, or compensation, for services rendered, or to be rendered by him, or as attorney, or attornies, counsellor, or counsellors at law, within the Territory, all money so received, shall be considered as money received to the use of the person paying the same, and may be recovered back with costs of suit, by an action or act ons for money had, and received; and all property delivered or conveyed for the purpose aforesaid, or the value thereof may be recovered back with costs of suit by the person conveying or delivering the same by action of Detinue or Trover and Conversion; and the person or persons receiving such money or property, shall forfeit threefold the amount or value thereof, to be recovered with costs of suit, before any magistrate, if within a magist ate juri - diction, but if not, in any court of record within the Territory, by action of debt or qui tam, the one half to the use of the person who shall sue for or recover the same, and the other half to the use of the county, in which such suit shall be brought. And if any person

Fraudulently signing the name of an attorney or judge &c. deemed forgery.

or persons shall sign, or cause to be signed, the name of an attorney, or either of the Judges of the General court, to any certificate or license, provided for by this law, with an intent to deceive, such person or persons, shall be deemed guilty of forgery, and shall be prosecuted and punished accordingly.

parties may prosecu e &c in proper person.

Sec. 10. Plaintiffs shall have the liberty of prosecuting, and defendants shall have the privil g of defending, in their proper persons, and nothing herein contained shall be construed to debar them therefrom, nor shall any thing herein contained, be construed to aff ct any person or persons heretofore admitted to the degree of an Attorney, or Counsellor at law, according to the rules of the General court, so as to subj ct them to further examina ion, or make i necessary for them to renew their licenses.

Not to affct. atts. heretofore admit'd

AUTHENTICATION OF RECORDS.

AN ACT.

For rendering authentic as Evidence in the courts of this Territory, the public acts, records and Judicial proceedings of Courts in the United States.

Passed Sept. 17 1807.

Legislative acts how authenticated.

Sec. 1. Every act of the Legislature of any one of the United States, having the seal of such state affixed thereto, shall be deemed authentic, and receive full faith and credit when offered in evidence, in any court of justice within this Territory.

Judicial acts how authenticated.

Sec. 2. And the records and judicial proceedings of the several courts of, or within the United ates, shall be proved and admitted in the courts of justice in this Territory, by the attest tion or certificate of the Clerk or Prothonotary,

and the seal of the court annexed, together with the certificate of the Chief Justice, or one, or more of the Judges, or of the presiding Magistrate of every such court, as the case may be, that the person who sign d such attestation or certificate was at the time of subscribing it, the Clerk or Prothonotary of such court; and the said records, and judicial proceedings, authenticated as aforesaid, shall have full faith and credit given to them in every court within this Territory, as by law or usage they have in the courts of the United States, or of any one of the states, whence the said records are, or shall be taken; any thing in this or any other act contained to the contrary notwithstanding.

When to be read in evidence.

COMMON FIELDS.

AN ACT.

To regulate the enclosing and cultivating of Common Fields.

Passed Sept 17, 1807

Sec. 1. THOSE who are or shall be proprietors or owners of land, in any

Owners to meet & make rules.

field that is now occupied, used and declared, or that shall hereafter be occupied, used and declared to be a common field, may meet together, by themselves or agents, annually, on the first Monday in March, or on such other days, as they shall appoint, at some convenient place by them appointed, for the purpose of making such rules and regulations as to them shall seem meet, for the well ordering of the affairs of such field with respect to fencing and cultivation, and all other things necessary for the well managing the same, for the common interest of such proprietors; in which meeting, the proprietors of such field, shall have full power by their major vote, to be computed by interest, to order all such affairs and make such regulations, as they shall deem proper and expedient, for the purposes aforesaid; *Provided always,* That any person, who is a proprietor in any common field, may at any time hereafter, separate his her or their land, from such common field, by fencing the same, subject only to making and keeping in repair fences in like manner as persons having enclosures adjoining to the common fields, as by this law directed.

Sec. 2. The better to enable them to carry on and manage the affairs of

such fields, they are hereby authorised and empowered, to elect a chairman clerk and treasurer, who shall be sworn to the faithful discharge of their duties, respectively; and the clerk shall enter and record all the acts, votes, and resolutions of the said proprietors relating to the management of the said common fields; and shall continue in his office until another shall be chosen and qualified to serve in his room, and that the election of chairman, clerk and treasurer, shall be annually, or otherwise as shall be determined by the said proprietors, or a majority of them in their lawful meetings assembled.

To Elect officers.

Sec. 3. For the better management of their common fields, they shall chuse a committee of three persons, which shall be stiled "the field committee," who shall be sworn to a faithful discharge of their duties; the said committee may call a meeting of the proprietors of such field, when they shall judge it needful, by giving warning to such of them as live in the town or village, verbally, where such fields lie, and to the agents, (if any) of non-resident proprietors, ten days previous to the time of such meeting, or by warning such proprietors in such other manner as they shall, in their lawful meetings agree upon.

Elect committee.

Sec. 4. The proprietors of common fields, are hereby authorized and empowered, at their lawful meetings, to grant and levy taxes on themselves, when they shall judge it needful, according to their several interests in such fields, for the defraying the charges that may arise in setting out and designating the proportion of, or altering the fence of such fields, in making gates and bridges, or for any other public or common charge, relating to such fields, and to appoint assessors and collectors for the making, apportioning, and collecting such taxes, which collectors shall have the same power and authority in every respect, as the collectors of county taxes; which taxes, when collected, shall be paid into the hands of the Treasurer, and shall be appropriated, by a majority of the proprietors for the common benefit.

Appoint assessor & collector.

Sec. 5. The field committee shall point out and designate the place where, and the proportion which, each proprietor shall erect of such common fence, and every proprietor in such common field shall duly erect and maintain, his, her or their proportion of such common fence, according to the directions of such committee: *Provided* such committee, shall not require any such fence to be erected at a greater expence, or

Duty of committe.

of better materials, than is directed by a law of this Territory, entitle "An act establishing and regulating enclosures," and shall attend all orders, and comply with all regulations of the major part of the proprietors of such common field, for the improvement thereof, for the common benefit, under the penalties of such fines and forfeitures as shall be lawfully annexed to the breach or neglect of such orders or regulations.

Sec. 6. Any person or persons, having his, her or their part or proportion of common fence, designated by the said field committee, shall have liberty, in order to make or repair the same, of passing over any person's lot or land whatsoever, whenever it shall be necessary, for the purpose aforesaid; and when it shall so happen that the line of fence, ordered as aforesaid, for the enclosing, or securing any common field, shall run in upon, or intersect the fence of any person making a particular enclosure, adjoini g the common field, the one half of the dividing fence between such particular enclosure, and the common field, as aforesaid, shall be made and maintained by the proprietors of such common field, and the other half by the owner of such particular enclosure; and if any person, or persons, whose land shall adjoin any such common field, shall neglect to keep in

Respecting repairs to fence.

repair, and maintain his, her, or their part of such fence, after being requested thereto by the field committee, in writing, under their hands, for the space of ten days, it shall be lawful for the said committee to repair the said fence, at the proper charges of the delinquent; which expense, after being esttimated by two reputable freeholde s of the town or village, wherein such fields are situated, may be recovered by action of debt, before any court having competent jurisdiction, together with costs.

Penalty for opening fence.

Sec. 7. If any person or persons whose lands shall adjoin such common field, shall lay open the same, without giving two months notice thereof in writing, lodged with the Clerk of such common field; such person or pesons shall be liable to pay all damages that may accrue to the proprietors or to any of them, of such common fields, to be recovered in any action of damages, before any court having competent jurisdiction.

Acpts. for services how paid.

Sec. 8. All accounts for any services rendered any person acting under the appointment of, or by the direction of the major part of the proprietors of common fields, shall be paid out of the common treasury of such proprietors.

after being audited by the field committee; except the accounts of such field committee; which last mentioned accounts, shall be audited by a special committee; and that all orders on the Treasurer, shall be signed by the chairman, and a tested by the Cle k; and the Collectors, shall, for all, or any monies by them paid to the Treasurer, demand duplicate receipts, one of which shall be held by the said Collectors, and the other lodged with the Clerk: the Treasurer shall also demand duplicate receipts for all monies paid by him, on orders, on the Treasurer, one of which receipts shall be holden by the Treasurer, and the other lodged with the Clerk.

Sec. 9. The proprietors of common fields, shall have power, by their major votes, in lawful meetings assembled, to order all such fines and forfeitures, on either, or any of themselves, as to them shall seem reasonable, for carrying into effect, any of their rules and regulations, for the common benefit of the said proprietors: Provided nevertheless, The penalty does not exceed the sum of five dollars, and that the person or persons thinking himself or themselves to be unreasonably or oppressively fined, shall have the

Fines and forfeitures.

Proviso.

right to appeal from the judgment of said proprietors, to the next court of Common Pleas, holden for said county: Provided, That notice of such appeal, shall be given within ten days after the judgment be given by the said proprietors.

To be enclosed with a good fence.

Sec. 10. The said common field shall be enclosed with a good and sufficient fence, according to law, on or before the first day of May in each and every year, or such other day as the said proprietors may appoint, and no cattle, horses or other animals shall be suffered to be put into such fields, for the purpose of depasturing therein, between the first day of May and the fif eenth day of November in each and every year, or on such day o her & time a the proprietors may agree upon, under the penalty of paying such fines, as shall be ordered by the said proprietors, in lawful meeting assembled.

AN ACT

Providing for the appointment of Constables.

Passed Sept. 17, 1807.

Sec. 1. It shall be the duty of the court of Common Pleas at their term next after the first of March annually, in each and every county, to appoint one or more respectable confidential persons, in each and every township, within their respective counties, to serve as Constable; and the Constables so appointed shall continue in office by virtue of such appointment, for the term of one year, and so long thereafter as may be sufficient for their successors in office to have notice of their appointments, take the oath, and enter on the duties of their offices: *Provided,* That nothing herein contained shall oblige them to serve as Constables for a longer time than three months af er the expiration of the term of one year as aforesaid.

Court of C. P. to appoint constable.

Term of service.

Sec. 2. Every Constable before he enters upon the duties of his office, shall take the following oath or affirmation;

"I do swear, or affirm (as the case may be) that I will faithfully discharge

Oath of office.

the duties of my office as Constable within the county of according to the best of my understanding and abilities."

Which oath or affirmation shall be taken before the court of common Pleas, or before any Justice of the Peace of the said court: and the Justice administering such oath, if out of court, shall make a certificate thereof and cause the same to be filed with the clerk of said court, by which such Constable shall have been appointed; and it shall be the duty of every Constable as far as in him lies, to apprehend, and bring to justice, all felons, and disturbers of the peace, to suppress all riots and unlawful assemblies, and to keep the peace within the county to which he shall have been appointed, and also to serve and execute all warrants, writs, precepts, and other process to him lawfully directed, and generally to do and perform all things appertaining to the office of Constable within the Territory; *Provided always,* That nothing herein contained shall be construed to require any Constable not qualified as is provided in the act entitled, "An act establishing courts for t e trial of small causes," to serve or execute any process that may issue by virtue of the provisions in that act contained.

His powers and duties.

Sec. 3. Every person who shall be appointed to the office of Constable in manner aforesaid, and who shall not within eight days after notice of such appointment, take the oath herein prescribed, and every Constable who having taken the oath aforesaid, shall neglect, or refuse to perform any of the duties appertaining in the office shall forfeit & pay for every such neglect or refusal, the sum of twenty dollars, to be recovered with costs of suit, before any court of record within the county in which such Constable resides, in the name of any person who will sue for the same, the one half to the use of the person so suing, and the other half to the use of the county; *Provided always,* That no person shall be liable to the penalty herein specified, for not accepting the appointment of a Constable in the same county, more than once in the term of ten years.

Failing to take oath or perform duty.

Proviso.

Sec. 4. When any Constable in any township within this Territory, appointed as aforesaid, shall die or remove out of the township, or shall be otherwise disqualified from holding such office, it shall be the duty of any Justice of the Peace in the township in which such death, removal, or disqualification shall happen, to appoint a Constable to fill such vacancies, and return his name

Vacancy how supplied.

Certified to C. P.

to the next court of Common Pleas held for the county; who shall confirm the said appointment, or appoint another; and the Constable so appointed shall take the same oath, and be subject to the same forfeitures, for neglect of duty, as those appointed by the court: *Provided nevertheless,* That nothing in this act shall be construed so as to prevent any Magistrate in the Territory from appointing any suitable person to act as Constable in a criminal case, or in case of attachments where there is a probability that the criminal will escape, or where goods and chattels are about to be removed, if delay is made for the purpose of applying to the Constable of the township.

Magistrate may appoint special constable.

CORONERS.

AN ACT

For the appointment of Coroners, their duty and power,

Passed Sept. 17, 1807.

Coroners to be appointed

Sec. 1. A coroner shall be appointed in each county in this Territory.

Sec. 2. Every coroner within the county for which he is appointed shall serve all writs and precepts when the Sheriff or any of his Deputies shall be a party to the same, & shall return jurors in all causes where the Sheriff shall be interested, or related to either party. The Coroners, or in case of their absence, any Justice of the Peace of the respective counties, shall take inquests of violent deaths, and casual deaths happening within their respective counties, and shall before they enter upon the duties of their respective offices, be severally sworn or affirmed, to the faithful discharge thereof and give security in the same manner as sheriffs are obliged to do.

Their duty and powers

To take oath & give security.

Sec. 3. Every Coroner shall, as soon as he shall be certified of the dead body of any person supposed to have come to his or her death by violence, or casualty, found o ly ng within his county, make out his warant, directed to the constable of the Township, where the dead body is found, or lying, requiring him forthwith to summon a jury of good and lawful men, of the same Township, not less than eighteen in all (so that twelve may be present) to appear before such Coroner, at the time and place in his warrant expressed, and to enquire upon a view of the body of

To issue warrant for jury of in quest.

To whom directed.

Number of jury.

(name here the person deceased, if known) there lying dead, how, in what manner, and by whom, he or she, came by his or her death; and every constable, to whom such warrant, shall be directed and delivered, shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant with the proceedings thereon, unto the Coroner who granted the same.

Duty of Constables.

Every Constable, failing unnecessarily, of executing such warrant, or of returning the same, as aforesaid, shall forfeit and pay the sum of eight dollars; and every person summoned as a Juror, as aforesaid, that shall fail of appearance, without having a reasonable excuse, shall forfeit five dollars: which fines shall be recovered by action of debt, before any jurisdicton that can take cognizance of the same, and be applied to the use of the county.

Fine on Constable for failure.

How recoverable.

Sec. 4. The Coroner or Justice shall administer an oath, or affirmation, to twelve of the Jurors, that shall appear, to the foremen first; in the following manner:

Jurors to be sworn &c.

"You do solemnly swear, (or solemnly, sincerely, and truly declare and affirm as the case is) that you will dili-

gently enquire, and true presentment make, how, in what manner, and by whom, A B, who he e lies dead, came to his death, and you shall deliver to me the coroner of this county a true inquest thereof, according to such evidence as shall be laid before you, and according to your knowledge, so help you God."

Foreman's oath.

Sec. 5. The other jurors shall swear or affirm, as the case may be, in the following form:

"Such oath or, affirmation, as your foreman hath taken, you, and each and every of you, shall well and truly observe and keep so help you God."

Other Jurors oath.

Sec 6. The Jurors being sworn, the Coroner, or Justice sh ll give them a charge upon their oaths to declare of the death of the person; whether he, or she died of felony, or mischance, or accident; and if of felony, who were principals and who were accessaries, with what instrument, he or she was struck or wounded; and so of all prevailing circumstances which may come by presumption, and if by mischance or accident, whether by the act of man, and whether by hurt, fall, stroke, drowning or otherwise; also, to enquire of the person who (if any) were present, the finders of the body, his, or her re-

Charge to jury.

lations and neighbors; whether he or she was killed in the same place where the body was found; and if elsewhere, by whom, and how the body was brought thence, and of all other circumstances relating to the said death: and if he or she died of his or her own felony, then to enquire of the manner, means or instrument, and of all circumstances concerning it.

Proclamation for evidence.

Sec. 7. The Jury being charged shall stand together, and proclamation shall be made for any persons who can give evidence, to draw near, and they shall be heard.

Cor. to issue warrants for witnesses.

Sec. 8. Coroner or Justice, is further impowered to send out his warrant for witnesses, commanding them to come before him to be examined, & to declare their knowledge concerning the matter in question. He shall administer an oath, or affirmation, to them in the following form:

Form of oath.

"You do solemnly swear, (or solemnly, sincerely, and truly declare and affirm,) that the evidence you shall give to this inquest concerning the death of A B, here lying dead, shall be the truth, the whole truth and nothing but the truth, so help you God."

Sec. 9. The evidence of such witnesses shall be in writing, subscribed by them; and if it relate to the trial of any person concerned in the death, then shall the Coroner or Justice bind such witness, by recognizance in a reasonable sum, for their personal appearance at the next General or Circuit court, to be holden within the same county, there to give evidence accordingly; and commit to the common jail of the county, any witness or witnesses, refusing to enter into such recognizance; and shall return to the same court, the inquisition, written evidence, and recognizance by him taken; and the jury having viewed the body, heard the evidence, and made all the enquiry within their power, shall draw up and deliver into the Coroner, their verdict upon the death under consideration, in writing, under their hands and seals.

Evidence subscribed.

Witnesses bound in recognizance

Verdict under hands and seals.

Sec. 10. Upon an inquisition found before any Coroner, of the death of any person, by the felony or misfortune of another, he shall speedily inform one or more of the Justices of the same county thereof, to the intent, that the person killed, or being in any way instrumental to the death, may be apprehended, examined, and secured, in order for trial.

Coroner to give information to Justices.

COUNTIES.

AN ACT.

establishing the boundary line between the counties of Randolph and St. Clair.

Passed Dec. 11, 1813

Be it enacted by the Legislative Council and house of Representatives of the Illinois Territory and it is hereby enacted by the authority of the same. That the Boundary line between St. Clair Randolph and Gallatin Counties shall begin at the Mississippi river on the line between Township 3. and 4. South of the base line (which is near Cahokia) thence running east along said line between townships 3. and 4. aforesaid to the meridian line which runs north from the mouth of the Ohio River, Thence along said meridian line until it intersects the lower (or southern Boundary of the county of Madison) This act to be in force from and after the passage thereof.

AN ACT.

establishing the boundary lines of Gallatin County.

Passed Dec. 11, 1813.

Be it enacted by the Legslative council and House of Representatives of the Illinois Territory and it is hereby enacted by the authority of the same, That the line of Gallatin county do begin at the mouth of lusk's creek on the Ohio river running up with said creek to Miles's old trace, Thence along said trace to the meridian line which runs north from the mouth of the Ohio river, Thence north with said line to the lower line of Madison County, Thence with said line to the dividing line between Illinois and Indiana Territories; & thence with said line to the mouth of the Wabash, and thence down the Ohio to the begining. This act to commence and be in foce from and after the passage thereof.

AN ACT

For the division of Gallatin County.

Passed Nov. 28, 1814.

Sec. 1. Be *it enacted by the Legislative Council and House of Representatives of*

the Illinois Territory and it is hereby enacted by the authority of the same, That all that tract of country within the following boundaries (to wit) beginnign at the mouth of Bompast creek on the big Wabash, and running thence due west to the meridian line, which runs north from the mouth of the Ohio River. Thence with said meridian line and due north till it strikes the line of Upper Canada, thence with the line of Upper Canada to the line that separates this territory from the Indiana Territory and thence with the said dividing line to the beginning, shall constitute a separate county to be called Edwards: and the seat of justice for said county shall be at the town now called Palmyra on the Wabash; provided the proprietor, or proprietors of said land shall give to the said county, for the purpose of erecting the public buildings a quantity of land at said place not less than twenty acres to be laid off into lots and sold for the above purpose. But should said proprietor or proprietors refuse or neglect to make the donation aforesaid then and in that case it shall be the duty of the court of Common Pleas who shall be appointed for said county to fix upon some other place for the seat of justice as convenient as may be to the different settlements in said county

County of Edwards, erected.

Palmyra seat of justice.

Public buildings.

2nd Section superceded by late acts.

Sec. 3. Be it further enacted that it shall and may be lawful for the Governor of this territory immediately to constitute the militia within the county thus laid off into one battalion, the commanding officer of which shall have the same power to order out the militia as is now possessed by the Lieut. Colonels of the respective regiments.

Battalion to be organised by Gov.

Sec. 4. And be it further enacted that the said County of Edwards is hereby allowed one Representative in the House of Representatives of this territory who shall be elected agreeably to law and be entitled to all the immunities, powers and privileges prescribed by law to members of the house of representatives. And whereas the next general election for Representatives to the Legislature will not take place before the month of September in the year 1816 and in consequence thereof the said county will be unrepresented in the house of representatives until that time, for remedy whereof, an election is hereby directed to be held at the seat of justice for said county on the first Thursday in March next and continue open three days and to be conducted in all other respects, by the persons and in the manner prescribed by

Allowed one Representative.

law; at which said election the persons entitled to vote may elect a representative to the house of Representatives who shall continue in office until the 10th day of October 1816 and shall during his continuance in office be bound to perform the same duties and entitled to the same privileges and immunities that are prescribed by law to a member of the House of Representatives.

To vote for a member of the council with Gallatin County.

Sec. 5. Be it further enacted that whereas the counties of Gallatin and Edwards compose one district for the purpose of electing a member of the Legislative Council; The citizens of said county entitled to vote may at any election for a member of the Legislative Council to represent said district proceed to vote for such member, and it shall moreover be the duty of the Sheriff of the said county of Edwards within ten days after the close of said election to attend at the Court House of the county of Gallatin with a statement of the votes given in said county of Edwards to compare the poles of the respective counties, and it shall be the duty of the Sheriff of Gallatin county to attend at such time and place with a statement of the votes of Gallatin county and upon counting the votes of the respective counties, it shall be the duty of the said Sheriff of Gallatin and Edwards coun-

Polls compared at Gallatin C. H.

ties to make out and deliver to the person duly elected a certificate thereof, if the said Sheriff or either of them shall refuse or fail to perform the duty required by this section, such delinquent shall forfeit and pay the sum of two hundred dollars to be recovered by action of debt or indictment one half to the use of the territory and the other half to the person suing for the same.

Sheriff to give certificate of election.

Sec. 6. Be it further enacted that the citizens of said county of Edwards are hereby declared to be entitled in all respects to the same right and p ivileges in the election of a delegate to Congress as well as of a member to the house of representatives of the territory that are allowed by law to the other counties of this territory and all elections are to be conducted at the same times and in the same manner, except as is excepted by this law as is provided for other counties—This act shall commence and be in force from and after the passage thereof.

To vote for delegate to Congress.

M

CRIMES.

AN ACT

Respecting Crimes and Punishments.

Passed Sept. 17th, 1807.

TREASON.

What offences shall be deemed treasonable.

Sec. 1. If any person residing in, belonging to, or protected by the laws of this Territory, shall levy war against the United States, or against this Territory, or shall knowingly or wilfully aid or assist any enemies at war against the U States or this Territory, by joining the armies or fleets of such enemies, or by inlisting, persuading or procuring others to join said fleets or armies, or by furnishing such enemies with arms, ammunition, or provisions, or any other article for their aid or comfort, or by carrying on a treasonable or treacherous correspondence with them, or shall form, or be any way concerned in forming any combination, plot or conspiracy, for betraying the U. S. or this Territory into the hands or power of any foreign enemy, or shall give,

or attempt to give or send any intelligence to any such enemy, for said purpose, the person or persons so offending, shall be deemed guilty of treason, and upon conviction thereof shall suffer the pains of death.

How punished.

MURDER.

Sec. 2. If any person or persons shall with malice aforethought, kill or slay another person, he, she, or they, so offending shall be deemed guilty of murder, and upon conviction thereof, shall suffer the pains of death.

Murder how punished.

MAN-SLAUGHTER.

Sec. 3. If any person or persons shall wilfully kill or slay another person, without malice aforethought, he, she, or they, so offending shall be deemed guilty of man-slaughter, and upon conviction thereof shall be punished as the common law hath heretofore been used and accustomed; *Provided nevertheless,* That if any person in the just and necessary defence of his own life, or the life of any other person, shall kill or slay another person, attempting to rob or murder in the field or highway, or to break into a dwelling house, if he cannot with safety to himself otherwise take the felon, or assailant, or bring

Manslaughter how punished.

Proviso.

him to justice, he shall be holden guiltless.

Sections 4 *and* 5 *repealed by act of* 27*th February* 1810.

RIOTS and UNLAWFUL ASSEMBLIES.

Fines on unlawful assemblies.

Sec. 6. If three or more persons shall assemble together with intention to do any unlawful act with force and violen e, ag inst the person or property of another, or to do any other unlawful act against the pe ce and to the terror of the people, or being lawfully assembled, shall agree with each other to do any unlawful act as aforesaid, and shall make any movements and preparation therefor, the persons so offending, and upon conviction thereof shall pay as a fine, each, to this Territory, the sum of sixteen dollars, and find surety for their good behaviour, respectively, for the space of six months, and stand committed until sentence be performed.

Duty of Judges &c. on unlawful assemblies.

Whenever three or more persons shall be assembled, as aforesaid, & proceeding to commit any of the offences as aforesaid, it shall be the duty of all Judges, Justices of the Peace and Sheriffs, and all ministerial officers immediately upon actual view, or as son as may be, upon information, to

make proclamation in the hearing of such offenders, if silence can be obtained, commanding them in the name of the United States immediately to dis perse, and depart to their several homes or lawful employments, and if upon such proclamation, or when silence cannot be obtained, such persons so assembled, shall not disperse, and depart as aforesaid, it shall then be the duty of such Judges, Justices of the Peace Sheriffs and other ministerial officers respectively, to call upon all persons near, and of abilities, and throughout the county if necessary, to be aiding and assisting in dispersing and taking into custody all persons assembled as aforesaid, and all military officers, and others called upon as aforesaid, are hereby ordered and directted to render instant and full obedience in this behalf, upon the penalty of ten dollars, each, for every neglect or refusal herein, and commitment in case of non-payment.

If rioters do not disperse how punished.

If any of the persons so unlawfully assembled, shall be killed, maimed, or otherwise injured, in consequence of resisting the Judges, or others in dispersing and apprehending, or in attempting to disperse and apprehend them, the said Judges, Justices of the Peace and sheriffs, and other ministerial officers, and others, acting by their authority, or

Rioters &c. killed holden guiltless.

the authority of any of them, shall be holden guiltless.

Fine on obstructing authority &c.

If any person or persons shall forcibly obstruct, any of the authority, aforesaid, or, if any three, or more persons shall continue together, after proclamation, as aforesaid, made or attempted to be made, and prevented by such rioters, or in case of no proclamation, and three or more perso s being assembled, as aforesaid, shall commit any unlawful act, as aforesaid, every offender upon conviction thereof, shall be

How punished.

fined in a sum not exceeding three hundred dollars, or to be whipped not exceeding thirty-nine stripes, and find surety for good behaviour, for a time not more than one year, at the discretion of the court, before whom the conviction may be had; and upon a second conviction, each, and every offender, shall be whipped and fined as aforesaid, and find surety for good behaviour, and the peace, for a time not exceeding ten years; and may be committed to any jail in the Territory, 'till sentence be fully performed.

Section 7 repealed by Act of 27th February, 1810.

LARCENY.

Sec, 8. If any person or persons shall

steal or purloin from another person or persons, any money, goods, wares or merchandize, or any other personal property, or thing whatever; he, she, or they, so offending, shall be deemed guilty of larceny, and upon conviction thereof, shall for the first offence, restore to the owner the thing stolen, and pay to him the value thereof, or twofold the value thereof, if the thing stolen be not restored, and shall be fined in a sum not exceeding two fold the value of the thing or goods stolen, or shall be whipped not exceeding thirty-one stripes, at the discretion of the court. Upon a second conviction, restitution, and payment shall be made to the owner as aforesaid, and a fine shall be set, and paid to the Territory, not exceeding four fold the value, as aforesaid; and the offender shall be whipped not exceeding thirty-nine stripes, and in like manner upon every succeeding conviction; and in case such convict shall not have property real or personal wherewith to discharge and satisfy the sentence of the court, it shall be lawful for the sheriff by direction of the court, to bind such person to labor, for any term not exceeding seven years, to any suitable person, who will discharge such sentence.

Larceny what deemed.

How punished.

IF any person or persons shall re-

Receiving stolen goods &c. how punished.

ceive any goods, or other things, as aforesaid, knowing the same to be stolen, he, she, or they, so offending, shall be deemed principly guilty, and upon conviction thereof, shall be punished accordingly.

Compounding felony how fined.

And if any person or persons shall agree to compound, or take satisfaction for any stealing, or goods stolen, such person or persons upon conviction thereof, shall forfeit twice the value of the sums or things agreed for, or taken; but no person shall be debared from taking his goods again, *Provid d* he prosecute the thief; *Provided al o,* That nothing herein shall be construed so as to oblige a parent to prosecute a child, being an infant, or in a state of minority.

Proviso.

FORGERY,

Forgery what cases deemed

Sec. 9. Whoever shall forge, deface corrupt, or embezzle any characters, gifts, grants, bonds, bills, conveyances, wills, testaments, or written contracts of any nature or kind, or shall deface, or falsify any enrollment or registry, or record, or matter or instrument recorded, or shall counterfeit the seal or hand writing of another, with intent to defraud; every person so offending shall upon conviction thereof, be fined

in double the sum he shall thereby have defrauded or attempted to defraud another, one half thereof to the party injured, or intended to be injured, and shall moreover forever after be rendered incapable of giving testimony, being a juror, or sustaining any office of trust, and be set in the pillory not exceeding the space of three hou s, and all persons wilfully aiding and assisting in the commission of these crimes, or who shall cause, or procure the same, or any of them to be perpetrated, shall be deemed principals.

Persons aiding and assist ng how punished.

USURPATION.

Sec. 10. No person shall take upon himself, or exercise or officiate in any office, or place of authority in this terri ory, without being lawfully authorised thereto: and if any person shall presume so to do, he shall, upon conviction thereof, be fined in a sum not exceeding one hundred dollars.

Usurpation wh t deemed.

How fined

ASSAULT AND BATTERY.

Sec. 11. If any person shall unlawfully assault or threaten another, in any menacing manner, or shall strike or wound another, he shall, upon conviction thereof, be fined in a sum not

Assault and battery what deemed.

How fined and punished.

exceeding one hundred dollars, and the court before whom such conviction shall be had, may in their discretion cause the offender to enter into recognizance with surety, for the peace and good behavior, for a term not exceeding one year.

FRAUDULENT DEEDS

Fraudulent deeds &c.

Sec. 12. All bonds, bills, deeds of sale, gifts grants or other conveyances or obligations whatever, made with intent to deceive and defraud others, or to defeat creditors of their just debts or demands, shall be null and void, and the person or persons so offending, shall, upon conviction thereof, be fined in a sum not exceeding three hundred dollars, and pay double damages to the party or parties injured.

DISOBEDIENCE OF CHILDREN AND SERVANTS.

Powers of Justice in cases of disobedient Children &c

Sec. 13. If any children or servants shall contrary to the obedience due to their parents or masters, resist, or refuse to obey their lawful commands, upon complaint thereof to any Justice of the Peace, it shall be lawful for such Justice, to send him or them so offending to the jail, or house of correction, there to remain until he or they shall hum-

ble themselves to the said parent's or master's satisfaction, & if any child or servant, shall, contrary to his bounded duty, presume to assault or strike his parent or master, upon complaint and conviction thereof, before two or more Justices of the Peace, the offender shall be whipped not exceeding ten stripes.

How punished.

OBTAINING GOODS BY FRAUDULENT PRETENCES.

Sec. 14. If any person or persons, shall knowingly and designedly by any false pretence or pretences, obtain from any other person or persons, any monies, goods or merchandize, or other effect whatever, with intent to cheat or defraud such person or persons of the same, he, she, or they so offending shall, on conviction thereof, by verdict or confession, on judgment, suffer such punishment as in case of larceny is provided to be inflicted.

Obtaining goods by fraudulent pretences.

How punished.

ARSON.

Sec. 15. If any person or persons shall wilfully and maliciously burn or cause to be burned, or shall willingly or knowingly aid or assist in burning, or causing to be burned, any dwelling house store-house, barn, stable, or other building adjoining thereto, or if

Arson what deemed.

How Punished.

any person or persons shall wilfully attempt to burn, by setting fire to any dwelling-house, store house, barn, stable, or other building adjoining thereto, every person or persons so offending, shall, on conviction thereof, suffer death.

Sec. 16. *Repealed by act* 26 *October* 1808.

HOG STEALING.

Hog stealing what deemed.

How punished.

Sec. 17. Any person or persons who shall steal any hog, shoat or pig, or mark, or alter the mark of any hog, shoat or pig, with an intention of stealing the same, for every such offence, upon being thereof lawfully convicted, shall be fined in any sum not exceeding one hundred dollars, nor less than fifty dollars, and moreover receive on his or her bare back, any number of lashes not exceeding thirty nine, nor less than twenty five; *Provided nevertheless,* That nothing herein contained shall be so construed as to prevent any person from marking or killing his own unmarked hogs, which may be running at large, with others in his own mark.

Proviso.

Altering defacing &c.

Sec. 18. A law to prevent altering and def cing marks and brands, and mismarking, and misbranding, horses,

cattle and hogs, unmarked and unbranded.

Hog stealing what deemed.

If any person or persons, shall alter or deface the mark or brand, of any other person or person's, horse, neat cattle, or hog, such person being thereof lawfully convicted by indictment or presentment, shall for every horse, mare, colt, neat cattle, or hog, whose mark or brand, he or she shall alter or deface, forfeit and pay the sum of five dollars, over and above the value of such horse, mare, colt, neat cattle, or hog, to the person whose mark or marks, brand or brands, shall be so altered or defaced: *Provided,* He prosecute for the same within six months after discovery of the fact committed; and the offender shall over and above the said fine receive forty lashes, on his or her bare back, well laid on; and for the second offence, shall pay the fine aforesaid, stand in the pillory two hours, and be branded in the left hand, with a red hot iron, with the letter T, and if any person or persons, shall mismark, or misbrand, any unmarked or unbranded horse, mare or colt, neat cattle, or hog, not properly his or their own, he, or they, shall forfeit a d pay the sum of five dollars over and above the value thereof, for every such horse, mare, colt, neat cattle or hog, so mismarked

How punished.

How to be prosecuted.

Further punishment.

or misbranded, which fines shall be recovered by indictment or action of debt in any court of record within this Territory.

Persons seing said crimes commited & not discovering how punished.

And to prevent the concealing of such offences, if any person or persons, shall see any person or persons committing any of the crimes aforesaid, and shall not discover the same, in ten days, to some magistrate, then, and in such case, such person or persons, for not discovering the said crimes, or any of them committed, shall forfeit and pay the sum of ten dollars, to the use of the county; to be recovered by any person or persons who will sue for the same by action of debt, or by indictment or information in any court of record in this Territory.

Evidence what sufficient.

And because it is difficult to convict any person who has seen such crime committed, if he will deny the same, it shall be sufficient evidence to convict any person that he has seen such crime committed, if it be proven that he has told any other person that he did see the said crimes or any of them committed: *And whereas,* the common custom in this Territory, of killing of cattle and hogs in the woods, gives great opportunities to steali g the cattle and hogs of other people: *Be it therefore enacted,*

Persons killing cattle & hogs in the woods how to proceed.

That if any person or persons, shall kill any one or more neat cattle, or hogs in the woods, he shall within three days shew the head and ears of such hog or hogs, and the hide with the ears on, of such neat beast or cattle to the next magistrate, or two substantial freeholders, under the penalty of ten dollars, to be recovered by any person who will sue for the same, by action of debt, information, or indictment in any court of record in this Territory.

Neglect how Punished.

Record brands with Clerk.

Every person in this territory who hath horses, cattle or hogs, shall have an ear mark or brand different from the ear mark or brand of all his neighbors, which ear mark and brand, he shall record with the clerk of the county where his horses cattle or hogs are; for recording of which ear mark, and brand, the clerk shall be entitled to demand and receive the sum of twelve and a half cents, and every person shall brand horses with the said brand from eighteen months old, and, upwards, and ear mark all his hogs from six months old, and upwards, with the said ear mark, and ear mark or brand all his cattle from twelve months old and upwards with said ear mark or brand; and if any dispute should arise about any ear mark or brand, the same shall be decided by the book of the clerk

Clerks fee

At what age to brand &c.

of the county where such cattle horses or hogs are.

Purchasers how to proceed.

Where any person shall buy any neat cattle from any other person, or come to the same by gift, will, or any other lawful means, then, and in such case, the person who has gained the same by any of the ways aforesaid, shall within eight months, brand the said neat cattle, with his own proper brand in the presence of two credible witnesses, a certificate of which shall be signed by the said witnesses.

Selling hogs without ear.

If any person shall cause to be brought to his own house, or any o her house, or on board any vessel, any hog shoat or pig, without ears, he or she so offending, shall be adjudged a hog stealer: *Provided nevertheless,* That any person may bring or cause to be brought to his or her own, or any other house or on board any boat or boats, or other vessel, his or her own swine, though without ears, he or she proving the same to be his or her property.

Proviso.

MAIMING OR DISFIGURING.

Maiming or disfiguring.

Sec. 19. Whoever on purpose, and malice aforethought, by lying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit or bite the

nose, ear, or lip, or cut off or disable any limb, or member, with intention in so doing, to maim or disfigure such person or shall voluntarily, maliciously, and of purpose, pull or put out an eye, while fighting or otherwise, every such offender, his or her aiders, abettors and councellors shall be sentenced to undergo a confinement in the jail of the county in which the offence was committed, for any time not less than one month, nor more than six months; and shall also pay a fine, not less than fifty dollars and not exceeding one thousand dollars, one fourth of which, shall be to the use of the Territory, and three fourths thereof to the use of the party grieved, and for the want of the means of payment, the offender shall be sold to service by the court, before which he is convicted, for any time not exceeding five years, the purchaser finding him food and raiment during the time.

How punished.

ANNULLING DISTINCTION between PETIT TREASON and MURDER.

Sec 20 In all cases wherein heretofore any person would have been deem-

Petit treason deemed murder and punished accordingly.

ed and taken to have committed the crime of petit treason such person shall be deemed and taken to have committed the crime of murder only, and be indicted, and prosecuted to final judgment accordingly, and the same punishment only shall be inflicted as in the case of murder.

RAPE.

Rape what deemed.

Sec. 21. Any person or persons who shall have carnal knowledge of a woman forcibly & against her will, or who shall aid and abet, counsel, hire, or cause or procure any person or pesons to commit the said offence, being of the age of fourteen years, shall unlawfully and carnally know and abuse any woman child, under the age of ten years, with, or without her consent, shall on conviction suffer death.

How punished.

Evidence in case of rape.

Sec. 22. So much of the law regulating the evidence in case of a rape, as makes emission necessary, is hereby repealed; *Provided nevertheless,* That the court before whom any offender may be brought for trial, for said offence, shall have other satisfactory proof or evidence of violence on the person of the woman reported to have been ravished.

SODOMY.

Sec. 23. Any person committing sodomy, or the infamous crime against nature, with mankind or beast, shall on conviction thereof, be fined not exceeding five hundred dollars, nor less than fifty dollars, be imprisoned for any term not less than one year, nor more than five years, and be whipped not less than one hundred nor more than five hundred stripes, well laid on, on his or her bare back, and shall moreover be rendered infamous, and incapable of giving testimony,; or holding any civil or military commission in this territory.

Sodomy what deemed.

How punished.

BIGAMY AND FORCIBLE AND STOLEN MARRIAGES.

Sec. 24. If any person or persons within this Territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife, being alive, upon conviction thereof, shall be whipped on his or her bare back, not less than one hundred, nor more than three hundred stripes, well laid on, be fined in not less than one hundred, nor more than five hundred dollars, to, and for the use of the party injured, and imprisoned not less than six, nor more than twelve months, and hereafter be

Bigamy what deemed.

How punished.

rendered infamous, be incapable of giving testimony, or holding any commission civil or military, in this Territory. And the party and parties so offending, shall receive such like proceedings, trial and execution within this territory, as if the offence had been committed in the county where such person shall be taken or apprehended: *Provided,* That nothing herein contained shall extend to any person or persons, whose husband or wife shall be continually remaining beyound the seas, for the space of seven years together, or whose husband or wife, shall absent him or herself, the one from the other, for the space of seven years together, in any part within the United States of America, or elsewhere, the one of them not knowing the other to be living within that time: *Provided also,* That nothing herein contained shall extend to any person or persons, that are, or shall be at the time of such marriage, divorced by lawful authority, or to any person or persons where the former marriage hath been, or hereafter shall be by lawful authority declared to be void, and of no effect, nor to any person or persons, for or by reason of any marriage had or made, or hereafter to be had or made within the age of consent: *And provided also,* That no attainder for the offence made felony, by this law, shall

Where tried.

Proviso in case of absence for seven years.

In case of divorce.

make, or work any corruption of blood or forfeiture of estate whatsoever.

Sec. 25. *And whereas,* Women, as well maidens as widows and wives, having substance, some in goods moveable, and some in land and tenements, and some being heirs apparent to their ancestors, for the lucre of such substances have been often times taken by misdoers, contrary to their will, and afterwards married to such misdoers, or to others by their consent, or defiled: *Be it further enacted,* That whatsoever person or persons shall take any woman so against her will unlawfully, that is to say, maid, widow, or wife, such taking, and the procuring and abetting to the same, and also receiving willingly the same woman so taken, against her will, shall be felony, and that such misdoers, takers and procurers to the same, and receivers, knowing the said offence in form aforesaid, shall be reputed and judged as principal felons: *Provided always,* That this law shall not extend to any person taking any woman, only claiming her as his ward or bond woman.

forcible and stolen marriages.

How punished.

Proviso.

Sec. 26. If any person above the age of fourteen years, shall unlawfully take and carry away, or shall cause to be unlawfully taken and conveyed away, any maiden, or woman child,

Stealing women under 14 years of age.

unmarried, being within the age of sixteen years, out of or from the possession, and against the will of such person or persons, as then shall happen to have, by any lawful ways or means, the order, keeping, education, or governance of any such maiden, or woman child, and being thereof duly convicted,

How punished.

shall suffer imprisonment, without bail or mainprize, for any time not exceeding two years, as shall be adjudged against him.

Stealing and marrying them.

Sec. 27. If any person or persons, shall so take away, or cause to be taken away, as is aforesaid, and deflower any such maid, or woman child, as is aforesaid, or shall against the will, or knowledge of the father of any such maiden child, if the father be in life, or against the will and knowledge of the mother of any such maiden, or woman child having the custody and governance of such child, if the father be dead, by secret letters, messages or otherwise contract matrimony, with any such maiden, or woman child, every person so offending, and being thereof lawfully convicted,

How punished.

shall suffer imprisonment of his body, for the space of five years, without bail or mainprize.

Sec. 28. No person or persons shall be prosecuted, tried or punished, for

Limitation of prosecutions for crimes.

treason or other offence, punishable with death, (murder excepted) unless the indictment for the same, shall be found by a grand Jury, within three years, next, after the treason, or other offence, punishable with death, shall be done or committed, nor shall any person be prosecuted or punished for any offence not punishable with death, unless the indictment for the same shall be found within two years from the time of committing the offence, or incurring the fine or forfeiture aforesaid,* *Provided,* That nothing herein contained, shall extend to any person or persons fleeing from justice.

Death how punishment of inflicted.

Sec. 29. The manner of inflicting the punishment of death shall be by hanging the person convicted, by the neck, until dead.

Persons convicted of crimes to be sold

Sec. 30. When any person or persons shall on conviction of any crime or breach of any penal law, be sentenced to pay a fine or fines, with or without the costs of prosecution, it shall & may be lawful for the court before whom such conviction shall be had to order the sheriff to sell or hire the person or persons so convicted, to service, to any person or persons who will pay the said

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* *See act passed Feb.* 27, 1810.

fine and costs for such term of time, as the said court shall judge reasonable.

Punishment in case of absenting from service

And if such person or persons, so sentenced and hired or sold, shall abscond from the service of his or her master or mistress, before the term of such servitude shall be expired, he or she so absconding, shall on conviction before a justice of the Peace, be whipped with thirty-nine stripes, and shall moreover serve two days for every one so lost.

Courts to give this act in charge to grand juries

Sec. 31. The Judges of the several courts of record in this Territory, shall give this act in charge to the Grand Jury, at each and every court, in which a Grand Jury shall be sworn.

AN ACT

To amend an act, entitled "An Act respecting Crimes and Punishments."

Passed October 26th, 1808.

Sec. 1. Be *it enacted by the Legislative Council and House of Representatives, and it is hereby enacted by the authority of the same,* That if any person or persons,

shall steal or purloin from any other person or persons, any horse, mare, gelding, mule, or ass, he, she, or they, so offending, shall upon conviction thereof, suffer the pains of death: and if any person or persons shall receive any such horse, mare, gelding, mule or ass, knowing the same to be stolen, he, she, or they, shall be deemed principally guilty, and upon conviction thereof, shall suffer the pains of death.

Horse stealing death.

To receivers death.

This act shall take effect from its passage.

AN ACT

Concerning fornication and adultery—adopted from the Georgia Code.

Passed January 26, 1810.

Be it enacted by the Governor and Judges of the Illinois Territory, and it is hereby enacted by the authority of the same.

P

Preamble.

Whereas it is highly injurious in civilized society, that men & women should live in adultery or fornication together. *Be it enacted that from and after the passing of this act,* That any man & woman, who shall live together in like manner, it shall be the duty of any of the neighbouring justice if within their knowledge or upon information to them on oath that such man and woman do live in adultery or fornication he shall thereupon cause the said man and woman, to be brought before them, or either of them, whose duty it shall be, to bind them over to appear at the next superior court, and the attorney or Solicitor General shall then and there prefer a bill of indictment against both the man and woman and on conviction thereof they shall pay for the first offence a sum not exceeding forty eight dollars and for the second offence a sum not exceeding one hundred and twenty dollars and for the third offence a sum not exceeding three hundred and sixty dollars and they stand committed to Jail until all and every of the several sums imposed as aforesaid shall be paid or continue therein not exceeding twelve months.

Justice to apprehend.

How punished.

2nd offence.

3rd offence.

The foregoing is hereby declared to be a law of this territory and to take effect from the date hereof.

AN ACT

To repeal part of an act of the General Assembly of the Indiana Territory, passed the seventeenth day of September, in the year one thousand eight hundred and seven, entitled an Act respecting Crimes and Punishments,

Passed February 27th, 1810.

Be *it enacted by the Governor & Judges of the Illinois Territory, and it is hereby enacted by the authority of the same,* That from and after the first day of May next, so much of the before recited act as prescribes any limitation of the time in which prosecutions for forgery, perjury, or any felony, shall be commenced: Shall be, and the same is hereby repealed.

AN ACT

Regulating the manner of taking depositions, Adopted from the Georgia Code:

Passed February 26th, 1810.

Parties to file interrogations.

give a copy to the other party ten days.

May take a dedimus to commissioners.

Be *it enacted by the Governor & Judges of the Illinois Territory, and it is hereby enacted by the authority of the same,* That where any witness resides out of the territory, or out of any county in which his testimony may be required in any cause, it shall be lawful for either party, on giving at least ten days notice to the adverse party, or his, her, or their attorney, accompanied with a copy of the interrogatories intended to be exhibited, to obtain a commission from the clerk of the court in which the same may be required, directed to certain commissioners to examine all and every such witness or witnesses on such interrogatories as the parties may exhibit; and such exhibitions shall be read at the trial, on motion of either party.

The foregoing is hereby declared to be a law of this territory and to take effect from the first day of May next.

AN ACT

Respecting Divorce.

Passed Sept. 17, 1807.

Sec. 1. Divorces from the banns of Matrimony shall be decreed where either of the parties had a former wife or husband alive, at the time of solemnising the second Marriage, or for impotency, or adultery in either of the parties.

Causes for divorce.

Sec. 2. Divorce from bed and board shall be granted for the cause of extreme cruelty in either of the parties.

from bed & board.

Sec. 3. Whenever a divorce shall be decreed, on cause or aggression from the husband, the woman, if no issue of the Marriage be living at the time of the divorce shall be restored to all her lands, tenements and hereditaments, and be allowed out of the man's personal estate, such alimony as the court may think reasonable, having regard to the personal property that came to him by the Marrige, and his ability; but if there be issue living at the time of the divorce, then the court, in regard to ordering restoration, or granting alimony, may do as circumstancss may seem to require, and, on application from ei-

Wifes alimony

ther party, may, from time to time, make, at their discretion, such alterations therein as may be necessary

In case of aggression of wife.

Sec. 4 If the divorce arise from the cause of aggression of the wife, whether there be living issue or not, of the Marriage, the court may order to her the restoration of the whole, or part, or no part of her lands, tenements, & hereditaments, and may assign such alimony, as shall be thought proper and may also make such distribution between the parties of their children (if any) as the court shall think proper.

distribution of children

what courts have recognizance

Sec 5. The General court, and the Circuit courts, shall have the sole cognizance of all divorces applied for, or made, and the Judges thereof may use such kind of process to carry their judgment into effect, as to them shall seem expedient. Whenever they may think it proper, they may compel the husband to disclose on oath, what personal estate he hath received in right of his wife, how the same hath been disposed of, and what proportion of it remained in his hands at the time of the divorce.

Oath of husband.

Proceedings in case of divorce.

Sec. 6. No cause of divorce, or alimony, shall be brought before the same courts, unless the party suing, or complaining, shall file his or her libel in the

proper Clerk's office, specially setting forth therein, the cause of his or her complaint, and shall cause the other party, if in this Territory, to be served with an attested copy thereof, and with a summons commanding him or her to appear at the court where the cause is to be heard, fourteen days at the least before the sitting of the said court, otherwise in such manner as the court shall direct. And where the party libelled shall not be within the limits of this Territory, then such summons shall be published at least once a week in some public newspaper in this Territory, nearest to the usual residence of the parties, for at least eight weeks. The said courts shall have all the powers necessary to the conducting and finally determining such causes, according to the true intent of this law.

further powers of court.

DOWER.

AN ACT

For the speedy assignment of Dower:

Passed September 17th, 1807.

Sec. 1. When the heir, or other person having the next immediate estate

Terre tenant to set out dower in one month

of freehold or inheritance, shall not, within one month, next after demand made, assign and set over, to the widow of the deceased, her dower, or just third part of, and in all lands, tenements and hereditaments, whereof, by law, she is, or may be, dowable, to her satisfaction, according to the true intendment of law, then such widow may sue for, and recover the same, by writ of dower, to be brought against the tenant in possession, or such persons as have or claim right or inheritance, in the same estate, in manner and form as the law prescribes.

How suit to be brought

On judgment how to proceed

Sec. 2. Upon rendering judgment for any woman, to recover her dower in any lands tenements or hereditaments, reasonable damages shall also be awarded to her, from the time of the demand, and refusal to assign to her, her reasonable dower; and a writ of *seizin,* shall be directed to the Sheriff of the county, or Coroner; and the Sheriff, or Coroner, to whom such writ is directed, shall cause her dower in such estate to be set forth unto her, by three disinterested freholders of the same county, under oath or affirmation, to be administered by any Justice of the Peace, to set forth the same, equally & impartially, without favour or affection, as conveniently as may be.

Sec. 3. Where estates, of which a woman is dowable, are entire, and where no division can be made, by metes and bounds, dower thereof shall be assigned in a special manner, as of a third part of the rents, issues, and profits, to be computed and ascertained, in manner as aforesaid. And no woman that shall be endowed of any lands, tenements and hereditaments as aforesaid, shall, wantonly, or designedly, commit or suffer any waste thereon, on penalty of forfeiting that part of the estate whereupon such waste shall be made, to him, or them that have the immediate estate of freehold, or inheritance, in remainder or reversion, (and in case of negligent and inadvertant waste, by her done, or suffered, the damages that may be assessed for such waste) to be recovered by action of waste. And all tenants in dower, shall maintain the houses, and tenements, with the fences, and appurtenances whereof they may be endowed in as good repair as the same have been delivered to them, during the term; and the same shall so leave, at the expiration thereof.

Widow not to commit wilful waste

Tenants to keep premises in good repair

Q

DUELLING.

AN ACT

To suppress duelling. Adopted from the Virginia Code.

Passed April 7, 1810,

Preamble.

Whereas experience has evinced, That the existing remedy for the suppression of the barbarous custom of duelling is inadequate to the purpose, and the progress and consequences of the evil have become so destructive as to require an effort on the part of the Legislature to arrest a vice, the result of ignorance and barbarism, justified neither by the precepts of morality, nor by the dictates of reason. For remedy whereof:

Killing adversary in a duel deemed murder.

Be it enacted by the acting Governor and Judges of the Illinois Territory and it is hereby enacted by the authority of the same, That any person who shall hereafter wilfully and maliciously, or by agreement fight a duel or single combat with any engine instrument or weapon,

the probable consequence of which might be the death of either party, and in so doing shall kill his antagonist or any other person or persons, or inflict such wound as that the person injured shall die thereof within three months thereafter, such offender, his aiders, abettors and councellors being thereof duly convicted shall be guilty of murder and suffer death by being hanged by the neck any law custom or usage of this territory to the contrary notwithstanding.

Aiders abetters &c.

And be it further enacted, That if any person whosoever, shall challenge another to fight a duel with any weapon or in any manner whatsoever, the probable issue of which may or might result in the death of the challenger or challenged, or if any person shall accept a challenge or fight a duel with any weapon or in any way, whatsoever, the probable issue of which may or might terminate in the death of the challenger or challenged, such person shall be incapable of holding or being elected to any post of profit, trust or emolument, civil or military under the government of this territory.

Ineligable to office for challenging.

And be it enacted, That from and after the passing of this act, every person who shall be appointed to any

Persons appointed to take oath.

Form of oath

office or place, civil or military in this territory, shall in addition to the oath now prescribed by law, take the following oath. I do solemnly swear or affirm (as the case may be) that I have not been engaged in a duel by sending or accepting a challenge to fight a duel, or by fighting a duel, or in any other manner in violation of the act, entitled an act to suppress duelling, (since the passage of this act) nor will I be so concerned directly or indirectly in such duel, during my continuance in office, so help me God.

And be it further enacted, That it shall be the duty of the presiding Judge of the General Court at each session of the court to give in charge expressly to the Jury this law, also to charge the jury to present all persons concerned in carrying sending or accepting a challenge.

Judge or Justice to apprehend.

And be it further enacted, That when any judge or magistrate of this territory has good cause to suspect any person or person are about to be engaged in a duel, he may issue his warrant to bring the parties before him, and if he shall think proper to take of them a recognizance to keep the peace, he shall insert in the condition, that the party or parties shall not during the time for which they were bound, directly or in-

directly be concerned in a duel, either with the person suspected or any other person, within the time limited by the recognizance.

Persons leaving the territory to elude this law, how punished and be proceeded against.

And be it further enacted, That if any person or persons, shall for the purpose of eluding the operation of the provisions of this law, leave the territory the person or persons so offending shall be deemed as guilty, and be subject to the like penalties as if the offence had been committed within this territory, if any person shall leave this territory with the intention of giving or receiving a challenge to fight a duel or of aiding or abetting in giving or receiving such challenge and a duel shall actually be fought, whereby the death of any person shall happen, and the person so leaving the territory shall remain thereout, so as to prevent his apprehension for the purpose of a trial, or if any person shall fight a duel in this territory or aid or abet therein, whereby any person shall be killed, and then flee into another state or territory to avoid his trial, in either case it shall be the duty of the executive and they are hereby directed to adopt and pnrsue all legal steps to cause any such offender to be apprehended and brought to trial in the county where the offence was committed, when the duel shall

have been fought within the territory, and when it shall have been fought without the territory then in that county where, in the opinion of the executive, the evidence against the offender can be best obtained and produced upon his trial.

Duty of attorney genl.

And be it further enacted, That it shall be the duty of the attorney general of the territory to give information to the executive whenever a case shall arise which will render the interposition of the executive authority under this act necessary, and the deputies of the Attorney General at the first court which shall be held in which they are to act as prosecuting attornies, after they have accepted their appointments, shall take the following oath. — I do solemnly swear or affirm, (as the case may be) that I will to the best of my Judgment execute the duty imposed on me by the act for suppressing duelling, so help me God.

Oath of his deputy.

Words of insult leading to violence and breach of peace actionable

And be it further enacted, That all words which from their usual construction, and common acception are considered as insults, and lead to violence and breach of the peace, shall hereafter be actionable and no plea, exception or demurrer shall be sustained in any court

within this territory to preclude a jury from passing thereon, who are hereby declared to be the sole judges of the damage sustained, *Provided* that nothing herein contained shall be construed to deprive the several courts of this territory from granting new trials as heretofore.

The foregoing is hereby declared to be a law of the Territory & to take effect accordingly from the date thereof.

DUNKARDS & QUAKERS.

AN ACT

For the relief of Dunkards quakers and other religious persons conscienciously scrupulous of bearing Arms.

Passed Dec. 1, 1813.

Whereas it has been represented to the general Assembly that there are

Preamble.

certain religious denominations of persons called Quakers and Dunkards or Tunkers whose religious tenets or persuasions are averse to the principle of bearing arms and of mustering as militia men or being engaged in military operations, therefore.

Exempted from ordinary militia duty upon paying 3 dollars to sheriffs.

Sec. 1. *Be it enacted by the legislative Council and House of Representatives of the Illinois Territory and it is hereby enacted by the authority of the same,* That where any person now is or hereafter may be enrolled by any captain or commanding officer of any militia company in this Territory and whose religious tenets or persuations are averse to the principle of bearing arms or being engaged in military operations, it shall and may be lawful for the captain or commanding officer aforesaid on the application of any such militia man, to exempt him from attendance at any company, battallion or regimental muster upon

To produce sheriffs rect. annually.

the said militia man producing annually to such commanding officer a receipt from the sheriff of the county for the sum of three dollars which said receipt the sheriff is hereby authorised to give to any such militia man on his paying

sheriff to pay it into the county levy.

the sum aforesaid, which money so received by any sheriff shall be accounted for by him and paid into the county treasury at the time of making his

settlement with the court for the county taxes and shall be appropriated to the use of the county: *Provided nevertheless,* That nothing in this act contained shall be so construed as to exempt any such militiaman from being compelled to perform his tour of duty as other militiamen, when there shall be any detachment required from the militia of this territory: But that all such militiamen shall perform such tour by himself or substitute as is now provided by law. **Proviso.**

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

EJECTMENT & DISTRESS FOR RENT.

AN ACT

As to proceedings in Ejectment, Distress for Rent, and Tenants at will holding over.

Passed Sept. 17 1817

Sec 1. WHERE any goods or chattels shall be distrained for any rent

Distress for rent how made.

reserved and due, upon any demise, lease, or contract whatsoever, and the tenant, or owner of the goods so distrained, shall not (within five days, next after such distress taken, and notice thereof, with the cause of such taking, left at the dwelling house, or other most notorious place on the premises, charged with the rent distrained for) replevy the same, with sufficient security, to be given to the Sheriff according to law, that then, and in such case, after such distress and notice, as aforesaid, and expiration of the said five days, the person distraining, or his agent duly authorised, shall, and may, with the sheriff, under sheriff, or any constable in the county, where such distress shall be taken (who are hereby required to be aiding and assisting therein) cause the goods and chattels so distrained, to be appraised by two reputable freeholders, who shall have and receive for their trouble the sum of fifty cents per diem each, and in the proportion for a longer, or shorter time, and shall first take the following oath or affirmation;

Owner of goods distrain'd when replevy.

Otherwise the distress to be appraised.

Appraisors fees.

Oath.

"I, A B, will well and truly, according to the best of my understanding, appraise the goods and chattels of C D, distrained on for rent, by E F,"

When distress may be sold.

Which oath or affirmation, such sheriff, under sheriff, or constable, is hereby empowered and required to administer; and after such appraisment, shall, and may, after six days public notice, lawfully sell the goods and chattels so distrained, for the best price that can be gotten for the same, for, and towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale, leaving the overplus, if any, in the hand of the said sheriff, under sheriff, or constable, for the owner's use.

Penalty on rescous of goods distrained.

Sec. 2. Upon any pound breach, or rescous of goods or chattels distrained for rent, the person or persons grieved thereby, shall in a special action upon the case, for the wrong thereby sustained, recover his, her, or their, treble damages, and costs of suit, against the offender or offenders, in such rescous, or pound breach, any, or either of them, or against the owner or owners of the goods distrained, in case the same be afterwards found to have come to his or their use, or possession.

And how recoverable.

Distraining for rent when there is none.

Sec. 3. *Provided,* That in case any distress and sale shall be made by virtue of this act, for rent pretended to be in arrear, and due, when in truth no rent

shall appear to be in arrear, or due, to the person or persons distaining, or to him, or them, or in whose name or names, or right, such distress shall be taken as aforesaid, then the owner of such goods and chattels, distrained and sold, as aforesaid, his executors or administrators shall, and may, by action of trespass, or upon the case, to be brought against the person or persons so distraining, any, or either of them, his, or their executors, or administrators, recover double the value of the goods or chattels, so distrained and sold, together with full costs of suit.

Rent due to be first paid out of goods distrained.

Sec. 4. The goods and chattels, lying or being in or upon any message, lands or tenements, which are, or shall be leased, for life or lives, term of years, or otherwise, taken by virtue of any execution, shall be liable to the payment of all such sum or sums of money, as are, or shall be due for rent for the premises, at the time of taking such goods and chattels by virtue of such execution, and the said Sheriffs shall, after sale of the said goods and chattels, pay to the landlord, or other person empowered to receive the same, such rent so due, if so much shall be in his hands, and if not, so much as shall be in his hands, and apply the overplus, thereof, if any, towards sat-

Sheriff to pay it over to landlord.

isfying the debt and costs, in such execution mentioned; *Provided always,* That the said rent so to be paid to the landlord, shall not exceed one years rent.

But not exceeding one years rent.

Sec. 5. In case any lessee, or tenant for life, or lives, term of years, at will, or otherwise, of any messuage, lands or tenements, upon the demise whereof any rents, are or shall be reserved or made payable, shall fraudulently or clandestinely convey, or carry off from such demised premises, his goods or chattels, with intent to prevent the landlord or lessor from distraining the same, for arrears of such rent, so reserved as aforesaid, it shall and may be lawful to, and for such lessor, or landlord, or any other person or persons, by him for that purpose, lawfully empowered, within the space of thirty days, next ensuing such conveying away, or carrying off such goods or chattels, as aforesaid, to take and seize such goods and chattels wherever the same may be found, as a distress for the said arrears of such rent, and the same to sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor, or landlord, in or upon such demised premises, for such arrears of rent any law, custom, or usage, to the contrary notwithstanding.

Tenant clandestinely removing his goods.

Goods not bona fide sold to another

Sec. 6. *Provided nevertheless* That nothing herein contained, shall extend, or be deemed or construed to extend to empower such lessor, or landlord, to take or seize any such goods or chattels, as a distress for arrears of rent, which shall be *bona fide,* and for a valuable consideration, sold before such seizure made, to any person or persons not privy to such fraud as aforesaid, any thing herein to the contrary notwithstanding.

Landlord to distrain stock &c.

Sec. 7. It shall and may be lawful, to, and for every lessor, or landlord, lessors, or landlords, or her, or their bailiffs, receivers, or other person or persons empowered, by him, her, or them, to take and seize, as a distress for arrears of rent, any cattle, or stock of their respective tenant, or tenants, feeding or pasturing upon all or any part of the premises, demised or holden, and also to take and seize all sorts of corn, and grass, hops, roots, fruits, pulse, or other product whotsoever, which shall be growing on any part of the estate, or estates, so demised or holden, as a distress for arrears of rent; and to appraise, sell, or otherwise dispose of the same, towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement and sale, in the

same manner as other goods and chattels, may be seized, distrained and disposed of; and the purchaser of any such corn, grass, hops, roots, fruits, pulse, or other product, shall have free ingress, egress, and regress, to, and from the same, where growing, to repair the fences from time to time, and when ripe, to cut, gather, make, cure, and lay up, and thrash, and after to carry the same away, in the same manner as the tenant might legally have done, had such distress never been made.

With liberty of ingress egress regress, &c.

Sec. 8. Whereas great inconveniencies may frequently happen to land lords by their tenants secreting declarations in ejectments, which may be delivered to them, or by refusing to appear to such ejectment, or to suffer their landlords to take upon them the defence thereof, every tenant therefore to whom any declaration in ejectment shall be delivered for any lands, tenements, or hereditaments within the territory, shall forthwith give notice thereof to his or her landlord, or landlords, or his or their bailiffs, receivers, agent, or attorney, under penalty of forfeiting the value of two years rent, of the premises so demised or holden in possession of such tenant, to the person of whom he or she holds, to be recov-

Tenant concealing decla. in ejectment to forfeit two years rent.

ered by action of debt, to be brought in any court where the same may be cognizable, wherein no essoin, protection, or wager of law shall be allowed, nor any more than one imparlance.

Landlord to become defendant in ejectment.

Sec. 9. It shall and may be lawful for the court where such ejectment shall be brought to suffer the landlord or landlords to make him, her or themselves defendant, or defendants, by joining with the tenant or tenants, to whom such declaration in ejectment shall be delivered, in case he, or they shall appear, but in case such tenant, or tenants, shall refuse or neglect to appear, judgment shall be signed against the casual ejector, for want of such appearance; but if the landlord, or landlords of any part of the lands, tenements, or hereditaments, for which such ejectment was brought, shall desire to appear by himself, or themselves, and consent to enter into the like rule, that by the course of the court, the tenant in possession, in case he, or she, had appeared, ought to have done, then the court, where such ejectment shall be brought, shall and may permit such landlords so to do, and

Wereupon stay of executions &c.

order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

Defendants in replevin may avow & make conuzance generally.

Sec. 10. Whereas great difficulties often arise in making avowries or con uzance upon distress for rent, it shall and may be lawful for all defendants, in replevin, to avow or make conuzance generally, that the plaintiff in replevin, or other tenant of the lands and tenements, whereon such distress was made, enjoyed the same under a grant or demise, at such a certain rent or service, during the time wherein the rent or service distrained for incurred, which rent or service, was then, and still remains due, without further setting forth the grant, tenure, demise or title of such landlord or landlords, lessor or lessors, any law or usage to the contrary, notwithstanding, and if the plaintiff or plaintiffs, in such action shall become nonsuit, discontinue his, her or their action, or have a judgment given against him, her or them, the defendant or defendants, in such replevin, shall recover double costs of suit.

If plaintiff be nonsuit, he forfeits double costs.

Sheriff &c. serving replevins, to take pltffs. bond.

Sec. 11 And to prevent vexatious replevins, or distresses taken for rent, all Sheriffs, and other officers, having authority to serve replevins, may, and shall, in every replevin of a distress for rent take in their own names, from the plaintiff, and one reasonable person as surety, a bond in double the value of

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the goods distrained, such value to be ascertained by the oath or affirmation, of one or more credible person or persons, not interested in the goods or distress; & which oath or affirmation, the person serving such replevin, is hereby authorised and required to administer, and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods and chattels distrained, in case a return shall be awarded, before any deliverance be made of the distress: & such Sheriff, or other officer, as aforesaid, taking any such bond, shall, at the request and costs of the avowant, or person making conuzance, assign such bond to the avowant, or person aforesaid, by endorsing the same, and attesting it under his hand and seal, in the presence of two credible witnesses. And if the bond so taken and assigned, be forfeited, the avowant or person making conuzance, may bring an action and recover thereupon in his own name, and the court where such action shall be brought, may by a rule of the same court give such relief to the parties upon such bond, as may be agreeable to justice and reason, and such rules shall have the nature and effect of a defeazance to such bond.

Sheriff may assign bond, and how.

Avowant may sue in his own name.

Sec. 12. Where any person or persons have leased or demised any lands

or tenements to any person or persons, for a term of one, or more years or at will paying certain rents, & he or they, or his or their assigns, shall be desirous, upon the determination of the lease, to have again, and repossess, his, or their estate, so demised, and for that purpose shall demand and require, his or their lessee, or tenant, to remove from, and leave the same, if the lessee or tenant, shall refuse to comply therewith, in three months after such request to him made, it shall and may be lawful to, and for such lessor, or lessors, his or their heirs and assigns, to complain thereof, to any two Justices of the Peace, in the county where the demised premises are situate, and upon due proof made before the said justices, that the said lessor or lessors, had been quietly and peaceably possessed of the lands or tenements, so demanded to be delivered up, that he or they demised the same under certain rents, to the tenant in possession, or some person or persons under whom such tenant claims, or came in possession, and that the term for which the same was demised, is fully ended, then and in such case it shall and may be lawful for the said two justices, to whom complaint shall be made as aforesaid, and they are hereby enjoined and required, forthwith to issue their warrant directed to the Sher-

Proceedings against tenants refusing to quit at the end of their term.

Two justices of the peace to have cognizance in such cases & how

Their power & duty and warrant to sheriff to summon 12 freeholders.

iff of the county, thereby commanding the Sheriff to summon twelve freeholders to appear before the said justice within four days, next after issuing such warrant, and also to summon the lessee or tenant, or other person claiming or coming into possession under the said lessee or tenant, at the same time to appear before them the said justices, and

Also lessee or tenant to appear and shew cause.

free holders to shew cause if any he has, why restitution of the possession of the demised premises should not be forthwith made to such lessor or lessors, his or their heirs or assigns; and if upon hearing the parties, or in case the tenant or other person claiming, or coming into

Further proceedings before the justices and jury

possession under the said lessee or tenant, neglect to appear, after being summoned as aforesaid, it shall appear to the said justices and freeholders, that the lessor or lessors, had been possessed of the lands or tenements, in question, that he or they had demised the same for a term of years, or at will to the person in possession, or some other under whom he or she claims, or came into possession at a certain yearly, or other rent, and that the term is fully ended: that demand had been made of the lessee, or other person, in possession, as aforesaid, to leave the premises three months before such application to the said justices, then and in every such case, it shall and may be lawful, for the said two justices to

make a record of such finding, by them the said justices and freeholders, and the said freeholders, shall assess such damages as they think right, against the tenant or other person in possession as aforesaid, for the unjust detention of the demised premises for which damages and reasonable costs, judgment shall be entered by the said justices, and shall be final and conclusive to the parties, and upon which the said justices shall, and they are hereby enjoined and required to issue their warrants under their hands & seals, directed to the Sheriff of the county, commanding him forthwith to deliver to the lessor or lessors, his or their heirs or assigns, full possession of the demised premises, aforesaid, and to levy the costs taxed by the justices, and damages, so by the freeholders aforesaid, assessed, of the goods and chattels of the lessee or tenant, or other persons in possession, as aforesaid; any law, custom or usage to the contrary, notwithstanding.

Justices to make record

Jury to assess damages.

Judgment thereupon for damages and costs.

Sec. 13. *Provided nevertheless,* That if the tenant shall alledge, that the title to the lands and tenements in question, is disputed and claimed by some other person or persons, whom he shall name in virtue of a right or title, accrued or happening since the commencement of the lease, so as aforesaid made to him,

When title set up by lessee or te ant.

Proceedings thereupon.

by descent, deed, or from, or under the last will of the lessor, and if thereupon the person so claiming, shall forthwith or upon summons, immediately to be issued by the said Justices, returnable before them in six days next following appear, & on oath or affirmation, to be by the said Justices administered, declare that he verily believes that he is entitled to the premises in dispute, and

laimant to ive bond to rosecute his laim at the ext court of . P.

shall with one or more sufficient sureties, become bound by recognizance, in the sum of two hundred dollars, to the lessor or lessors, his or their heirs or assigns, to prosecute his claim at the next court of Common Pleas, to be held for the county where the said lands and tenements shall be, then, and in such case, and not otherwise, the said Justices shall forbear to give the said judgment.

if the m be not rosecuted d to be eited.

Sec. 14 *Provided also,* That if the said claims shall not be prosecuted according to the true intent and meaning of the said recognizance, it shall be forfeited to the use of the lessor or landlord, and the Justices aforesaid shall proceed to give judgment, and cause the lands and tenements aforesaid, to be delivered to him, in the manner herein before enjoined and directed.

Sec. 15. It shall and may be lawful

for any person or persons, having any rent in arrear, or due upon lease, for life, or lives, or for one or more years, or at will, ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done, if such lease or leases had not been ended or determined: *Provided,* That such distress be made during the continuance of such lessor's title or interest

Landlords may distrain for rent after lease ended.

ELECTIONS.

A LAW.

To regulate Elections.

Passed Sept. 17, 1807.

Sec. 1. ALL general elections for Representatives to serve in the General Assembly, shall invariably be begun on the first Monday in April, biennial-

Elections held biennially.

ly, and be held at the court house, or place of holding courts, in the several counties; the poll of the election shall be opened between the hours of ten and eleven of the clock, in the forenoon, and shall be kept open without interruption or adjournment, until five of the clock of the afternoon of the same first day of the election, when it shall be adjourned until ten of the clock of the next morning, when the poll shall again be opened, and carried on without adjournment until five of the clock of the afternoon of the same second day when the poll shall be finally closed, unless the Judges of the election deem it advisable to continue the election, or some candidate requires them to continue the same; and if the election is to be continued, it shall be adjourned until ten of the clock of the next morning, when the polls shall again be opened, and continue open without adjournment until three of the clock of the afternoon of the said third day, and no longer, when the election shall close, and the Judges of the said election, shall then proclaim the person or persons (if more than one a e to be elected) highest in number of votes duly elected.

When finally closed.

Judges to proclaim persons elected.

Provided always, That when through any casualty, the governor's writ of

election does not reach the Sheriff of any county, previous to the hour of opening the poll of the election, then the electors thereof shall have the right to elect the same number of representatives which they were entitled to agreeably to their last return transmitted to the governor.

Who Shff to take as asistants.

Sec. 2. The Sheriffs of the several counties, shall and they are hereby authorised and required, each to take to his assistance two of the Judges of the court of common Pleas for their respective counties, ten days before the commencement of any general election, and two days before any occasional election which two Judges together with the sheriff, shall be Judges of all elections for representatives to serve for their respective counties in the general assembly; and if any Sheriff shall be absent by reason of sickness or other disability when the poll is to be opened, his deputy by him specially appointed shall act in his stead; and if the aforesaid judges or either of them are absent, whether wilfully, or by reason of sickness, or other disability, when the poll is to be opened, the sheriff shall supply his or their place; by chusing from among the freeholders present, one o more, who shall supply the place of such absent

Judges of election.

In case of the absence of Sheriff.

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Absence of judges how supplied.

Neglect or refusal to serve.

Judge or Judges; and if any shall refuse or neglect to discharge the duties by this act of him required; whereby any county may be deprived of its full representation in the legislature of this territory; for every such offence, he shall forfeit and pay the sum of five hundred dollars, to the use of the county, to be recovered by indictment, in any court to be held in such county, wherein the same may be cognizable.

The first part of Section 3 is repealed by the 3d, Section of act December 8th 1813 and the residue is repealed by the act of Congress extending the right of suffrage in the Illinois Territory passed May 20th 1812.

Each elector one vote

viva. voce.

Sec. 4. Every elector shall vote once, and no more, in any election for representatives; and the manner of voting shall be by the elector at any time while the poll of the election is open, to approach the bar in the election room and addressing the Judges of such election in his proper person, in an audible voice, to be heard by the Judges of the election, and poll keepers thereof, to mention by name the person or persons, to the number of representatives to which such county may be entitled; & the poll keepers, shall enter his vote

accordingly; and then he shall withdraw.

Sec. 5. At the time and place of holding elections, and before the poll begun, the She iff shall affix at the outer door of the house in which the election shall be held, a notice in writing, expressing the number of representatives to be elected at the ensuing election, and the names of the persons whom he hath selected as assistant Judges, thereof; and previous to any votes being received, the assistant Judges shall severally take an oath (or affirmation) before some person qualified to administer oaths. The oath or affirmation of an assistant shall be,

Sheriff to adv. place.

Assistant Judge to take oath.

"I, A B, do solemnly swear (or affirm, that I will duly attend the ensuing election, throughout the continuance of the same, and that I will truly assist the other Judges thereof, to the best of my ability, according to law, and that I will endeavour to prevent all fraud, deceit, and abuse in carrying on the same."

Form.

It shall be the duty of the Judges of the election to preserve order and regularity in conducting the said election, to receive the votes of all persons who to them may appear to be duly quali-

fied electors, and where they entertain doubts, they may interrogate such person on oath, touching his qualifications as an elector; and it shall be their further duty to observe that the poll is fairly kept, and at the close of the election to proclaim the person or persons (if more than one are to be elected) highest in votes, duly elected.

Administer oath.

Inspect votes

Section 6 *superceded by* 3 *Section of act* 25*th, of December* 1812.

Sec. 7. The Sheriff and other Judges of the election, shall deliver to every person proclaimed duly elected, a certificate of his election, signed with their names, and attested by the poll keepers; and the Sheriff shall cause a fair copy of the poll certified by the poll keepers, and the writ, (when it has come to his hand in due time) certified by himself, otherwise a certificate of the proceedings for want of such writ, to be forthwith transmitted to the office of the Secretary of the territory; and shall within twenty days from the close of the election, deliver duplicates of the poll, and writ, or other certificate to the Clerk of the court of Common Pleas, of the proper county, who shall carefully preserve the same.

Sheriff and judges to give certificates.

Sec. 8. If any candidate, or elector

Notice to be given of a contested election, and further proceedings.

of the proper county, who choose to contest the validity of any election, or the right of any person proclaimed duly elected in any county, to his seat in the Legislature; such person shall give notice in writing to the person whose election he means to contest, or leave a written notice thereof, at the house where such person last resided, within ten days after such election, expressing the points on which the same shall be contested, and shall within the same time give notice to the coroner of the county, who shall thereupon summons two Judges of the court of Common Pleas of the same county, other than those who were Judges of the election, who shall be severally obliged to attend under the penalty of fifty dollars. The said Coroner shall appoint a place and time for the said two judges of the pleas as aforesaid, to meet within the said county, which shall be within twenty days after the election; the said two Judges and every of them, shall have power to issue subpoenas, and compel the attendance of all persons required to give evidence, under the penalty of fifty dollars, to be levied on each and every delinquent, who hath been duly served with process; and the said two judges so met, shall hear and certify under seal all testimony relative to the said contested election, to the

house of representatives at their next session.

Contestors to be electors in the county
What testimony recieved

No person shall contest any election unless he is an elector of that county in which the election is held, nor shall any testimony be received, which does not relate to the point specified in the notice: Copies attested by the person who delivers or leaves said notices, shall be delivered to the said Judges of the pleas.

Legislature to attend the Govs. call.

Sec. 9. All persons elected, or appointed to serve in either branch of the Legislature, and consenting thereto, shall be obliged to give due attendance at such time and place as may be directed by the governor, having received previous and timely notice of their respective elections or appointments, under the penal sum of one hundred and fifty dollars, to the use of the territory: unless for good cause shewn, the house to which he is elected or appointed a member, shall remit the same or any part thereof.

Penalty on neglect.

Member may be expelled.

Sec. 10. Each house or branch of the legislature, shall have the right of expelling its own members, for disorderly behaviour or transgressing the rules: *Provided,* That no member shall be expelled without the concurrence of

two thirds of the members present; and no member shall be questioned a second time for the same offence.

Treating or bribing how punished.

Sec. 11. No candidate or other person for him shall attempt to obtain votes by bribery or treating, with meat or drink; and any person so offending, shall be incapable of holding a seat in either branch of the legislature for the space of two years, next thereafter; or if any person in order to obtain votes, either for himself or any favorite candidate, shall make any sham conveyance of land, title or lease of land to any person with an intent of enabling him to vote; every person so offending, by making such sham conveyance, title, bond or lease, shall on conviction thereof, forfeit for every such offence, the land so pretended to be conveyed, sold or leased, to the Territory; and every person so offending, by receiving any such sham conveyance, title, bond or lease, shall on conviction, forfeit the value of the land so pretended to be held, by such pretended conveyance, title bond or lease to the use of the Territory.

Sham conveyances to be forfeited.

Penalty for recieveing them.

Sec. 12. For all services done in pursuance of this act, in conducting the elections and making return thereof by the clerk of the court of Common Pleas,

Poll keepers to recieve compensation.

Sheriff, assistant Judges of elections respectively in any county, a reasonable compensation shall be allowed by the court of Common Pleas of such county respectively, who are hereby directed at any time to make such reasonable allowance, as the said court deem proper, to be paid out of the county funds.

persons not eligible.

Sec. 13. No Sheriff, under Sheriff, Clerk of any court, or person holding a commission during pleasure, directly under the United States or this Territory, except Justices of the Peace, and militia officers, shall be elig ble to a seat in either branch of the legislature.

Sections 14 and 15 were limited to one year and no longer, they have therefore expired.

AN ACT

Regulating Elections.

Passed Decr. 25th, 1812.

Sec. 1. *Be it enacted* by the Legislative Council and House of Representa-

tives and it is hereby enacted by the autority of the same. That the next general election for representatives, to serve in the general assembly shall commence on the first thurs ay in September one thousand eight hundred and fourteen to be held biennially thereafter, and that the election for members to serve in the legislative council shall commence on the first thursday of September one thousand eight hundred and sixteen and be held quadrennially thereafter at which respective times all qualified voters shall have a right to vote for representatives to serve in the general assembly and members of the legislative council consistently herewith.

Time of holding elections.

Proviso repealed by act December 8th, 1813. — Sec 2. Repealed by same act.

Sec 3. When any writ of any occasional election shall be issued by the governor in case of the death or removal from office of any representative or member of the legislative council or delegate for congress the same shall be directed to the Sheriff of such county respectively for which such representative or member of the legislative council or delegate for congress shall have been elected who is dead or removed from office shall have been elected and

Writ of election to be handed to the Shff.

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Sheriff to give notice ten days.

the Sheriff on receiving the writ shall forthwith give due and public notice throughout the county ten days before holding such election and the same shall be holden within twenty days after the writ of election is received by the sheriff and conducted in like manner aforesaid.

Former law refered to.

Sec. 4. *Be it further enacted,* by the authority of the same. That in all other respects all elections shall be governed by the law of the Indiana territory entitled "A law regulating elections approved the seventeenth day of September one thousand eight hundred and seven.

AN ACT

Supplemental to an act entitled "an act regulating elections passed the twenty fifth day of December 1812.

Passed December 8th, 1813.

Preamble.

Whereas voters have hitherto been obliged to vote by ballot, and the ignorant as well as those in embarrassed circumstances are thereby subject to be imposed upon by electioneering zealots

—And whereas it is inconstistent with the spirit of a representative republican government since the opening for bribery and corruption is so manifest, which should ever be opposed and suppressed in such a government, for remedy whereof.

Votes given viva-voce.

Sec. 1. Be it enacted by the Legislative Council and House of Representatives and it is hereby enacted by the authority of the same, That at all elections for a delegate or delegates to congress, & for members of the general assembly of this territory, all votes shall be given viva voce in presence of the Judges of the Election and all such candidates as may be present.

Sheriff to cry voters name and for whom he voted.

Sec. 2. *Be it further enacted* that it shall be the duty of the sheriff of each county in which such election may be holden to attend and when the voter shall say for whom he votes, it shall be the duty of such sheriff to cry the name of the voter & also the person or persons for whom he votes distinctly.

Clerk of Co Ple ke Po

Sec. 3. It shall be the duty of the Clerks of the Courts of Common Pleas to attend (in their respective counties) all such elections as aforesaid, and keep the poll thereof in the manner hereinafter provided (that is to say) he shall

enter the names of the candidates in a book for that purpose to be kept, and shall also enter the name of each voter on the same book, and shall designate for whom he votes by making a mark under the person or persons name or names for whom he votes directly opposite to such voters name for which service such clerk shall be allowed the sum of two dollars for each day they may be required to attend such election any laws or parts of laws to the contrary notwithstanding. This act to commence and be in force from and after the passage thereof.

His allowance.

AN ACT

Supplemental to an act entitled "an act regulating Elections.

Passed December 11th, 1813.

Persons elected at a general election to commence their term of service 10 of Oct. next after their elections.

Be it enacted by the Legislative Council and House of Representatives of the Illinois Territory. That whenever hereafter any person shall at any general assembly be elected a member of the House of Representatives, of the Legislative Council or a Delegate to Congress the term of his service shall commence on the tenth day of October

next ensuing his election and such persons so elected to the House of Representatives, to the Legislative Council and a Delegate to Cogress shall continue in office from the said tenth day of October next ensuing his election for their respective terms as fixed by law.

AN ACT.

Declaring the elegibility of certain officers to a seat in the Legislature.

Passed Dec. 22. 1814.

Whereas the free people of this Territory are as competent as their public servants to decide on whom it is their interest to elect to represent them in the General Assembly: and are too enlightened and independent to recognize the odious and aristocratical doctrine that they are their own worst enemies or to admit that it is the duty of their Representatives to save the people from themselves. **Preamble**

And whereas this Legislature being

composed of the servants, not the masters of the people; cannot without an arbitrary assumption of power impose restrictions upon the latter as to the choice of their representatives, which are not warranted by the express words or necesary implications of the ordinace from which the Legislature derives its powers.

And whereas the duties of the Judges of the county court established by law are such as have heretofore been performed in this Territory by Justices of the Peace by whom they are also usually performed in many of the states and there being nothing in the ordinance, nor any reason to exclude from a seat in the Legislature those Judges of the county courts or county surveyors or prosecuting attornies, that do not apply with equal force to militia officers and Justices of the Peace and the duties of the former being no more incompatible with a seat in the Legislature than those of the latter Therefore.

Judges of the county court county surveyors & Prosecuting attorneys eligible to the Legislature

Sec. 1. Be it enacted by the Legislative council and house of Representatives and it is hereby enacted by the authority of the same, That all laws or parts of laws creating any distinction as to elegibility to a seat in the Legislature between Judges of the county court,

county surveyors and prosecuting attornies or district attornies under the United States, on the one hand and Justices of the Peace on the other, shall be and the same are hereby abolished, and that hereafter if the free and qualified voters of this Territory shall choose to elect any Judge of a county court, county surveyor or any prosecuting attorney they shall have the same right to do so as they have hitherto had to elect justices of the peace or militia officers.

Approved, Dec. 22 1814.

ENCLOSURES.

AN ACT

Regulating Enclosures.

Passed Sep. 17, 1807.

Fences of wood how to be made, & of what height to be sufficient in law.

Sec. 1. ALL fields and grounds kept for enclosures, shall be well inclosed with a fence composed of sufficient posts and rails, posts and pailings, palisadoes, or rails alone, laid up in the manner which is commonly called a worm

fence; which posts shall be deep set and strongly fastened in the earth; and all fences composed of posts and rails, posts and pailings, or palisadoes, shall be at least five feet in height; and all fences composed of rails, in manner which is commonly denominated a worm fence, shall be at least five feet six inches in height, the uppermost rail of each and every pannel thereof supported by strong stakes, strongly set and fastened in the earth, so as to compose what is commonly called staking and ridering, otherwise the uppermost rail of every pannel of such worm fence, shall be braced with two strong rails, poles or stakes, locking each corner or angle thereof; and in all cases wherein any fence is composed of any of the foregoing materials, the apertures between any of the rails pailings or palisadoes, within two feet of the surface of the earth, shall not be more than four inches; and from the distance of two feet from the earth, until the height of three feet six inches from the surface thereof, the apertures between such rails, pailings or palisadoes, shall not be more than six inches; and that in all worm fences, the worm of the same shall be at least one third of the le gth of the rails, which compose the respective pannels thereof.

Apertures between the rails.

Length of worm.

Sec. 2. If any horse, gelding, mare, colt, mule, or ass, sheep, lamb, goat, kid, or cattle, shall break into any person's enclosure, the fence being of the aforesaid height and strength or if any hog, shoat or pig, shall break into any person's enclosure, the fence being of the aforesaid height and sufficiency, and by the view of two persons for that purpose, appointed by the court of Common Pleas, found and approved to be such, then the owner of such creature or creatures, shall be liable to make good all damages, to the owner of the enclosure; for the first offence single damages only, ever afterwards double the damages sustained.

animals breaking lawful fences.

Sec. 3. For the better ascertaining and regulating of partition fences, it is hereby directed, that when any neighbors shall improve lands adjacent to each other, or when any person shall enclose any land adjoining to another's land already fenced, so that any part of the first person's fence becomes the partition fence between them, in both these cases, the charge of such division fence, (so far as enclosed on both sides) shall be equally borne and maintained by both parties, to which, and other ends in this law mentioned, each court

Partition fences.

of common pleas, yearly and every year, in the term next after the month of January, shall nominate, and is hereby required to nominate and appoint three honest able men, for each township respectively; who, being duly sworn to the faithful discharge of the duties of their appointment, shall proceed at the request of any person or persons feeling him, or themselves aggrieved, to view all such fence and fences, about which any difference may happen or arise; and the aforesaid persons, or any two of them in each township, respectively, shall be the sole judges of the charge to be borne by the delinquent, or by both, or either party, and of the sufficiency of all fences, whether partition fences, or others; and when they shall judge any fence to be insufficient, they shall give notice thereof to the owners or possessors; and if any one of the owners or possessors, upon request of the other, and due notice given, by the said viewers, shall refuse, or neglect, to make, or repair the said fence or fences, or to pay the moiety of the charges of any fence before made being the division or common fence, within twenty days after notice given, then, upon proof thereof, before two justices of the peace, of the respective county, it shall be lawful for the said justices, to order the person aggrieved

C. P. to appoint fence viewers &c.

Duty of fence viewers.

Judges of the sufficiency of fences &c.

Owners refusing to make or repair partition fences,

Penalty on neglect.

and suffering thereby, to make or repair the said fence or fences, who shall be reimbursed his costs and charges, from the person so refusing or neglecting to make or repair the partition fence or fences aforesaid, or to order the delinquent to pay the moiety of the charge of the fence before made, being a division, or a common fence, as the case may be; and if the delinquent shall neglect or refuse to pay to the party injured, the moiety of the charge of any fence before made, or to reimburse the costs and charges of making or repairing the said fence or fences, under the order aforesaid, then the same shall be levied upon the delinquents goods and chattels under warrant from a justice of the peace, by distress and sale thereof, the overplus, if any be, to be returned to the said delinquent: *Provided* That nothing herein contained, shall be intended to prevent, or debar any person or persons from enclosing his or their grounds, in any manner they please, with sufficient walls, or fences of timber, other than those heretofore mentioned, or by dykes, hedges and ditches; all such walls and fences to be in height at least five feet from the ground; and all dykes to be at least three feet in height from the bottom of the ditch, and planted and set with thorn and other quickset, so that such

Proviso.

enclosures shall fully answer and secure the several purposes meant to be answered and secured by this law: *Provided also,* That such walls, or fences of timber, other than those heretofore mentioned, and dykes, hedges, and ditches, shall be subject to all provisions inspections, and restrictions respectively to which by this law, any other enclosure or fence is made liable, according to the true intent and meaning hereof.

Subjected to the inspectors. &c.

AN ACT

To regulate the disposition of Water Crafts, of certain descriptions found gone or going adrift, and of estray animals.

Passed September 17 1807.

Persons taking up boats &c.

Sec. 1. If any person shall take up any boat, flat, periague, canoe or other small vessel gone or going adrift, he or she, shall within five days cause the same to be viewed by some householder of the county where the same shall be taken up, and shall forthwith go with

such householder, before a justice of the peace of the same county and make oath when and where the same was taken up, and that the marks thereof have not been altered or defaced by him, or by any other person to his knowledge since the taking up, and the justice shall take from such householder, upon oath, an exact description of such boat, flat, periague, canoe, or other small vessel, and shall enter the same in his estray book, to be by him kept for that purpose, and shall transmit a certified copy thereof to the clerk of the court of common pleas of the county to be by him recorded in his estray book to be kept for that purpose within fifteen days thereafter if the said justice does not reside at a greater distance than fifteen miles from the clerk's office; but if the said justice resides at a greater distance than fifteen miles from the said office, he shall transmit the said certificate, within the space of thirty days, and the clerk shall cause a copy of such certificate to be set up at his court house door, during the two succeeding terms to be held for said county, for which service, he shall be entitled to take and receive twenty-five cents, for every such boat, flat, periague, canoe, or other small vessel to be deposited by the taker up in the hands of said justice and by him transmitted to the said clerk

Duty of Justice.

Duty of the clerk of C. P.

with the certified copy of such description, and the justice for administering the oath, making the entry and granting the certificate as aforesaid, shall be entitled to twenty five cents for his services, which sum shall be paid by the taker up.

Allowance to justice and clerk.

Sec. 2. Every person who shall take up a stray horse, gelding, mare, colt, mule or ass, shall within five days advertise the same in three different places in the neighbourhood or township, and shall also within ten days thereafter, unless it shall have been previously claimed and proved by the proper owner and a tender made of the compensation herein after provided, take the same before some justice of the peace of the county where such stray shall be taken up, and make oath before such justice that the same was taken up at his or her plantation or place of residence, in said county or otherwise, (as the case may be) and that the marks or brands have not been altered by him or any other person or persons, to his knowledge, before or since the taking up; the Justice shall then issue his warrant to three disinterested householders in the neighborhood, unless they can be otherwise had, causing them to come before him to appraise said stray, and after they, or any two of them, are sworn to ap-

Taking up horses &c.

Duty of justice.

praise such stray, without partiality favor or affection, they shall forthwith proceed to appraise the same, & immediately make return thereof, in writing, together with the description of the marks, natural and accidental, brand, stature, color, and age of said horse, gelding, mare, colt, mule or ass, to said Justice, who shall enter the same in his estray book, and transmit a certified copy thereof, under his hand together with the original return of the appraisers, under their hands to the Clerk of the court of Common Pleas of said county within the time as limited in the first section of this act, who shall enter the same in his estray book, and file the aforesaid transcript, and certificate of the appraisers in his office: and the taker up shall pay unto the said justice fifty cents, and further deposit in the hands of said Justice fifty cents, to be paid unto the Clerk aforesaid, which sum of fifty cents shall be transmitted at the same time with the aforesaid certificate of entry and appraisement, and the said clerk shall cause a copy of such valuation and description to be publicly affixed at the court house door of his county during three succeeding terms.

Duty of the clerk.

Fees to justices & clerk

Sec. 3. Any person who shall take up any head of neat cattle, sheep, hog

persons taking up neat cattle, sheep &c.

or goat, shall within five days after, cause the same to be advertised in three different places in the neighborhood or township, and shall also within ten days thereafter, unless it shall have been previously claimed and proved, by the proper owner, and a tender made of the compensation herein after provided, cause the same to be viewed by some householder of the county, where the same shall be taken up, and immediately go with such householder before a Justice of said county, and make oath before him, as is required in taking up a stray horse, gelding, mare colt mule or ass, and then such Justice, shall take from such householder, upon oath, a particular description of the marks, brands, colour and age of every such neat cattle, sheep, hog, or goat; and such Justice shall cause the said stray to stra s to be appraised in like manner as is required to be done in case of stray horse, gelding, mare, colt, mule or ass, which description and valuation shall be entered by such Justice, in his estray book, and by such Justice transmitted to the Clerk of the court of common Pleas of said county, and to be by him recorded in his estray book, and he shall cause a copy to be publicly affixed at the court house door of his county as before directed in taking up stray horse, gelding, mare, colt, mule or ass, and

How to proceed.

Duty of Justice.

Duty of the clerk.

the taker up shall pay the Justice twenty five cents for his services, and deposit with such Justice, twenty five cents, to be transmitted at the same time with the certified copy to the Clerk as aforesaid, for his services: *Provided,* That if two or more strays of the same species, are taken up by the same person, at the same time, they shall be included in one entry and one advertisement, and in such case the said Justice and Clerk shall receive no more than for one such species: *Provided also,* that no person shall be allowed hereafter, to take up and post any head of neat cattle, sheep, hog, or goat, between the first day of April and the first day of November, following, unless the same may be found within the lawful enclosure of the taker up, &c. having broken in the same.

Fees of the Justice and clerk.

Proviso.

Where two or more strays of same species taken up.

Not to take up or post any neat cattle &c. between 1st of april & november.

Sec. 4. As a reward for taking up, there shall be paid by the owner to the taker up, or such other person as may be authorised by this act to receive the same; For every boat or flat, one dollar for every periague, canoe, or other small vessel, fifty cents, every horse, gelding mare, colt, mule, or ass one dollar, for every head of neat cattle, fifty cents, for every sheep or goat,

Reward for taking up &c.

With charges for keeping &c.

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twenty-five cents, and for every hog above six months old ten cents, together with the fees paid by the taker up, to the Justice and Clerk aforesaid, and reasonable charges for keeping said estray or estrays to be assessed by two disinterested householders appointed by some one Justice in the manner and form as other appraisers are to be appointed under this act, who shall in the same manner, and under the same restrictions proceed to make appraisement, and return to the said justice, as by this act in other cases is required, and on failure of the claimant to satisfy such fees and charges, the estray or estrays, shall be by the Sheriff, after giving two days notice, sold to the highest bidder to satisfy such costs and charges for keeping, and the said Sheriff after paying such costs and charges, and deducting one dollar for his fees of sale, shall pay the remainder to the claimant.

In default of payment estrays to be sold & how.

Sec. 5. If no owner shall appear to prove his or her property, within one year after such publication, and when the valuation does not exceed five dollars, the property shall be vested in the taker up, but when the valuation shall exceed five dollars, and no owner appears within the time aforesaid, the property shall be vested in the Sheriff of the

When no owner appears in one year.

county to be sold to the best bidder, and the money arising from the sale thereof, after paying the fees that have accrued and reasonable expences for keeping the same, shall be put into the county treasury, which expences shall be ascertained in manner and form as before directed by this act, saving *nevertheless,* The right in the taker up, at the expiration of one year, to pay into the county treasury, the appraisement value of such estray, and in that case the property of said estray shall be vested in the taker up: *Nevertheless,* The former owner may and shall at any time thereafter, by proving his or her property in the court of common pleas of the county, where such estray was taken up, and obtaining a certificate from the clerk, receive an order from the court of common pleas, to the Sheriff, for the nett proceeds, after paying costs and charges, and if any person shall trade, sell, or take away any such stray, or water craft, out of the territory, before he is vested with the right of property, agreeable to this act, for any purpose whatsoever, he or she, so offending, shall forfeit and pay double the value thereof, to be recovered by any person suing for the same, in any court of record within this territory, having cognizance thereof, the one half to the informer, and the other half to

Valuation under 5 dollars,

Penalties on persons selling or taking away estrays,

the county; and it shall not be lawful for any person to take up any stray, except as shall hereafter be excepted, unless he shall have a freehold, be a tenant for three years, have bond for the land on which he resides, or be in possession of the tenement on which such estray was found trespassing.

What persons to take up estrays.

Sec. 6 Any person finding any stray horse, gelding, mare, colt, mule or ass, running at large, without the settlement of this Territory, may take up the same, and shall immediately carry such stray or strays, before the nearest Justice of the Peace, and make oath, as before directed in this act, after which it may be lawful for him, if qualified as aforesaid, to post such stray, or strays in the manner and form as herein before directed, as if the same had been taken up on his plantation or place of residence, and when the taker up shall not be qualified as aforesaid, he shall take the oath before required, and deliver up such stray to the said Justice, who shall cause the same to be dealt with as before directed by this act, and if no owner appears to prove his or her property within one year, such Justice shall deliver such stray or strays, unto the Sheriff of the county, to be disposed of in manner before directed, and after paying the taker up all rea-

Horses &c. found running at large without the settlements

Taker up not qualified

When no owner appears in one year.

sonable charges, and deducting the expences for keeping, which shall be ascertained as aforesaid such Sheriff shall, within three months pay the ballance into the county treasury; *Nevertheless,* The former owner at any time after, by proving his, or her property before the court of common pleas, in the county where the said stray was taken up, shall receive a certificate from the Clerk of the said court to the Sheriff as treasurer, who shall pay the ballance aforesaid: *Provided always,* That nothing in this act contained shall be construed to authorise any person or persons to take up any horse, gelding, mare, colt, mule or ass, running at large, between the first day of April and the first day of November, so as to entitle him or them to receive the reward or compensation herein provided, unless the same be found within the lawful enclosure of the taker up, having broken the same.

When strays die or water crafts get away.

Sec. 7. If any stray or water craft taken up as aforesaid shall die or get away before the owner shall claim his, or her right, the taker up shall not be answerable for the same unless it be proven that such stray or water craft died or got away through the neglect or inattention of the taker up, and if any person shall take up any stray at any other place within the inhabitants,

than his or her place of residence, or without being qualified as required by this act, such person shall forfeit and pay ten dollars, with costs before any Justice in the county where the offence shall have been committed, or not having property sufficient to pay such fine, he shall be liable to be confined one month in the Jail of the county where he may be found, by warrant under the hand and seal of any Justice of the peace, directed to the proper officer who shall confine such offending persons, accordingly, and the prison fees of such delinquent shall be paid by the county: *Nevertheless,* Such delinquent shall be liable to repay such fees to the county, should he thereafter have property sufficient; and any person taking up a stray out of the limits of the settlements of this Territory and failing to comply with the requisitions of this act shall be subject to the same penalties.

Taking up estrays without the limits of a settlement.

Sec. 8. When any water craft or animal taken up in pursuance of this act, the appraised value whereof shall exceed the sum of five dollars, may be restored to the proper owner, or when the same may be lost, it shall be the duty of the taker up, within one month afterwards to certify in writing, under the signature of the taker up, to the Clerk of the court of Common Pleas

of the proper county; such restoration where the same may be restored, with the name and place of residence of the person claiming the same, or such loss, (where the same may be lost) together with the time when, and the manner whereof, and if the taker up of any such water craft, or animal taken up in pursuance of this act, shall neglect to make the certificate aforesaid within the time limited by this act, or shall make a false statement of facts, in any such certificate, every person so offending, for every such offence, shall forfeit and pay the value of such water craft, or the appraised value of such stray animal respectively, to be recovered by action of debt, qui tam or indictment, in any court where the same may be cognizable, one half thereof to the county respectively, and the other half to whoever will sue for the same.

Penalty on neglect.

How recoverable & applied.

Sec. 9. The Judges of the court of Common Pleas within each county of this Territory, shall cause a pound to be made, at or near the several court houses; and in all new counties that may be formed in this territory, within three months after the place of erecting the public buildings is fixed upon, with a good sufficient fence, gate, lock and key, where all stray horses, geldings, mares, colts, mules or asses, above two

Court of C. P to cause pounds to be erected.

years old, taken up within twenty miles of the court house, shall be kept on the first day of every court of Common Pleas in said county for three succeeding terms after the same is taken up, from twelve until four o'clock on each day, that the owner may have an opportunity of claiming his or her property; and any person taking up any stray horse, gelding, mare, colt, mule or ass, not exceeding two years old, shall not be compelled to exhibit, such stray or strays at the court house, but shall be dealt with in other respects, as is directed in this act, and when any person taking up any stray horse, gelding, mare, mule or ass, more than two years old resides twenty miles and upwards from the court house, he shall not be compelled to exhibit such stray or strays more than once in the pound, which shall be on the first day of the second term after taking up: *Provided always,* That such taker up, cause a particular description of such stray or strays to be advertised at the door of the court house at and before the term, at which the same is put in the pound, by the clerk of the court of Common Pleas of said county, in manner and form as before directed by this act, and the Judges of the court of Common Pleas for the said county, failing to have such pound erected, shall forfeit

When estrays &c. are restored or lost.

What strays shall be put in the pouud

Persons living 20 miles from the pound.

and pay a sum of twenty dollars for every court thereafter, until the same be erected: and until such pound is erected, no person taking up any stray horse, gelding, mare, colt, mule, or ass, shall be liable for any penalty for not exhibiting the same, and the Judges of the court of Common Pleas shall appoint some person to take care of the said pound, & keep the same in repair; whose duty it shall be to attend at the said pound on the several court days during the time such strays are directed to continue therein, with the key of the same, and the said Judges shall make such reasonable allowances for the expence of erecting and keeping of the said pound, as to them shall seem proper, to be paid out of the treasury, in like manner and form, that other county charges are liquidated and paid, and any person being appointed, and undertaking to take care of said pound, and failing to discharge his duty agreeable to the directions of this act, shall forfeit and pay to the informer the sum of eight dollars for every such offence, with costs, recoverable before any Justice of the county, where such offence shall be committed.

Court to appoint pound keeper.

His duty.

Pound keeper failing in duty forfeiture on.

How recovered

Sec. 10. If any person shall act contrary to the duties enjoined by this act,

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for which no penalty is herein before particularly pointed out, the person so offending shall on conviction thereof, forfeit and pay for every such offence, not more than one hundred dollars, nor less than five dollars, with costs, to the use of the proper county, to be prosecuted for, & recovered in like manner, as other fines and forfeitures are under this act, and moreover be liable to the action of the party injured, for such neglect.

Penalty on persons acting contrary to this act.

EXECUTIONS

AN ACT

Subjecting Real Estates to Execution for Debt.

Passed Sept. 17, 1807.

Sec. 1. To the end, that no creditors may be defrauded of debts justly due to them, from persons who have sufficient real, if not personal estates to satisfy the same; all lands, tenements and heriditaments, whatsoever, where

Real estate liable to be seized & sold

no sufficient personal estate can be found, shall be liable to be seized and sold, upon judgment and execution ob- cost.

Sec. 2. In case the lands, tenements and hereditaments, seized and taken in execution, shall not on a sale thereof, produce the amount of the debt, dama- ges and costs due thereon, it shall and may be lawful for the Sheriff, or other officer, by another writ, to seize and take, any other lands, tenements, and hereditaments, in execution, and there- upon, with all convenient speed, with, or without any writ of *venditioni exponas,* to make public sale thereof, for the most they will yield, and pay the price or value of the same, to the party towards satisfaction of his debt, damages and tained.

If lands seiz- ed do not sell for amount.

But before any such sale be made, the Sheriff or other officer, shall cause so many writings to be made upon parchment, or good paper, as the debt- or or defendant shall reasonably desire or request, or so many without such request as may be sufficient to signify and give notice of such sales or vendues and of the day and hour when, and the place where the same will be, and what lands or tenements, are to be sold, and where they lie; which notice shall be given

Sheriffs duty before sale.

to the defendant, and the parchments or papers, fixed by the Sheriff or other officer, in the most public places of the county, at least ten days before sale; and upon such sale the Sheriff, or other officer, shall make return thereof, endorsed or annexed to the said writ of execution, and give the buyer a deed duly executed, and acknowledged in court for what is sold; but in case the said lands and hereditaments, so to be exposed cannot be sold, then the officer shall make return upon the writ, that he exposed such lands or tenements to sale, and the same remained in his hands unsold for want of buyers, which return shall not make the officer liable to answer the debt or damages contained in such writ, but the writ of *levari facias* shall forthwith be awarded, and directed to the proper officer, commanding him to deliver to the party, such part or parts of those lands, tenements and hereditaments, as shall satisfy his debt, damages and interest, from the time of the judgment given, with costs of suit, according to the valuation of twelve men; to hold to him, as his free tenement, in satisfaction of the debt, damages and costs, or so much thereof, as those lands by the valuation thereof, as aforesaid shall amount unto, and if it shall fall short, the party may aterwards have execution

Sheriff to give the buyer a deed,

In case lands do not sell.

Levari facias

for the residue, against the defendant's body, lands or goods, as the laws of this Territory shall direct and appoint, from time to time, concerning other execution; all of which said lands, tenements, hereditaments and premises, so as aforesaid to be sold or delivered, by the sheriff, or officer aforesaid, with all their appurtenances, shall or may be quietly or peaceably held, and enjoyed by the person or persons, or bodies politic, to whom the same shall be sold or delivered, and by his and their heirs, successors and assigns, as fully and amply, and for such estate or estates, and under such rents and services, as he or they, for whose debt or duty, the same shall be sold or delivered, might, could or ought to do, at or before the taking thereof in execution.

Purchasers to hold for such estate &c. as debtors had at the time of taking in execution.

Sec. 3. *Provided always,* That the messuage, or lands or tenements, upon which the defendant is chiefly seated, shall be the last taken and sold on execution, before the expiration of one whole year after judgment is given, to the intent, that the defendant, or any other for him, may redeem the same.

Proviso as to deft's. chief seat.

Sec. 4. Where default or defaults have been, or shall be made or suffered, by any mortgagor or mortgagors of land, tenements, or other hereditaments

Proceedings on mortgages.

within this territory, or by his, her or their heirs, executors, administrators and assigns, of, or in payment of the mortgage money, or performance of the condition or conditions, which they or any of them, should have paid or performed, or ought to pay or perfom, in such manner and form, and according to the purport, tenor and effect of the respective provisoes, conditions or covenants, comprised in their deeds of mortgage or defeasance, and at the days times and places in the same deeds respectively mentioned and contained, in every such case, it shall and may be lawful, to, and for the mortgagee or mortgagees, and him, her or them, that grant the said deed of defeasance, and his, her or their heirs executors, administrators or assigns, any time after the expiration of twelve months, next ensuing, the last day whereon the said mortgage money ought to be paid, or other conditions performed as aforesaid: to sue forth a writ or writs of *scire facias,* which the Clerk of the court of Common Pleas for the county where the said mortgaged lands or hereditaments lie, is hereby empowered and required to make out and dispatch, directed to the proper officer; requiring him by honest and lawful men of the neighborhood, to make known to the mortgagor or mortgagors, his, her

See act 1814

Mortgagee in 12 months after default, of payment, may issue si. fa.

or their heirs, executors or administrators, that he, or they, be and appear before the Judges or Justices of the said court or courts, to shew if any thing he or they have to say, wherefore the said mortgaged premises ought not to be seized and taken in execution for payment of the said mortgage money with interest, or to satisfy the damages which such plaintiff in such *scire facias* shall upon the record suggest, for the breach, or non performance of the said conditions. And if the defendant in such *scire facias* appear, he or she may plead satisfaction or payment of part, or all the mortgage money, or any such other lawful plea, in avoidance of the deed or debt, as the case may require, but if the defendant in such *scire facias,* will not appear on the day whereon the writ shall be made returnable, then if the case be such, damages only, are to be recovered, an inquest shall be forthwith charged to enquire thereof; and the definitive judgment therein, as well as all other judgments to be given upon such *scire facias,* shall be entered, that the plaintiff in the *scire facias* shall have execution by *levari facias,* directed to the proper officer; by virtue whereof the said mortgaged premises shall be taken in execution, & exposed to sale in manner aforesaid, and, upon sale, conveyed to the buyer or buyers thereof, &

Defdt. may appear and plead.

On judgment vs. mortgage &c.

the money or price of the same rendered to the mortgagee or creditor, but for want of buyers, to be delivered to the mortgagee, or creditor, in manner and form, as is herein above directed, concerning other lands and hereditaments to be sold, and delivered upon executions, for other debts or damages. And when the said lands and hereditaments shall be sold, or delivered as aforesaid, the person or persons to whom they shall be sold or delivered, shall and may hold and enjoy the same, with their appurtenances, for such estate or estates as they were sold or delivered, clearly discharged and freed from all equity & benefit of redemption, and all other incumbrances made or suffered by the mortgagers, their heirs or assigns; and such sales shall be available in law; and the respective vendees, mortgagees, or creditors, their heirs and assigns, shall hold and enjoy the same, freed and discharged, as aforesaid. But before such sales be made, notice shall be given in writing, in manner and form as is herein above directed, concerning the sales of lands upon executions, any law or usage to the contrary notwithstanding.

Sheriffs duty before sale.

Sec. 5. *Provided also,* That when any of the said lands, tenements or hereditaments, which, by the direction and

Overplus of sales if any.

authority of this law, are to be sold for the payment of debts and damages, in manner aforesaid, shall be sold for more than will satisfy the same debts, or damages, and reasonable costs; then the sheriff or other officer who shall make the sale, must render the everplus to the debtor or defendant; and then, and not before, the said officer shall be discharged thereof, upon record, in the same court where he shall make return of his proceedings concerning the said sales.

Sec. 6. *Provided also,* That no sale or delivery which shall be made, by virtue of this law, shall be extended to create any further term or estate, to the vendees, mortgagees, or creditors, than the lands or hereditaments, so sold, or delivered, shall appear to be mortgaged for, by the said respective mortgagees, or defeazible deeds.

Sec. 7 *Provided also,* That if any of the said judgements which do or shall warrant the awarding of the said writ of execution, whereupon any lands, tenements or hereditaments, have been, or shall be sold, shall, at any time hereafter be reversed for any error or errors; then, and in every such case, none of the said lands, tenements or heredita-

In case judgment reversed.

ments, so as aforesaid taken, or sold or to be taken or sold upon executions, nor any part thereof shall be restored, nor the sheriff's sale or delivery thereof avoided; but restitution in such cases shall be made only of the money or price for which such lands were or shall be sold.

AN ACT

Concerning Executions.

Passed Sept. 17, 1807.

Fifa levied on property.

Sec. 1. When any writ of fieri facias issuing out of the General court, or any court of Common Pleas within this territory, shall be levied on any real or personal estate of the defendant or defendants, it shall and may be lawful for such defendant or defendants, to release the same by tendering to the sheriff or other officer, a bond with sufficient security to pay the amount of such execution, including all costs, with lawful interest thereon, from the date of said bond, within five

Deft. may replevy.

Officer to restore property.

months, and on such bond being given, the said sheriff or other officer, shall restore to the defendant or defendants, such personal or real estate; and where no bond shall be tendered by such defendant or defendants, or any person for him or them, the sheriff or other officer shall proceed to sell the said estate for whatever it will bring in cash, ten days previous notice having been given of such sale.

Officer to sell.

Bd. to have validity.

Sec. 2 Any defendant or defendants, on any writ of capias ad satisfaciendum, may in like manner, release his, her or their body or bodies, from execution, by tendering bond and security, as required in the foregoing section.

Shff. to return bond.

Sec. 3. All and every bond so taken in pursuance of this act, shall have the force of judgments, and such sheriff or other officer taking such bonds shall return the same to the office from which execution issued, within twenty days thereafter.

Sec. 4 If the amount of the said bond shall not be paid agreeably to the condition thereof, it shall and may be lawful, for the creditor or creditors, his, her, or their executors or administrators, at any time thereafter, to sue

out of the clerk's office of said court, his execution against the real and personal estate of the said defendant or obligors in said bond, their executors or administrators; and the clerk issuing such execution, shall endorse on the back thereof that no security of any kind is to be taken.

Bond insufficient shff. liable.

Sec. 5. If any replevy bond be quashed, or the security adjudged insufficient at the time of receiving the bond, the sheriff taking the same, and his securities shall at all times be liable to the party injured, or his representatives.

Section 6. *repealed.*

Time of servants may be sold.

Sec. 7. *And whereas,* doubts have arisen whether the time of service of negroes and mulattoes bound to service in this Territory, may be sold under execution; *Be it therefore enacted,* That the time of service of such negroes or mulattoe , may be sold on execution against the master in the same manner as personal estate immediately from which sale, the said negroes or mulattoes shall serve the purchaser or purchasers for the residue of their time or service; and the said purchasers, and negroes and mulattoes shall have the same remedies against each other, as by the laws of the territory are mutually given them in the several cases therein mentioned, and

the purchasers shall be obliged to fulfil to the said servants, the contracts they made with the master as expressed in the indenture or agreement, of servitude, and shall for want of such contract be obliged to give him or them their freedom dues at the end of the time of service, as expressed in the second section of a law of the territory entitled, "A Law concerning Servants.

Give freedom dues.

AN ACT

To amend an Act, entitled "An Act concerning Executions,"

Passed October 26th, 1808.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives, of the Indiana Territory, and it is hereby enacted by the authority of the same,* That where any writ of execution shall hereafter issue out of any court of record within this Territory, against the estate of any defendant or defendants,, the Sheriff or officer shall take in execution, all, or such part or parts of the real or personal estate or estates of such defen-

Optional with deft. what property to give up

dant or defendants as such defendant or defendants, designate or shew to such Sheriff, or other officer, and as will, in the opinion of such Sheriff or other officer, be sufficient to satisfy the amount of the said execution, and costs; and in case the said real and personal estate, or estates, so designated or shewn, will not, in the opinion of such Sheriff or other officer, be sufficient to satisfy the said execution and costs, then such Sheriff or other officer shall in such case only, levy on, and seize so much only of the defendant or defendants other real or personal estate, as will, in the opinion of such sheriff or other officer, be sufficient to satisfy the remainder of the said execution and costs; but in case such defendant or defendants, shall not shew or designate to such Sheriff or other officer, real or personal property to him belonging as will be sufficient to satisfy the said execution and costs, then such Sheriff or other officer, shall seize and levy on the whole or any part of the real or personal estate of such defendant or defendants, as he can find in his bailiwick, and as will be sufficient to satisfy such execution and costs.

If not sufficient.

If deft. fails to shew property.

Sec. 2. *Be it further enacted,* That when any Sheriff or other officer shall proceed to sell or dispose of any real or personal estate, by virtue of any writ

Shff. in selling property

of execution, he shall be obliged to sell and dispose (at the choice of the defendant or defendants,) either of the real or personal estate of such defendant or defendants, or such part or parts thereof, as he or they shall direct him so to dispose of, until the amount of the said execution and costs shall be made; and if any Sheriff or other officer, shall either take, or sell and dispose of the real or personal estate of any defendant, or defendants, in any other manner than is directed by this law, such Sheriff or other officer, shall forfeit and pay to the defendant or defendants, whose property shall be so taken and sold, the full value of such real or personal estate, so taken and sold, to be recovered by bill, plaint, or information, in any court of record proper to try the same.

shff. failing in duty.

Sec. 3. *Be it further enacted,* That when it appears on the face of any writ of Fiere Facias, that any one or more of the defendant or defendants, against whom such writ is issued, are only security or securities, for any one or more of the other defendant or defendants in such writ named, the Sheriff or other officer, shall in such case, sell and dispose of all, or so much of the real or personal estate, of such principal defendant or defendants, as such Sheriff or

Property of principal to be first sold.

other officer, shall be able to find in his bailiwick, as will satisfy the said execution and costs, before he shall set up or dispose of any part of the real or personal estate of such surety, or sureties, unless the said Sheriff or other officer, shall be otherwise directed by such surety or sureties.

Sec. 4. This act shall commence and be in force from and after the first day of January next.

AN ACT

Concerning Executions.

Passed Dec. 9th, 1814.

Execution returnable in thirty days from its date if to the same county.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives of the Illinois Territory and it is hereby enacted by the authority of the same,* That all writs of execution that may be hereafter issued from the Clerks of the General Court or any court of Common Pleas shall be made returnable within thirty days from the date thereof

if directed to the Sheriff of the county in which the execution issued but if directed to a different county from that in which the execution issued then and in that case it shall be made returnable in forty days from the date thereof.

If to another forty days.

Sec. 2. Be it further enacted that it shall be the duty of all sheriffs of the respective counties within this territory when he shall receive an execution to endorse on the back thereof the day and hour when he received it and it shall bind the personal estate of the defendant or defendants which may then be in the county to which the execution is directed from the date of the indorsement thereon as aforesaid made.

Sheriffs to indorse the day & hour of receiving execution. The execution binds personal property from the indorsement of the Sheriff

Sec. 3. Be it further enacted, That any sheriff who shall fail to comply with the duty imposed on him by the second section of this act shall forfeit and pay the sum of one hundred dollars, for every such neglect of his duty, by an action of debt, indictment or presentment, one half to the informer and the other half to the territory and he shall moreover be liable to the party injured for such damages as he may sustain thereby.

Penalty for failing to endorse the execution.

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Plaintiff may issue execution to any county after one is returned not satisfied.

Sec. 4. Be it further enacted, That if it appears from the return of a fieri facias, that the defendant or defendants have not goods or chattels or tenements sufficient to satisfy said execution in the county in which the judgment was rendered the plaintiff may immediately sue out another execution on said judgment, and have it directed to any county in the territory he may think proper.

If mortgaged property does not satisfy the debt Plff. may issue other executions.

Sec. 5. Be it further enacted, that on all judgments now entered or hereafter to be entered on any mortgage in this territory and the mortgaged premises sold on a writ of levari facias shall not bring the sum for which judgment and costs were entered, it shall and may then be lawful for the plaintiff after the return of said levari facias and the sale of the said mortgaged property to issue the executions against the person or estate of said defendant, for the recovery of the sum remaining due on said judgment as in other cases. This act shall commence and be in force from and after the first day of January next.

EXECUTORS AND ADMINISTRATORS.

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AN ACT

Authorising the granting of letters Testamentary and letters of Administration, for the settlement of intestate's estates, and for other purposes.

Passed Sept. 17, 1807.

The duty of clerks respecting wills &c. and power of court.

Sec. 1. The Clerks of the courts of Common Pleas, of each county in this Territory, shall take proofs of last wills and testaments, and grant letters of testamentary, and letters of administration: *Provided however,* That the said letters testamentary, and letters of administration, granted by such Clerk in the vacation, may be repealed by sentence of the court of Common Pleas for the county at their term, next after the granting of such letters, and other letters may, by the same court, be granted to any person applying therefor, and having legal right thereto, in which cases, all acts and proceedings, done and

made, by the former executor or administrator, shall be legal and valid, and such further proceedings may be had and made, in the name or names of the succeeding executor or administrator, as though the original suits, or proofs had been commenced in his, her or their name or names.

Clerk to record and put on file all papers &c.

Sec. 2. The said clerks shall record last wills and testaments, and make entries of the granting of letters testamentary and letters of administration, and shall receive, put on file, and carefully preserve all bonds, inventories, accounts and other documents necessary to be perpetuated in their office.

To whom bonds made payable.

Sec. 3. All bonds that under, or by authority of this law, are directed to be taken, shall be made to the Judges of the respective courts of Common Pleas.

Courts power to award process &c.

Sec. 4. The courts of Common Pleas of each county of this Territory, shall have full power to award process, and cause to come before them, all, and every such person & persons, who, as guardians, trustees, tutors, executors, administrators, or otherwise, are, or shall be intrusted with, or in any wise accountable for any lands, tenements, goods chattles or estates, belonging, or which shall belong, to any orphan, or

person under age, and cause them to make and exhibit, within a reasonable time, true and perfect inventories and accounts of the said estates.

Sec. 5. When any complaint is made to the said court, that an executrix, having minors of her own, or being concerned for others, is married, or likely to be espoused to another husband, without securing the minors portions, or estates, or that an executor, or other person, having the care and trust of minors estates, is likely to prove insolvent, or shall refuse, or neglect to exhibit, true and perfect inventories, or give full and just accounts of the said estates, come to their hands or knowledge, then, & in every such case, the said court is hereby required to call all, and every such executors and trustees, and also such guardians or tutors of orphans or minors, as have been formerly appointed, or shall at any time hereafter be appointed, to give security to the orphans or minors, by mortgage or bond, in such sums, and with such securities, as the said court shall think reasonable, conditioned for the performance of their respective trusts, and for the true payment and delivery, to, and for the use and behoof of such orphans as they are concerned for, or such as shall legally represent them, the lega-

How minors estates are to be secured on complaint of an executrix married or likely to marry where executor is likely to become insolvent.

cies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets; as also for their maintenance and education, as the said court shall think fit to order, for the benefit and best advantage of such orphans, as is usual in such cases.

Executor &c by leave of court placing minors money at interest not to be accountable in case of loss, but otherwise while in their own hands.

Sec. 6. Any of the said executors, administrators, guardians, or trustees, may, by the leave, and direction of the said court, put out their minors money to interest, upon such security as the court shall allow of; and if such security so taken, *bona fide,* and without fraud, shall happen to prove insufficient, it shall be the minor's loss. But if no person who may be willing to take the said money at interest, with such security, as can be found by the person, so as aforesaid, concerned for the minors, nor by any others, then the said executors, administrators, guardians or trustees, shall in such cases be responsible for the principal money only, until it can be put out at interest, as aforesaid.

Term of payment of minors money so lent not to exceed 12 months.

Sec. 7. *Provided always,* That the day of payment of the money, so to be put out to interest, at any one time, shall not exceed twelve months, from the date of the obligation, or other security taken for the same, and so *toties quoties,*

when and so often as the said money shall be paid in, or come to the hands of the said executors, guardians or trustees.

Sec. 8. *Provided also,* , That no executors, administrators or guardians, shall be liable to pay interest, for the surplusage of the decedent's estate, remaining in their hands or power, and belonging to the minors, when the accounts of their administration are, or ought to be settled, and adjusted before the said courts.

Executors &c. how liable to intere .

Sec. 9. The said courts shall have full power and authority, to admit orphans or minors, when, and as often as there may be occasion, to make choice of guardians, or tutors, and to appoint guardians, next friends, or tutors, over such as the said court shall judge too young, or incapable, according to the rules of the common law to make choice themselves, and at the instance and request of the said executors administrators, guardians or tutors, to order and direct the binding, or putting out of minors, apprentices to trades, husbandry, or other employments, as shall be thought fit. And all guardians and *prochein amies,* who shall be appointed, by any of the said courts, shall be allowed and received, without

Court to admit minors to make choice of guardians &c &c. and to appoint gnardians &c. to such as are too young to choose for themselves and order the binding of minors to trades &c. guardians so appointed to prosecute and defend their minors

further admittance, to prosecute and defend all actions and suits, relating to the orphans or minors, as the case may require, in any court or courts of this territory.

power of the court in case of contempts etc.

Sec 10. In any person or persons, being duly summoned to appear in any of the said courts of common pleas, relating to any matter or thing, by this law made cognizable in the said court, ten days before the time appointed for their appearance, shall make default, the said courts may send their attachment, for contempts, and force obedience to their warrants, sentences and orders, concerning any matters or things cognizable in the same courts, by imprisonment of body, or sequestration of lands or goods.

Appeal to the general and circuit courts.

Sec. 11. *Provided always,* That if any person or persons, shall be aggrieved, by any definitive sentence, or judgment of the said court, it shall be lawful for them to appeal from the same, to the General, or Circuit courts, which appeal, upon security given, as is usual in such cases shall be granted accordingly.

Sec. 12. If any of the said executors administrators, guardians, or trustees, did, or shall receive and give discharges

for any sums of money, debts, rents, or duties, belonging to any orphan or minor, for whom they are, or were interested, it is hereby declared, that all such discharges, or receipts, shall be binding, to, and upon the orphan or minor, when he, or, she, attains to full age, and shall be effectual in law, to discharge the person or persons that take the same.

Dischanges or receipts given by executor and shall bind minors or orphans.

Sec. 13. When any of the said minors attain to the full age, and the person or persons, so, as aforesaid, intrusted or concerned for them, having rendered their accounts to the court of Com mon Pleas, according to law, and paid the minors their full due, then such minors shall acknowledge satisfaction in the said court; but in case any of them refuse so to do, then the said court shall certify how the said persons concerned have accounted and paid, which shall be a sufficient discharge to the guardians or tutors, and to the trustees, executors or administrators, who shall so account and pay, and thereupon all bonds entered into, for payment of such orphans portions, shall be delivered up and cancelled.

Minors attaining full age how they shall act on refusal how the court shall act.

Sec. 14. *Provided always,* That none of the said courts of Common Pleas,

No minor or orphan to be put under the control of those of dif ferent reli gion.

shall have any power to order or commit the tuition or guardianship of any orphans or minors, or bind them apprentices, to any person or persons, whose religious persuasion shall be different from what the parents of such orphan or minor professed, at the time of their decease; or against the minors own mind, or inclination, so far as he or she has discretion and capacity to express or signify the same; or to persons that are not of good repute, where others of good credit, and of the same persuasion may, or can be found.

The courts to have due regard to the direction of all last wills

Sec. 15. *Provided also,* That the said courts of common pleas, and all others concerned in the execution of this law, shall have due regard to the direction of all last wills, and to the true intent and meaning of the testators, in all matters and things that shall be brought before them concerning the same.

All Bonds given rela ting to mi nors or de cedents estates, how to whom liable.

Sec. 16. All such bonds or obligations, as are by this, or any other law of the territory, directed, or required to be given to the said courts, relating to minors, or decedents estates, and all such bonds as by any law are directed to be given by any judge or other officers or persons in office, for the due execution of his or their respective offices or employments, are hereby declared to

be to, and for the use of, and in trust for, the person or persons concerned; and the benefit thereof shall be extended from time to time, for the relief and advantage of the party grieved, by the misfeazance, or nonfeazance of the officers that did, or shall give the same.

When such bonds are sued and judgment had, no extn to issue before a scire facias sent out—damages and costs how to be awarded on verdict, for mer judgement to stand cautionary.

Sec. 17. And when any of the said bonds shall be put in suit, and judgment thereupon obtained, the judgment shall remain in the same nature the bonds were; and no execution shall issue thereupon, before the party grieved shall, by writ of *scire facias,* summon the person or persons against whom the said judgment is obtained, to appear and shew cause, why execution shall not issue upon the said judgment. And if the party grieved shall prove what damages he sustained, and thereupon a verdict be found for him, the court where such suit is, shall award execution for so much as the jury shall then find, with costs, and no more—and the former judgment is hereby declared still to remain cautionary, for the satisfaction of such others as shall legally prove themselves damnified, and recover their damages in manner aforesaid.

Sec. 18. The clerks of the said courts of common pleas, and all others, in whose hands the said bonds shall be de-

Clerks to give copies on demand of such bonds. Fee thereon.

posited or lodged, are hereby required to give any person injured and requesting the same, a true copy of any of the said bonds, he paying thirty seven and a half cents, for the same, and to produce the original in court, upon any trial that shall be had for the breach of any of them, if required by the court. And if the person in whose hands the said bonds shall be lodged, or come to, shall refuse or delay to give copies thereof, and produce the original in court, as aforesaid, he or they, shall forfeit and pay to the party grieved, treble damages; to be recovered against the officer who gave such bonds and his sureties, by action of debt, *bill, plaint,* or information, in any court in the territory, where no *essoin,* protection or *wager* of law, or any more than one *imparlance* shall be allowed.

To produce the original in court if required, clerk refusing or delaying to give such copies or produce the original in court to pay treble damages.

Administrators to give bond with two or more sureties &c.

Sec 19. The Clerks of the courts of Common Pleas, shall, upon granting letters of administration of the goods and chattels of persons dying intestate within this Territory, take sufficient bonds, with two or more able sureties, (respect being had to the value of the estate) in the name of the Judges of the said court, with the conditions in manner and form following, *mutatis mutandis,* viz.

Sec. 20 the condition of this obligation is such, that if the within bounden A B, administrator of all and singular, the goods, chattels, and credits of C D, deceased, do make, or cause to be made, a true and perfect inventory, of all and singular, the goods, chattels and credits of the said deceased, which have, or shall come to the hands, possession, or knowledge of him the said A B, or into the hands and possession of any other person or persons for him and the same so made, do exhibit, or cause to be exhibited in the court of Common Pleas of the county of at or before the day of next ensuing and the same goods, chattels and credits, and all other the goods, chattels and credits, of the said deceased, at the time of his death, which at any time hereafter, shall come to the hands, or possession of the said A B or into the hands and possession of any other person or persons for him, do well and truadminister according to law, and further do make, or cause to be made, a true and just account of his said administration, at or before the day of and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon the said administrator's account (the same being first examined and allowed of by the court of Common Pleas, of

Condition thereof. Such bonds valid and pleadable in any court.

the county where the said administration is granted) shall deliver and pay unto such person or persons, respectively, as the said court of Common Pleas (in the respective county) by their decree or sentence, pursuant to the true intent and meaning of law, shall limit and appoint. — And if it shall hereafter appear, that any last will and testament was made by the said deceased, and the executor or executors therein named, do exhibit the same, into the said court of Common Pleas, making request to have it allowed and approved accordingly, if the said A B, within bound, being thereunto required, do render and deliver the said letters of administration, approbation of such testament being first had and made, in the said court of Common Pleas, then this obligation to be void, and of none effect, or else to remain in full force and virtue.

Courts may oblige administrators to account, further power and duty of the court.

Sec. 21. Which bonds are hereby declared, to be good to all intents and purposes, and pleadable in any court of Justice, and also the said courts of Common Pleas, in the respective counties, shall, and may, and are hereby enabled, to proceed and call such administrators to account for, and touching the goods of any person dying intestate, and upon hearing, and due consideration

thereof, to order and make just and equal distribution of what remaineth clear, after all debts, funeral, and just expences of every sort, first allowed & deducted, according to the ordinance of Congress for the government of the Territory, and to the rules and limitations hereafter set down, and the same distributions to declare and settle, and to compel such administrators to observe and pay the same, by the due course of the laws of this Territory, saving to every one supposing him, or themselves aggrieved, their right of appeal, to the General or Circuit courts.

Children of intestate to share the est ate, equally.

Sec. 22 *Provided always,* That in case any child who shall have any estate by settlement, from the intestate, or shall be advanced by the said intestate in his life time, by portion, not equal to the share which will be due to the other children by such distribution as aforesaid, then, so much of the surplusage of the said estate of such intestate, to be distributed to such child, or children, as shall have any land by settlement from the intestate, or were advanced in the life time of the intestate, as shall make the estate of all the said children to be equal, as nearly as can be estimated. And in case there be no children, or any legal representatives of them, then one moiety of the said estate, to be

Where no representatives, wife to have one half the oth er to the next of kindred. Concerning collateral branches. When no wife children to take the whole, when no wife nor child how distribution to be made.

alloted to the wife of the intestate, and the residue of the said estate to be distributed, equally, to every of the next kindred of the intestate, who are in equal degree, and those who legally represent them: *Provided,* That there be no representatives admitted among collaterals, after brother's and sister's children; and in case there be no wife, then all the said estate to be distributed equally to, and among the children: and in case there be no child, then to the next of kin, in equal degree, of, or unto the intestate, and their legal representatives, as aforesaid, and in no other manner whatsoever.

Distribution of personal estate not to be made with in the year.

Sec. 23. *Provided also, and to the end,* That a due regard be had to creditors, that no such distribution of the goods of any person dying intestate be made, till after one year be fully expired, after the intestate's death; and that such, & every one, to whom any distribution and share shall be allotted, shall give bond, with sufficient sureties, in the said court of Common Pleas, that if any debt or debts, truly owing by the intestate, shall be afterwards sued for, and recovered, or otherwise duly made to appear, that then, and in every such case, he or she, shall respectively refund and pay back to the administrator, his or her ratable part of that debt or debts, and of the costs of suit, and charges of

Party sharing estate to give bond to refund and in the court of common pleas.

the administrator, by reason of such debts, out of the part and share, so, as aforesaid, allotted to him or her; thereby to enable the said administrator to pay and satisfy the said debt or debts, so discovered, after the distribution made as aforesaid.

Sec. 24. *Provided always,* That in all cases whereby law, administration with the will annexed, ought to be granted, the said Clerk, or the court of Common Pleas, shall grant administration accordingly, as before directed.

Administration with the will annexed, how grantable.

Sec. 25. Where any letters of administration shall be granted, and no bond with sureties given, as the law in that case requires, such letters of administration shall be, and are hereby declared to be void, and of none effect, and the Clerk, or Judges of the court that grant the same, shall be *ipso facto,* liable to pay all such damages as shall accrue to any person or persons, by occasion of granting such administration. And the party to whom the same shall be so granted, may be sued as executor in his own wrong, and shall be so taken and deemed, in any suit to be brought against him, for, or by reason of his said administration; or if upon such examin-

Letters administration granted without sureties to be void.

The officers so granting them, to be liable to the damages arising therefrom, and the party under them deemed executor in his own wrong.

ation it appears that the said court have not taken sufficient sureties, where the administrators may not be of ability, to answer or make good the value of what the decedent's estate doth, or shall amount unto, then the said court of Common Pleas, are hereby required and empowered to cause all such administrators to give better security to the said court by bonds; in manner and form as the law prescribes, and under such penalties, and with such sureties as the said court shall approve of, after they have heard the objections of creditors, or persons concerned, if any such be made, during the sitting of the court.— And if it appear that any of the said administrators have embezzled, wasted, or misapplied, or suffered so to be, any part of the decedent's estates, or shall neglect, or refuse to give bonds, with sureties, as aforesaid, then, and in every such case, the said court shall forthwith, by their sentence, revoke, or repeal the letters of administration granted by them, and thereupon, where such occasion happens, they are hereby required to grant letters of administration to such person or persons, having right thereunto, as will give bonds in manner and form, aforesaid, who may have their actions of *trover* or *detinue,* for such goods or chattels, as came to the possession of the former administrators;

Power of the court where insufficient security is taken, also in case of waste or embezzlement, when other letters shall be granted and bond taken, former administrator liable to suit.

and shall be detained, wasted, embezzled, or misapplied, by any of them, and no satisfaction made for the same.

Where personal estate is insufficient, the common pleas may order the real to be sold for the payment of debts, education and maintenance of the children.

Sec. 26. If any person or persons, shall die intestate, being owner of lands or tenements within this Territory, at the time of their death, and leave lawful issue to survive them, but not a sufficient personal estate to pay their just debts, and maintain their children, in such case it shall be lawful for the administrator or administrators of such deceased, to sell and convey such part or parts of their said lands or tenements for paying their just debts, maintenance of their children, and for putting them apprentices, and teaching them to read and write, and for improvement of the residue of the estate, if any be, to their advantage, as the court of Common Pleas of the county, where such estate lies, shall think fit to allow, order and direct from time to time.

Except under marriage settlement.

Sec. 27. *Provided always,* That no lands or tenements, contained in any marriage settlement, shall, by virtue of this law, be sold or disposed of, contrary to the form and effect of such settlement, nor shall any court of Common Pleas, allow, or order any intestates lands or tene-

Inventory to be first exhibited and other proceedings had.

ments to be sold, before the administrator requesting the same, doth exhibit a true and perfect inventory, and conscionable appraisement of all the intestate's personal estate whatsoever, as also a just and true account, upon his or her solemn oath or affirmation, of all the intestate's debts which shall be then come to his or her knowledge. And if thereupon it shall appear to the court that the intestate's personal estate will not be sufficient to pay the debts, and maintain the children, until the oldest of them attains the age of twenty-one years, or to put them out to be apprentices, and teach them to read and write, then, and in every such case, and not otherwise, the court shall allow such administrator to make public sale of so much of the said lands belonging to any minor, as the court, upon the best computation they can make of the value thereof, shall judge necessary for the purposes aforesaid, reserving the mansion house, and most profitable part of the estate till the last. But before any such sale be made, the court shall order so many writings to be made by the Clerk, upon parchment, or good paper, as the court shall think fit, to signify and give notice of such sales, and of the day and hour when, and the place where the same will be, and what lands are to be sold, and where they lie;

Mansion house and most profitable part of the estate to be reserved to the last.

Advertisements to be put up of time & place of sale.

which notice shall be delivered to the Sheriff or Constables, in order to be fixed in the most public places of the county, or city or town, at least twenty days before sale: and the Sheriffs or Constables are hereby required to make publication accordingly; and the administrator that makes such sale, shall bring his or her proceedings therein, to the next court of Common Pleas, after the sale made. And if it shall happen that any lands be sold by virtue of this law, for more than the courts computation of the value thereof, then the administrator shall be accountable for the same as by this law is required for intestate's personal estates.

Administrators to report proceedings to next court When lands sell higher than valued, the administrator must account for excess.

Sec. 28. Where any person has died, or hereafter shall die intestate, leaving his or her heirs, or any of them infants, or having made a will, shall not in said will have authorised his or her executors or some fit persons to make deeds of conveyance, and having previous to his or her death, executed bonds or any other instrument of writing, binding him or her to convey any tract of land, or lot of ground, in such case, the administrator, or executor shall apply to the court of Common Pleas, where the land lies, to appoint three fit persons as commissioners, who shall have full power and authority to convey any tract of

Court to appoint 3 commissioners on application or exrs. or adminsts. to convey real estate according to decedants bond.

land, or lot of ground, to the person entitled to the same, which the decedent bound him or herself, & his or her heirs, by any instrument of writing to convey, agreeably to the tenor of such instrument; and such conveyance so made, shall be as valid, and obligatory, upon the heirs, as if made by the ancestor in his life time: *Provided however,* That nothing in this act shall be so construed, as to prevent the infant representatives of such decedent, from instituting suits to recover such land, or a compensation in damages from the person or persons, to whom it shall have been conveyed, if any fraud shall have been practised in obtaining the same: *Provided always,* That the bond or instrument on which said conveyance is prayed, shall be filed with the records of the said court.

Fraudulent conveyance not binding on decedants heirs. Bonds to be filed with the records of court.

Sec. 29. Whenever it shall appear to the several courts of common pleas, of any county in this territory, on petition of any guardian or guardians, of any minor or minors, being owner or owners, and proprietor or proprietors, of any houses and lots, in any town or village, in this territory, that the yearly rents, issues and profits, beyond all reprisals of the same, are not sufficient to keep them in repair; it shall and may be lawful for such court to authorise the

If the rents of houses and lots belonging to minors are not sufficient, the court may authorise the guardian to sell the same

said guardian or guardians to sell and dispose of the said house and lot, or houses and lots, by public auction, to the highest bidder, on giving thirty days previous notice of the time and place of such sale, which shall be on such credit as the court shall direct, payable with lawful interest.

Guardian on such sale to take approv ed security. and make conveyance to purchaser.

Sec. 30. The said guardian or guardians, on the said sale's being made, shall take bond from such purchaser or purchasers, with sufficient security, to be approved of by the court, for the pay ment of such consideration money, who shall thereupon by proper deeds, convey to such purchaser or purchasers, his or her heirs, all the estate, right, title and interest, of such minor or minors, of, in, and to the said house and lot, or houses and lots; which conveyance so made, shall be as valid and effectual, as if the same had been made by such minor or minors, when of full age.

Guardians to account for the consider ation money

Sec. 31. The said guardian or guardians, shall account for the consideration money received for such house and lot, or houses and lots, in the same manner as for the other estate of such minor or minors.

Sec. 32. All wills in writing, wherein, or whereby, any lands, tenements or hereditaments, have been, are, or shall

Written wills declared good conveyances

Proof of wills how made

be devised (being proved by two or more credible witnesses, upon their solemn oath or affirmation, or by other legal proof, in this Territory, or being proved before such as have, or shall have power in any of the United Sates, or elsewhere, to take probates of wills, & grant letters of administration, and a copy of such will, with the probate thereof annexed, or endorsed, being transmitted hither under the public or common seal of the courts, or offices where the same have been, or shall be taken or granted, & recorded or entered in the office of the Clerk of the court of Common Pleas in this Territory) shall be good and available in law, for the granting, conveying and assuring of the lands or hereditaments, thereby given or devised, as well as of the goods and chattels thereby bequeathed; and the copies of all wills and probates, under the public seals of the courts, or offices, where the same have been, or shall be taken or granted, respectively, other than copies, or probates of such wills as shall appear to be annulled, disapproved or revoked, shall be judged and deemed, and are hereby declared to be matter of record, and shall be good evidence to prove the gift or devise thereby made And all such probates, as well as all letters of administration, granted out of this Terri-

Probates of wills declared matter of record and may be given in evidence

tory, being produced here, under the seals of the courts, or offices, granting the same, shall be as sufficient to enable the executors or administrators, by themselves or attornies, to bring their actions in any court within this Territory, as if the same probates, or letters testamentary, or administrations were granted here, and produced under the seal of the court of common pleas, in any county of this territory.

Should a will be disproved within 7 years remedy given to the party aggrieved.

Sec. 33. *Provided always,* That if any of the wills whereof copies or probates, shall be so as aforesaid, produced and given in evidence, shall within seven years after the testators death, appear to be disproved, or annulled, before any Judge or officer having cognizance thereof, or shall appear to be revoked or altered, by the testator, either by a latter will, or codicil in writing, duly proved as aforesaid, then, and in every such case, it shall and may be lawful for the party aggrieved, or his or their heirs, executors or assigns, to have their action for what shall be taken, or detained from them, by occasion of such wills, or have their writ or writs of error, for reversing the judicial proceedings thereon, (as the case shall require) any thing herein contained, to the contrary notwithstanding.

C c

Nuncupative will bequeathing more than 80 dollars value declared void, unless proved and how.

Sec. 34. No *nuncupative* will shall be good, where the estate thereby bequeathed shall exceed the value of eighty dollars, that is not proved by two or more witnesses, who were present at the m king thereof, nor unless it be proved, that the testator at the time of pronouncing the same, did bid the persons present, or some of them, bear witness that such was his will, or to that effect; nor unless such nuncupative will, be made in the time of the last sickness of the deceased, and in the house of his or their habitation, or dwelling, or where he or they have, or hath been resident, for the space of ten days or more next before the making of such will; except where such person was surprised, or taken sick, being from his own house, and died before he returned to the place of his or her dwelling.

Further requisites to make such will valid.

Limitation of proofs as to such nuncupative wills,

Sec. 35 When six months have passed after speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncipative, except the said testimony, or the substance thereof was committed to writing within six days after the making of the said will.

Sec. 36. No letters testamentary, or probate of any nuncupative will, shall pass the seal of the court of common

pleas in the respective coun ies, till fourteen days at least after the death of the testator, be fully expired, nor shall any nuncupative will, be at any time received to be proved, unless process have first issued out, to call in the widow, or next of kindred to the deceased, to the end, that they may contest the same, if they please.

No probate of wills nun cupative to issue, till 14 days after the death, nor till the widow or next of kin, be summoned to contest the same.

Sec. 37. Notwithstanding this law, any mariner or person being at sea, or soldier being in actual military service, may dispose of his moveables, wages and personal estate, as he might have done before the making hereof.

This law no to effect mariners & soldiers.

EXECUTORS AND ADMINISTRATORS.

AN ACT.

To amend an act entitled "An Act authorising the granting of Letters Testamentary, and Letters of Administration, for the settlement of Intestates estates,and for other purposes.

Passed Oct. 24. 1808.

Exors. or admors unless prevented by will or order of court to sell property on credit.

Sec. 1. Be it enacted by the legislative Council and House of representatives, and it is hereby enacted by the authority of the same, That all the moveable property of any person or persons dying, testate or intestate, in the territory, shall, unless otherwise directed by the will of such testator, or by a rule or order of the court of Common Pleas of the county, be sold by his, her or their executors or administrators, by public vendue, to the highest bidder, on a credit of at least three months, the purchaser or purchasers

giving bond with security, to be approved of by the executor or administrator, for the payment of their purchase money at the time mentioned in the conditions of sale, either with, or without interest, as expressed in such conditions: *Provided,* That executors or administrators may make it a part of the conditions of such sale, that purchases under three dollars, shall be paid down.

Certain sums to be paid down.

Sec. 2. *Be it further enacted,* That administrators in settling the accounts of their administrations, shall be charged with, and accountable for the nett proceeds of such sales, notwithstanding the same may amount to more, or less, than the appraised value.

Accountable for the amount of sale.

Sec. 3. *Be it further enacted,* That no action, or suit, shall hereafter be maintainable against any executor or executors, administrator or administrators, for debts due by the testator, or intestate, at the time of his death, before the expiration of twelve months after the granting of the first letters of administration, or letters testamentary; and if any such action, or suit, shall be brought, contrary to the provisions of this act, the same shall be dismissed by the court with full costs.

No suit shall be sustained against them until expiration of 12 months.

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

EXECUTORS AND ADMINISTRATORS.

AN ACT

Supplemental to an act entitled "an act authorising the granting of letters Testamentary and letters of Administration, for the Settlement of Intestates Estates and for other purposes.

Passed Dec. 10, 1813.

Preamble.

Whereas it appears that there is no law provided to authorise the Judges of the Courts of Common Pleas to issue any compulsory process against the Executors or Administrators in vacation of the courts setting and a considerable length of time between terms — which sometimes subjects estates to considerable loss. For remedy thereof.

Sec 1. Be it enacted by the Legislative Council and House of Representatives of the Illinois Territory and it is hereby enacted by the authority of the same. That on complaint made to any judge of the court of common pleas between term times of said court that any estate is likely to be embezzled or wasted in any manner whatever by any executor or administrator, guardian or others, the said judge is hereby empowered and authorised to issue such necessary process against any such executor or administrator in the same manner as might or could be done if sitting in a regular session at the times prescribed by law, and on hearing such case if the said judge should be of opinion that such complaint is well founded he is hereby authorised to summon one other judge to his assistance and hold a special session in which they are hereby empowered to hear and finally do all such matters & things thereon as might or could be done at any regular session of said court of common pleas at their terms appointed by the act to which this is a supplement.

Judges of C P to call special session of the C. P.

The power

Sec. 2. Be it further enacted, That the debts due by any person or persons at the time of his or her decease by any instrument in writing with or without seal shall be considered and taken as

All debts due by instument of writing of equal dignity

debts of equal degree and by his or her executors or administrators accordingly paid as such out of the decedent's estate and all executors and administrators after receiving the letters of administration, shall in ninety days thereafter make return of the appraisment and sale of such estate as he or they, may administer upon to the clerk of the court of common pleas and at the end of nine months thereafter they shall render to the court, their whole proceedings had thereon or so far as to make known to the court, whether the estate is sufficient or insolvent that he administered, or the next term after the expiration of the said nine months — and if any executor or administrator shall pay to any creditor, of said estate any more than his proportionable part or share of said estate, the said executor or administrator shall be liable out of his own estate to pay the creditors of said deceased the amount, thus improperly paid — though the executor or administrator might not have known of the insolvency of said estate, nor shall he at his peril, knowingly pay to any creditor more than his proportionable part or share of said estate after the expiration of one year next succeeding the date of his letters of administration or testamentary, no executor or administrator, shall confess a judgment to any creditor of said estate

Exr. to return list of appraisement & sale in 90 days

Shall settle in 6 months thereafter

If exr pays more to a credr. than his share liable out of his own property

Even if he does not know the estate to be insolvent

unless, upon oath so as to entitle the party to whom he confesses judgment to any more than his just proportion of said estate, nor that no executor nor administrator shall be entitled to retain of said estate for his own debt any more than a just proportion, with the other creditors.

Not to confess judgement unless on oath.

Sec. 3. And be it further enacted, That where the estate of which any one may be executor or administrator shall amount to no more than two hundred dollars, it shall be his duty to set up five advertisements in the most public places in the county in which the said deceased died, notifying the creditors of said estate, that at the next court of Common Pleas, he will settle with the court and require the creditors to bring in their claims properly authenticated, but should the estate amount to more than two hundred dollars, the executor or administrator shall insert the notice of such intended settlement in some public newspaper for eight successive weeks, and set up advertisements for the purpose aforesaid.

When the estate amts. to 200 dolls. what

When more what.

Sec. 4. Be it further enacted, That where the estate of any deceased person does not amount to any more than

Exrs. allowance.

two hundred dollars, the executor or administrator, who administers on said estate shall not be entitled to any more fees than ten per cent for his trouble and all above two hundred dollars five per cent, and when the estate amounts to no more than five hundred dollars, the administrator shall not be entitled to any more fees than seven per cent for his trouble as administrator of said estate — and all above five hundred dollars to one thousand dollars three per cent, and when any estate does not amount to any more than one thousand dollars the administrator shall not be entitled to any more fees for his trouble than five per cent, all above one thousand dollars to two thousand dollars three per cent. And where any estate does not amount to any more than two thousand dollars the administrator shall not be entitled to any more fees for his trouble than four per cent — on all sums above two thousand dollars two and a half per cent. And in any case where the Judges of the court of Common Pleas, should be of opinion that the percent allowed by this law for the trouble of settling estates should be too much, the said Judges may make any reasonable deduction as they may think just and reasonable. And where estates have become insolvent it is always to be understood that all fu-

C. Plaes may reduce it.

Funeral expences first paid.

neral expences shall be first paid. That nothing in this act contained shall be so construed so as in any wise to affect any administration granted before the passage of this act.

Not to have effect on admins. & exrs. now in office.

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

FEES

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AN ACT

Regulating the Fees of the several Officers and Persons therein named.

Passed Sept. 17th, 1807.

Sec. 1. No officer shall at any time exact or demand for services hereafter to be performed any larger or other fee, to be taxed in a bill of costs, than is hereinafter provided.

Fees to be taxed.

CLERKS FEES IN THE COMMON PLEAS.

		D.	C.	M.
	Every writ of capias and seal,		50	
	Entering action,		6	
Clerk C. P.	Filing writ,		6	
	A bond given by the plaintiff when he is not a freeholder and resident of the Territory.		37	5
	Filing declaration		6	
	Copy of declaration or other pleading per sheet if required each sheet containing seventy-two words		12	5
	Discontinuance or retraxit		do	
	Altering a declaration in ejectment, and admitting defendant		25	
	Entering every motion and rule thereon		12	5
	Copy of every rule when required		do.	
	Bringing a particular record into court		25	
	Entering satisfaction of record		12	5
	Receiving and entering verdict		do.	
	Entering judgment		15	
	Reading and allowing every writ of habeas corpus, writ of error or certiorari and the return		25	
	An execution		50	

	D.	C.	M.
Transcript of the record in error, and returning it with the writ every sheet of seventy two words		12	5
Entering defendants appearance		6	
Drawing and filing special bail in or out of court		18	
Every writ of enquiry per sheet		12	5
Entering on docket		do.	
Filing every plea, replication or joinder or other pleading		6	
Receiving and entering the panel and swearing the jury		18	
A habeas corpora juratorum		50	
Subpoena for four witnesses or under		do	
Swearing each witness		6	
Swearing constable		6	
Making up & entering a complete record after judgment per sheet of seventy two words		18	
Copy of a record of a judgment, when required per sheet of seventy two words		12	5
Searching the record within one year		do	
Every year back		6	
Copy of a record per sheet of seven ty two words		12	5
Entering report of referrees per sheet of seventy two words		do.	
On confession of judgment, default, joinder or demurrer		25	

	D.	C.	M.
Entering rule of court on appointing referrees		15	
Continuing each cause		20	
On surrendering the principal in court by sureties		15	
On entering every principal motion		10	
Every issue joined		25	
On every trial		do.	
On drawing special list of jury, attending & striking & making copies of jury list, for plaintiff & defendant		50	
Issuing commission to take deposi tions		do	
For recording certificate of marriage		12	5

CLERKS FEES IN CRIMINAL PROCEEDINGS

Taking a recognizance and drawing it up in form, to be paid to the clerk or other person who does the service		37	5
For engrossing every indictment & filing and reading the same		56	
Subpoena for four witnesses or under		50	
A venire or other writ		do.	
Entering defendants appearance		6	
An execution		50	
Making up record per sheet of seventy-two words		18	
Copy of same if required		12	5

Clrk. C. P in criminal cases

	D.	C.	M.
Every order or rule of court		9	
Entering noli prosequi, or cesset processus		18	
A venire for jurors to inquire of riots forcible entries and detainers, &c.		50	
Drawing and engrossing inquisition and returning the same		6	
Filing record		12	5
Entering the panel and swearing the jury		25	
Swearing each witness or constable		6	
Reading each evidence or petition in court		6	
Taking and entering verdict		12	5
Entering judgment and the fine		15	
Entering defendants confession		do	
Copies of indictment and pleadings if required per sheet of seventy two words		12	5
Discharging a recognizance		10	
For examining every account in court		do	
On entering appeal, allowing habeas corpus and writ of certiorari, when presented from the Judges of the General court		12	5
Every trial		25	
Continuing cause		20	
Entering a noli prosequi		12	5
Certificate and seal		75	

	D.	C	M.
Receiving, reading and filing every order brought to be allowed at the court of Common Pleas, and entering the confirmation and recording the same as in other cases per sheet of seventy two words		12	5
Making cost bill		37	5
Copy thereof		25	
To the Clerk in lieu of fees hereafter chargeable to the county the annual sum of	30		
To the Clerk of the General court the same sum to be paid by the Territory			

PROBATE FEES.

For all copies each folio of seventy two words		12	5
For administering an oath		6	
Probate. For filing		18	
For a citation		50	
For a letter of administration	2	50	
Taking and filing a renunciation and taking proof of a renunciation, and which proof the Clerks of the court of Common Pleas are heredy authorised and required to take		50	

	D.	C.	M.
For proving a will, endorsing a certificate thereon, recording the same and filing it	2	50	
For qualifying administrator taking bond, and writing certificate	1	50	
For filing caveat		18	
For proving codicil, if proved separately, endorsing certificate, recording the same and filing it	1	50	
For examining and proving an inventory or account	1		
For granting the administration with the will annexed	2	50	
For settlement of accounts of executor or administrator		50	
Every copy of said account not exceeding one hundred items, with certificate and seal of office	1	50	
Reading and filing petition, to sell land, and swearing administrator to the truth of the statement made and entering the necessary order thereon		67	
Giving notice by order of court for sale of land, for every advertisement not exceeding three		25	

JUSTICES FEES IN THE COURT OF COMMON PLEAS FOR THE USE OF THE COUNTY.

		D.	C.	M.
	For each action in court		37	5
Judges of C. P. use of county.	Signing every judgment		12	5
	Taking bail		25	
	Acknowledging satisfaction on record		9	
	Taxing and signing bill of costs		25	
	Proof or acknowledgment of a deed		37	5
	For every issue joined		50	
	For every trial	1		
	Allowing writ of error, habeas corpus or certiorari, when presented from the judges of the General court		50	
	Granting reference		25	
	Approving the report of referees		30	
	On surrender of principal in court		20	
	Hearing petition and making order thereon		25	

Sheriff's Fees.

For serving a writ and taking into custody		50	
For every mile fixed by law		6	
Every bail bond & copy of same		50	
Returning writ		9	
Summoning jury		75	

	D.	C.	M.
Attending a view per day	1		
Going & returning	1		
Serving & returning a scire facias		37	5
Serving a writ of possession with the aid of the posse commitatus	2	50	
Every mile from the place of holding Court		6	
Serving such writ without the aid of the posse commitatus	1	25	
For calling a jury on each cause		12	5
Every person committed to the common jail		37	5
Calling every witness		6	
Discharging every person out of the common jail		37	5
Calling every action		9	
Executing a writ of enquiry, drawing inquisition and returning the same	1	50	
Discharging every person by proclamation		9	
Serving a summons		37	5
For attending a prisoner before a judge when surrendered by his bail and receiving the prisoner into custody		50	
In criminal cases the like fees in the respective courts, as for the like services in civil cases			
For dieting a prisoner per day		25	
For proceeding to sell on any execution, if the property be ac-			

	D.	C.	M.
tually sold, the commission to the sheriff shall be five per centum on the first three hundred dollars, and two per centum on all sums above that; and one half of such commissions when the money is paid to the sheriff without seizure, or when the lands or goods seized or taken shall not be sold, and no other fee or reward shall be allowed upon any execution, except for the expence of receiving and keeping the property			
For making a deed on sale of real estate on execution		2	
To the sheriff in lieu of all fees that may hereafter be chargeable to the county, the annual sum of		50	

JURORS FEES IN THE COMMON PLEAS AND GENERAL COURT.

Jurors.	Every juror sworn in each action		25
	Every juror attending a view		50

WITNESSES FEES IN THE COURT OF COMMON PLEAS AND GENERAL COURT.

Every witness attending in his own county on trial per day		37	5

	D.	C.	M.	
Attending from a foreign county and coming and returning per day		56		
Each witness subpoenaed in the county and detained from a foreign county per day		56		
To a witness on a duces tecum coming from a foreign county attending and returning per day		56		
Except a clerk of a court, attending from a foreign county with wills, records, and other evidences, on Subpoena per day	1	65		

CORONERS FEES.

For the view of each body	3			
Each juryman that sits on the body		12	5	**Coroners.**
For witnesses the same allowance as in the court of Common Pleas				
Serving writs in all cases, the same as is before allowed to the sheriff for like services; the fees of the coroners inquest shall be certified by the coroner, and paid by the treasurer of the county.				

SECRETARYS FEES.

For copies or exemplification of records per sheet of seventy-two words		12	5	

	D.	C.	M.
And seal and certificate thereto when required		75	
For affixing the seal to any patent		75	
For recording an extract of every patent for land when the same is not recorded at full length		25	
For recording at full length any such patent, on the application of the patentee requesting the same, but not otherwise, for every seventy two words		12	5

SURVEYORS FEES.

For going to and returning from a view per day, and thirty miles per day	1	25	
Surveyors His actual service per day, on the view per day	1	50	
For going to, attending the court per trial & returning per day	1	25	

AN ACT

Regulating the fees of Justices of the Peace, Constables and Recorders,

Passed December 24th 1814.

Be it enacted by the Legislative

Council and House of Representatives, and it is hereby enacted by the authority of the same, That the following shall be the standing fees to govern the Justices of the Peace, Constables and Recorders of this territory:

	D.	C.	M.	
For every summons or warrant		12	1-2	**Justices fees**
Each Suboena		12	1 2	
Each continuance		6	1 4	
Swearing each witness on trial		6	1 4	
Every deposition in full length		25		
Entering up judgment		25		
For every execution		25		
Entering security when required		12	1-2	
Scire facias to be served on security when execution is returned "nothing to be found"		25		
Each notification, when the cause is to be left to referees		62	1-2	
Entering award and final judgment thereon		37	1-2	
Taking deposition of each witness on dedimus from another territory or county		25		
Returning dedimus certificate & sealing and directing same		37	1-2	
Entering appeal from judgment of justices		25		
Bond on appeal		37	1-2	
Copy of the proceedings on justices judgment		25		
For taking acknowledgement				

	D.	C.	M.
on a deed or other instrument of writing or proving the same for each person named therein		25	
On attachment for taking deposition		18	3-4
Granting attachment, taking bond and security		75	
Entering up judgment on the same		37	1-2
Putting the same on docket		12	1-2
On forcible entry and detainer for each precept		37	1-2
Administering each oath thereon		12	1 2
To each justice of the peace on trial per day	2	50	
Copy of proceedings & making out the same	2	50	

In Criminal Cases.

Taking each deposition at full length		25	
Each warrant		25	
Each recognizance		37	1-2
Each mittimus		37	1-2
Order for those who misbehave to be whipped		37	1-2
Order to remove a pauper		50	
Order to relieve a pauper		37	1-2

Constables Fees.

For serving and returning each

	D.	C.	M.
warrant		37	1-2
Serving summons & returning the same		37	1 4
erving execution and returning the same		37	1-2
Advertising property taken in execution for sale		12	1-2
Commission on sales under six dollars		25	
Commission on sales above six dollars	*six per cent.*		
Attending on each trial		12	1-2
Milage from the justice's dwelling, 5 cents per mile.			
For each day's attendance on the General court or court of common pleals	1		

IN CRIMINAL CASES.

For serving a warrant on each person therein named		50	
Attending on examination		25	
For serving subpoena on each person therein named		25	
For returning each precept		6	1-4
Taking each person to jail		25	
Milage from the place of commitment per mile		5	
Milage from the Justices of the Peace, on all criminal cases		5	

	D.	C.	M.
Whipping each person for a misdemeanor by order of any court or justices of the peace		50	

RECORDERS FEES. &c.

Recording deeds, mortgages and all other instruments of writing per 100 words.		16	
For all copies of records per 100 words		12	1 2
For every search for each year back		6	1-4
For certificate of any writing recorded		50	
Every seal when required		25	

Be it further enacted, That all laws and parts of laws that come within the pervieu of this act, shall be, and the same are hereby repealed.

This law shall be in force from and after the first day of May next.

Here follows the residue of the Act of 17th September 1807, *entitled "An act regulating the fees of the several officers & persons therein named"*

If any constable shall ask, demand or receive any more or greater fees than is above mentioned, he or they so of-

fending, shall forfeit and pay any sum, not exceeding eighteen dollars, for eve- such offence, to be recovered before any court having jurisdiction, the one half to the person suing for the same, the other half to the use of the proper county.

Constable taking greater fees fined.

And to the end, all persons chargable with any of the fees aforesaid, due to the several above officers (except constables) may certainly know for what the same are charged, none of the fees herein before mentioned, shall be payable to any person whatsoever, until there shall be presented unto the person owing or chargeable with the same, a bill or amount in writing, containing the particulars of such fees, signed by the Clerk, or officer to whom such fees shall be due, or by whom the same shall be chargeable respectively; on which said bill or account shall be expressed in words at full length, and in the same manner as the fees aforesaid are allowed by this law, every fee for which any money is or shall be demanded.

Officers to make and sign bills.

The Clerks of the General and Circuit courts, and Clerks of the courts of Common Pleas, in this Territory, shall cause to be set up in some public place in their offices and there constant-

Clk. to set up table of fees.

ly keept, a fair table of their fees herein before mentioned on pain of forfeiting forty dollars for every court day the same shall be missing, through their neglect, which penalty shall be to the use of the person or persons who shall inform or sue for the same, and shall and may be recovered in any court of record within this territory, by action of debt or information.

Officer taking other or greater fee.

Sec. 27 If any officer hereafter shall claim, charge, demand, exact or take any more or greater fees for any writing, or other business by him done within the purview of this act, than herein before set down and ascertained, or if any officer whatsoever shall charge or demand and take any of the fees herein before mentioned, where the business for which such fees are chargeable shall not have been actually done and performed (to be proved by the fee book of such officer on his corporeal oath) such officer for every such offence shall forfeit and pay to the party injured, besides such fee or fees six dollars to every particular article or fee so unjustly charged or demanded or taken, o be recovered with costs in any court of record in this territory, by action of debt or information provided the same be sued for within twelve

How punished.

months after the offence shall be committed. **Limitation.**

Sec. 28. And for the better collection of the said fees, the Clerks of every court respectively, shall annually before the first day of March deliver or cause to be delivered to the Sheriff of every county in this territory, their account of fees due from any person or persons residing therein, which shall be signed by the clerks respectively. **Clk. to deliver fee bill to sheriff.**

Sec. 29. The said sheriffs are hereby required and empowered to receive such accounts and to collect levy and receive the several sums of money therein charged of the persons chargeable therewith; and if such person or persons, after the said fees shall be demanded, shall refuse or delay to pay the same, till after the tenth day of April in every year, the sheriff of that county wherein such person resides, or of the county in which such fees became due, shall have full power and are hereby required, to make distress of the slaves, or goods and chattels of the party so refusing or delaying payment, either in that county where such person inhabits, or where the same ees became due; and the sheriff of any county for all fees which shall remain due and unpaid after the said tenth day of April in any year, **Sheriff to collect.** **If payment delayed.** **Shff. to distrain.**

As also for own & other sheriffs,

either to themselves or the sheriffs of another county which shall be put into hi hands to collect, as aforesaid, is hereby authorised and empowered to make distress and sale of the goods and chattels of the party refusing or delaying payment in the same manner as for other fees due to any of the officers

No wart for fees except as property

therein before mentioned, but no action, suit or warrant from a justice, shall be had or maintained, for Clerk's fees unless the Sheriff shall return that the person owing or chargeable with such fees, hath not sufficient within his bailiwick, whereon to make distress, except when the clerk as aforesaid shall have

Or fee book lost.

lost his fee book by fire or other misfortune, so that he be hindered from putting his fees into the sheriffs hands to collect; and in that case, any suit or warrant may be had and maintained for the recovery thereof. And if any Sheriff shall be sued, for any thing by him done in pursuance of this law, he may

Shff. pld. gl. issue.

plead the general issue and give this law in evidence.

Sec. 30. Every Sheriff of every county shall on or before the last day of

Shff. to account &c.

May in every year, account with the Clerks respectively, for all fees put into his hands, pursuant to this law, and pay the same, abating ten per centum for collecting. And if any Sheriff shall

refuse to account or pay the whole amount of fees, put into his hands, after the deductions aforesaid made, to gether with an allowance of what is charged to persons not dwelling, or having no visible estate in his county, it shall and may be lawful for the Clerks, their executors or administrators, upon a motion made in the next succeeding General court Circuit court or court of Common Pleas, of the county of such Sheriff, to demand judgment against such sheriff, for all fees wherewith he shall be chargeable by virtue of this law; and such court is hereby authorised and required to give judgment accordingly, and to award execution thereupon; *Provided,* The sheriff have ten days previous notice of such motion.

Deduction.

Clk. may motion agst. Shff.

To give notice

Sec. 31. The executors or administrators of any such sheriff, or und r sheriff, shall be liable to a judgment as aforesaid, for fees received to be collected by their testator or intestate, and not accounted for. Every receipt for fees produced in evidence, on any such motion, shall be deemed to be the act of the person subscribing it, unless he shall deny the same upon oath.

Exrs. & admrs. liable

Recpt. evidence unless denied on oath.

Sec. 32. Sheriff's poundage, and all other legal fees in a suit, from final judgment to execution, shall, by the

sheriff, be levied out of the estate and effects of the persons against whom such execution shall be issued.

See act 25 *October* 1808 *page* 27.

AN ACT

Rrgulating the Fees in the General Court, and for other purposes,

Passed Sept. 14*th,* 1807.

Clks of G. C same fees as clks of P.

Except &c.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives, and it is hereby enacted by the authority of the same,* hat from and after the passage hereof, the Clerk of the General court, and Circuit courts of this Territory, shall not have, take, ask or demand any other, or greater fee or reward for services hereafter rendered in suits or proceedings, now depending, or hereafter to be brought in the General or Circuit courts, than is, or shall by law be allowed to the respective Clerks of the courts of Common Pleas, of any county in this territory, except as now excepted, that they shall respectively have and receive fifty cents, for any manner, or kind of writ, except special writs, for which he shall be allowed

such additional fee, as the court in their discretion shall think reasonable, regard being had to the length thereof, which may be severally issued by them; and the Clerk of the General court especially shall be allowed, ask, demand, and take for taking bond, on issuing writ of error, or supersedeas, seventy-five cents.

clk. to make up record a full length

The better to preserve the records and proceedings of the several courts within this territory, it shall be the duty of the clerk of the general court, and the clerks of the respective courts of Common pleas, on the final determination of any suit to enter on record, in a book which they shall keep for that purpose all the proceedings and papers filed therein, proceeding had, and also the judgment therein at full length, for which services the clerk of the General court shall receive the same fee as is allowed to the Clerks of the courts of Common pleas.

G G

coroners fees the same in all courts.

Sec. 2. Be it further enacted, That the respective Sheriffs and Coroners of the several counties in this territory, shall not in like manner, receive or take, ask, or demand, any other or greater fee for services rendered by them respectively, in the general or circuit court, than is, or may be allowed by law for similar services in the courts of Common pleas.

counsellors or attons. fees

Sec. 3. Be it further enacted, That no attorney or counsellor at law, shall exact or demand any further or greater fees for services rendered either in the General court or court of Common Pleas, than the following viz.

In all civil actions where the titles of land do not come in question	2 50
In all civil actions where the titles of lands do come in question	5
For every verbal advice where suit is not depending	1 25
For every written advice where suit is not depending	2 50

Sec. 4. Be it further enacted, That the clerk of the general court, if otherwise duly qualified and admitted according to law, shall be allowed and permitted to practise as attorney at law in the several courts of Common pleas of this territory.

clk. of c.c. practice in inferior crt.

Sec. 5. Be it further enacted, That the attorney general, or attorney prosecuting the pleas in the dtfferent counties shall not in like manner tax up, or charge any other or greater fee than hereafter immediately stated, to wit: Drawing up and attending to an indictment or presentment, five dollars; which fee may be received by the said attorney general, or attorney prosecuting the pleas of the United States, in no other cases than where the defendant shall be lawfully convicted, when it shall be taxed in the bill of costs.

Atto gen. or atto. pro secuting pleas

Fees taxed on deft. if c nvicted

Sec. 6. Be it further enacted, That the Clerks of the several courts of Common pleas in their respective counties shall hereafter act as clerks of the circuit courts, which may be

clks. of c.p. act as clk. of c Crt.

holden therein, who shall receive such fees for their services as may, or shall be allowed by law.

Repealing clause

Sec. 7. And be it further enacted, That all laws and parts of laws coming within the purview of this act, be, and the same are hereby repealed.

AN ACT

Concerning Clerks fees in the Court of Chancery and for other purposes.

Passed Dec. 26, 1812.

Be it enacted by the Legislative Council and House of Representatives, and it is hereby enacted by the authority of the same, That it shall be the duty of the clerk of the court of

chancery to make up complete records of cases decided in the court of Chancery in the same manner as the clerks of the courts of common pleas and clerk of the general court, are now by law directed to do, and the clerk of the said court of chancery shall be entitled to charge demand and receive the same fees as in similar cases is allowed by law to the Clerk of the general court, and where the business shall be different from that contained in the bill of fees allowed to the clerk of the general court, the said court of chancery shall regulate the same and make a record thereof and the said clerk of the court of chancery shall put his fee bills into the hands of the Sheriffs of the several counties at the same time as other clerks are now by law required to do, which said bills shall be collected in the same manner as other officer's fees.

clerk, of chancery to make up complete record

To have same fees as clk. of gen court

Fees how collected

AN ACT

To amend an act, entitled "An act regulating the Fees of the several Officers and persons therein named.

Passed October 22, 1808.

Sec. 1. Whereas, numerous, and in some cases, just complaints do still exist among our citizens with respect to the exorbitancy of the Clerks fees of the courts of record in this territory; and likewise that they are compellable by execution, to pay large sums of money for fees without for knowing what services they do pay: for remedy whereof;

clerk to make fee bill with execution

Be it enacted by the Legislative Council and House of Representatives, and it is hereby enacted by the authority of the same, That in all cases, or judgments upon which execution may, or shall hereafter be issued from any court of record in this territory, the clerk of the court from whence the same may so issue

shall, at the time of issuing thereof, make out under his signature, and deliver to the Sheriff or Coroner, as the case may be, with the execution, a detailed bill of the costs in the said suit from its commencement to its termination in order that the party paying the same, may certainly know, with, & for what, he is chargeable; which said bill, the said officer, to whose hands the execution may so come, shall deliver to the party against whom the execution may be, so soon, and upon his replevying for or paying the same, together with his certificate thereon, that the same was so replevied for, or paid by the said person.

Officer to receipt for

Sec. 2. And be it further enacted, That should any officer concerned in the issuing or executing any execution hereafter to be issued as aforesaid, fail in the duty enjoined upon him, in the preceeding section hereof, they shall severally, and respectively, forfeit and pay to the party, or person injured the sum of fifty dollars with costs, to be recovered

clerk or officer falling fined and to whose use

Compared with original
act, & act as here given
is complete.
Nov. 16, 1889.
W. L. Gross[1]

[1]There is no page 256, but in the edition belonging to the Illinois State Historical Library there is a blank page with the above note on it in pencil.

in any court of record in this territory, by indictment or information; and no imparlance or delay shall be allowed therein, any law usage or custom to the contrary thereof, in any wise notwithstanding.

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

AN ACT

Defining and explaining the fees of sheriffs and Clerks in certain cases.

Passed December 20th 1814.

Whereas unreasonable doubts have arisen relative to the amount of the sum which the sheriffs and clerks of the General court or Supreme court are or hereafter may be legally entitled to receive out of the county Treasury for their respective services in the public prosecutions of those persons who are either or may be acquitted of the charge or charges exhibited against them or discharged, or unable to pay the fees, and for the removal of all such doubts. **Preamble.**

Sheriffs & clerks shall receive but 50 Dolls.

Sec. 1. *Be it enacted by the Legislative Council and House of Representatives, and it is hereby enacted by the authority of the same,* That the sheriffs and clerks of the Supreme or General courts of the respective counties, shall not be entitled to receive any compensation out of the said treasuries for any services they or either of them may render in any prosecutions in which the territory is party, but in lieu thereof each sheriff shall receive out of his own county treasury, the sum of fifty dollars annually.

Which is in lieu of fees chargeable to the Territory or county.

And each clerk of the General or Supreme court, shall receive annually out of their respective county treasuries the sum of thirty dollars in full for all services of every description wherein the respective counties or territory may be chargeable to any of said officers.

Witnesses, Jurors & Constables fees taxed in bill of costs.

Sec. 2. *Be it further enacted,* That in all criminal cases, the witnesses and jurors and constables' fees shall be taxed in all bills of costs as in civil causes which shall be paid according to law.

For replevy Bond what.

Sec. 3. *Be it further enacted,* That upon executing a writ of execution and taking a replevy bond thereupon the sheriff or coroner executing the same shall charge six cents per mile from the court house of his county to the place of actual service and also fifty cents for the

replevy bond, but no more. And if any sheriff or coroner shall charge, demand, or receive any more or greater or other fees, he shall forfeit and pay to the party injured or attempted to be injured thereby, six dollars for every item so unjustly charged, demanded or taken by action of debt, before any court having jurisdiction thereof.

Sheriffs mileage.

Sec. 4. If there be more persons than one named in any writ or subpoena, the travel shall be computed from the court-house of the county of said sheriff to the place of service which shall be the most remote, adding thereto the extra travel, which shall be necessary to serve it on the other or others; *Provided always,* That, that extra travel shall not exceed the distance between the place of service and the court House of said Sheriffs county, and it shall be the duty of said Sheriff or coroner to endorse on each writ or subpoena he may execute the distance he has traveled to execute the same regulating the calculation of the mileage thereof according to the provisions of this section, and it shall be the duty of the sheriffs to charge mileage to the place he actually executes any writ or subpoena and for no more, and if the sheriff or coroner shall charge, demand or receive more or greater or other fees than are hereby

Sheriff to indorse distance traveled.

Penalty.

allowed or if he shall not make his return as above directed, he shall fo feit and pay to the party injured or attempted to be injured or who may by the event and termination of the suit be injured thereby for every item thus illegally charged or demanded or received, the sum of six dollars, to be recovered by action of debt by any person injured or attempted to be injured thereby, in any court having jurisdiction thereof. And if any sheriff or coroner shall neglect or refuse to make his return as above directed, on all writs and subpoenas, he shall forfeit and pay to the party injured thereby, who will sue for the same the sum of fifty dollars.

FERRIES.

AN ACT.

To amend an act entitled "An act to establish and regulate Ferries."

Passed Dec 25, 1812.

Sec. 1. Be it enacted by the Legisla-

tive council and house of representatives and it is hereby enacted by the authority of the same. That, all ferries established by the laws of Indiana are hereby declared established ferries in the Illinois Territory unless repealed.

Sec. 2. And be it further enacted, That so much of the act to which this is a supplement as comes within the pervieu of this act shall be and the same is hereby repealed.

AN ACT

To establish and regulate Ferries.

Passed Sept. 17 1807.

Ferries to be established by the court of C. P.

Sec. 1. Whenever it shall be found necessary to establish a public ferry, over any river or creek within the Territory the court of common pleas of the respective counties, on due application to them made by the proprietor of land, on either side, may establish and confirm the same by a special order for that purpose: *Provided always,* That no application shall avail the proprietor, unless his or her intentions relative thereto have been published in the public papers of the county, and if there be no public press in the county,

How to make application for a ferry.

then at least three of the most public places of the township, in which such ferry is proposed to be established, three months previous to the making of such application; and shall moreover have published his or her intention by advertisement, on the door of the court house of the proper county, for three days successively during the sitting of the court, within the time, above mentioned.

Courts to fix the rates of ferriage in their respective counties

Sec. 2. The court of common pleas, in every county, shall be, and they are hereby empowered, authorised, and required, to fix from time to time, the rates, which each ferry keeper shall hereafter demand, for the transportation of passengers, waggons or carriages, horses, cattle, &c. at any ferry, now or hereafter to be established in their respective counties within this territory, having due regard to the distance, which the ferry boats have to travel, the dangers or difficulties incident to the same, and the state and condition at the river or creek, over which such ferry is established, and the owner or owners of any such ferry or ferries; shall within three months from the establishment of such ferry execute and deliver a bond, with one or more sufficient securities, to the said court, in the penalty of one hundred dollars, payable to the

Owner of a ferry to give bond.

Sheriff, as treasurer of the county or his successor in office, with a condition that he or she will keep such ferry, or cause the same to be kept according to law; and that he or she will give passage to all public messengers and expresses when required, from time to time without any fee or reward for the same; and if the condition of the said bond, shall at any time be broken, the penalty therein contained, shall be recoverable with costs of suit, for the use of the county; and in case any such person shall neglect or refuse to give such bond, he or she shall forfeit and pay the sum of fifty dollars for every month's refusal or neglect, one half to the use of the person prosecuting for the same, the other half to the use of the county. All expresses sent on public service, by a commander in chief, colonel, lieutenant colonel, major or commandant of any military post, to the governor, or commanding officer of the militia, shall be accounted public messengers and expresses, and shall pass ferry free, within the condition and meaning of the bond aforesaid, in case the dispatch carried by such express, be endorsed on "Public Service," and signed by the person sending the same.

The condition.

Penalty of failure to give bond.

Express &c. to pass ferry free.

Ferry keeper to set up rate of ferriage

Sec. 3. Every ferry keeper shall set

& keep up, upon the margin of the river or creek, opposite to the ferry place of every public ferry, a post or board, on which shall be written the rates of ferriage, of such ferry by law allowed; and if any ferry keeper shall demand from any person a greater sum for the ferriage, than is or shall be allowed by the court of Common Pleas to such ferry keeper, such offender shall forfeit to the person so overcharged, the feriage demanded and received, and also two dollars with costs of suit, for every such offence, recoverable before any justice of the peace, within the township wherein the offence has been committed.

Penalty for demanding higher rates.

How recoverable.

Sec. 4. Each and every ferry keeper shall keep a good and sufficient boat, or boats, if more than one be necessary, with a sufficient number of good and skilful men to navigate the same, and to give due attendance to the said ferry or ferries, and the transportation of all persons who shall apply for the same during the day time, that is to say, from day light in the morning until dark in the evening, that no unnecessary delay may happen to persons having occasion to use the same: *Provided always,* That all ferry keepers shall be obliged at any hour of the night, if required, except in case of evident danger, to give passage to all public expresses a-

To keep good and sufficient boats &c.

Feries to be kept from day light till dark.

When in the night.

bove recited, and to all other persons requiring the same on their tendering and paying double the rate of ferriage allowed to be taken during the day time.

Ferry man exempt from militia duty.

Sec. 5. And for encouraging ferry keepers, and in consideration of setting over public messengers and the persons exempted by this act, *Be it enacted,* That all men necessarily attending on ferries in this Territory, shall be free from militia duty, impressments, opening and repairing highways, so far as personal service is required, and from serving on juries, and if any person or persons other than ferry keepers, licensed as aforesaid, shall for reward set any person over any river or creek, where public ferries are appointed or established, at any place within five miles, of any such public ferry, he she or they so offending, shall forfeit and pay a sum not exceeding twenty nor less than five dollars, for every such offence; one moiety to the person prosecuting for the same, and the other moiety to the use of the county wherein the offence shall have been committed

Penalty on keeping ferries without license.

When court may discontinue ferries

Sec. 6. If any ferry or ferries, which now are, or may hereafter be establish-

ed, shall not be furnished with necessary boat or boats, and ferrymen, within the space of six months after the est - blishment thereof, or shall at any time hereafter, be wholly disused or unfrequented for the space of one year, it shall and may be lawful for the court of Common Pleas for the county in which such ferry or ferries shall be, on complaint to them made, to summon the proprietor or proprietors of the same, to shew cause, why it should not be discontinued, and to decide according to the testimony adduced, which decision shall be valid in law.

Ferries kept under license from the governor continued &c.

Sec. 7. It shall and may be lawful for any ferry keeper, to take into his or her boat or boats, any passenger or passengers, carriages, waggons, horses, or cattle, of any kind whatsoever, to convey them over, and to receive the ferriages for the same agreeably to the rates established by the courts of Common Pleas: *Provided nevertheless,* That all ferries now kept by license from the Governor, shall be, and are hereby declared to be established ferries: *Provided,* The owner or owners of such ferries, have the license recorded in the recorders office in each county, wherein the ferry or ferries are, within three months after the taking effect of this act, subject to the same rules, regulations,

and restrictions, as are herein contained.

See acts 1812 *and* 1814.

AN ACT.

For the releif of the legal Representatives of Alexander Wilson deceased.

Passed Nov. 28, 1814.

Whereas it appears to this Legislature that William H. Harrison Esquire during the time he acted as Governor in and over the Indiana Territory and as superintendent of the United States Saline within the same while this Territory was an integral part of that, did grant a permission to a certain individual to occupy and keep a public ferry at the place now called Shawanoetown which said permission being unrevoked after the erection of this Territory into a separate Government was with all the previleges, & subject to all the conditions appertaining thereto, purchased by Alexander Wilson deceased for a large sum of money which was paid and satisfied by said Wilson, who also before the establishment of Gallatin County obtained an order of from the

Preamble.

Court of Randolph County establishing and granting said ferry to himself which he continued to hold, occupy and use as such until his death, and which has since been so held occupied and used by his legal Representatives. And whereas d ubts have arisen as to the legality of t e establishment of said ferry or the right of the legal Representatives to hold the same in consequence of the margin of the Ohio River at Shawanoetown where said ferry was established being according to the plan of said town public ground and unappropriated to any individual. For remedy whereof and to settle all disputes relative thereto.

Ferry at Shawnoetown granted.

Sec. 1. Be it enacted by the Legislative Council and House of Representatives and it is hereby enacted by the authority of the same that the aforesaid ferry on the Ohio River at Shawanoetown shall be and hereby is confirmed to the legal representatives of said Alexander Wilson deceased with all the emoluments advantages and previleges that can be granted to any individual under the existing law relative to ferries but nevertheless it shall be subject in the hands of said representatives to all the rules regulations and penalties to which ferries legally established by courts are subject. This act shall take

Rules and regulations of it.

effect and continue in force from and after the passage thereof.

AN ACT

To amend an act entitled "an act to amend an act entitled an act to establish and regulate ferries,"

Passed December 22, 1814.

Sec. 1. Be it enacted by the Legislative council and House of Representatives, and it is hereby enacted by the authority of the same, That so much of the act entitled "an act to amend an act, entitled an act to establish and regulate ferries" as declares that no ferry shall be established by the court of Common Pleas in any county in this Territory, across the Ohio and Mississippi rivers within less than two miles of an established ferry, shall be and the same is hereby repealed.

Repeals former law.

Sec. 2. That in all future cases the county courts may grant any ferry according to law, that the respective county courts in their several counties may deem necessary.

County court may establish ferries.

FINES & FORFEITURES.

AN ACT

Concerning fines and forfeitures.

Passed Dec. 1st 1813.

Fines &c. to go to county.

Be it enacted by the Legislative council and House of Representatives, and it is hereby enacted by the authority of the same, That all fines and forfeitures that may hereafter be recovered in the respective courts of Common Pleas shall be appropriated in behalf of the county levy in each county in which such fine and forfeiture shall be recovered, any law to the contrary notwithstanding. This act to commence and be in force from and after the passage thereof.

Firing of Woods and Prairies.

AN ACT

Regulating the firing of Woods, Prairies and other lands,

Passed Sept. 17, 1807.

Sec. 1. Whosoever shall at any time, except as is herein after excepted, wilfully or negligently set on fire or cause to be set on fire, any woods, prairies or other grounds, whatsoever within this Territory, and being thereof legally convicted by the oath or affirmation of one or more credible witnesses, in any court having cognizance of the same, shall pay a fine not exceeding one hundred dollars, nor less than five dollars; the one half of which to be paid to the person prosecuting for the same and the other half to the use of the county wherein the offence shall have been committed.

firing woods &c. fined and in what sum.

How paid.

Sec. 2. When any person or persons so offending, shall thereby occasion any loss, damage or injury to any other per-

To make good all damages.

son or persons, every person so offending, shall be, and is hereby declared liable to make good all damages to the person or persons injured, with costs of suit, in any court having cognizance of the same.

Servant how punished.

When any servant or servants shall offend against the tenor of this law, & being duly convicted of the same, except his, her or their master or mistress shall pay the fine herein above provided, with damages and costs for said offence, then such servant or servants, so offending, shall be whipped not exceeding thirty nine stripes, at the discretion of the court having cognizance thereof.

Proviso.

Sec. 4. Nothing in this act shall be so construed as to prevent any person or persons from setting on fire any rubbish, leaves or brush, on his, her or their farms or plantations as often as occasion may require, if the same be done without damage to the property of any other person or persons: *Provided also,* That nothing in this act shall be so construed, as to prevent any person or persons from setting on fire prairies or cleared land, between the first day of December and the tenth day of March, if the same be done without damage, as aforesaid.

What time to fire prairies.

FORCIBLE ENTRY AND DETAINER.

AN ACT.

Against forcible entry and detainer.

Passed Sept. 17, 1807

Two justices may enquire by jury and order restitution of lands &c. unlawfully withheld.

Sec. 1. TWO Justices of the peace shall have authority to enquire by jury, as is hereinafter directed, as well against those who make unlawful and forcible entry, into lands or tenements, and with a strong hand detain the same, as against those who having lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found upon such enquiry that an unlawful and forcible entry hath been made, and that the same lands or tenements are held and detained with force and strong hands, or that the same after a lawful entry are held unlawfully and with force and strong hand, then

such justices shall cause the party complaining to have restitution thereof.

Justices on a written complaint of unlawful detainer of lands, &c how to proceed.

Sec. 2. When complaint shall be formally made in writing to any two justices of the peace of any unlawful and forcible entry into any lands or tenements and detainer as aforesaid, or if any unlawful and forcible detainer of the same after a peaceable entry, they shall make out their warrant under their hands and seals, directed to the Sheriff (or as the case may be) the Coroner of the same county, commanding him to cause to come before them, twelve good and lawful men of the same county, each one of whom having freehold lands or tenements, and they shall be impannelled to enquire into the entry, or forcible detainer complained of, which warrant shall be in the form following, *mutatis mutandis.*

Warrant to impannel a jury of freeholders.

H. Sc.

Form of the warrant.

AB, and CD, esquires two of the justices assigned to keep the peace within and for the said county, to the of H. greeting whereas complaint is made to us by E F, of in the county aforesaid that G H, of yeoman upon the day of at aforesaid with force

and arms, and with a strong hand, did unlawfully and forcibly enter into and upon a tract of land of him, the said E F, in aforesaid containing acres, bounded as follows, viz (or into the messuage and tenement of him, the said E F, as the case may be) and him the said E F, with force and a strong hand, as aforesaid, did expel and unlawfully put out of the possession of the same (for if it is a forcible detainer only then the entry shall be described, and the detainer inserted as follows) and the said E F, does unlawfully, unjustly, and with a strong hand deforce and still keep out of the possession of the same; you are therefore commanded on behalf of the United States, to cause to come before us upon the day of at the in the said county, twelve good and lawful men of your county, each one of whom being a freeholder, to be impannelled and sworn to enquire into the forcible entry, and detaier, (or for the detainer only) before described; given under our hands and seals the day of in the year

A B. } Justices of the
C D. } Peace.

Sec. 3. And the said justices shall make out their summons to the party

complained against, in the form following:

Sc.

L. S. }
L. S. }

Form of the summons to the party complained of.

A B and C D, two of the justices assigned to keep the peace, within and for said coun y of to the of greeting: Summons G H, of to appear before us at in the said county at o'clock in the noon then and there to answer to and defend, against the complaint of E F, to us exhibited, wherein he complains that (here the complaint shall be recited) and you are to make to us a return of this summons with your proceedings therein, on or before the said day. Witness our hands and seals the day of in the year of

A B, }
C D, } Justices.

Summonses how to be served.

Which summons shall be served upon the party complained against, or a copy thereof left at his usual place of abode, seven days exclusively, before the day appointed by the justices for the t ial; and if after the service of such summons, the party do not appear to de-

fend, the justices shall proceed to the enquiry in the same manner as if he were present, and when the jury shall appear, the Justices shall lay before the jury the exhibited complaint, and shall administer the following oath to them, viz.

FOREMAN's OATH

Jurors oath.

You as foreman of this jury do solemnly swear (or affirm) that you will well and truly try whether the complaint of E. F. now laid before you is true, according to your evidence, so help you God, [if swearing.]

THE OTHER JURORS' OATH, viz.

The same oath or (affirmation) that your foreman hath taken on his part, you, and every of you shall well and truly observe, and keep, so help you God. And if the jury shall find the same true then they shall return their verdict in form following—

Form of the verdict.

At a court of enquiry held before A B, and C D, esquires, two Justices assigned to keep the peace, within and for the county of H at in the said county of H upon the day of

in the year the jury upon their oath or affirmation, as aforesaid, hat tenements in aforesaid, bounded or described as follows (as in the complaint) upon the day of in the year were in the lawful and rightful possession of the said E. F, and that the said G H, did upon the same day, unlawfully with force and arms, & with a strong hand, enter forcibly upon the same; or being lawfully upon the same, did unlawfully with force and strong hands, expel and drive out the said E F, and that he doth still continue wrongfully to detain the possession from him, the said E F, wherefore the jury find upon their oath or affirmation, as aforesaid, hat the said E F, ought to have restitution thereof without delay.

Where pannel is incomplete, then to be filled by a tales.

All jurors to sign verdict for complainant, otherwise costs to defendant.

On verdict for complainant judgment to be entered up & a writ of restitution.

If by accident or challenge, there shall happen not to be a full jury, the sheriff shall fill the pannel by tales, as in other cases; and if the jury after a full hearing of the cause, shall find the complaint laid before them supported by evidence, they shall all sign their verdict in form aforesaid, otherwise the defendant shall be allowed his legal costs, and have his execution thereof.

If the jury shall return their verdict signed by the whole pannel, that the complaint is supported, the justices shall

enter up judgment for the complainant to have restitution of the premises; and shall award their writ of restitution accordingly, and no appeal shall be allowed from the judgment of the justices.

Sec. 4. *Provided nevertheless,* That the proceeding may be removed by *Certiorari* into General court or Circuit court, holden in such county, and be there quashed for irregularity, if any such there may be, nor shall such judgment be a bar to any after action brought by either party; which writ of restitution shall be in form following:

No appeal from justices judgment.

H Sc.

L S.

L. S.

A B and C D, two of the justices assigned to keep the Peace in, and for the said county, to the of H greeting:

Appeal to Certiorari.

Whereas at a court of enquiry, of forcible entry and detainer, held before us at in the said county of upon the day of in the year the jurors empannelled and sworn according to law did return their verdict in writing signed by each of them, that E F, was upon the

day of in the rightful possession of a certain messuage or tract of land, (as in the verdict returned) and that &c. (as in the verdict) whereupon it was considered by us, that the said E F should have restitution of the same: We therefore require you that taking with you the force of the county, if necessary; you cause the said G H, to be forthwith removed from the premises, and the said E F, to have the peaceable restitution of the same, and also that you levy of the goods, chattels, or lands of the said G H, the sum of being costs taxed against him on the trial aforesaid, together with more for this writ, and your own fees, and for want of such goods, chattels or lands, of the said G H, by you found, you are commanded to take the body of the said G H, and him commit to the common jail of the said county, there to remain until he shall pay the sum aforesaid, together with all fees arising on the service of this writ, or until he be delivered by due course of law, and make return of this writ with your proceedings: Witness our hands and seals at aforesaid the day of in the year

A B
C D, } Justices.

Provided nevertheless, That this law shall not extend unto any person who hath had the occupation, or been in the quiet possession of any lands or tenements by the space of three whole years together, next before, and whose estate therein is not ended or determined.

Proviso.

As to three years quiet possession.

FRAUDS & PERJURIES.

A LAW

To prevent Frauds and Perjuries, adopted from the Kentucky Code.

Passed July, 21, 1809.

Sec. 1. Be it enacted by the Governor and Judges of the Illinois Territory and it is hereby enacted by the authority of the same, That no action shall be brought whereby to charge any executor or administrator upon any

Certain contracts void unless in writing.

special promise to answer any debt or damages, out of his own estate or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, tenements or hereditaments, or the making any lease thereof for a longer term than one year, or upon any agreement which is not to be performed within the space of one year from the making thereof unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party charged therewith, or some other person by him thereunto lawfully authorised.

All conveyances sales and gifts made to defraud creditors void as to creditors.

Sec. 2 Every gift, grant, or conveyance of lands, tenements, hereditaments, goods or chattles or of any rent, common or profit of the same, by writing or otherwise, and every bond suit, judgment or execution had, and made or contrived of malice, fraud, covin, collusion or guile to the intent or purpose to delay hinder or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures, or to defraud or deceive those who shall purchase the

same lands, tenements, or hereditaments or any rent, profit or commodity out of them shall be from thenceforth deemed & taken (only as against the person or persons his, her, or their heirs, successors, executors, administrators or assigns and every of them, whose debts, suits, demands, estates and interest by such guileful and convinous devises and practices as aforesaid, shall or might be in any wise desturbed, hindered, delayed or defrauded) to be clearly and utterly void; any pretence, color, feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding, and moreover if a coveyance be of goods and chattels and be not on consideration deemed valuable in law; it shall be taken to be fraudulent within this act, unless the same be by will duly proved, and recorded, or by deed in writing acknowledged or proved, if the same deed includes lands also, in such manner as conveyances of land are by law directed to be acknowledged, or proved, or if it be goods and chattels only, then acknowledged or proved by two witnesses in any court of record in the county, wherein one of the parties lives within eight months after the execution thereof, or unless possession shall really and bona fide remain with the donee, and in like manner where any loan of

Good and valid against the donor or vendor.

What is required to make the conveyance good.

goods and chattels shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained by the space of five years, without demand made and pursued by due process at law, on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of an use or property by way of condition, reversion, remainder or otherwise in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to the creditors and purchasers of the persons aforesaid so remaining in possession to be fraudulent within this act, and that the absolute property is with the possession, unless such loan, reservation or limitation of use or property were declared by will or deed in writing proved and recorded as aforesaid.

Restriction.

Sec. 3. This act shall not extend to any estate or interest in any lands, goods or chattels or any rents, common or profit out of the same, which shall be upon good consideration and bona fide lawfully conveyed or assured to any person or persons, bodies politic or corporate.

AN ACT

For improving the breed of Horses.

Passed Sept. 17, 1807.

Stone horses above a year old, running at large to be taken up & cut or gelded.

Sec. 1. It shall and may be lawful for any person or persons, to take up, and cut or geld, at the risk of the own er, any stone horse of the age of twelve months and upwards, that may be found running at large, out of the enclosed ground of the owner or keeper, & if the said horse should happen to die he shall have no recourse against the person or persons who shall have so taken up or gelded the said horse; & the owner of the said horse shall moreover pay to the person who has so taken up and cut or gelded the said horse or caused it to be done, the sum of three dollars, to be recovered before any Justice of the Peace of the county.

Horse dying loss of owner.

Who shall pay for cutting 3 dolls.

How recoverable.

Provision in favor of stud horses above 14 1 2 hands high running at large, and proceedings in such cases.

Sec. 2. It shall not be lawful for any person to cut, or geld any horse above fourteen and one half hands high, that is known to be kept for covering mares; but if any owner or keeper of a covering horse, shall wilfully or negligently suffer said horse to run at large, out of the enclosed lands of the owner or keeper, any person may take up said horse and carry him to his owner or keeper,

for which he shall receive two dollars, recoverable before any justice of the peace of the county; for a second offence double the sum, and for a third offence the said horse may be taken and cut or gelded, as is provided in the first section hereof.

IMPEACHMENT.

AN ACT

Directing the manner of proceeding in cases of Impeachment.

Passed Sept. 17 1807.

H. R. to procure Impeachments &c.

Sec. 1. All civil officers holding any commission under the authority of this territory shall be impeachable by the House of Representatives, either for mal administration or corruption in his office, such impeachment shall be prosecuted by the Attorney General, or such other person or persons as the house may appoint.

Sec. 2. The Legislative Council shall have the sole power to try all impeachments, when sitting for that purpose, they shall be on oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members present.

L. C to try impeachts. be on oath.

Sec. 3. Judgment in case of impeachment, shall not extend further than to removal from office, and to disqualification to hold and enjoy any office of honor, trust or profit under this territory, but the party convicted, shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

Judgt. to extend to removal &c.

INDIANS.

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AN ACT

Prohibiting the sale of Ardent Spirits, and other Intoxicating Liquors to Indians,

Passed Sept. 17th, 1807.

Sec. 1. It shall and may be lawful for the Governor of this Territory, and he is hereby authorised and empowered,

Governor to issue his proclamation.

during the sitting of any council, or holding any public treaty or conference, with any Indian nation or tribe, to prohibit, by proclamation, the sale or other disposition of any ardent spirits, or other intoxicating liquors, to any Indian or Indians, by any person or persons, for any purpose, or under any pretence whatsoever, within thirty miles of the place of holding such council, treaty, or conference.

Offenders to be fined &c.

Sec. 2. If any person shall not strictly observe whatever restrictions may be imposed under the authority aforesaid, he, she or they so offending, shall, on conviction, by indictment, or prosecution, be fined in a sum not exceeding five hundred dollars, nor less than fifty dollars, and in case of inability to pay the fine with costs, shall be imprisoned not more than six months, nor less than three months.

Mediately or immediately selling or giving to Indians be fined.

Sec. 3. If any trader or other person whosoever, residing in, coming into, or passing through the said Territory, or any part thereof shall presume to furnish, vend, sell or give, or shall procure to be furnished, vended, sold or given, upon any account whatever to any Indian or Indians, or nation or tribe of Indians, being within the Territory, or waters adjoining to, or boun-

ding the same, any Rum, Brandy, Whiskey, or other intoxicating liquor, or drink, he, she or they so offending, shall, on conviction, by presentment or indictment, forfeit and pay, for every such offence, any sum not exceeding one hundred nor less than five dollars, to the use of the territory; *Provided,* That nothing herein contained shall be taken or construed to impair or weaken the powers and authority that now are, or at any time hereafter may be vested in the Governor, or other person as Superintendent, or Agent of Indian affairs, or commissioner plenipotentiary for treating with Indians.

Not to impair or weaken authority vested in agt. of Indian affairs.

The third section of this act shall com mence and be in force, when, and as soon as the Governor of this territory shall be officially notified, that the states of Ken ucky and Ohio, and the territories of Louisiana, and Michigan, have passed, or shall pass laws prohibiting the sale or gifts of intoxicating liquors to Indians, within their respective states & territories: and it shall continue in force so long as the said acts made or to be made in the said states or territories, shall continue in force therein.

When 3rd sec to be in force.

Continue in force same time.

See acts 1813 *and* 1814.

M M

AN ACT

Prohibiting the trading with Indians, &c.

Passed December 8, 1813.

Preamble.

Whereas it has been represented by the Executive of this Territory, and the Chief of the tribe of the Kaskaskia Indians, that the vending of ardent spirits, and other intoxicating liquors, to the Indians of the said tribe is productive of great evils to the community and of serious injury to the said tribe, and that to tolerate the purchase of arm , clothing, horses, and other articles necessary for their use, and comfort, would tend to encourage intemperance & wretchedness to which these unfortunate beings are hastening, for remedy whereof:

No person to sell whiskey to Indians.

Sec. 1. Be it enacted by the Legislative council and House of Representatives, and it is hereby enacted by the authority of the same, That if any trader or other person whosoever residing or coming into, or passing through the said territory, shall presume to furnish, vend, or sell, or shall procure to be vended or sold upon any account whatever to any Indian or Indians being within this territory or waters adjoining to the same, any brandy, rum, whiskey or other intoxicating liquor, he,

she or they so offending shall on conviction of the same, by presentment or indictment, forfeit and pay for every such offence, any sum not exceeding twenty dollars, nor less than five; one half to the use of the territory, and the other half to the informer.

Sec. 2. Be it further enacted, That if any person or persons, shall purchase or receive of any Indian in the way of barter, or trade a gun or other article commonly used in hunting, or any instrument of husbandry or cooking utensil, or clothing or horse, shall forfeit and pay any sum not exceeding fifty dollars nor less than ten, to the use of the territory, to be recovered as is directed in the former section, one half to the use of the territory and the other to the use of the informer—*Provided,* that nothing herein contained shall be so construed as to restrain any person from trading with Lewis Decoigne, the chief of the Kaskaskia Indians, for any article that he may deem necessary in behalf of said tribe, nor so as to impair or weaken the powers and authority that now, or at any time hereafter may be vested in the governor, or other person, as superintendent or agent of Indian affairs, or commissioner plenipotentiary for treating with Indians, within this territory.

No person to purchase gun or other article of Indians.

Penalty.

Proviso.

This act to be in full force from and after the first day of January next.

AN ACT

To promote retaliation upon hostile Indians.

Passed Dec. 24, 1814.

Preamble.

Whereas the hostile incursions of the savages and their indiscriminate slaughters of men women and children, have been often repeated under circumstances aggravating the horror of such sanguinary scenes and producing great affliction and distress among the inhabitants of this territory.

And whereas nothing is so well calculated to check the progress or prevent the repetition of those attacks on the part of those blood thirsty monsters as successful pursuit and retaliation upon them; to effect which it becomes expedient to offer sufficient encouragement to the bravery and enterprize of our fellow-citizens, and those other persons now engaged or that hereafter may be engaged in the defence of our frontier Therefore.

Persons who may pursue Indians and kill any how rewarded.

Sec. 1. Be it enacted by the Legislative Council and house of Representatives and it is hereby enacted by the authority of the same, That if any Indian or Indians shall hereafter make an incursion into our settlements with hostile

intentions and shall commit any murder or depredation, and any citizen or citizens or rangers or other persons engaged in the defence of our frontier shall pursue and overtake and take prisoner or prisoners or kill any indian or indians that may have so offended such person or persons shall if they be citizens merely receive a reward for each indian so taken or killed the sum of fifty dollars and if they be rangers or other persons actually at that time engaged in the defence of our frontier, such person or persons shall be entitled to a reward of twenty five dollars.

If rangers how rewarded

Sec. 2 Be it further enacted that if any party of citizens having first obtained permission of the commanding officer on our frontier to go into the territory of any hostile indians shall perform any such tour and shall kill any Indian Warrior, or take prisoner any Squaw or child in the country of said hostile indians such person shall be entitled to a reward of one hundred dollars for each indian warrior killed and each squaw or child taken prisoner.

Citizens making incursions into the Indian country and killing men or taking women & children prisoners how rewarded.

Sec. 3 Be it further enacted that if any party of Rangers or other persons now engaged or that may hereafter be engaged in the defence of our frontier, not exceeding fifteen in number shall

with the leave of the officer make a voluntary incursion into the country of any hostile indians and shall kill any indian warrior or warriors, or take and bring away any squaw or squaws child or children, in and from the country of said indians such persons as aforesaid shall be entitled to a reward of fifty dollars for each indian warrior killed as aforesaid, and each squaw or child so taken prisoner.

Proofs to be made to the Judges of county court

Sec. 4. Be it further enacted that proof of any of the before mentioned facts to entitle any person or persons to the reward given by this law shall be made before the judges of any county court, or any two of said judges who upon full proof being made before them, shall certify the same to the auditor of public accounts who shall audit the amount due to such person or persons and give to him or them a warrant on the Treasurer for the amount thereof which shall be paid out of any money in the public treasury. This act shall commence and be in force from and after the passage thereof.

Auditor to draw on treasurer.

AN ACT

Concerning the Kaskaskia Indians,

Passed December 22, 1814.

Preamble.

Whereas a former law of this Legislature has been found insufficient to prevent evil disposed persons from selling and giving intoxicating drinks to the Kaskaskia Indians, or from cheating and defrauding the said Indians, out of their property by pretended or real purchases, and whereas the former practice is productive of disorder, and other pernicious consequences, and the latter a violation of moral justice and good policy—for remedy thereof:

Persons prohibited from giving whiskey to the Indians.

Sec. 1. Be it enacted by the Legislative Council and House of Representatives, and it is hereby enacted by the authority of the same, That if any white person or free person of colour either male or female shall hereafter without license from the Governor as superintendent of Indian affairs within this territory or from some sub-agent appointed by him, either sell or give to any Kaskaskia Indian or any other Indian, residing with them any quantity of whiskey, gin, brandy, rum, cider or any other intoxicating drink, such person so offending shall forfeit and pay twenty dollars to be recovered upon warrant before any Justice of the peace, who shall upon con-

Penalty wh

viction of such offence, issue execution returnable in thirty days against either the body or goods of such offender as may be required of the said justice of the peace, and upon such execution there shall be no security whatever taken.

How recovered.

Sec. 2. If either of the offences stated in the above section, shall be committed by any negro or mulatto being the slave or servant of any person whatever, it shall be the duty of a justice of the peace upon application to him made according to law to issue his warrant against such negro or mulatto and upon proof of the offences above mentioned or either of them having been committed by said negro or mulatto, the justice of the peace before whom such proof may be made shall order him or her so offending to receive on his or her bear back if for the first offence fifteen lashes and for every subsequent offence of like kind, double that number, *Provided, however,* That the said corporal punishment shall not be inflicted if the owner or any other person will in behalf of said negro or mulatto, pay the sum of twenty dollars for each offence respectively.

Slave so offending.

How punished.

Owner or other person may pay the money for them.

Sec. 3. That it shall not be lawful for any person whatever without license from the Governor or some sub-agent appointed by him to purchase or receive

by gift or other wise of any of the before mentioned Indians, any horse mare, gun tomahawk, knife, blanket, shrouding, calico, saddle, bridle, or any goods wares or merchandize whatever, that all such sales and purchases or gifts shall be considered as fraudulent on the part of the buyer or receiver and that any white person or free person of coulour whatever so buying or receiving any such articles of any one of those Indians shall be liable to pay a fine of twenty dollars to be recovered before a justice of the peace, who shall upon conviction of any such offender, issue execution in like manner as is directed in the first section of this act, and the said offender shall restore the article or articles so bought or received and shall moreover be liable to a suit in the supreme court for the fraud of buying or receiving any such article aforesaid whatever the amount of value thereof may be and in all cases of judgment against him or her, he or she shall pay the costs.

Persons forbidden to purchase arms &c. other property from them

The sale void

Fine for so doing.

How recovered.

Sec. 4 If either of the offences stated in the last preceding section of this act shall be committed by any negro, or mulatto being the slave or servant of any other person the said negro or mulatto so offending shall be subject to the

Slaves so offending.

How punished.

same proceedings and punishment under the same conditions as are prescribed in the second section of this act, and

Owner to compel restoration or be liable to pay for them

the owner shall either cause said negro or mullatto, restore any article or articles so purchased or received by him or or her or said owner shall be liable in default thereof to the same proceedings as if such owner had actually himself or herself bought or received the said article or articles contrary to the intention of this law.

Governor or subagent may prosecute for said Indians.

Sec. 5. In all the above cases and in all other cases of injuries done to the said Indians it shall be lawful for the Governor of the territory or any subagent appointed by him, to sue or warrant as the case may require in behalf of any such injured Indian.

Fines how applied.

Sec. 6. All fines imposed by this law after deducting thereout all necessary expenses shall be paid by the governor or a sub-agent to the injured Indian or Indians.

Justices, Sheriffs, & Constables to execute this law.

Sec. 7. It shall be the duty of all Justices of the peace, sheriffs and constables, to aid and assist in the execution of this law according to their respective offices.

AN ACT

Concerning Indictments and Presentments.

Passed December 22, 1814.

Indictment for trespass or misdemeanor agst. several, no more costs than if but one.

Sec. 1. Be it enacted by the Legislative Council and House of Representatives and it is hereby enacted by the authority of the same, That where two or more persons shall be indicted for the same tresspass or misdemeanor no more costs shall be allowed than if it were against one only.

No prosecutor in treason murder or felony required.

Sec. 2. Be it further enacted that in all cases of treason murder or felony no prosecutor shall hereafter be required.

Indictment found upon information of a grand Juror or conservator of the peace no prosecutor reqd.

Sec. 3. That in all cases of indictments or presentments for tresspass or misdemeanor where the presentment or indictment shall be made from the knowledge of two of the grand jury, or upon information of a conservator of the peace in the necessary discharge of his duty, it shall be so stated at the foot of the indictment or present, and no prosecutor shall be required, but in all other cases there shall be a prosecutor.

This act shall take effect from and after the passage thereof.

AN ACT

For the relief of persons imprisoned for Debt.

Passed Sept. 17 1807.

Prisons may giv up property.

Sec. 1. Any person who now is or hereafter may be in actual confinement in any of the jails of this Territory and is willing to deliver up to his or her creditors all his or her estate both real and personal, towards the payment of his or her creditor or creditors, shall have leave to present a petition to the court of

Petition C. P.

Common pleas, in and for the county wherein he or she is so imprisoned, setting fourth the cause or causes of his or her imprisonment, together also, with a list of all his or her creditors, with the money due and arising to each of them, to the best of his or her knowledge.

Court to set time.

Sec. 2. The court to whom such application is made, are required to name the time and place, at which they will attend to hear what can be alledged for or against the liberation of such debtor; of which time and place so appointed by the court, the debtor shall cause notice thereof in writing at least

Give notice or adv. &c.

thirty days previous thereto to be served, or left at the usual place of residence of each of his or her creditor or creditors, if residing within this territory, and

have the same inserted in one of the newspapers of this Territory the most contigous to the place of his or her confinement, if any such creditor or creditors should not reside in the Territory.

Sec. 3 At such time & place as aforesaid the debtor so applying to the court as aforesaid, shall subscribe and deliver a schedule of his or her whole estate, and make oath, and swear to the effect following, that is to say:

To make & subscribe list of property & take oath.

"I, A B in the presence of Almighty God do solemnly swear or affirm (as the case may be) the schedule now delivered, and by me subscribed doth contain to the best of my knowledge and remembrance a full, true, just and perfect account, and discovery of all the estate, goods and effects unto me in any wise belonging, and such debts as are to me owing, or to any person in trust for me, and of all securities and contracts wherby any money may become payable, or any benefit or advantage accruing to me or to my use, or to any other person or persons in trust for me, have not land money, stock, or any other estate real or personal in possession, reversion or remainder or the value of the debt or debts by me due, and that I have not since the commencement of the suits for

Form

which I am now imprisoned, or at any day or time, directly or indirectly, sold lessoned or otherwise disposed of in trust, or concealed all, or any part of any lands, money, goods stock, debts, securities, contracts, or estate, whereby to secure the same, or recieve or expect any profit or advantage therefrom or to defraud any creditor or creditors, to whom I am indebted in any wise howsoever.

Schedule to remain with clerk

Which schedule being subscribed in open court, shall be returned to the clerk of the court, there to remain for the benefit of the creditors, and after delivering in such schedule, and taking such oath, such prisoner shall be discharged by warrant from such court; which warrant shall be sufficient to indemnify such sheriff or officer against any escape or escapes, action or actions whatsoever, which shall or may be brought or prosecuted against him, or them by reason thereof: and if any such action should be commenced for performing his duty in pursuance of this act, he may plead the general issue and give this act in evidence: *Provided always,* That notwithstanding such discharge, it shall be lawful for any creditor or creditors, by judgment at any time afterwards, to sue out a writ of *scire facias* to have execution against the lands or tene-

Prisoner to be dischargd.

ments, goods or chattels, which such insolent persons shall hereafter acquire, or be possessed of, but no person delivering in such schedule, and having taken the oath and been liberated from prison, by the provisions of this act, shall be subject to imprisonment on final process, for any debts contracted or for damages accrued for the breach of any contract entered into prior to such liberation unless such liberation be fraudulently obtained.

Creditor may issue exon. & take prop ty.

Not again comtd.

Sec. 4. All the estate which shall be contained in such schedule, and any other estate which may be discovered, shall be vested in such person as the court of Common Pleas of the county, where such prisoner was discharged, shall appoint as assignee; and such assignee is hereby authorized and impowered and required within sixty days after the taking the said oath, ten days previous notice of the time and place of sale being given to sell and convey the same to any person whomsoever for the best price that can be got for the same, and the money arising by such sale shall by such assignee within thirty days thereafter be paid to the creditor or creditors of such insolvent debtor *pro rati,* according to their respective debts, saving however to every such prisoner, his or her necessary apparel,

Estate vested in assignees appointed by C. P.

Their duty and power

and utencils of trade, & when any debts by such schedule said to be due to such insolvent debtor, the said assignee shall sue for and recover the same in his own name as assignee of such debtor, in any court proper to try the same; and such assignee shall be allowed to retain out of the effects of such insolvent debtor before the distribution thereof, all reasonable expences in recovering such money, and disposing of such estate as shall be adjudged reasonable by the court.

Recover debts

Retain for trouble etc,

Sec. 5 If any prisoner as aforesaid shall be convicted of having sold leased or otherwise conveyed, concealed or otherwise disposed of, or intrusted his or her estate or any part therof, directly or indirectly contrary to his or her foregoing oath or affirmation, he or she shall not only be liable to the pains and penalties of wilful perjury, but shall receive no benefit from the said oath or affirmation, and in case such prisoner at the time of such intended caption shall not take the said oath or affirmation, or shall not be admitted thereto by the said court, he or she shall be remanded back to prison and shall not be entitled to the benefit of this act, unless a new notification be made out and served in manner aforesaid.

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